SUMMARY: The Bureau of Indian Affairs (BIA) approved the Kickapoo Traditional Tribe of Texas’ (Tribe) Part 3 Business Leases, Chapter 27 Leasing Code under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business leases without further BIA approval.

DATES: BIA issued the approval on September 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, sharelene.roundface@bia.gov, (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary’s approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior’s (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Kickapoo Traditional Tribe of Texas.

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 not 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
proclaim to the final regulations, the Federal government has a strong interest in 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. 5108, 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 5108 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, 799 F.3d 1324, 1331, 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. 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 State, Federal, 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, leasehold or possessory interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. See Michigan v. Bay Mills Indian Community, 572 U.S. 782, 810 (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 810–11 (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(b)(3)(B)(ii) (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 remediate 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 Kickapoo Traditional Tribe of Texas.

Tara Sweeney,
Assistant Secretary—Indian Affairs.
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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
[201A21000D/AAKCO01030/ AOA5101.999900]
Land Acquisitions; Tejon Indian Tribe
AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Notice.
SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 10.36 acres, more or less, into trust for the Indians of the Tejon Indian Tribe.
DATES: The Assistant Secretary—Indian Affairs made the final determination on September 1, 2020.
FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street, NW, MS 4620–MIB, Washington, DC 20240, telephone (505) 563–3132, email: sharlene.roundface@bia.gov.
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, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the Federal Register.
On the date listed in the DATES section of this notice, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for the Tejon Indian Tribe under the authority of the 25 U.S.C. 5108, Indian Reorganization Act of June 18, 1934 (48 Stat. 985).

Legal Description
THE NORTHERLY 589.34 FEET OF SECTION 28, TOWNSHIP 12 NORTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SURVEY OF SAID LAND ON FILE IN THE BUREAU OF LAND MANAGEMENT SITUATED WEST OF THE WESTERLY LINE OF WHEELER RIDGE ROAD AND SOUTH OF THE SOUTHERLY LINE OF DAVID ROAD, IN THE COUNTY OF KERN, STATE OF CALIFORNIA.