

# HEARTH & Hexes

Crafting Sovereign Leasing Magic



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# BIO



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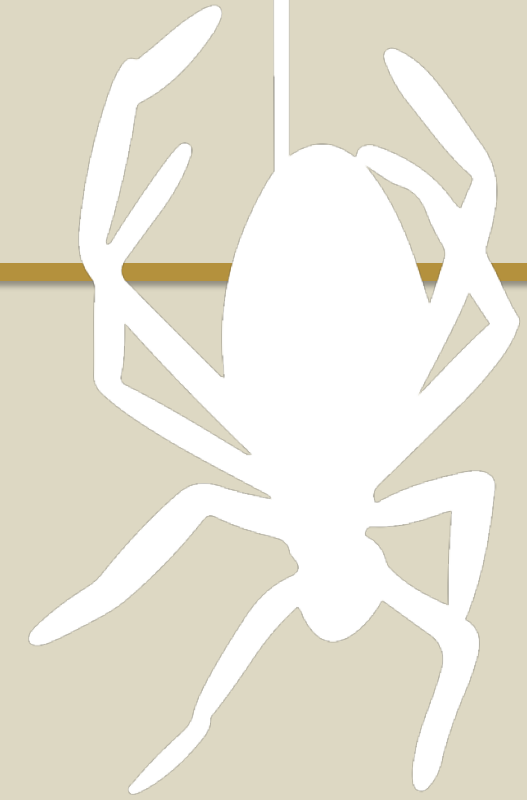
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Indigenous Practice**

- Enrolled citizen of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- Lewis & Clark Law School graduate
- Former Assistant U.S. Attorney at the U.S. Department of Justice, District of Oregon
- Former Executive Director of the Western Resources Legal Center in Portland, Oregon
- Former Senior Counselor to the Assistant Secretary-Indian Affairs at the U.S. Department of the Interior
- Adjunct Professor of Law at Lewis & Clark Law School



# Agenda (45 minutes)

- I. HEARTH: what changes – and what doesn't**
- II. Legal Framework: Statute + 25 CFR Part 162**
- III. Adopting HEARTH regulations & timelines**
- IV. Tribal environmental review under HEARTH**
- V. From signed lease to record: TAAMS/LTRO**
- VI. ROWS ≠ Leases: Part 169, SLAs, Revocable Permits**
- VII. TERA/TEDO**
- VIII. Case Snapshots, pitfalls, Q&A**





# HEARTH in One Slide

**HEARTH lets tribes approve their own surface leases under Interior-approved regulations.**

- **Scope:** business, residential, agricultural, wind/solar, certain public uses
  - Not covered: minerals, allottee lands, fee lands, land mortgages
- **Post-approval:** BIA no longer approves each lease; Tribe does
- BIA retains title/records functions (TAAMS/LTRO)

# Legal Framework

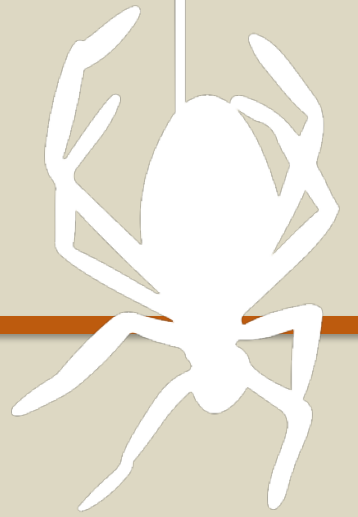
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- **Statute:** HEARTH Act (25 U.S.C. § 415(h))
- **Regulatory Anchor:** 25 CFR Part 162 (Ag/Res/Bus/Wind-Solar)

*Tribal regs must mirror federal elements but can tailor procedures locally.*



# Adopting HEARTH Regulations – Process Snapshot



# Environmental Review Under HEARTH

## KEY POINTS

- Recognize significant effects (define thresholds)
  - Provide public notice & comment window
  - Respond in writing to substantive comments
    - Keep an auditable decision record

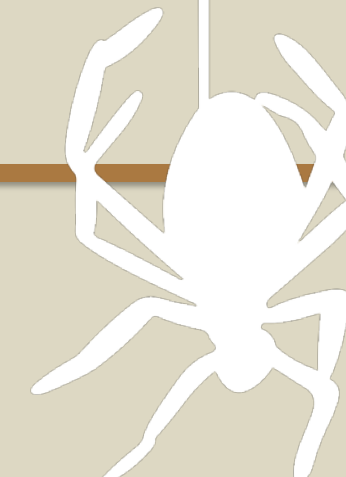
## PRACTICAL TIPS

- Create short-form vs full review tiers
  - Templates & checklists
- Coordinate cultural resources early
- Clarify amendments/assignments

# From Signed Lease to Title Record

- **Key terms:** parties, premises/legal description, term, rent, use, signatures
- TAAMS encoding and LTRO recording
- **Finance-ability:** leasehold mortgage clauses, estoppels, SNDA
- Amendments, renewals, subleases, assignments





# Not *Everything* Is a HEARTH Lease

# HEARTH v. ROWs (Right-of-Way)

## KEY POINTS

- HEARTH covers surface leases (Part 162)
- ROWs governed by Part 169; non-possessory
  - BIA approval required for ROW grants
  - SLAs for single service connections

## PRACTICAL TIPS

- Separate ROW timeline from leases
- Accurate map/definite location & legal description
  - Bonding/insurance; safety plans
- Parallel tracks when projects need lease + corridor

# RUPs

## KEY POINTS

- HEARTH covers surface leases (Part 162)
- ROWs governed by Part 169; non-possessory
  - BIA approval required for ROW grants
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## PRACTICAL TIPS

- Separate ROW timeline from leases
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# Template Clauses – Revocable Use Permits (RUP)



- **Purpose:** temporary access, staging, geotech; no permanent improvements
- **Term & Revocability:** short term; revocable on notice; no possessory interest
- **Compliance:** Tribal law; cultural/environmental protections
- Insurance/Indemnity; Restoration duties
- Coordination with Tribal Realty/Environmental; copy to Agency

# Toolkit to Keep Schedules Moving



**Revocable Use Permits (RUP):** temporary, revocable, non-possessory  
— surveys, geotech, staging

Copy to Agency for records; convert to lease if use becomes possessory



**Survey Access:** owner permission; in some cases BIA-issued survey access for anticipated ROWs

**Energy:** consider TERA/TEDO for self-approval of energy leases/ROWs (capacity-intensive)

# Adoption Snapshot & Use Cases

- Many Tribes have adopted HEARTH regs across housing, business parks, renewables
- **Examples:** leasehold-mortgaged housing; business parks with subleases
- **Renewables:** surface lease + separate ROWs for interconnection
- Use Indian Affairs list for current approvals

# Decision Flow – Lease, ROW, or Permit?

Linear facility (road/utility/pipeline/cable)? → Part 169 ROW

Need access while ROW processes? → RUP on tribal parcels

Single service connection? → SLA (Part 169)

Not linear? → HEARTH (if regs approved) or Part 162

# Common Pitfalls (and Fixes)

## KEY POINTS

- Vague environmental thresholds
  - Incomplete legal descriptions
- Overreaching HEARTH scope (minerals/ROWs)
- Under-resourcing admin/enforcement

## PRACTICAL TIPS

- Define 'significant effect'; templates
- Pre-clear descriptions with LTRO
- Keep HEARTH to surface uses
- Budget staffing; adopt checklists

# What about Energy Leases?

# What TERAs Do

- **TERA** = Tribal Energy Resource Agreement (25 U.S.C. §3504)
- With an approved TERA, tribes may approve energy-related leases and business agreements
- Tribes may also grant energy ROWs (pipelines, transmission/distribution) on tribal lands
- No Secretarial approval for each individual transaction under the TERA
- **Scope:** energy development (minerals, generation, transmission/distribution)
- **Goal:** greater tribal administrative/regulatory control for energy projects

# TERA Approval – Statute & Rule Changes

Created by ITEDSA in 2005

First regulations in 2008

2017 Amendments (P.L. 115 – 325) updated the statute

2019 final rule (84 Fed. Reg. 69602) updated 25 C.F.R. Part 224

Approval standard: demonstrate capacity + required environmental /compliance provisions

TERA may let tribes assume certain DOI activities (not inherently federal)

# TERA – Environmental & Compliance Requirements (Highlights)



- ✓ **Tribal environmental review** with public notice & responses
- ✓ **Assurances of compliance** with applicable federal and tribal environmental laws
- ✓ **Public notification** of final approvals; consult on off-reservation impacts if any
- ✓ **Recordkeeping & payment** documentation to support DOI trust responsibility and periodic review

# Where TERA Fits (vs. HEARTH & TEDO)

## *HEARTH*

- Surface leases (non-energy); tribe approves after regs
- Excludes minerals & ROWs

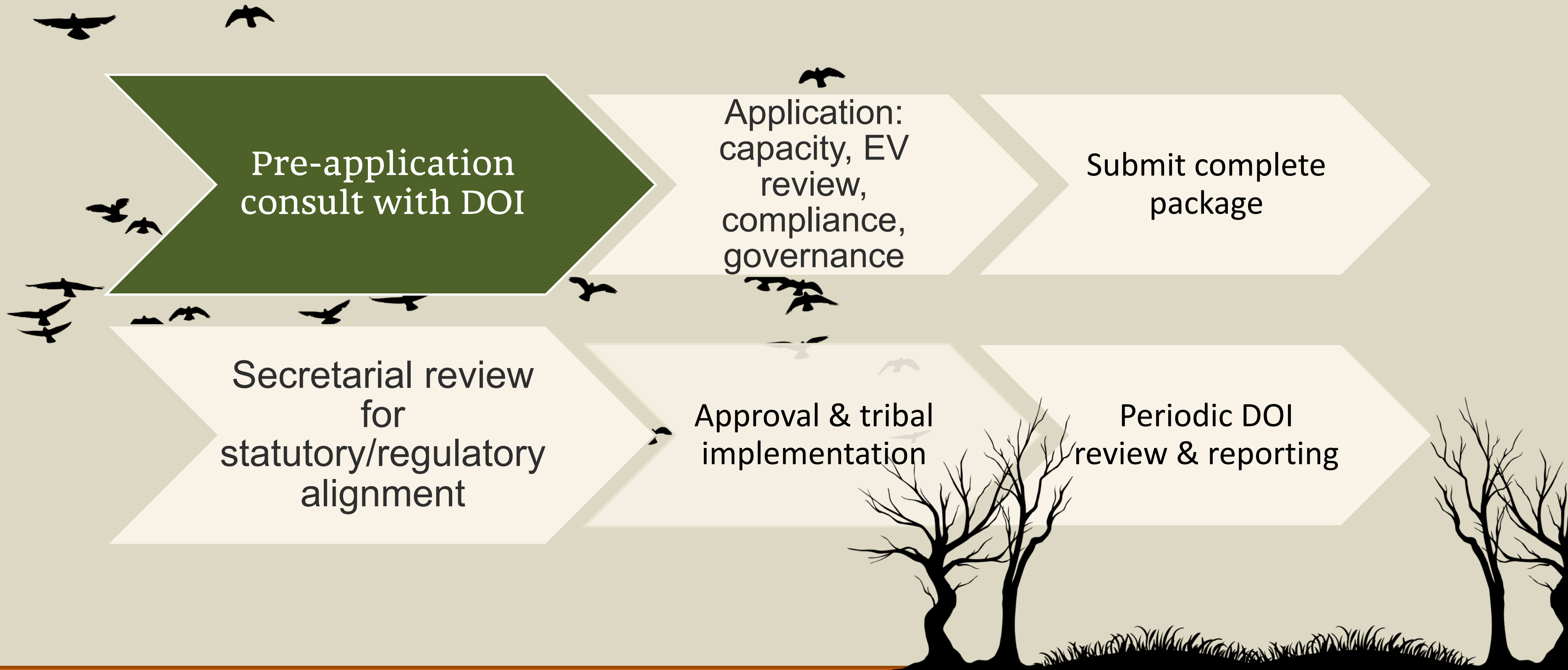
## *TERA*

- Energy-focused; tribe approves energy leases, agreements, and energy ROWs
- Requires capacity & robust EV/compliance

## *TEDO*

- Certified org route; energy-related leases/agreements/ROWs with reduced Secretarial approvals for certified TEDOs

# TERA Process Snapshot



# Resources & Next Steps

HEARTH overview  
& BIA guidance

25 CFR Part 162  
(Leasing) & 25 CFR  
Part 169 (ROWs)

Indian Affairs:  
approved HEARTH  
regulations list

Sample templates:  
environmental  
checklist, RUP  
clauses

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# Closing Thought

- HEARTH empowers tribal decision-making and speed
- Pair it with disciplined processes and the right tools (ROWs, permits, TERA/TEDO) to unlock housing, infrastructure, and investment on tribal lands



# Thank you for your time!

*Please reach out if you'd like to discuss any of the topics presented here today.*



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