



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

JUL - 1 2024

The Honorable Margaret Cortez  
Chairperson, Timbisha Shoshone Tribe  
621 W. Line Street, Suite 109  
Bishop, California 93514

Dear Chairperson Cortez:

On August 8, 2023, the Timbisha Shoshone Tribe (Tribe)<sup>1</sup> submitted a written request (Amendment)<sup>2</sup> to the Assistant Secretary – Indian Affairs to amend the Tribe’s 2017 Memorandum of Agreement between the Tribe and the Department of the Interior (Department). The Amendment seeks to substitute a parcel of land within the City of Ridgecrest (Ridgecrest Parcel) for a different parcel in Kern County (County Land Parcel), which consists of approximately 20.03 acres and is located less than ten miles from the Ridgecrest Parcel. By letter dated March 7, 2024,<sup>3</sup> the Tribe requested that the Department take the County Land Parcel in trust for the benefit of the Tribe pursuant to the Timbisha Shoshone Homeland Act of 2000 (Homeland Act).<sup>4</sup> Additionally, the Tribe had previously requested that the Department determine whether the parcel substituted for the Lida Ranch, originally the Ridgecrest Parcel but now the County Land Parcel, would be eligible for gaming pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719.

This decision supersedes the need for the 2017 Memorandum of Agreement because it acts to substitute the Ridgecrest Parcel for the County Land Parcel pursuant to Section 5(d)(2) of the Homeland Act. Additionally, this decision goes further and makes a gaming eligibility determination.

## Decision

As discussed in detail below, the Department has determined that it will acquire the County Land Parcel in trust pursuant to Section 5(d) of the Homeland Act. Pursuant to Section 7 of the Homeland Act, the County Land Parcel shall be considered the Tribe’s initial reservation and is eligible for gaming pursuant to Section 20 of IGRA.

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<sup>1</sup> The Bureau of Indian Affairs lists the Tribe as Timbisha Shoshone Tribe (previously listed as the Death Valley Timbi-sha Shoshone Tribe). See U.S. Dep’t of the Interior, Bureau of Indian Affairs, Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 Fed. Reg. 34,863 (July 23, 2018). Documents in the record reflect both names.

<sup>2</sup> Letter from Mark A. Levitan, to Bryan Newland, Assistant Secretary - Indian Affairs dated August 8, 2023, enclosing Tribal Council Resolution 2023-09, *Memorandum in Support for an MOA to Mutually Agree to Acquire the County Land Parcel in Trust for the Tribe*, with appendices, including a map of the County Land Parcel.

<sup>3</sup> Letter from Margaret Cortez, Chairperson of Timbisha Shoshone Tribe to Bryan Newland, Assistant Secretary – Indian Affairs, dated March 7, 2024.

<sup>4</sup> Timbisha Shoshone Homeland Act, Pub. L. No. 106-423, 114 Stat. 1875 (2000) (Homeland Act).

## Background

The Tribe is the successor and direct descendant of the Panamint Shoshone groups which inhabited the area that now comprises Death Valley National Park and neighboring areas of California and Nevada.<sup>5</sup> The Panamint Shoshone groups, which were historically linked, began to combine into one group centered on an approximately 40-acre settlement near Furnace Creek in Death Valley National Park.<sup>6</sup> The Tribe was officially recognized by the United States in 1983.<sup>7</sup> The Tribe remained landless until 2000 when Congress enacted the Homeland Act.<sup>8</sup>

The Homeland Act mandates the Secretary of the Interior (Secretary) to acquire in trust for the Tribe two specifically identified parcels if purchased from willing sellers, one of which is the Lida Ranch, Nevada.<sup>9</sup> The Homeland Act authorizes the Secretary and the Tribe to mutually agree to a substitute parcel in lieu of the Lida Ranch.<sup>10</sup> In 2017, the Department entered into a Memorandum of Agreement (2017 Memorandum of Agreement) with the Tribe to substitute Lida Ranch for a property in Ridgecrest, California (Ridgecrest Parcel). Pursuant to the 2017 Memorandum of Agreement, the Assistant Secretary – Indian Affairs issued a decision to acquire the Ridgecrest Parcel in trust for the Tribe on September 18, 2018, because it was a mandatory acquisition under the terms of the Homeland Act. Unfortunately, for a variety of reasons, the Tribe was unable to purchase the Ridgecrest Parcel before the option to purchase it expired on February 2, 2021.

After the option to purchase the Ridgecrest Parcel expired, the Tribe and its developer eventually identified a new parcel of land (the “County Land Parcel”) located in Kern County, California at the intersection of State Route 178 and U.S. Highway 395, less than ten miles from the Ridgecrest Parcel.

## Authorities

### *Mandatory Acquisition Authority*

The Secretary of the Interior (Secretary) has authority to accept land in trust on behalf of a tribe.<sup>11</sup> In some cases, such as this one, the Secretary has been mandated by Congress to accept land in trust.

Section 5(d)(2) of the Homeland Act states, in relevant part, that:

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<sup>5</sup> Memorandum from Deputy Assistant Secretary-Indian Affairs to Assistant Secretary-Indian Affairs, dated February 9, 1982, *Recommendation and summary of evidence for proposed findings for Federal acknowledgement of Death Valley Timbi-Sha Shoshone Band of Indians of California pursuant to 24 C.F.R. 54* (Federal Acknowledgement); *see also* Homeland Act § 2.

<sup>6</sup> Federal Acknowledgement at 1; Homeland Act § 2.

<sup>7</sup> Homeland Act § 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at § 5(d). The Homeland Act also identifies five non-contiguous parcels to be held in trust for the benefit of the Tribe. *Id.* at § 5(b).

<sup>10</sup> *Id.* at § 5(d)(2).

<sup>11</sup> 25 C.F.R. § 151.4.

The Secretary may purchase from willing sellers the [Lida Ranch, Nevada] and appurtenant water rights to be taken into trust for the Tribe ... or another parcel mutually agreed upon by the Secretary and the Tribe.<sup>12</sup>

The plain language of Section 5(d) supports the view that Section 5(d)(2) is mandatory. Once the Secretary exercises their discretion to agree to and purchase substitute land, they must take the land into trust for the Tribe.<sup>13</sup>

Because the Secretary's trust acquisition of the County Parcel once purchased is mandatory, the Part 151 regulations do not apply,<sup>14</sup> and the Secretary must instead follow the procedures set forth in Section 3.1.3 of the Bureau of Indian Affairs' *Fee-to-Trust Handbook*.<sup>15</sup> The *Fee-to-Trust Handbook* provides that, in the absence of statutory or judicial language requiring the Secretary to proceed with a mandatory acquisition without notice or application, a tribe must submit a written request to commence the acquisition process.<sup>16</sup>

### **Application**

As noted above the Tribe submitted a written request to substitute the Ridgecrest Parcel for the County Land Parcel. The County Land Parcel is owned by Global Land Investment Company, LLC (GLIC). The GLIC has agreed to sell the County Land Parcel to the United States for the sum of \$1.00.<sup>17</sup> By this decision, I agree to purchase the County Land Parcel for the sum of \$1.00. This satisfies the requirement of the Homeland Act that the property be purchased from a willing seller.

Additionally, the GLIC Statement contains a legal description of the County Land Parcel which is comprised of a parcel totaling approximately 20.03 acres, located in Kern County, California, and identified by Assessor Parcel Number 084-010-42-00-7. A full legal description is included in the GLIC Statement. This legal description satisfies the requirements in *Fee-To-Trust Handbook* at 56-60.

Trust acquisitions made pursuant to mandatory acquisition statutes, as is the case here, need not comply with the National Environmental Policy Act (NEPA).<sup>18</sup> Accordingly, acquisition of the County Land Parcel in trust does not require preparation of an environmental assessment pursuant to NEPA.

<sup>12</sup> Homeland Act § 5(d), (d)(2).

<sup>13</sup> This multistep approach to the trust acquisition is consistent with the approach that the Department has taken for other mandatory acquisitions conditioned on certain events. See *Todd County v. Aberdeen Area Director*, 33 IBIA 110 (1999). See also *State of Minnesota*, 41 IBIA at 126.

<sup>14</sup> 25 C.F.R. Part 151.

<sup>15</sup> See *supra* n. 14.

<sup>16</sup> *Fee-to-Trust Handbook* at 32.

<sup>17</sup> Statement Concerning Land Transfer in Kern County for the Benefit of the Timbisha Shoshone Tribe, signed by Rafik Hakopian, Managing Member of GLIC (GLIC Statement).

<sup>18</sup> See Echo Hawk Memorandum at 5, citing *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9<sup>th</sup> Cir. 1995) (NEPA only applies to discretionary agency actions).

The Department's policies and procedures require the Department to perform due diligence by conducting an initial site inspection and documenting the results.<sup>19</sup> These steps are not, however, a precondition to completing the mandatory acquisition process.<sup>20</sup> The Regional Office must, therefore, conduct site inspections for mandatory acquisitions to understand any environmental hazards that might be present on the land, as well as any potential legal liabilities.<sup>21</sup> The Regional Office will complete a final site inspection prior to the acquisition of the County Land Parcel in trust. This satisfies the due diligence requirements of 602 DM 2.

### **The Indian Gaming Regulatory Act**

Section 7(c) of the Homeland Act mandates that certain lands acquired in trust under the Homeland Act, including the Lida Ranch or its substitute, the County Land Parcel, shall be considered the Tribe's initial reservation for the purposes of Section 20 of IGRA.<sup>22</sup> We, therefore, determine that the County Land Parcel qualifies as the Tribe's initial reservation and that the Tribe may conduct gaming pursuant to IGRA on the land once acquired in trust.

### **Conclusion**

As discussed above, the Department has determined that it will purchase the approximately 20.03-acre County Land Parcel and place it in trust for the Tribe. Consistent with applicable law, the Regional Director shall purchase the County Land Parcel for \$1 then immediately take the land into trust. The County Land Parcel, upon its acquisition in trust, shall be the Tribe's initial reservation for the purposes of Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(ii).

Sincerely,



Bryan Newland  
Assistant Secretary – Indian Affairs

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<sup>19</sup> *Fee-to-Trust Handbook* § 3.1.3 at 34.

<sup>20</sup> *Id.*

<sup>21</sup> Echo Hawk Memorandum at 5.

<sup>22</sup> Homeland Act § 7(c). The Homeland Act excludes lands located in Death Valley National Park from the "Initial Reservation" for gaming purposes.