promoting economic development, self-determination, and tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of state law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts state and local taxation of permanent improvements on trust land. Confederated Tribes of the Chehalis Reservation v. Thurston County, 724 F. 3d 1153, 1157 (9th Cir. 2013) (citing Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973)). Similarly, Section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See Seminole Tribe of Florida v. Stranburg, No. 14–14524, *13–*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether state and local taxation of non-Indian lessee’s on the reservation is preempted. White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980). The Bracker balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant Federal, state, and tribal interests. We hereby adopt the Bracker analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and tribal interests against state and local taxation of improvements, leaseholds, and activities on land leased under the Department’s leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress’s overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” Id. at 5–6.

Assessment of state and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. See Michigan v. Bay Mills Indian Community, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. See id. at 2043–44 (finding that state and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA’s surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to part 162 of the regulations.

Accordingly, the Federal and tribal interests weigh heavily in favor of preemption of state and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations at part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Twenty-Nine Palms Band of Mission Indians of California.
Secretary—Indian Affairs, has approved the tribal regulations for the Oneida Nation of New York.

II. Federal Preemption of State and Local Taxes

The Department’s regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are subject to state and local taxation and may be subject to taxation by the Indian tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal Government has a strong interest in promoting economic development, self-determination, and tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of state law in the field of Indian leasing and the taxation of lease-related activities applies with equal force to leases entered into under tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts state and local taxation of permanent improvements on trust land. See Confederated Tribes of the Chehalis Reservation v. Thurston County, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973)). Similarly, section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See Seminole Tribe of Florida v. Stranburg, No. 14–14524, *13–*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether state and local taxation of non-Indians on the reservation is preempted. See White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980). The Bracker balancing test, which is conducted against a backdrop of “traditional notions of Indian self-government,” requires a particularized examination of the relevant Federal, state, and tribal interests. We hereby adopt the Bracker analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and tribal interests against taxation of improvements, leaseholds, and activities on land leased under the Department’s leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to tribal leasing regulations approved under the HEARTH Act. Congress’s overarching intent was to “allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.” 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford tribes “flexibility to adapt lease terms to suit [their] business and cultural needs” and to “enable [Tribes] to approve leases quickly and efficiently.” Id. at 5–6.

Assessment of state and local taxes would obstruct these express Federal policies supporting tribal economic development and self-determination, and also threaten substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. See Michigan v. Bay Mills Indian Community, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”). The additional costs of state and local taxation have a chilling effect on potential lessees, as well as on a tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. See id. at 2043–44 (finding that state and local taxes greatly discourage tribes from raising tax revenue from the same sources because the imposition of double taxation would impede tribal economic growth).

Similar to BIA’s surface leasing regulations, tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See 25 U.S.C. 415(h)(3)(B)(i) (requiring tribal leasing regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the tribal land leasing process by approving the tribal leasing regulations in the first instance and providing technical assistance, upon request by a tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the tribal regulations, including terminating the lease or rescinding approval of the tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the tribal regulations according to the part 162 regulations.

Accordingly, the Federal and tribal interests weigh heavily in favor of preemption of state and local taxes on lease-related activities and interests, regardless of whether the lease is governed by tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Oneida Nation of New York.

Dated: June 14, 2016.

Ann Marie Bledsoe Downes,
Deputy Assistant Secretary—Policy and Economic Development.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A0501019.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 128.30 acres, more or less, an addition to the Reservation of the Shakopee Mdewakanton Sioux Community of Minnesota on June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), for the land described below. The land was proclaimed to be Shakopee Mdewakanton Sioux Community Reservation for the exclusive use of Indians on that Reservation who are entitled to reside at the Reservation by enrollment or tribal membership.