

authorizes Tribes to negotiate and enter into agricultural and 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 Confederated Tribes of the Colville Reservation.

## 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 preamble 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, 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.” H. Rep. 112–427 at 6 (2012).

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*, 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(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 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 Confederated Tribes of the Colville Reservation.

**Bryan Newland,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2021-09691 Filed 5-6-21; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

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### Notice of Public Meetings for the John Day-Snake Resource Advisory Council Planning Subcommittee, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory

Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) John Day-Snake Resource Advisory Council (RAC) Planning Subcommittee will meet as follows:

**DATES:** The John Day-Snake RAC Planning Subcommittee will meet at 6:30 p.m. Pacific Time (PT), Wednesday, June 9, 2021, and Wednesday, Sept. 15, 2021, via Zoom conference. A public comment period will be offered during each meeting at 7:35 p.m. PT.

**ADDRESSES:** The Subcommittee Zoom meeting details will be published on the RAC web page at least 10 days in advance of the meetings at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac>.

A final agenda will be posted online at the RAC web page at least 1 week prior to the meeting.

The public may send written comments to the subcommittee and RAC in response to material presented. Comments can be mailed to: BLM Vale District; Attn. Shane DeForest; 100 Oregon St., Vale, OR 97918.

**FOR FURTHER INFORMATION CONTACT:** Larisa Bogardus, Public Affairs Officer, 3100 H St., Baker City, OR 97814; telephone: 541-219-6863; email: [lbogardus@blm.gov](mailto:lbogardus@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1 (800) 877-8339 to contact Larisa. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member John Day-Snake RAC was chartered and members appointed by the Secretary of the Interior. Its diverse perspectives are represented in commodity, conservation, and general interests. It provides advice to BLM and, as needed, U.S. Forest Service resource managers regarding management plans and proposed resource actions on public land in the John Day-Snake area.

The Planning Subcommittee was established to gather information, conduct research, and analyze relevant issues and facts on selected topics for future consideration by the RAC. The Subcommittee's primary goal is to provide information to the RAC members that allows them to better respond to time-sensitive issues, such as responding to an environmental document within the public comment period. No decisions are made at the subcommittee level.

Meetings are open to the public in their entirety. Agenda items include

review of recreation fee proposals for the Wallowa-Whitman, Malheur, and Deschutes National Forests. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. The public may send written comments to the Subcommittee and RAC (see **ADDRESSES** section).

The Designated Federal Officer will attend the call, take minutes, and publish detailed meeting minutes on the RAC web page (see the **ADDRESSES** section earlier).

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

(Authority: 43 CFR 1784.4-2)

**Jason Simmons,**

*Acting Vale District Manager.*

[FR Doc. 2021-09623 Filed 5-6-21; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVE00000 L5440000 EU0000  
LVCLF1906630 20X; N-97447/01  
MO#4500143560]**

### Notice of Realty Action: Proposed Non-Competitive (Direct) Sale of Public Land in Elko County, Nevada, to the City of West Wendover

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) proposes a non-competitive (direct) sale of 84.06 acres to the City of West Wendover. This land is currently part of the City of West Wendover's existing 175.06-acre Recreation and Public Purpose Act (R&PP) lease N-79079/01. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM land sale regulations, at no less than the fair market value of \$840,000.

**DATES:** Interested parties may submit written comments regarding this direct sale until June 21, 2021. Comments may be mailed to the BLM office address below, faxed to 775-753-0347, or

emailed to [elfoweb@blm.gov](mailto:elfoweb@blm.gov). The BLM will not consider comments received via telephone.

**ADDRESSES:** You may submit written comments to the Elko District, Wells Field Office, Attn: Melanie Mitchell, Wells Field Manager, 3900 East Idaho St., Elko, Nevada 89801, or via fax to 775-753-0347, or via email to [elfoweb@blm.gov](mailto:elfoweb@blm.gov).

### FOR FURTHER INFORMATION CONTACT:

Karen Uhri, Realty Specialist, BLM Elko District, Wells Field Office, at 775-753-0378, at the above address, or by email to [kuhri@blm.gov](mailto:kuhri@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM proposes a non-competitive (direct) sale of 84.06 acres to the City of West Wendover. This land is currently part of the City of West Wendover's existing 175.06-acre Recreation and Public Purpose Act (R&PP) lease N-79079/01. This 84.06-acre portion of the R&PP lease has been developed by the City of West Wendover and includes the City Hall, City Police Station, administrative offices, North Gene L. Jones Way, and the Victory Highway arch, monument, and interpretative trail. These improvements were developed in accordance with the approved R&PP lease plan of development.

On December 1, 2006, a **Federal Register** Notice (71 FR 69583) segregated the lands from all forms of appropriation under the public land laws, including the general mining laws, except for the sale provisions of FLPMA.

The local government has an interest in incorporating this property into the City Center Downtown Development Master Plan, adopted in 2001. This area will be a focal point for the creation of the city center and downtown area and will include a variety of development initiatives, including public as well as ancillary private/commercial investments. This diversified development portfolio for the area will create and foster a vibrant city center and create new business investment, services, jobs, and related opportunities for the community.

This property is located in the City of West Wendover between Interstate 80 to the north and Wendover Boulevard to the south, and is legally described as: