

and other types of leases not covered under the Tribal regulations according to the 25 CFR part 162.

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 25 CFR part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Nisqually Indian Tribe.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

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#### HEARTH Act Approval of Confederated Tribes of the Warm Springs Reservation of Oregon Amended Business Leasing Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) approved the Confederated Tribes of the Warm Springs Reservation of Oregon Amended Business Leasing Ordinance 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, wind and solar, and wind energy evaluation leases without further BIA approval.

**DATES:** BIA issued the approval on May 2, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, [carla.clark@bia.gov](mailto:carla.clark@bia.gov), (702) 484–3233.

#### 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 Confederated Tribes of the Warm Springs Reservation of Oregon.

##### 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 (IRA), 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, 25 U.S.C. 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 25 CFR part 162.

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 25 CFR part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Confederated Tribes of the Warm Springs Reservation of Oregon.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[BLM\_CA\_FRN\_MO4500174427]

#### Notice of New Recreation Fees on Public Lands in Humboldt, Trinity, and Shasta Counties, CA

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

**ACTION:** Notice of new recreation fees.

**SUMMARY:** Pursuant to the Federal Lands Recreation Enhancement Act, the Northern California District Office of the Bureau of Land Management (BLM) is providing notice that the Arcata Field Office, King Range National Conservation Area (NCA) is implementing a new Individual Special Recreation Permit (ISRP) fee for overnight use in the King Range Wilderness, and the Redding Field

Office is implementing a new fee for overnight camping at Steiner Flat Campground and Ohl Olsen Campground.

**DATES:** The new fees at the King Range NCA and Ohl Olsen Campground will take effect November 12, 2024, and the new fees at the Steiner Flat campground will take effect when the upgrades listed in this notice are complete or November 12, 2024, whichever is later.

**ADDRESSES:** Please send comments to the BLM Northern California District Office, 6640 Lockheed Dr. Redding, California 96002, or by email at [BLM\\_CA\\_Web\\_RE@blm.gov](mailto:BLM_CA_Web_RE@blm.gov).

**FOR FURTHER INFORMATION CONTACT:** Public Affairs Officer Joseph J. Fontana, telephone: 530-260-0189; email: [jfontana@blm.gov](mailto:jfontana@blm.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to contact Mr. Fontana in the United States.

**SUPPLEMENTARY INFORMATION:** Fees help ensure that those who recreate on public lands make a greater, but reasonable, contribution toward protecting and enhancing those opportunities than those who do not utilize recreation opportunities. Information about the use of the fee revenues will be posted at one or more kiosks within the fee areas annually.

#### King Range NCA

The BLM will implement a fee of \$12 per person per overnight trip (maximum stay per trip is 14 days) in the King Range Wilderness. There will be no fee for children 16 and under and no fee for day use.

The King Range NCA encompasses 68,000 acres of public lands along 35 miles of coastline, draws people from all over the world to visit the "Lost Coast" of California, and offers one of the only coastal backpacking opportunities in the contiguous United States. Providing safety and trip planning support for visitors is important due to the unique safety issues associated with a coastal wilderness environment, including the influence of tides, waves, and storms.

The King Range NCA is managed as a "Special Area" and is a component of the BLM's National Landscape Conservation System. Special Areas are defined as areas officially designated by statute, Presidential decree, or Secretarial order and include components of the National Wilderness

Preservation System. The 2005 King Range NCA Resource Management Plan directed the BLM to establish visitor carrying capacities, a permit system, and a fee schedule for overnight backcountry use. Since 2017, overnight visitation in the King Range Wilderness has been managed with a free ISRP issued through [www.recreation.gov](http://www.recreation.gov).

In accordance with the BLM recreation fee program policy, the King Range NCA developed a business plan in 2023 to establish future management goals and priorities to determine how the BLM intends to use fees to improve and maintain visitor services. As discussed in the business plan, the ISRP fee for overnight visitation in the King Range Wilderness is consistent with other established fee sites for similar areas. The BLM has notified and involved the public throughout this process and released the draft business plan for a public comment period from April 21 to May 22, 2023. The BLM presented the proposed project and the results of the public comment period to the Northern California Resource Advisory Council (RAC) on October 26, 2023. The RAC supported the fees as provided in the business plan.

#### Redding Field Office

The BLM will implement a new \$15 fee for overnight camping at Steiner Flat Campground, located near Douglas City, California, along the Trinity River. The campground will be upgraded to include the following amenities: toilets, trash service, increased park ranger and law enforcement presence, and campsites with campfire rings, tables, bear-proof food storage boxes, and tent pads. The upgraded amenities will help reduce environmental impacts and improve the experience for those using the site. Fees will begin when all the amenities are available in the campground or 6 months after this notice is published, whichever is later.

Ohl Olsen Campground is a group-use campground near Shasta Lake City, California, in the Chappie-Shasta Off-Highway-Vehicle Area. The BLM will implement a new fee of \$60 per night for the lower site (maximum of 30 people) and \$80 per night for the upper site (maximum of 50 people).

In accordance with the BLM recreation fee program policy, the Redding Field Office finalized a business plan in 2023 to establish future management goals and priorities for the recreation fee program. As discussed in the business plan, the overnight camping fees for Steiner Flat Campground and Ohl Olsen Campground are consistent with other established fee sites for similar areas