

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. 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-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, 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).

Just like BIA’s surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. See Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM–TRUS–29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed tribal regulations with part 162 regulations and listing required Tribal regulatory provisions). 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 Ohkay Owingeh.

Dated: January 6, 2016.

**Lawrence S. Roberts,**

*Acting Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

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### Land Buy-Back Program for Tribal Nations Under Cobell Settlement

**AGENCY:** Office of the Deputy Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** On November 4, 2015, the Department of the Interior released the 2015 Status Report for the Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program), which summarizes its implementation to date: <https://www.doi.gov/buybackprogram/about>. Since December 2013, the Program has paid nearly \$715 million to individual landowners and has restored approximately 1.5 million acres of land to tribal governments.

The Report highlights the Program’s launch of two efforts to help determine its next implementation schedule. The two-pronged planning initiative seeks input from tribal governments and landowners who are interested in participating in the Program. Eligible tribal governments not already scheduled for implementation are invited to formally indicate their interest in participating in the Program no later than March 11, 2016. More information is available to tribal leaders at: <https://www.doi.gov/buybackprogram/tribes>. Additionally, the Program has launched a nationwide recruitment drive to identify and engage landowners who are interested in learning more about this opportunity.

The Department also announced that Deputy Secretary Connor will host a Listening Session on March 3, 2016, at the Albuquerque Convention Center in Albuquerque, New Mexico, from 1:00–5:00 p.m. MT.

**DATES:** The Department will accept expressions of interest from eligible tribal governments that exercise jurisdiction over locations not on its current implementation schedule until March 11, 2016. Interested landowners are strongly encouraged to contact the Trust Beneficiary Call Center (Call Center) at 888–678–6836 to register their interest and confirm contact information by that same deadline, in order for their interest to be incorporated as a factor as

the Program develops its next implementation schedule.

**FOR FURTHER INFORMATION CONTACT:**

Tribal staff should contact [buybackprogram@ios.doi.gov](mailto:buybackprogram@ios.doi.gov) with questions regarding the expressions of interest. Landowners seeking to register their interest should contact the Call Center at (888) 678-6836.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Buy-Back Program is the Department of the Interior's collaborative effort with Indian Country to realize the historic opportunity afforded by the *Cobell* Settlement—a \$1.9 billion Trust Land Consolidation Fund—to compensate individuals who voluntarily choose to sell fractional land interests for fair market value. Purchased lands are then transferred to the tribal government with jurisdiction for uses to benefit the tribal community as a whole.

Individuals who accept their purchase offers receive payments directly into their Individual Indian Money accounts at the Office of Special Trustee for American Indians (OST). In addition to receiving fair market value based on objective appraisals, individuals also receive a base payment of \$75 per offer, regardless of the value of the land.

The Department is currently implementing the Buy-Back Program at multiple locations across Indian Country. Thus far, the Program has paid nearly \$715 million directly to individuals who have chosen to sell fractional interests. This has restored the equivalent of more than 1.5 million acres to tribes. Our working relationships with tribes (25 cooperative agreements or other arrangements to date) and continued outreach to landowners are important elements of continued progress.

**II. Planning Initiative—Tribal Nations**

The Buy-Back Program's implementation schedule has thus far been guided by various planning activities, an open solicitation from November 2013–March 2014, and by a number of factors developed in partnership with tribal leaders and individuals through early Program consultation and one-on-one meetings. Those factors include severity of fractionation; degree of ownership overlap between locations; geographic location to maximize efficiency and resources; appraisal complexity; and overall interest of a tribe.

Using this strategy, the Department identified 42 locations where land consolidation activities—such as

planning, outreach, mapping, mineral evaluations, appraisals or acquisitions—are expected to take place through the middle of 2017. These communities represented approximately 83 percent of all outstanding fractional interests across Indian Country. More information on this selection can be found in the Program's 2014 Status Report: <https://www.doi.gov/sites/doi.gov/files/uploads/Buy-BackProgramStatusReport-11-20-14.pdf>.

The Program is currently inviting all eligible tribal governments that exercise jurisdiction over locations not on its current implementation schedule to submit expressions of interest regarding participation. In addition to noting any interest, the Program also seeks to understand what plans each tribal government may have to utilize consolidated lands, such as economic development, additional housing, infrastructure improvements, habitat protection, and cultural preservation. Details regarding this solicitation are available at <https://www.doi.gov/buybackprogram/tribes>. This will likely be one of the final opportunities for the remaining eligible tribal governments to register their interest in participating in the Program. The Program will accept expressions of interest through March 11, 2016.

**III. Planning Initiative—Interested Landowners**

There are about 245,000 owners of nearly three million fractional interests across Indian Country who are eligible to participate in the Buy-Back Program. Many receive little or no economic benefit from what are often small, undivided interests in lands that cannot be utilized due to their highly fractionated state.

Since the inception of the Buy-Back Program, it has been a priority to provide as much access to information as possible to landowners who may be interested in participating. Across the Department, teams within the Offices of the Secretary and Deputy Secretary, OST and the Bureau of Indian Affairs (BIA) have conducted significant outreach to provide resources to individuals so that they may make informed decisions about the use of their fractional land.

The level of interest—or willing sellers—registered with the Department has always been one of the determining factors as the Program develops its implementation schedules. In fact, we have identified more than 15,000 unique willing sellers across the country. The Program has now launched a nationwide recruitment drive to further identify and engage landowners

who are interested in participating in the Program.

Interested landowners should call the Call Center at (888) 678-6836 to register their interest and confirm contact information. While landowners who do not register as willing sellers may still receive an offer, contacting the Call Center is the best way to ensure that the Program is aware of their interest in receiving and considering an offer. Registration in no way commits a landowner to sell their land and is no guarantee that they will receive an offer; it merely identifies the landowner's interest in receiving an offer.

**IV. Additional Resources**

Information about the Program is available at: <http://www.doi.gov/buybackprogram>. To learn more about how the Program works, understand the appraisal process, or receive financial training and resources to think strategically about how to use funds they may receive, individuals can contact the Call Center or visit their local OST or BIA office.

Extensive frequently asked questions and answers are also online at: <http://www.doi.gov/buybackprogram/landowners/upload/Frequently-Asked-Questions.pdf>.

Dated: December 21, 2015.

**Michael L. Connor,**

*Deputy Secretary.*

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

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PPWOCRADIO, PCU00RP14.R50000]**

**Proposed Renewal of Information Collection; Historic Preservation Certification Application**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to renew approval for the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on July 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.