



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

SEP 27 2018

The Honorable George Gholson  
Chairman, Timbisha Shoshone Tribe  
621 W. Line Street, Suite 109  
Bishop, California 93514

Dear Chairman Gholson:

On September 7, 2017, the Timbisha Shoshone Tribe (Tribe)<sup>1</sup> submitted a written request<sup>2</sup> to the Pacific Regional Office, Bureau of Indian Affairs, (Regional Office) for approval by the Secretary of the Department of the Interior (Department) of the mandatory acquisition in trust of approximately 26.48 acres, the Ridgecrest Site, pursuant to the Timbisha Shoshone Homeland Act of 2000 (Homeland Act)<sup>3</sup> and the 2017 Memorandum of Agreement between the Department and the Tribe (MOA).<sup>4</sup> The Ridgecrest Site is located in the City of Ridgecrest, Kern County, California. The Tribe also requested that the Department determine whether the Ridgecrest Site would be eligible for gaming pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719.

## Decision

As discussed in detail below, the Department has determined that Congress mandated the trust acquisition of the Ridgecrest Site pursuant to Section 5(d) of the Homeland Act. Pursuant to Section 7 of the Homeland Act, the Ridgecrest Site shall be considered the Tribe's initial reservation and eligible for gaming pursuant to Section 20 of IGRA.

## 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

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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> Memorandum from George Gholson, Chairman, Timbisha Shoshone Tribe, to Michael Black, Acting Assistant Secretary - Indian Affairs and Amy Dutschke, Director, Pacific Regional Office, dated September 7, 2017 [hereinafter Tribe's Request].

<sup>3</sup> Timbisha Shoshone Homeland Act, Pub. L. No. 106-423, 114 Stat. 1875 (2000) [hereinafter Homeland Act].

<sup>4</sup> Memorandum of Agreement between the U.S. Department of the Interior and the Death Valley Timbi-sha Shoshone Tribe, dated January 19, 2017 [hereinafter MOA].

<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* [hereinafter Federal Acknowledgement]; see also Homeland Act § 2.

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 2016, the Tribe requested that the Department consider the substitution of the Ridgecrest Site for the Lida Ranch.<sup>11</sup> The Department agreed to the substitution and entered into the MOA with the Tribe.<sup>12</sup>

## Authorities

### *Mandatory Acquisition Authority*

Statutory authority is required for the United States to accept real property into trust on behalf of a Tribe.<sup>13</sup> Such authority may be discretionary or mandatory.<sup>14</sup> Mandatory acquisitions are not subject to the discretionary criteria of 25 C.F.R. Part 151.<sup>15</sup> Instead, mandatory acquisitions are either “flatly required” by the terms of the applicable statute, turn on the absence of certain legal impediments, or require the occurrence of certain events.<sup>16</sup>

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

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>17</sup>

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<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> See Letter from Mark A. Levitan, to the Acting Assistant Secretary – Indian Affairs, dated September 22, 2016.

<sup>12</sup> MOA § 3. The MOA states the acquisition of the Ridgecrest Site will fulfill the Secretary’s responsibilities under Section 5(d)(2) of the Homeland Act and no further lands shall be acquired pursuant thereto. *Id.* at § 7.

<sup>13</sup> 25 C.F.R. § 151.3.

<sup>14</sup> *State of Minnesota v. Acting Midwest Reg’l Dir.*, 47 IBIA 122, 126 (2008), *aff’d*, 604 F.Supp.2d 1252 (D. Minn. 2009). See also Memorandum from Assistant Secretary – Indian Affairs to Regional Directors, dated April 6, 2012, *Updated Guidance on Processing Mandatory Trust Acquisitions* [hereinafter Echo Hawk Memorandum]; Bureau of Indian Affairs, *Acquisition of Title to Land Held in Fee or Restricted Status (Fee-to-Trust Handbook)*, § 3.1.3 (“Mandatory Trust Acquisitions”) dated June 28, 2016.

<sup>15</sup> 25 C.F.R. §§ 151.10, 151.11.

<sup>16</sup> *State of Minnesota*, 47 IBIA at 126

<sup>17</sup> Homeland Act § 5(d), (d)(2).

Although Section 5(d) does not use the word “shall,” the IBIA and courts have held that “magic words” are not necessary to effectuate a mandatory acquisition. The plain language of Section 5(d), notwithstanding the absence of the word “shall”, supports the a view that Section 5(d)(2) is mandatory. By providing for land “to be taken into trust,” it mandates acquisition upon the occurrence of two events, first, the Secretary’s and the Tribe’s mutual agreement to substitute a parcel for the Lida Ranch, Nevada, and second, the Secretary’s purchase of the substitute parcel from willing sellers. Once the Secretary exercises his discretion to agree to and purchase substitute land, he must take the land into trust for the Tribe.

The Homeland Act’s overall language and purpose also support this view. As a matter of sound policy, when Congress mandates acquisitions of land for a tribe it does so generally to restore land to the tribe’s homelands.<sup>18</sup> It would make little sense for the Department to acquire the property as a homeland for the Tribe, only to hold it in fee. Section 5(d) is captioned “Additional Trust Resources.” The legislative history shows that if the Secretary acquires either of the private parcels from willing sellers, Congress intended that those parcels “also would be taken into trust for the tribe.”<sup>19</sup> The Indian canons of construction would produce the same result if the expression “to be taken” were deemed ambiguous. We, therefore, conclude that if the Secretary agrees to substitute the Ridgecrest Site for the Lida Ranch and then purchases the Ridgecrest Site, Section 5(d)(2) of the Homeland Act mandates the Secretary to take the Parcel into trust for the Tribe’s benefit.

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. In *Todd County v. Aberdeen Area Director*, 33 IBIA 110 (1999), the Board concluded that, under the Isolated Tracts Act, the Secretary was required to accept new land in trust for the Rosebud Sioux Tribe upon the occurrence of certain events.<sup>20</sup> Because the Secretary’s trust acquisition of the Ridgecrest Site once purchased is mandatory, the Part 151 regulations would not apply,<sup>21</sup> and the Secretary must instead follow the standard operating procedures set forth in section 3.1.3 of the BIA’s *Fee-to-Trust Handbook*,<sup>22</sup> which defines a mandatory trust acquisition as one that is directed by Congress and that requires the Secretary to accept title to land into trust, without discretion to deny the request. 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>23</sup> Section 5(d) of the Homeland Act does not contain express language requiring the Secretary to proceed without notice or application.

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<sup>18</sup> Echo Hawk Memorandum at 3.

<sup>19</sup> S. Rep. 106-327 at 5.

<sup>20</sup> See also *State of Minnesota*, 41 IBIA at 126.

<sup>21</sup> 25 C.F.R. Part 151.

<sup>22</sup> See *supra* n. 14.

<sup>23</sup> *Fee-to-Trust Handbook* at 32.

## Memorandum of Agreement

The MOA articulates procedures for implementing the substitution provision of Section 5(d)(2) of the Homeland Act.<sup>24</sup> The Homeland Act and the MOA require that the property acquired pursuant to Section 5(d) be purchased from a willing seller.<sup>25</sup> The MOA further requires that the Tribe comply with Section 3.1.3 of the *Fee-to-Trust Handbook*, comply with the environmental due diligence requirements of 602 DM 2, and submit title evidence meeting the requirements of the U.S. Department of Justice, *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions*.<sup>26</sup>

### *A willing seller*

Through the MOA, the Department and the Tribe have mutually agreed to substitute the Ridgecrest Site for the Lida Ranch pursuant to Section 5(d)(2) of the Homeland Act.<sup>27</sup>

The Ridgecrest Site is owned by the Successor Agency to the Ridgecrest Redevelopment Agency (Ridgecrest Redevelopment Agency), an entity of the City of Ridgecrest.<sup>28</sup> On October 20, 2016, the Tribe's investors, Global Investment Enterprise Ridgecrest, LLC, (GIER), entered a Purchase and Sale Agreement for the Ridgecrest Site (Purchase Agreement) with the Ridgecrest Redevelopment Agency.<sup>29</sup> The Purchase Agreement provides GIER with the option to purchase the Ridgecrest Site at a specified price. The Tribe also submitted an agreement between the Tribe and GIER pursuant to which GIER agrees to transfer title to the property to the United States to be held in trust for the benefit of the Tribe.<sup>30</sup> Further, Section 4 of the MOA contains a commitment from the Secretary to purchase the Ridgecrest Site from a willing seller for the sum of one dollar.<sup>31</sup> This evidence satisfies the requirements of the Homeland Act and the MOA that the property be purchased from a willing seller.

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<sup>24</sup> MOA at §§ 2, 4.

<sup>25</sup> Homeland Act § 5(d); MOA § 4.

<sup>26</sup> MOA § 4

<sup>27</sup> MOA § 3.

<sup>28</sup> ALTA Commitment for Title Insurance Number NCS-864108-ONT1 issued by First American Title Insurance Company on August 31, 2017, and amended on September 6, 2017. The Title Commitment and the current deed for the Ridgecrest Site list the owner as the "Ridgecrest Redevelopment Agency," however in 2011 the California State Assembly ordered the State's Redevelopment Agency's be dissolved and successor agencies be formed. *See California Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231 (2011).

<sup>29</sup> Purchase and Sale Agreement between the Successor Agency to the Ridgecrest Redevelopment Agency and Global Investment Enterprise Ridgecrest, LLC, dated October 20, 2016, for the purchase of approximately 26.48 acres in Ridgecrest Business Park.

<sup>30</sup> Agreement Concerning 26.48 Ridgecrest Parcel, dated August 16, 2018. The record uses 'site' and 'parcel' interchangeably when describing the subject property.

<sup>31</sup> MOA § 4

### *Compliance with the Fee-to-Trust Handbook*

The Department's trust land acquisition regulations governing notice and comment and governing the consideration of certain regulatory criteria at 25 C.F.R. Part 151 are not applicable to mandatory acquisitions of trust land.<sup>32</sup> Instead, the Department has issued guidance governing the review of mandatory acquisitions.<sup>33</sup> Pursuant to this policy guidance, the Department requires a legal description of the property and performance of environmental due diligence as articulated in Section 3.1.3 of the *Fee-to-Trust Handbook*.

### *Legal Description and Title to the Property*

The Tribe's request contains a legal description of the Ridgecrest Site which is comprised of 12 parcels totaling approximately 26.48 acres. The 12 parcels are identified by Assessor Parcel Numbers: 033-070-01 through 033-070-03, and 033-070-28 through 033-070-36. A full legal description and parcel map is included as Attachment 1. Pursuant to the MOA, the Tribe has agreed to provide title evidence meeting the requirements of the U.S. Department of Justice.<sup>34</sup>

Though not required for a mandatory trust acquisition, the record before me also includes a Preliminary Title Opinion from the Regional Solicitor, Pacific Southwest Region, dated December 8, 2017, and a Legal Description Review Certificate from the Cadastral Surveyor, Bureau of Land Management, for the Ridgecrest Site, dated December 27, 2017. These documents satisfy the requirements of the MOA and the Department of Justice, *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions* (2016).

### *Environmental Due Diligence*

It is well-established that the environmental review requirements of National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, are not applicable to mandatory acquisitions.<sup>35</sup> Therefore, trust acquisitions made pursuant to mandatory acquisition statutes, as is the case here, need not comply with NEPA. Accordingly, acquisition of the Ridgecrest Site in trust does not require preparation of an environmental assessment pursuant to NEPA.

The due diligence requirements of 602 DM 2 (Real Property Pre-Acquisition Environmental Site Assessments) are also not applicable to mandatory acquisitions.<sup>36</sup> Instead the Department's policies and procedures require the Department to perform due diligence by conducting an initial site inspection and documenting the results.<sup>37</sup> These steps are not, however, a precondition to completing the mandatory acquisition process.<sup>38</sup>

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<sup>32</sup> See 25 C.F.R. § 151.10 and § 151.11.

<sup>33</sup> See Echo Hawk Memorandum, in *Fee-To-Trust Handbook* at 56 – 60.

<sup>34</sup> MOA § 4(iii).

<sup>35</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).

<sup>36</sup> *Fee-to-Trust Handbook* § 3.1.3 at 34.

<sup>37</sup> *Fee-to-Trust Handbook* § 3.1.3 at 34.

<sup>38</sup> *Id.*

Notwithstanding the inapplicability of 602 DM 2, however, the Tribe voluntarily agreed to comply with its environmental due diligence requirements.<sup>39</sup> The Regional Office must, therefore, conduct site inspections for mandatory acquisitions to understand any environmental hazards that might be present on the land the Department must acquire, as well as any potential legal liabilities.<sup>40</sup> The Regional Office completed a Phase I Contaminate Survey on January 19, 2018, which found no evidence of hazardous materials.<sup>41</sup> The Regional Office will complete a final site inspection prior to the acquisition of the Ridgecrest Site 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 Ridgecrest Site – shall be considered to be the Tribe’s initial reservation for the purposes of Section 20 of IGRA.<sup>42</sup> We, therefore, acknowledge that the Ridgecrest Site will qualify as initial reservation eligible for gaming upon its acquisition in trust.

### **Conclusion**

As mandated by the Timbisha Shoshone Homeland Act, the Department will acquire the approximately 26.48-acre Ridgecrest Site in trust for the Tribe. Consistent with applicable law, the Regional Director shall immediately record the land in trust. Also as mandated by the Homeland Act, the Ridgecrest Site upon its acquisition in trust shall be considered to be initial reservation for the purposes of Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(ii).

Sincerely,



Tara Sweeney  
Assistant Secretary – Indian Affairs

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<sup>39</sup> MOA § 4(ii).

<sup>40</sup> Echo Hawk Memorandum at 5.

<sup>41</sup>Phase I Survey of Ridgecrest Parcel dated January 19, 2018, performed by Chad Broussard. The record uses ‘site’ and ‘parcel’ interchangeably when describing the subject property.

<sup>42</sup> Homeland Act § 7(c). The Homeland Act excludes lands located in Death Valley National Park from the “Initial Reservation” for gaming purposes.