HEARTH & Hexes

Crafting Sovereign Leasing Magic



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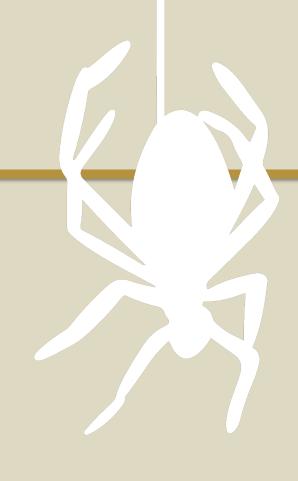
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- Enrolled citizen of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians
- Lewis & Clark Law School graduate
- Former Assistant U.S. Attorney at the U.S. Department of Justice, District of Oregon
- Former Executive Director of the Western 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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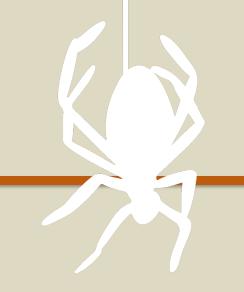
- Statute: HEARTH Act (25 U.S.C. § 415(h))
- Regulatory Anchor: 25 CFR Part 162 (Ag/Res/Bus/Wind-Solar)

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



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Adopting HEARTH Regulations – Process Snapshot



Draft regs
(authority, scope,
environmental
review,
enforcement)

Community input (recommended)

Submit to Interior (DRES)

Interior review target ~120 days from complete

Approval & publication

Implement:
forms,
checklists,
training

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

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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



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

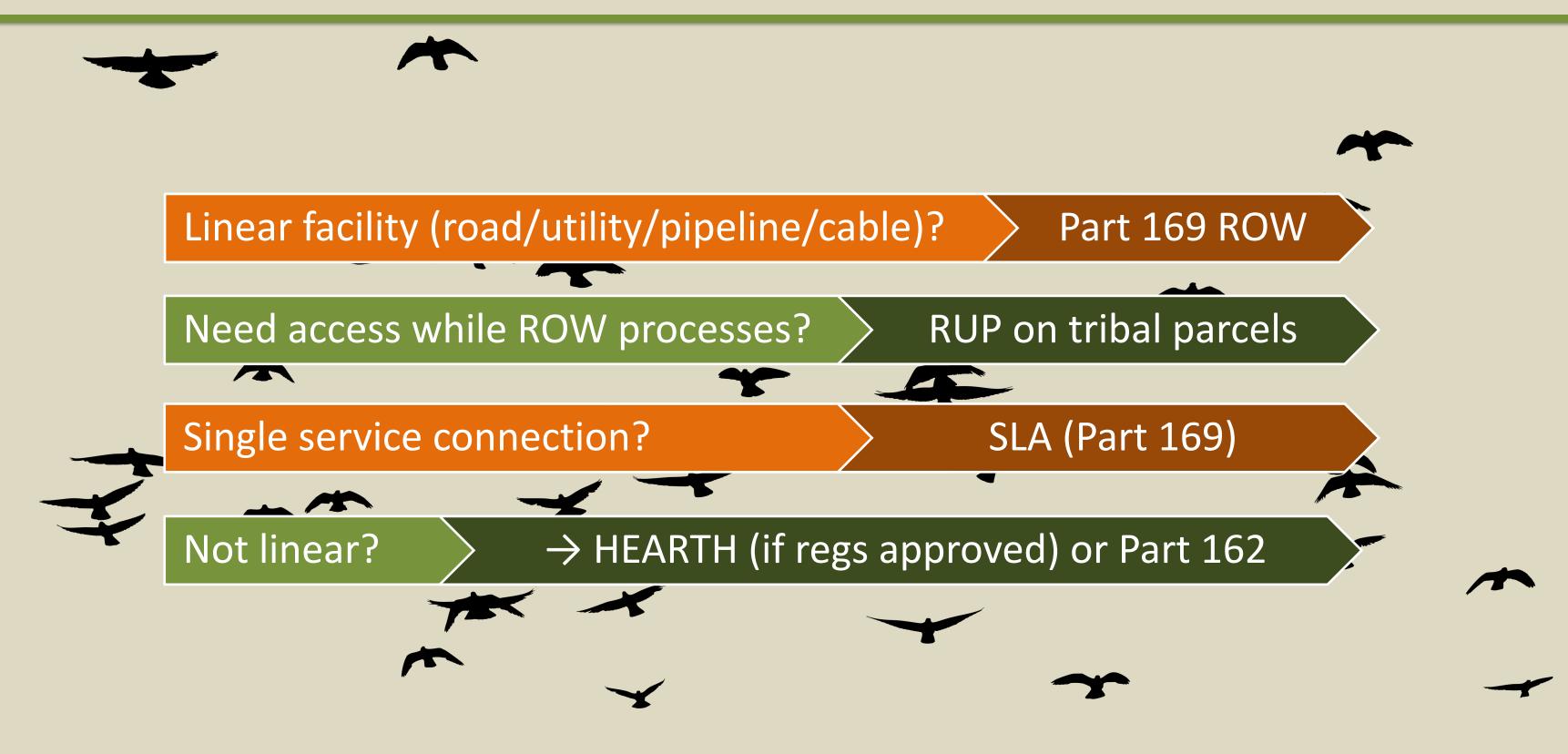
 Many Tribes have adopted HEARTH regs across housing, business parks, renewables

 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?



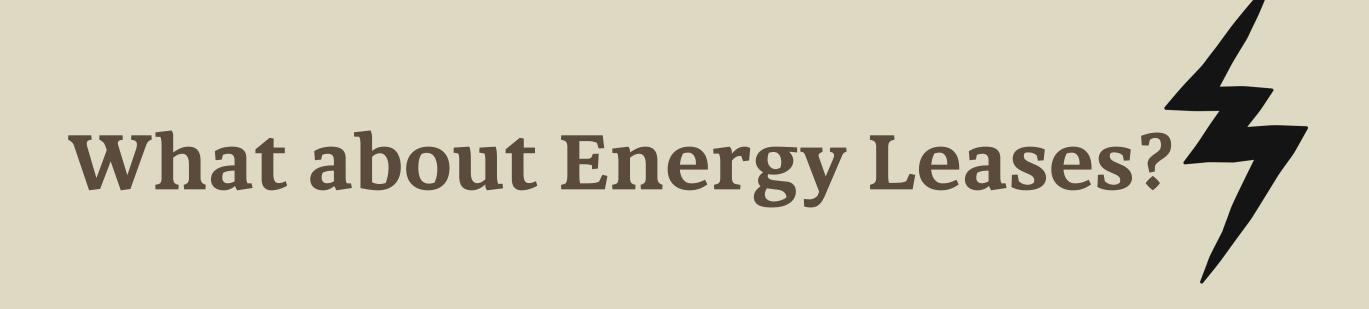
Common Pitfalls (and Fixes)

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 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

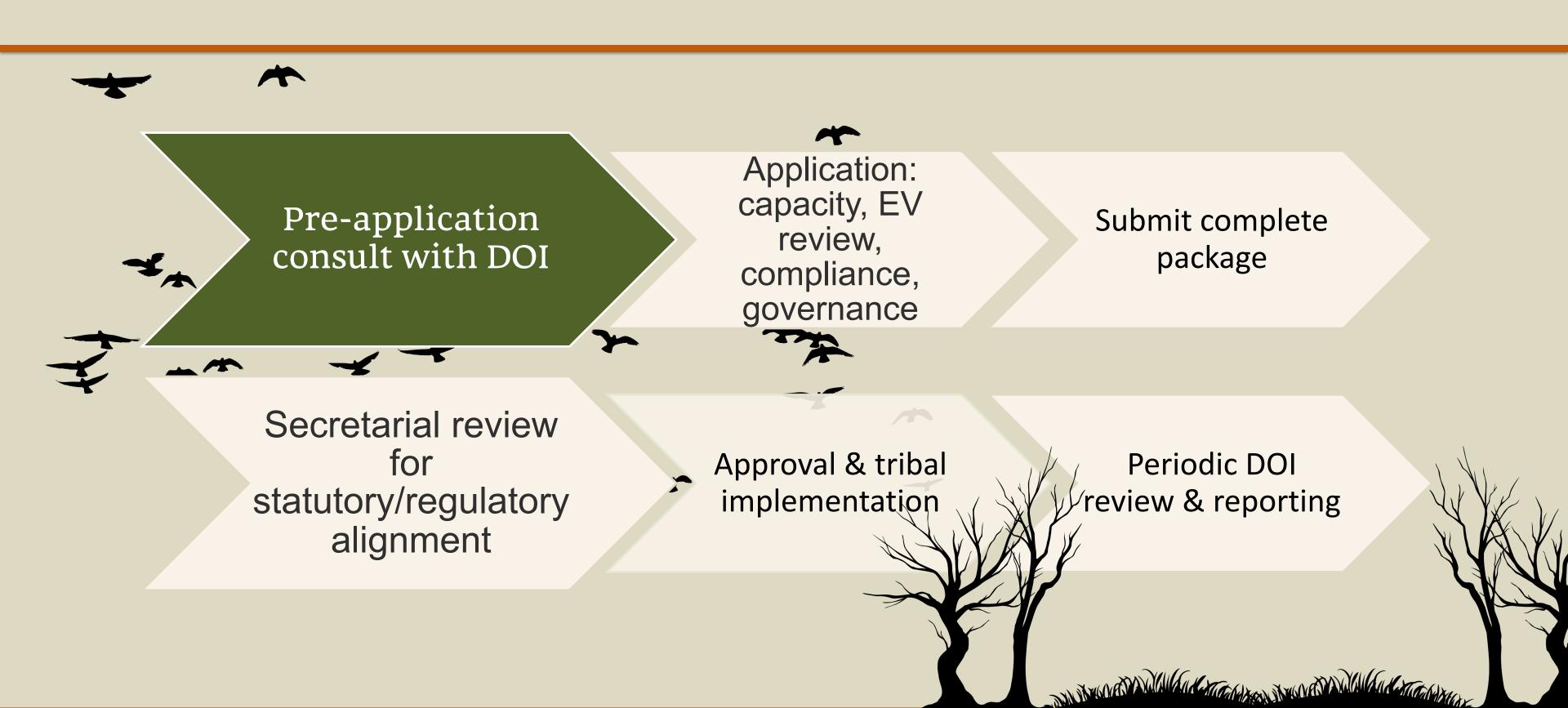
- Energy-focused; tribe approves energy leases, agreements, and energy ROWs
 - Requires capacity & robust EV/compliance



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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