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HOLCH & ERICKSON LLP

April 3, 2018

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
Mail Stop 7328
1849 C Street, NW
Washington, D.C. 20240

Subject: Timbisha Shoshone Tribe – Mandatory Trust Acquisition for a Proposed Casino
in Ridgecrest, California

Dear Secretary Zinke:

On behalf of Stand Up for California! (“Stand Up”),¹ Ricky Fielding, and Michael Neel,² this letter is a follow-up communication to my letter to you of February 4, 2018, regarding a January 2017 Memorandum of Agreement between the Department of the Interior and the Death Valley Timbisha Shoshone Tribe of California (“Timbisha Shoshone” or “Tribe”).

This Memorandum of Agreement (“MOA”) changed the classification of a pending trust land application for a tribal casino in Ridgecrest, California from a discretionary acquisition into a mandatory one.³ As explained in my earlier letter, this MOA is not in compliance with the Timbisha Shoshone Homeland Act of 2000 (“Homeland Act” or “Act”).⁴

This letter encloses a 1999 Secretarial Report that strongly supports my client’s view that the Homeland Act does not authorize the Interior Department to purchase the Ridgecrest parcel and acquire it in trust for the Tribe. Further, this Secretarial Report confirms that the Department does not consider any land in Ridgecrest to be within the Tribe’s aboriginal homeland.

In 1994, and prior to the enactment of the Homeland Act, Congress directed the Secretary of the Interior to conduct a study “to identify lands suitable for a reservation for the Timbisha

¹ Stand Up for California! is a statewide organization with a focus on gambling issues affecting California (www.standupca.org).

² Ricky Fielding and Michael Neel are residents of Ridgecrest, California.

³ See Memorandum of Agreement between the U.S. Department of the Interior and the Death Valley Timbi-Sha Shoshone Tribe, January 19, 2017.

⁴ Public Law 106-423. The Homeland Act is also cited at 16 U.S.C. § 410aaa note.

Shoshone Tribe that are located within the Tribe's aboriginal homeland area within and outside the boundaries of the Death Valley National Monument and the Death Valley National Park."⁵

After extensive study and deliberation with the Timbisha Shoshone Tribe, the Secretary submitted this report to Congress ("Secretarial Report") in December 1999.⁶ The framework established for this Secretarial Report confirms that one of the primary objectives of this evaluation was to establish "a permanent homeland for the Tribe in traditional ancestral land areas falling within and without today's [Death Valley] National Park boundaries."⁷

A copy of this Secretarial Report is attached for your review.

As discussed in my letter of February 4, 2018, the MOA signed by the Department and the Tribe incorrectly interprets a provision of the Homeland Act that provides discretionary authority to the Secretary to purchase a 2,340-acre parcel called the Lida Ranch, located in the State of Nevada.⁸ If the Secretary decides to purchase this parcel, then he or she is also authorized by this statute to take the land into trust for the Tribe.⁹ If this parcel is not available for sale for some reason, then the Secretary is authorized to purchase "another parcel mutually agreed upon by the Secretary and the Tribe."¹⁰

Even though the entire Lida Ranch is, and has been, for sale on the real estate market in Nevada,¹¹ the Department decided to "substitute" the Ridgecrest parcel for this Lida Ranch parcel, relying on this statutory language. However, there is no evidence that Congress intended this language to be used to justify a trust land acquisition that is 265 miles away, in another state (California), and outside of the Tribe's aboriginal homeland.

Additionally, there is no legal support behind re-classifying this substitution of land as a mandatory acquisition, instead of a discretionary one, as the Homeland Act uses the term "may" instead of "shall." And, finally, the statute requires that the land be *purchased* by the Secretary, and not the Tribe, and that has not occurred here.

The Secretarial Report confirms these conclusions. The Report states that the Lida Ranch was "originally developed by a Timbisha family who gardened and grew hay for their horses and

⁵ Section 705(b) of the California Desert Protection Act of 1994, Public Law 103-433 (Oct. 31, 1994), *codified at* 16 U.S.C. §410aaa-75(b).

⁶ U.S. Department of the Interior, "The Timbisha Shoshone Tribal Homeland: A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities," December 1999 (hereinafter "Secretarial Report").

⁷ *Secretarial Report* at 45.

⁸ See Section 5(d)(2) of the Homeland Act.

⁹ See Section 5(d) of the Homeland Act.

¹⁰ See Section 5(d)(2) of the Homeland Act.

¹¹ See <https://www.lovelidaranch.com> (last visited March 30, 2018).

cattle.”¹² The reason for purchasing this Ranch from private owners was to help the Tribe take advantage of its “potential for tribal residences and economic development.”¹³ According to the Report, the land would be used for “residences, agriculture, and, perhaps a tribal retreat.”¹⁴ The Report recommends that the Secretary be authorized to purchase the Ranch from a willing seller.¹⁵ The Department would then be permitted—but not required—to take the land into trust “upon legislative authorization, appropriation, and purchase.”¹⁶

While the Homeland Act contains some flexibility for the Department to substitute a parcel or parcels if the Lida Ranch is not for sale, an off-reservation casino was not contemplated by Congress. The purpose of this land was for residences, agriculture, and possibly a tribal retreat.

More importantly, the conditions of this statutory provision have not been met. First, the Lida Ranch is actually for sale and so there is no need for a substituted parcel. Second, this Secretarial Report and the legislative history of the Homeland Act contemplated that Interior would need to request an appropriation from Congress to secure the funds to make this purchase. And, finally, the Department is not in the process of actually purchasing the Ridgecrest parcel, as required by section 5(d)(2). Instead, the Tribe and its partner intend to buy the Ridgecrest parcel for \$5.5 million and then transfer the deed to the Department. No appropriation will be requested and no purchase of this land by the Department will occur.

The Ridgecrest parcel is also significantly outside the Tribe’s aboriginal homeland. One of the purposes of the Secretarial Report was to evaluate and map the aboriginal homeland of the Timbisha Shoshone Tribe, which the Report defined as “the geographic area within which the Tribe has a historical relationship with the land, and is the area within which the Tribe identified lands of particular historical, cultural, and economic interest which were then analyzed to determine if they were suitable to become trust lands.”¹⁷

A map of the Tribe’s homeland boundaries is presented on page 4 of this Secretarial Report.¹⁸ A second map on page 15 presents the locations of the 7 parcels of land identified in the Secretarial Report as being suitable to become the initial reservation of the Tribe.¹⁹

The City of Ridgecrest is identified on both of these maps. However, the City is located a considerable distance outside of the Tribe’s homeland boundaries, to the south and west. The

¹² *Secretarial Report* at 39.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 40.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4 (Map 1).

¹⁹ *Id.* at 15 (Map 2).

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proposed Ridgecrest trust land parcel is also 82 driving miles away from the nearest tribal reservation parcel recommended by this Secretarial Report, which is in Centennial, California.²⁰

This Secretarial Report is further evidence that the Department has misconstrued the Homeland Act by substituting a parcel in Ridgecrest, California in place of purchasing the Lida Ranch in Nevada. If the Department decides to proceed, this trust land application should be processed as a discretionary trust acquisition and not as a mandatory one. And the local government and community in Ridgecrest should have an opportunity to provide comments to the Department through an Environmental Impact Statement developed under the National Environmental Policy Act ("NEPA").

Thank you for your consideration of these views. Please contact me at 202-624-1461 or via email at nholch@holcherickson.com with any questions, or if you need additional information about these issues.

Sincerely,



Niels Holch

Enclosure

cc: The Honorable David Bernhardt, Deputy Secretary
James Cason, Associate Deputy Secretary
John Tashuda, Principal Deputy Assistant Secretary—Indian Affairs

²⁰ See Letter from Mark A. Levitan, Attorney at Law, to Mr. Lawrence Roberts, Acting Assistant Secretary—Indian Affairs, September 22, 2016, at Exhibit K.