

## **Indian Lands**

The Tribe plans to construct its new casino on an Indian allotment located only a few miles from the Tribe's reservation. The allotment (the "Casino Site" or "Parcel") is held in trust solely for the benefit Sherrill McCabe-Esteves, a tribal member. The Tribe and Ms. McCabe-Esteves entered into a Lease Agreement on December 16, 2004, which has been submitted to the Bureau of Indian Affairs, Central California Agency, for approval. As described below, the Casino Site has been held in trust by the United States for Ms. McCabe-Esteves and constitutes "Indian lands" under 25 U.S.C. § 2703(4)(B).

The title history for the Casino Site is remarkably simple for an Indian allotment. The Parcel was originally allotted to Ms. McCabe-Esteves's great-grandmother, Mary McCabe on March 29, 1920, and the patent indicates that the land was to be held in trust by the United States. The parcel was later conveyed to Frank McCabe, Mary McCabe's son.<sup>2</sup> When Frank McCabe died on May 14, 1970, his son Lester McCabe inherited the Parcel. Finally, on February 2, 1979, Lester McCabe conveyed the Parcel to his daughter, Sherrill Ann McCabe (now, Sherrill McCabe-Esteves), who continues to own the Parcel.

As a result, since 1920, the Casino Site has been continuously held in trust by the United States for members of the McCabe family. The McCabes were all members of the Big Sandy Band of Western Mono Indians. The original Indian allottee, Mary McCabe, died prior to the maintenance of formal Tribal membership records, but the Parcel's trust patent indicates that she was a "Mono Indian," and the Tribe's oral history confirms that she was a member of the Tribe. The second owner, Frank McCabe, was Mary McCabe's son. Frank was not only a member of the

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<sup>2</sup> More specifically, on October 6, 1922, Mary McCabe conveyed one-half of her interest in the Parcel to Frank McCabe and the other one-half interest to her friend and live-in companion, Robert Lewis. On June 26, 1943, Mr. Lewis conveyed his interest in the Parcel to Frank McCabe, thereby giving Mr. McCabe 100% beneficial ownership of the property.

Tribe, but also served on the Tribal Business Committee during the 1930s. Frank's son Lester, and granddaughter Sherrill, are also enrolled members of the Tribe.

Because the Parcel has been held in trust by the United States for the benefit of individual tribal members since well before October 17, 1988, to constitute "Indian lands" under IGRA, the Parcel need only satisfy the requirements contained in 25 U.S.C. § 2703(4)(B). The relevant portion of that Section states that "Indian lands" include all lands held by the United States in trust for the benefit of any individual tribal member so long as the tribe "exercises governmental power" over those lands. *Id.* In previous Indian lands opinions, the NIGC has interpreted this language to require proof that the lands are within the Indian tribe's jurisdiction, and that the tribe currently exercises authority over the land.

The Parcel easily fits this definition. The NIGC has concluded that "[t]ribes are presumed to possess tribal jurisdiction within Indian country," see *NIGC Indian Lands Determination, Bear River Band of Rohnerville Rancheria* (August 5, 2002), and the statutory definition of "Indian country" explicitly includes "all Indian allotments, the Indian titles to which have not been extinguished." 18 U.S.C. § 1151(3). See also *Mustang Production Co. v. Harrison*, 94 F.3d 1382, 1385 (10th Cir. 1996) ("Indian tribes have jurisdiction over lands that are Indian country, and allotted lands are Indian country"). Because the Parcel is an Indian allotment originally granted in 1920 to a Tribal member, and has remained in trust since that time, there can be no doubt that it falls within the Tribe's jurisdiction.

The Tribe "must also have a present day exercise of governmental authority over the land." *NIGC Indian Lands Determination, Mechoopda Indian Tribe of the Chico Rancheria* (March 14, 2003). The Tribe has always exercised jurisdiction over the individual Indian allotments outside reservation boundaries, and when requested, has provided various services to those allotments, including solid waste disposal, food deliveries, and home repair services (replacement/repair inspection of hot water heater, septic systems, well, electrical system, plumbing). The Tribe recently reaffirmed its exercise of jurisdiction over Indian allotments in Tribal Council Resolution #0604-03 (June 12, 2004), which requires that all off-reservation allotments display a sign stating: "NO TRESPASSING; PROPERTY UNDER JURISDICTION OF BIG SANDY RANCHERIA TRIBAL GOVERNMENT; ENTRANCE ONLY BY PERMISSION OF TRIBAL GOVERNMENT." The Parcel contains such a sign, is patrolled by Tribal police, and when development begins, will receive Tribal services. As such, it constitutes Indian lands under IGRA.

We have included the following basic documentation regarding the Casino Site for your information at Exhibit F:

