

**Memorandum in Support of the
Timbisha Shoshone Tribe Request to the Secretary of the Interior
for an MOA to Mutually Agree to Acquire
the Ridgecrest Parcel in Trust for the Tribe
Pursuant to Section 5(d)(2) of the Timbisha Homeland Act**

**For FOIA Purposes this is a Voluntary Submission of Financial/Commercial
Confidential Information on Behalf of the Tribe**

1. Introduction

The Timbisha Shoshone Tribe (the “Tribe”) is a federally recognized sovereign nation.¹ The Tribe's ancestral homeland includes the area that now comprises Death Valley National Park and neighboring areas of California and Nevada. The Tribe was officially re-recognized by the United States in 1983.² The Tribe remained landless until Congress passed the Timbisha Homeland Act in 2000 (the “Act”).³ The Act identified five non-contiguous parcels to be held in trust for the benefit of the Tribe and to serve as the Tribe’s initial reservation. The Act also authorizes the Secretary of the Interior to acquire on behalf of the Tribe two specifically identified parcels from willing sellers, to be placed in trust for the Tribe and considered part of the Tribe’s initial reservation.⁴ In the place of the second parcel, the Act provides that, in the alternative, the Secretary may acquire “another parcel mutually agreed upon by the Secretary and the Tribe.”⁵

Sixteen years has passed since the Act was adopted, but the Tribe is still awaiting the full implementation of the Act. The Tribe requests the Secretary to enter into a Memorandum of Agreement (“MOA”) with the Tribe to acquire an alternative parcel in Ridgecrest, California (the “Ridgecrest parcel”)⁶ by mutual agreement between the Secretary and the Tribe pursuant to Section 5(d)(2) of the Act.

The Act provides that the Secretary “may” acquire the additional parcel,⁷ therefore it is a discretionary acquisition, not a mandatory acquisition, and the Tribe will be required to complete the fee to trust process provided for at 25 C.F.R. Part 151. The Tribe requests the MOA before

¹ 80 F.R. 1942, January 14, 2015 (Indian Entities Recognized and Deemed Eligible To Receive Services From The United States Bureau of Indian Affairs). The Tribe is listed under the name “Death Valley Timbi-Sha Shoshone Tribe.”

² Memorandum from Deputy Assistant Secretary-Indian Affairs to Assistant Secretary-Indian Affairs, 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”). Exh. B.

³ The Timbisha Shoshone Homeland Act. 16 U.S.C. § 104aa, Pub. L. 106-423, §§ 1-8, Nov. 1, 2000, 114 Stat. 1875. Exh. A.

⁴ The Act. Section 5(d)(1) and (2). Exh. A.

⁵ The Act. Section 5(d)(2). Exh. A.

⁶ See Purchase and Sale Agreement dated September 7, 2016. Exh. C. This Agreement has been approved by the Tribe and the City of Ridgecrest but a fully executed version is not yet available.

⁷ The Act. Section 5(d). Exh. A.

the fee to trust because that process is both time consuming and expensive and the Tribe should not be unduly burdened in its efforts to seek full implementation of the Timbisha Homeland Act.

The Tribe plans to utilize the Ridgecrest parcel for gaming purposes. The Act provides that an alternative parcel acquired by the Secretary pursuant to Section 5(d)(2) of the Act would be considered part of the Tribe's initial reservation for purposes of the Indian Gaming Regulatory Act ("IGRA").⁸ The Tribe acknowledges that by agreeing to a discretionary acquisition of the parcel for the Tribe pursuant to the Act, the Secretary is in effect making a determination that the Ridgecrest parcel is eligible for gaming as part of the Tribe's initial reservation pursuant to IGRA, Section 20(b)(1)(B)(ii). While 25 C.F.R. Part 292 does not govern this action due to the independent authority granted to the Secretary pursuant to the Timbisha Homeland Act, the Tribe acknowledges that the policy considerations of Part 292 will be relevant for the Secretary in making this "mutual agreement" decision with the Tribe. This submission will set forth the history of the Tribe, the Timbisha Homeland Act and its purposes and effect, the Tribe's need for the additional land, the Tribe's need for gaming, and how the acquisition satisfies the policy considerations of Part 292.6 for initial reservations.

Although the Act contemplates that the Ridgecrest parcel will be acquired (and paid for) by the United States,⁹ the Tribe hopes to make the acquisition easier and more expeditious for the Secretary by not requesting that the United States make a meaningful financial contribution towards the purchase of the parcel. The Tribe's gaming developer has acquired an option for the purchase of the parcel.¹⁰ Upon the approval of the MOA and the fee to trust, the developer will sign the Ridgecrest parcel over to the BIA at no cost or, if the Secretary finds that it is necessary to pay for the parcel in order to comply with the Act, the United States may purchase the parcel from the Tribe's developer for a nominal price.

2. History of the Tribe

The Timbisha Shoshone Tribe are the descendants of a subgroup of the Shoshone people who have occupied the desert area in and around Death Valley National Park, and extending to the eastern base of the Sierra Nevada Range, since time immemorial. In the anthropological record they are often referred to as the Panamint Shoshone or the Koso Shoshone. The early anthropological analysis of the Panamint Shoshone was conducted by Julian Steward and

⁸ The Act, Section 7(c). "Lands taken into trust for the Tribe pursuant to section 5, except for the Park land described in subsections b(1)(A) and d(1) of such section shall be considered to be the Tribe's initial reservation for purposes of section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(ii))." Exh. A. Note that the Park land referenced at (b)(1)(A) is the Furnace Creek parcel, and the Park land referenced at (d)(1) is the privately owned Indian Rancheria parcel.

⁹ The Act, Section 5(d): "Additional Trust Resources. The Secretary may *purchase* from willing sellers the following parcels..." (emphasis added). Exh. A.

¹⁰ Purchase and Sale Agreement. Exh. C. Note that the Tribe has entered into a Management Agreement and a Development Agreement with Ridgecrest Global Investment Enterprise, LLC. The General Council of the Tribe recently approved the limited waiver of immunity contained in these agreements, and the Tribe will be submitting them to the National Indian Gaming Commission in the near future.

published in 1930s. The Chairman of the Tribe can recall his grandparents telling the story of when Julian Steward stayed with them.¹¹

To assist with preparations for this request pursuant to the Timbisha Homeland Act, the Tribe acquired the assistance of anthropologists from the University of Utah who specialize in tribes from the Great Basin area.¹² The Codding Report finds that Steward identified four “districts” of the Panamint Shoshone: Little Lake, Saline Valley, Panamint Valley, and Death Valley.¹³ The highest population of the Panamint Shoshone was in the Little Lake Band area.¹⁴

Through non-native encroachment, the Tribe’s use of its territory shrank over time. The Tribe came under the supervision of the Bureau of Indian Affairs at least as early as 1911, when Tribal children began attending board school.¹⁵ Several members received public domain allotments during the allotment era.¹⁶ In 1928 a single family of the Tribe, the Hansons, received a reservation in Panamint Valley.¹⁷ This reservation became known as Indian Rancheria, and it is specifically identified in the Act as land the Secretary can acquire from willing sellers.¹⁸ Despite requests from government agents, other parcels that were suggested for federal designation for Timbisha members were not approved by Congress.¹⁹

The remainder of the Tribe were considered by the BIA to be non-ward Indians but the BIA provided them a variety of services.²⁰ In 1937 the BIA assisted the Tribe in forming a Tribal Council.²¹ Efforts to provide the Tribe with a reservation were stymied by establishment of the Death Valley National Monument in 1933, which made ineligible a significant portion of the Tribe’s territory.²² An interagency agreement provided a 40 acre parcel for the Tribe’s use within the Monument for a village site (the “Village”), which has been occupied by Tribal members since.²³ The residents of the Village played a critical role in maintaining a cultural and political center for the Tribe, which formed much of the basis for the BIA’s decision to re-recognize the Tribe in 1983.²⁴

¹¹ Gholson Declaration. Exh. D.

¹² *Evaluating the Extent of the Timbisha Shoshone Homeland*, report prepared for the Timbisha Shoshone Tribe by Ashley K. Parker and Brian F. Codding, The University of Utah (July 25, 2016) (the “Codding Report”). Exh. E.

¹³ Codding Report, Pg. 14. Exh. E.

¹⁴ Codding Report, Pg. 14. Exh. E.

¹⁵ Federal Acknowledgement, Pg. 3. Exh. B.

¹⁶ Federal Acknowledgement, Pg. 3. Exh. B. Codding Report, Pg. 20, and the locations of some of the allotments are identified on Figure 3, Pg. 23. Exh. E.

¹⁷ Federal Acknowledgement, Pg. 3. Exh. B. Codding Report, Pg. 21, and the location of the Hanson Indian Rancheria is identified on Figure 3, Pg. 23. Exh. E.

¹⁸ The Act, Section 5(d)(1). Exh. A. The Indian Rancheria reservation was terminated in 1964. Federal Acknowledgement, Pg. 36 of 68. Exh. B.

¹⁹ Codding Report, Pg. 21. Exh. E.

²⁰ Federal Acknowledgement. Pg. 3. Exh. B.

²¹ Federal Acknowledgement, Pg. 3. Exh. B.

²² Federal Acknowledgement, Pg. 3. Exh. B.

²³ Federal Acknowledgement, Pg. 3. Exh. B.

²⁴ Federal Acknowledgement, Pg. 5. Exh. B.

In its recommendation for recognition in 1982, the BIA acknowledged that the Timbisha Shoshone Tribe "...is clearly derived from several traditional Western Shoshone political units located in Death Valley and neighboring mountain ranges. These units, made up of several family groups each, were traditionally linked by economic and kinship relationships."²⁵ Because of the location of the Village site and the gathering of many members there during the 1920s and 1930s,²⁶ the Tribe came to be associated primarily with Death Valley and Furnace Creek,²⁷ but all four bands of the Tribe were still in existence and recognized as distinct family groups within the Tribe. The descendants of the four bands all trace their lineage back to the Census reports of 1933 and 1936 Census which are referenced in the Tribe's Federal Acknowledgement.²⁸

Within the Little Lake Band area were the Coso Hot Springs, which were sacred to the Timbisha and other neighboring groups. Although the hot springs were completely within the Timbisha territory, they permitted other tribes such as the Kawaiisu, Paiute, and Tubatulabal to use the sacred area.²⁹ The Little Lake Band suffered further displacement because most of the Band's territory was taken over by the Naval Air Weapons Station China Lake ("China Lake Base") in 1943. Little Lake Band members residing at Indian Gardens, Coso Hot Springs, and in the Coso Range and the Argus Range were all forcibly removed from their homes at that time.³⁰

Congress adopted the Desert Protection Act in 1994, and required a report to be prepared on how to best address the Timbisha Shoshone Tribe's land needs. After several years of delay on the part of the United States, the Secretary put together a working group including the Tribe and the recommendation of the Timbisha Shoshone Homeland Act was the result of that work.

3. The Timbisha Shoshone Homeland Act

The Timbisha Shoshone Homeland Act is clearly an effort to balance the interests of the Tribe in acquiring sufficient lands to constitute a reservation and the interests of the United States in keeping the Death Valley National Park as intact as possible. In addition, the National Park Service was interested in ensuring that the Tribe's presence within the Park was consistent with the Park's perspective on what belongs in a National Park and what does not.

To that end, the Act provides for five non-contiguous parcels to be held in trust for the benefit of the Tribe.³¹ All five of these parcels were already owned by the United States, but the Act changed their designation to lands held in trust for the Tribe and therefore under the supervision of the BIA. Four of the parcels were outside the boundaries of the Park under BLM management. One of the parcels was located inside the boundaries of the Park, encompassing the Village plus additional adjacent lands that were under Park management.

²⁵ Federal Acknowledgement, Pg. 4. Exh. B.

²⁶ Federal Acknowledgement, Pg. 13. Exh. B.

²⁷ Coddling Report, Pg. 11. Exh. E.

²⁸ Federal Acknowledgement, Pg. 15. Exh. B.

²⁹ Coddling Report, Pg. 16. Exh. E.

³⁰ Coddling Report, Pg. 25. Exh. E. Picture of Little Lake Band descendants visiting ancestral home within the Naval Air Weapons Station China Lake. Exh. F.

³¹ The Act, Section 5(b). Exh. A.

a. Trust Parcels

(i) Furnace Creek

The first parcel is 314 acres in Furnace Creek, California, within the Death Valley National Park.³² Furnace Creek is the only reservation parcel that has a residential population. Approximately twenty members live in the Village. Of the five parcels, Furnace Creek is the only parcel that was subject to a considerable amount of planning for its use after passage of the Act. The Act specifically provides that the Tribe may open a small to moderate size desert inn and cultural center at this site, and prohibits more than fifty single-family residences.³³ The concerns of the Park with regard to maintaining uses that it deemed consistent with the Park's purpose are demonstrated by the care and attention the Act pays to the Furnace Creek parcel. The Park was apparently even concerned with ensuring that the Tribe's development at Furnace Creek would be unique enough not to compete with the existing accommodations at Furnace Creek.³⁴ The Tribe is prohibited from gaming on the Furnace Creek parcel.³⁵ The Tribe has not given up hope on developing an inn at Furnace Creek. The Tribe has been diligently pursuing this project for the last five years, but to date has not been able to acquire financing.

(ii) Death Valley Junction

The second parcel is 1,000 acres at Death Valley Junction, California.³⁶ Death Valley Junction is a very remote road intersection (Highways 190 and 127) on the route from Las Vegas to the Park. The intended uses for Death Valley Junction were single family residences and small-scale economic development.³⁷ The Tribe has had difficulty finding a use for the parcel. It is too remote for Tribal members to use for residences because there is no work or schools nearby. The Tribe researched gas stations and convenient stores but the traffic numbers do not warrant these projects. The Tribe undertook an alternative energy study and it was not economically feasible to develop the parcel for wind or solar power generation. The Tribe was advised by experts that there is plenty of open desert land very close to Las Vegas available for alternative energy development, so it is not cost effective to invest in projects further away from the population center and incur the additional transmission line costs.

(iii) Centennial

The third parcel is 640 acres at Centennial, California.³⁸ The intended uses for the Centennial parcel were single family residences and small-scale economic development.³⁹ The water resources of Centennial had not been adequately researched at the time of the Act's

³² The Act, Section 5(b)(1)(A). Exh. A. See Map 1. Exh. G.

³³ The Act, Section 5(b)(3), Exh. A.

³⁴ Legislative Environmental Impact Statement of the Timbisha Homeland Act prepared by the National Park Service (the "LEIS"), Section 2.2.1.1.

³⁵ The Act, Section 7(c), Exh. A.

³⁶ The Act, Section 5(b)(1)(B). Exh. A. See Map 2. Exh. G.

³⁷ LEIS 2.2.2.1.

³⁸ The Act, Section 5(b)(1)(C)(i). Exh. A. See Map 3. Exh. G.

³⁹ LEIS 2.2.2.1.

adoption, and the Act provided that if the Centennial parcel did not have adequate water then the Tribe would be able to exchange it for another parcel of approximately 640 acres administered by the BLM and located “in that portion of Inyo County, California, to the north and east of the China Lake Naval Weapons Center, to be a mutually agreeable substitute....”⁴⁰ Studies conducted since 2000 have confirmed that Centennial lacks sufficient water, and the Tribe and the BLM are currently discussing alternative sites. This exchange should not be confused with the Tribe’s request in this submission. The Tribe is working directly with the BLM on finding a suitable replacement for the Centennial parcel. This request to the Secretary for a mutual agreement to acquire the Ridgecrest parcel is not related in any way to the Centennial parcel.

(iv) *Scotty’s Junction*

The fourth parcel is 2,800 acres at Scotty’s Junction, Nevada.⁴¹ Scotty’s Junction is located at a remote intersection (Highways 95 and 267). The intended uses for this parcel were single family residences and small-scale economic development.⁴² The Tribe has not been able to begin any development on the Scotty’s Junction parcel. It is too remote to develop for residential uses. The Tribe considered alternative energy development but found the same results as at Death Valley Junction in an even more remote location.

(v) *Lida Community*

The fifth parcel is 3,000 acres at Lida, Nevada.⁴³ The intended uses for this parcel were also single family residences and small-scale economic development.⁴⁴ Lida is considered a ghost town and there are no economic opportunities nearby to support a population of members. The Tribe considered alternative energy development but found the same results as at Death Valley Junction in an even more remote location.

b. Additional Parcels

(vi) *Indian Rancheria*

The first parcel identified in the Act for potential purchase from a willing seller is the Indian Rancheria site.⁴⁵ The intended uses for this parcel were family residences and limited agriculture.⁴⁶ The Indian Rancheria is land that was formerly held in trust for the Hansons, a single family of the Timbisha Shoshone. The land passed out of trust when the Rancheria was terminated in 1964.⁴⁷ The descendants of the Hansons still own the land. The Tribe has contacted them and they are not interested in selling.⁴⁸

⁴⁰ The Act, Section 5b(1)(C)(ii). Exh. A.

⁴¹ The Act, Section 5b(1)(D). Exh. A. See Map 4. Exh. G.

⁴² LEIS 2.2.2.1.

⁴³ The Act, Section 5(b)(1)(E). Exh. A. See Map 5. Exh. G.

⁴⁴ LEIS 2.2.2.1.

⁴⁵ The Act, Section 5(d)(1). Exh. A. See Map 6. Exh. G.

⁴⁶ LEIS 2.2.1.2.

⁴⁷ Federal Acknowledgement, Pg. 36 of 68. Exh. B.

⁴⁸ Gholson Declaration. Exh. D.

(vii) *Lida Ranch or Alternative*

The second parcel identified in the Act for potential purchase from a willing seller is the Lida Ranch site.⁴⁹ The LEIS does not indicate the intended uses of the Lida parcel if acquired. In the Senate Committee on Indian Affairs hearing concerning the Act before its passage, United States Department of the Interior Assistant Secretary Donald Barry was the principal representative for the Department of the Interior concerning the proposed legislation. The *first question* asked of Assistant Secretary Barry by Senator Inouye, who presided over the hearing, was, “As you know, Mr. Secretary, this bill authorizes the purchase of Lida Ranch. Can you tell us the reasons for acquiring this ranch and what is the tribe’s connection to it?”⁵⁰ Barry answered that it was important to the Tribe for its cultural history, and because it has water and “...the tribe views this as one of the few areas where there would be an opportunity for either economic development of some sort, or at least to provide additional community development. I think, for that reason, Lida Ranch becomes very, very important to the Tribe.”⁵¹

Senator Inouye went on to question Barry more closely concerning the acquisition and whether the Secretary was “moving to secure” the ranch and the Indian Rancheria parcels. Barry responded that the Secretary had not yet begun any acquisition efforts but that upon the passage of the Act “the burden is then on us to follow through in good faith to look for a way of trying to achieve the benefits for the Tribe that the legislation would authorize.”⁵² Senator Inouye later questioned Professor Charles Wilkinson on the matter of Lida Ranch, to confirm that the Act conveyed the necessary authority to the Secretary.⁵³

Lida Ranch is and was an operating ranch, with significant water rights, and at the time of the Act it was thought to be a real economic development opportunity for the Tribe. Lida Ranch was for sale for several years, but was taken off the market in 2014 and is no longer for sale.⁵⁴ Even if it were still for sale, the Tribe does not believe that it is realistic to expect that Congress will appropriate \$25 million for this purchase, and the Tribe does not want to spend several years waiting to find out. The Tribe also does not believe that Lida Ranch presents the best opportunity for the Tribe. The main justification for acquiring Lida Ranch would be to continue to operate it as a cattle ranch.⁵⁵ The Secretary is, perhaps, in a better position than the Tribe to estimate how many tribal governments undertaking their first economic development project have taken ownership of a farm or ranching operation and run it successfully and for a profit, but

⁴⁹ The Act, Section 5(d)(2). Exh. A. See Map 7. Exh. G.

⁵⁰ Hearing before the Committee on Indian Affairs, U.S. Senate, The Timbisha Homeland Act, 106th Congress, Second Session on S.2102 (“Hearing”). March 21, 2000. Pg. 26 of 105. Exh. H.

⁵¹ Hearing. Pg. 27 of 105. Exh. H.

⁵² Hearing. Pg. 27 of 105. Exh. H.

⁵³ Hearing. Pg. 38 of 105. Exh. H. Senator Inouye: “Does this measure provide the necessary authority for the Department to proceed with the purchase of Lida Ranch?” Professor Wilkinson: “Yes; I believe it does.”

⁵⁴ Gholson Declaration, Lida Ranch attachment, “This Land Property is Off-Market.” Exh. D.

⁵⁵ Gholson Declaration, Lida Ranch Advertisement, Exh. D, suggests that if the property were still for sale it could also be successfully developed for gold mining. The Tribe has spent considerable resources over the past 20 years opposing gold mine development on Western Shoshone lands throughout Nevada and is not going to establish a gold mine on its trust property.

we believe the number is very, very small. It is a business that appears to have low profit margins and significant risks. This is in contrast to the opportunity presented by gaming, which is an economic development opportunity that has proven to be immediately successful for many tribes.

There are no criteria in the Act to guide the Secretary and the Tribe in deciding if Lida Ranch or another parcel should be acquired, or if another parcel is to be acquired how to decide what the appropriate parcel is. There is also no guidance in the legislative history of the Act. The alternative parcel was not discussed at the Senate hearing, in the LEIS, or in the Senate Committee on Indian Affairs Committee Report.⁵⁶

In the absence of any other applicable legislative history, the record of Senator Inouye's line of questioning at the Senate Committee hearing and Assistant Secretary Barry's response looms large. The exchange itself and the fact that it was Senator Inouye's first question demonstrates: 1) the United States Congress understood the significance of additional lands being acquired for the Tribe pursuant to the Act and considered it a matter of importance; and 2) notwithstanding the nondescript references to economic development potential in the "proposed uses" of the other parcels set forth in the LEIS,⁵⁷ Assistant Secretary Barry's comments indicate the Secretary's understanding that in truth there were only two parcels provided for in the Act that had real economic development potential for the Tribe: Furnace Creek and Lida Ranch.⁵⁸

This legislative history can provide the Secretary and the Tribe with guidance for the acquisition of a parcel pursuant to Section 5(d)(2). Congress was informed and understood that the success of the Act in the long run depended in part on the additional acquisitions. The Secretary at the time the Act was passed, and Congress, understood that the reason for the acquisition of Lida Ranch was because the Tribe needed another parcel with real economic development potential. The legislative history therefore provides guidance that the parcel to be acquired in the place of Lida Ranch should have real economic development potential.

The mutual agreement language of the Act does not contain any geographic restrictions on where the alternative parcel must be located.⁵⁹ This is significant. Even in the same Act the Centennial parcel replacement provision contains a specific geographic restriction.⁶⁰ Congress

⁵⁶ Senate Report 106-327, *Providing to the Timbisha Shoshone a Permanent Land Base Within Its Aboriginal Homeland*, June 30, 2000. Exh. I. The Report briefly addresses the Section: "Subsection (d) authorizes the Secretary to purchase, from willing sellers, and to take in trust for the Tribe, approximately 120 acres known as the Indian Rancheria Site, California, and approximately 2,340 acres comprising the Lida Ranch, Nevada, or another parcel mutually agreed upon by the Secretary and the Tribe, with appurtenant or separate water rights." Pg.8.

⁵⁷ *Supra*, footnotes 36, 38, 41, and 43.

⁵⁸ The LEIS and the Act itself paid extensive attention to the Furnace Creek parcel and its potential development. But the Act is silent on the uses of the four BLM parcels. The LEIS provided a dismissive analysis of the four parcels identifying virtually identical uses for them all (single family residential and small-scale economic development) with no further discussion and no reference to what small-scale economic development would be feasible. It is difficult to conclude that there was any real plan or even a serious expectation of economic development on the four BLM parcels.

⁵⁹ The Act, Section 5(d)(2). Exh. A.

⁶⁰ The Act, Section 5(b)(1)(C)(ii). Exh. A.

has also demonstrated in similar legislation that when Congress wants to place geographical restrictions on Tribal acquisitions, Congress understands how to do so.⁶¹

In the absence of legislative history providing other guidance, the Tribe submits that the most reasonable interpretation for this lack of geographical restriction was to ensure that the hands of the Secretary would not be tied if an alternative parcel was needed. To the extent that the lack of a defined geographical area in the Act constitutes an ambiguity, the applicable canon of construction requires the Secretary to interpret the language in the Act in the manner that favors the Tribe.⁶²

Furthermore, the Act itself sets precedent for the acquisition of a parcel that is not adjacent to or even near the other parcels granted under the Act. The non-contiguous reservation established by the Act is spread out over a significant region.⁶³ The distance from the Death Valley Junction parcel to the Lida Community parcel is about 100 miles as the crow flies. When driving distances are taken into account, the distance from the Centennial parcel to the Lida Community parcel is over 130 miles.⁶⁴ Assistant Secretary Barry justified the spread out, non-contiguous nature of the initial reservation being established by explaining that it more accurately mirrored the Tribe's traditional use of its territory because of the scarcity of natural resources.⁶⁵ The distance between the Centennial parcel and the Ridgecrest parcel is about 45 miles, and the distance of the Ridgecrest parcel from the other trust parcels is well within the norms established by the Act by the distances between the other parcels.⁶⁶

The Secretary is empowered by the Act to exercise her discretion to acquire a parcel that would be most likely to help the Tribe fulfill the purposes of the Act. The Secretary appreciates that modern tribal governments, lacking a tax base, must undertake economic development in order to sustainably operate their governments. It is reasonable for the Secretary to examine the Tribe's history of the past sixteen years and to conclude that the Act did not provide the Tribe with lands that were positioned for economic success. The Act provides the means and the

⁶¹ "When Congress has wanted to limit the geographical range in which a restored tribe's reservation can be located, it has done so by specifying a particular tract of land as the restored tribes' reservation." *City of Roseville v. Norton*, 348 F.3d 1020, 1031 (D.C. Cir. 2003).

⁶² "The basic Indian law canons of construction require that treaties, agreements, statutes, and executive orders be liberally construed in favor of the Indians." Cohen's Handbook of Federal Indian Law, Section 2.02[1] (2005 Edition). "The Supreme Court has held on numerous occasions that ambiguities in federal statutes are to be resolved in favor of the Indians." *City of Roseville v. Norton*, 348 F.3d 1020, 1032 (D.C. Cir. 2003) (citing *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992); *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985)).

⁶³ Map of the location of the trust parcels and Ridgecrest parcel. Exh. J.

⁶⁴ Distance and mileage chart of the trust parcels and Ridgecrest parcel. Exh. K.

⁶⁵ Hearing, written statement of Donald J. Barry: "These parcels would constitute a discontinuous reservation for the tribe. This is appropriate, given the desert environment in which essential resources like water are scarce and separated by vast distances. The existence of mining claims, the availability of infrastructure such as roads, power, and other services, and the fact that much of the land in this area has special resource designations, have resulted in the identification of several parcels to meet tribal needs, rather than a single contiguous parcel. In addition, a discontinuous reservation mirrors the way the Timbisha Shoshone people historically used their ancestral homelands, which covered more than eleven million acres." Pg. 44 of 105. Exh. H.

⁶⁶ Distance and mileage chart of the trust parcels and Ridgecrest parcel. Exh. K.

opportunity to rectify this situation. The potential for gaming as an economic opportunity for the Tribe is clearly contemplated by the Act, and identifying a parcel to be acquired for gaming purposes is consistent with the purposes of the Act.⁶⁷

c. Ridgecrest Parcel

The Ridgecrest parcel is approximately 26.48 acres in size and is located on China Lake Boulevard in the City of Ridgecrest, close to the entrance to the China Lake Base.⁶⁸ The Tribe and the City have entered into a site-specific Municipal Services Agreement anticipating a Tribally-operated gaming facility on the site.⁶⁹ The Tribe's developer, Global Investment Enterprise Ridgecrest, LLC, has entered into a Purchase and Sale Agreement with the City's Redevelopment Agency, giving the developer an exclusive option to purchase the Ridgecrest parcel.⁷⁰

The City of Ridgecrest previously identified the Ridgecrest parcel and the immediately surrounding area as a business park and intended it for commercial purposes. China Lake Boulevard is one of the main north-south streets in the City. The Ridgecrest parcel is located on the west side of China Lake Boulevard near its northern end, close to the intersection with Inyokern Rd., a main east-west street that connects out to Highway 395. The Ridgecrest parcel lots are currently empty, and on the west side of China Lake Boulevard across from the Ridgecrest parcel are various restaurants and small businesses.

The Tribe considered several different parcels in and around the Ridgecrest area. In addition to its central location, one of the advantages of the selected site is that it was owned by an entity of the City, and the City was motivated to see the property developed. The Tribe and its developer have completed a market analysis and believe that the site can support a small to medium size gaming facility. The Tribe plans to initiate negotiations with the Governor of the State of California for a Class III gaming compact in the near future.

4. Initial Reservation

In 2008, the Department adopted 25 C.F.R. §292 to govern Indian lands decisions under IGRA. The regulations include criteria for making an initial reservation determination. 25 C.F.R. § 292.6. These provisions do not control the Secretary's decision under Section 5(d)(2) of the Act because the Act provides independent authority for the acquisition and the Secretary is not making an Indian lands determination. In addition, 25 C.F.R. §292.6 contains provisions that are contradictory or cannot feasibly be reconciled with the Act, which controls over the regulations.

However, the Tribe acknowledges that by making a discretionary decision to acquire a parcel pursuant to Section 5(d)(2) of the Act, the Secretary is in effect making a decision that the

⁶⁷ The Act, Section 7(c). Exh. A.

⁶⁸ Ridgecrest parcel maps. Exh. L.

⁶⁹ Municipal Services Agreement between Tribe and City of Ridgecrest. Exh. M.

⁷⁰ Purchase and Sale Agreement. Exh. C.

acquired parcel is eligible for gaming as part of the Tribe's initial reservation. Therefore, the Secretary may usefully refer to 25. C.F.R. §292.6 for policy considerations.

The one policy that would clearly be of concern to the Secretary would be verification that the Tribe has historic connections to the Ridgecrest area.

a. Historic connections

The Panamint Shoshone consisted of four bands, or districts.⁷¹ The boundaries between the bands were based on the locations of their villages and their commonly-utilized resources. The boundaries between the Timbisha Shoshone and its neighbors were based on linguistic differences. Steward wrote, under the heading "Western Independent Shoshoni Villages,"⁷² and the subheading of "Eastern California": "These Shoshoni occupied the northern halves of Death Valley and Panamint Valley, all of Saline Valley, the southern end of Eureka Valley, the southern shore of Owens Lake, the Koso Mountain region, the northern edge of the Mojave Desert, and the eastern slope of the Sierra Nevada Mountains."⁷³ Steward reviewed the villages, resources, and chiefs of the bands separately: Saline Valley,⁷⁴ Little Lake and Koso Mountains,⁷⁵ Panamint Valley,⁷⁶ and Northern Death Valley.⁷⁷

According to the anthropological record, the City of Ridgecrest is not located exactly within the boundaries of any tribal group. It was identified as "no permanent occupation" or that it was uncertain who occupied that area.⁷⁸ It is undisputed that the closest aboriginal village sites and known resource use locations to the City of Ridgecrest belonged to the Little Lake Band of the Timbisha Shoshone.⁷⁹ The distance from the southern linguistic boundary line of the Little Lake Band drawn by Steward to the Ridgecrest parcel is just over 5 miles.⁸⁰ Furthermore, the Coddling Report demonstrates that linguistic boundaries are not hard lines. Known travel stories recorded by Steward suggest that the linguistic boundaries should be given a buffer zone of fifteen kilometers.⁸¹ With a fifteen kilometer (9.3 mile) buffer, the City of Ridgecrest is within the ancestral territory of the Timbisha Shoshone.⁸²

It is known that the Kawaiisu traveled east from the Tehachapi mountains across the area of Ridgecrest on foraging trips, but their core territory remained in the Tehachapi mountains.⁸³ In a

⁷¹ We will refer the four subgroups of the Timbisha Shoshone as bands. Steward referred to them as districts, and referred to the Panamint Shoshone as a band of the Shoshone Tribe.

⁷² Julian Steward, Basin-Plateau Aboriginal Sociopolitical Groups Excerpt ("Steward"), Pg. 69. Exh. N.

⁷³ Steward, Pg. 71. Exh. N.

⁷⁴ Steward, Pg.76. Exh. N.

⁷⁵ Steward, Pg. 80. Exh. N.

⁷⁶ Steward, Pg. 84. Exh. N.

⁷⁷ Steward, Pg. 85. Exh. N.

⁷⁸ Coddling Report, Pg. 11, and Figure 1, Pg. 13. Exh. E.

⁷⁹ Coddling Report, Figure 2, Pg. 18, and Figure 4, Pg. 24. Exh. E.

⁸⁰ Coddling Report, Figure 1, Pg. 13. Exh. E.

⁸¹ Coddling Report, Pg. 17. Exh. E.

⁸² Coddling Report, Figure 1, Pg. 13. Exh. E.

⁸³ Coddling Report, Pg. 10. Exh. E.

letter to a colleague in 1955 Steward clarified that all of the boundaries around the Panamint Shoshone territory were a zone of intermarriage and bilingualism except for the Sierra mountains which formed a hard boundary. He also noted that the major population centers of the Panamint Shoshone were on the western side of their territory, including the southern end of Owens Lake, Olancho, Little Lake, and Coso Hot Springs.⁸⁴ These locations are all within the Little Lake Band's territory.

The Codding Report's review of the anthropological record concerning the southern territory boundary of the Panamint Shoshone is supported by the Indian Claims Commission findings. The relevant section identifies a line from Argus Peak to the town of Brown, California.⁸⁵ Brown is a small outpost still on the map just to the east of Highway 395, between Indian Wells and Little Lake. This line is virtually the same as the linguistic boundary set forth by Steward (which is most likely where the ICC received its information). Steward recorded that the Little Lake Band hunted near Brown: "Antelope were most numerous in Indian Wells Valley, near Brown, about ten miles south of Little Lake."⁸⁶ Brown is about thirteen miles northwest of the Ridgecrest parcel, and Indian Wells is even closer.⁸⁷

In the LEIS prepared for the Act, a map of the ancestral territory of the Tribe was included that has quite different boundaries from Steward and the ICC.⁸⁸ The LEIS map was prepared by the anthropologist Katherine Fowler, who assisted the Timbisha Shoshone with its petition for federal acknowledgement and the negotiation of the Homeland Act. In the course of her work, Dr. Fowler worked very closely with the residents of the Village. When we shared the LEIS map with Dr. Codding and his team, their first reaction was confusion over the shape of the western boundary. It has a strange western point apparently drawn to include Coso Hot Springs, but just barely. They commented that "it looks more like a political boundary than a linguistic one." The Codding Report simply concludes that the LEIS map "neglects the southwestern portion that is demonstratively Timbisha, specifically the Little Lake Band range."⁸⁹

Given the clarity of Steward's work, and the fact that he unequivocally found that the territory of the Little Lake Band of the Panamint Shoshone extended to "the eastern slope of the Sierra Nevada Mountains" on the west,⁹⁰ it is hard to reconcile Dr. Fowler's map which leaves out the majority of the Little Lake Band's territory and does not extend anywhere near the slopes of the Sierra Nevada Mountains. Again, Steward discussed all four bands of the Panamint Shoshone in sequence, and did not differentiate between the status of the Little Lake Band and the others.⁹¹

⁸⁴ Codding Report, Pg. 11. Exh. E.

⁸⁵ 11 ICC 387, 413, Finding #23. Exh. O.

⁸⁶ Steward, Pg. 81. Exh. N.

⁸⁷ Distance from Brown to Ridgecrest Map, Exh. P.

⁸⁸ LEIS Map, Exh. Q. Codding Report, Figure 1, Pg. 13. Exh. E. Note that Codding Report Figure 1 incorporates the LEIS map boundaries for reference.

⁸⁹ Codding Report, Pg. 12. Exh. E.

⁹⁰ Steward, Pg. 71. Exh. N.

⁹¹ Steward, Pg. 71 to 85. In Steward's review of the four districts, the Little Lake are discussed second. Exh. N.

Because the ancestral territory map discrepancy seems to beg for an explanation, we will include two possibilities for why Dr. Fowler's map looks so different, but we admit we do not know for certain. First, tribes who are seeking federal recognition have no assurance that they will be successful. It may be that the Village residents leading the recognition efforts decided it would be easier if they focused on the families of the residents of the Village and excluded the Little Lake Band descendants. This possibility is supported by the fact that although the Little Lake Band are well represented on the 1936 Census referenced in the Federal Acknowledgement,⁹² the Little Lake Band descendants were excluded from the 1978 membership roll submitted to the United States.⁹³ It isn't that the Village residents didn't know the Little Lake Band descendants were still there. These groups were closely related family and all knew each other.

After the Tribe was federally recognized in 1983, a meeting was convened to ratify the first constitution of the Tribe in 1986. The first constitution restricted enrollment to those on the 1978 roll submitted to the Secretary. Although they were not on the 1978 roll and therefore not eligible for membership in the Tribe pursuant to the constitution's membership criteria, two descendants of the Little Lake Band attended the General Council meeting and voted on the constitution.⁹⁴

In 1988, the Tribe amended the Enrollment Ordinance and included descendants of the Little Lake Band in the Tribe by adding Shoshone descendants of the 1936 Census. The minutes of the meeting indicate that the Tribal Council knew they were changing the enrollment criteria of the constitution and that the constitution would need to be amended.⁹⁵ Little Lake band descendants subsequently enrolled in the Tribe in substantial numbers. Many Little Lake descendants served as Tribal Council members and Chairpersons of the Tribe. For several years during the time of the negotiation of the Timbisha Homeland Act Leroy Jackson was the Chairman of the Tribe. Mr. Jackson is a Little Lake Band descendant, and is the son of Shirley Summers (a former Chairperson and one of the Little Lake descendants who was present and voted on the 1986 Constitution), and the brother of Eleanor Jackson (a current Tribal Council member). Mr. Jackson is currently the Tribal Environmental Director.

But, as the Secretary knows, in 2008 during a Tribal leadership dispute the Tribal Council led by Joe Kennedy attempted a mass disenrollment of the Little Lake Band descendants on the grounds that they were not eligible for membership in the Tribe because of the constitutional criteria limiting membership to the descendants of the 1978 roll. The first constitution had never been amended to match the Enrollment Ordinance as amended in 1988, 20 years prior. While the disenrollments were not ultimately successful, the effort was supported by many elder residents of the Village. The same elders who had excluded the Little Lake descendants from the 1978 roll and the first constitution, but opened the constitution ratification meeting to them and then invited the Little Lake descendants to enroll after 1988.

⁹² Federal Acknowledgement, Pg. 6 of 68. Exh. B.

⁹³ Federal Acknowledgement, Pg. 6 of 68. Exh. B.

⁹⁴ January 25, 1986 General Council meeting sign-in sheet. Exh. R. Susan Bever-Parrie and Shirley Summers were Little Lake Band descendants.

⁹⁵ Minutes of Timbisha Shoshone Tribal Council, August 5, 1988, Pg. 3 of 4. Exh. S.

Based on this history, the second possibility is that there has been ongoing family tension between the Village residents and the Little Lake descendants that pre-dates federal recognition, and that the Village residents have simply gone back and forth on wanting the Little Lake descendants to be part of the Tribe. They may have instructed Dr. Fowler to leave out the Little Lake territory as part of this ongoing tension.

Regardless of the accuracy of our guesses, the LEIS map's western and southwestern boundaries are completely inconsistent with the anthropological record.

b. Modern Connections

The initial reservation criteria at 25 C.F.R. §292.6 also require tribes to demonstrate modern connections to the land. The Tribe does not believe that its modern connections to the Ridgecrest area should be relevant for the Secretary's decision. The Tribe did not have modern connections to all of the areas where it received trust land under the Act, suggesting that this was not a Congressional priority for the Tribe. This is reasonable under the circumstances because the availability of land within the Tribe's ancestral territory raises unusual issues. Between Death Valley National Park and the China Lake Base, a substantial percentage of the Tribe's ancestral territory is in a restricted status which makes recovery of Tribal jurisdiction extremely unlikely or impossible.⁹⁶ As a result, the vast majority of Tribal members have moved outside of the Tribe's ancestral territory. The highest concentration of Tribal members is now in the Bishop and Big Pine area of California,⁹⁷ which is a Paiute area and the home of Paiute tribes with which the Timbisha Shoshone have long-standing historic and pre-historic relationships.

For the sake of thoroughness, the Tribe submits that it does have modern connections to the Ridgecrest area. Former China Lake Base archaeologist Russell Kaldenberg wrote about his education by the Little Lake Band descendants concerning their way of life in the Coso Mountains.⁹⁸ The Tribe has a quarterly meeting with the China Lake Base to discuss upcoming projects.⁹⁹ The Tribe has an agreement with the China Lake Base to permit access to Coso Hot Springs for spiritual and cultural purposes.¹⁰⁰ The Tribe, and specifically the Little Lake Band

⁹⁶ See attached maps showing the Tribe's ancestral territory utilizing Steward's map, juxtaposed with the Death Valley National Park and the Naval Air Weapons Station China Lake. Exh. T. Death Valley National Park is over 3 million acres in size, and is the largest Park in the lower 48 states. Naval Air Weapons Station China Lake is over 1 million acres in size, and is the largest single landholding of the United States Navy. Together, the Park and the Base occupy about 70% of the Tribe's ancestral territory. See also Hearing, written testimony of Assistant Secretary Donald J. Barry, Pg. 44 of 105. Exh. H.

⁹⁷ See attached map of the population of Tribal members in the Tribe's ancestral territory and neighboring areas Exh. U.

⁹⁸ Russell L. Kaldenberg, *Introduction to the Archaeology of the Naval Air Weapons Station, China Lake, California*, Pacific Coast Archaeological Society Quarterly, Volume 43, Numbers 1 and 2. "When the Base was created in 1943, local Koso Shoshone families still lived on it part time... In a series of personal interviews and field trips with some of the Koso people, I have learned a great deal about their life in the Coso Mountains and Darwin Wash areas." Pg. 4, Exh. V. (Digital version only provided, document cannot be printed).

⁹⁹ Codding Report, Pg. 27. Exh. E.

¹⁰⁰ Codding Report, Pg. 27. Exh. E.

descendants, have informal agreements with the China Lake Base to visit their ancestral home,¹⁰¹ to organize petroglyph tours, and to harvest pine nuts and hunt.¹⁰² The City of Ridgecrest also regularly contacts the Tribe to invite Tribal representatives to the annual Petroglyph festival.¹⁰³

5. Conclusion

The Timbisha Shoshone Tribe requests, pursuant to Tribal Council Resolution 2016-19, that the Secretary enter into a Memorandum of Agreement to mutually agree to acquire the Ridgecrest parcel pursuant to the authority set forth at Section 5(d)(2) of the Timbisha Homeland Act. The acquisition of the Ridgecrest parcel for the benefit of the Tribe is consistent with the specific language, purposes, and legislative history of the Act, and it is the most beneficial means for the Secretary to fully implement the Act on behalf of the Tribe and its members.

¹⁰¹ Picture of Little Lake descendants visiting their ancestral home within the restricted Naval Air Weapons Station China Lake. The elder in the middle of the picture is former Tribal Chairperson Shirley Summers (deceased). She is standing in front of the remains of the Wrinkle family home where her parents and grandparents once lived, before being forcibly removed by the United States in 1943. Exh. F. Coddling Report, Pg. 25. Exh. E.

¹⁰² Coddling Report, Pg. 27. Exh. E.

¹⁰³ Declaration of Chairman Gholson. Exh. D.