

goals, objectives, and criteria that should be met prior to our consideration of removing the species from the Federal List of Endangered and Threatened Plants. We request review and comment on this draft recovery plan from Federal, State, and local agencies; Native American Tribes; and the public.

Background

The Umtanum desert buckwheat is a long-lived perennial that occurs in a narrow, discontinuous band on Umtanum Ridge at least 1.6 kilometers (1 mile) long. This plant is closely associated with Lolo Flow lithosol soils in the Lower Columbia River Basin in the State of Washington. In April 2013 and as reaffirmed in December 2013, the Umtanum desert buckwheat found along sparsely vegetated, north-facing basalt cliff of Umtanum Ridge in central Washington State, was listed as a threatened species pursuant to the Act (78 FR 23983; April 23, 2013; 78 FR 76995; December 20, 2013).

Recovery Planning Process

Recovery of endangered and threatened animals and plants is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

Recovery Planning and Implementation

The Service has recently revised its approach to recovery planning and is now using a new process termed recovery planning and implementation (RPI) (see <https://www.fws.gov/endangered/esa-library/pdf/RPI.pdf>). The RPI approach is intended to reduce the time needed to develop and implement recovery plans, increase recovery plan relevancy over a longer timeframe, and add flexibility to recovery plans so they can be adjusted to address new information or circumstances. Under RPI, a recovery plan includes the statutorily required elements under section 4(f) of the Act (*i.e.*, objective and measurable recovery criteria, site-specific management actions, and estimates of time and costs), along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by two supplementary documents: A species status assessment or biological species report, which describes the best available scientific information related

to the biological needs of the species and assessment of threats; and the recovery implementation strategy, which details the particular near-term activities needed to implement the recovery actions identified in the recovery plan. Under this approach, we can incorporate new information on species biology or details of recovery implementation by updating these supplementary documents without concurrent revision of the entire recovery plan, unless changes to statutorily required elements are necessary.

Recovery Plan Components

The primary recovery strategy for the Umtanum desert buckwheat is to increase the capability of the single population to withstand stochastic events, establish new populations to provide a safety margin against catastrophic events, and to increase the ecological and/or genetic diversity of the species. Recovery will hinge on establishing self-sustaining populations, improving habitat, reducing threats, and preserving or enhancing the ability of individuals to survive and reproduce in the range of conditions they are likely to experience.

We may initiate an assessment of whether recovery has been achieved and delisting is warranted when the recovery criteria have been met, including once a sixth population has been discovered or established on conserved lands and is managed in a way that is compatible with Umtanum desert buckwheat conservation.

Request for Public Comments

Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (59 FR 34270; July 1, 1994). In an appendix to the approved final recovery plan, we will summarize and respond to the substantive comments raised during public comment and peer review. Substantive comments may or may not result in changes to the recovery plan. Comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions.

We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

Public Availability of Comments

Before including your address, phone number, email address, or other

personal identifying information in your comment, you should 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 that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/
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Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Third Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Spokane Tribe (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, paula.hart@bia.gov, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and

incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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A0A501010.999900]

HEARTH Act Approval of Title XVII Pueblo of Jemez Residential Leasing Code

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Title XVII Pueblo of Jemez Residential 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 residential leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, sharlene.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 Pueblo of Jemez, New Mexico.

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. H2682 (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