September 28, 2015

Chairperson Leona L. Williams
Pinoleville Pomo Nation
500 B Pinoleville Drive
Ukiah, California 95482

Dear Chairperson Williams:

This is in response to your request for an Indian lands opinion[1] from the Office of General Counsel ("OGC") of the National Indian Gaming Commission ("NIGC") regarding whether gaming can be legally conducted on the Pinoleville Pomo Nation's Reservation[2] under the Indian Gaming Regulatory Act ("IGRA"). More specifically, the Tribe asks whether certain fee lands, upon which the Tribe intends to conduct gaming, fall within the definition of "Indian lands" under IGRA.[3]

To assist with our analysis, the Tribe has provided us with extensive documentation and written materials. The submissions include, but are not limited to, the following: (1) maps of the Tribe's Reservation; (2) maps of the fee lands at issue and their location within the Reservation; (3) deeds for the original Rancheria; (4) letters, with maps, from the BIA addressing the legal status of the Pinoleville Rancheria, dated January 3, 2001, and September 8, 2009; (5) copies of stipulations and court orders from the *Tillie Hardwick* class action litigation and subsequent settlement, which includes a legal description of the exterior boundaries of the Reservation, both original and as restored; (6) a copy of the Tribe's current commercial lease for the Parcels, with an option to purchase; (7) land survey records; (8) preliminary title reports; (9) an environmental site assessment of the Reservation; (10) a draft Environmental Impact Report, prepared for the Tribe in 2010, concerning a proposed casino project on the fee lands at issue; (11) the Tribe's

[1] *See* letter, with enclosures, dated January 16, 2014, from Attorney Melissa Canales, on behalf of the Pinoleville Pomo Nation, to Eric Shepard, Acting General Counsel, NIGC; e-mail from Melissa Canales to Eric Shepard, entitled "Request of Indian Lands Determination Legal Opinion" (Jan. 16, 2014, 16:37 EST) (on file with NIGC); and e-mail, from Melissa Canales to the NIGC, entitled "Request of Indian Lands Confirmation" (Aug. 19, 2013, 14:58 EST) (on file with NIGC).

[2] In the requests and submissions we received from the Tribe, the Tribe's lands are referred to as both the Pinoleville Reservation and the Pinoleville Rancheria. The terms "reservation" and "rancheria" are used interchangeably throughout this opinion. We note that the definition of a "reservation," found in 25 C.F.R. § 292.2, specifically includes rancherias.

[3] *See* 25 U.S.C. § 2703(4); 25 C.F.R. § 502.12; *see also* 25 C.F.R. § 292.2.

Constitution; (12) the Tribe's class II and III Gaming Ordinance, approved by the NIGC;[4] and (13) the Tribe's Tribal-State Compact with the State of California for class III gaming, approved by the Secretary of the Interior.[5]

According to the Tribe, the fee lands at issue are located within the exterior boundaries of the Pinoleville Reservation, which is situated approximately one mile north of the City of Ukiah, in an unincorporated portion of Mendocino County, California. The fee lands consist of two adjacent parcels ("the Parcels"), which, together, comprise approximately 8.8 acres. The lands are owned by a non-Tribal entity[6] and were previously developed as an automobile dealership/service center. They are currently being leased to the Tribe for a 5-year term, until 2016, with an option to purchase the lands included in the lease.

After carefully reviewing the Tribe's submissions, coupled with our own investigation of the status and location of the lands at issue, we find that the Parcels are located within the exterior boundaries of the Tribe's Reservation. Based on this finding, we conclude that the Parcels are "Indian lands" under IGRA. We also find that the Tribe has jurisdiction over the land. Therefore, the Tribe may legally conduct gaming on the lands.[7]

Background

The Pinoleville Pomo Nation is a federally recognized Indian tribe.[8] The Tribe's primary land base is a 99.53-acre reservation located in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. It is situated approximately 100 miles north of San Francisco and is divided by Highway 101, a major north-south, interstate thoroughfare. According to the Tribe's Constitution, the territory of the Tribe includes "all lands within the original boundaries of the Pinoleville Reservation."[9]

Beginning in 1906, Congress appropriated funds for the acquisition of lands "for the use of the Indians in California now residing on reservations which do not contain land suitable for

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[4] The Pinoleville Band of Pomo Indians Gaming Ordinance was approved by NIGC Chairman Philip N. Hogen on August 24, 2004.

[5] The Tribal-State Compact between the State of California and the Pinoleville Pomo Nation was approved on January 26, 2012, by Larry Echo Hawk, Assistant Secretary-Indian Affairs, and became effective on February 3, 2012. The term of the Compact extends to December 31, 2031. *See* "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).

[6] The non-Tribal owner/lessor of the fee lands is Kandy Investments, LLC.

[7] We note that IGRA's prohibition of gaming on after-acquired trust land is not triggered here because the Parcels are fee lands within the limits of the Pinoleville Reservation. *See* 25 U.S.C. § 2719(a)(1).

[8] *See* "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs," 80 Fed. Reg. 1942, 1945 (Jan. 14, 2015). Until 2005, the Tribe was listed in the Federal Register as the Pinoleville Rancheria of Pomo Indians of California. *See also* BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, to Jay Petersen, Directing Attorney, California Indian Legal Services.

[9] *See* Pinoleville Pomo Nation Const. art. I, § 1.

cultivation, and for Indians who are not now upon reservations . . ."[10] Parcels acquired with these funds came to be known as rancherias.[11]

In 1911, the federal government purchased privately held land for the benefit of the Pomo Indians in the Pinoleville area of California and, with this land, created the Pinoleville Rancheria ("Rancheria").[12,13,14]

In 1958, Congress passed the California Rancheria Act,[15] which authorized termination of the federally recognized tribal status of many of the California rancherias, including the Pinoleville Rancheria.[16] The rancherias' lands were broken up into parcels and distributed in fee to the adult Indian members, thereby removing the rancherias' status as Indian lands.[17] Additionally, individual Indian distributees receiving rancheria assets lost their federal Indian status.[18]

In the 1960s, the Pinoleville Rancheria was "terminated" and the land and other assets were distributed pursuant to the California Rancheria Act.[19, 20] The BIA divided the Rancheria

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[10] Act of June 21, 1906, 34 Stat. 325, 333; Act of 1908, 35 Stat. 70, 76.

[11] *Duncan v. Andrus*, 517 F. Supp. 1, 2 (N.D.Cal.1977); *see also* 2014 BIA website *available at* http://bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/index.htm (accessed April 15, 2015).

[12] *In re the Trusteeship of the Pinoleville Indians v. Hunter*, 2004 WL 1304044, 2 (Cal.App. 1 Dist.) (unpublished decision); *see also Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043 (N.D. Cal. 1988).

[13] According to the BIA, the deeds from the two purchases by the United States to establish the Pinoleville Rancheria are dated March 13, 1911, and September 15, 1911, and were authorized by appropriations acts passed by Congress on June 21, 1906 (34 Stat. 325, 333) and April 30, 1908 (35 Stat. 70, 76). *See* BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

[14] *See* BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director.

[15] "An Act to provide for the distribution of the land and assets of certain Indian Rancherias in California, and for other purposes," ("California Rancheria Act"), P.L. 85-671, 72 Stat. 619-621 (1958) (amended 1964). The California Rancheria Act set out a process by which the Secretary could terminate the tribal status and federal recognition of 41 California rancherias, if the members of the rancheria approved the termination. The Rancheria Act was amended six years later to allow *all* rancherias and reservations lying wholly within California to petition for the distribution of tribal lands and other assets and the termination of federal relations.

[16] California Rancheria Act, P.L. 85-671, §§ 3(e), 9, 11.

[17] *Id.* at § 3(e); *see also Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043.

[18] *Id.* at § 10(b); *see also Allen v. United States*, 871 F. Supp.2d 982, 984 (2012).

[19] California Rancheria Act, P.L. 85-671, § 1; Complaint at 7, *Hardwick v. United States ("Hardwick")*, No. C-79-1710 SW (N.D. Cal. Filed 1979); *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1043. *See also Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ 2(B)(2)-(3).

[20] *See also* "Notice of Termination of Federal Supervision Over Property and Individual Members," 31 Fed. Reg. 2911 (Feb. 18, 1966), which reads: *Notice of Termination of Federal Supervision Over Property and Individual Members* from the Office of the Secretary [of the Department of Interior] regarding "Certain Rancherias in California . . . Notice is hereby given that the Indians and the dependent members of their immediate families named below are no longer entitled to any of the services performed by the United States for Indians because of their status as Indians; that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens within their jurisdiction. Title to the land on the North Fork, Picayune, Graton, and Pinoleville Rancherias has passed from the U.S. Government under the distribution plans, approved April 29, 1960; June 30, 1960; September 17, 1959; and May 10, 1960; respectively, for the above-named Rancherias . . . Pinoleville Rancheria. . . Ninety-nine and 53/100 acres of land located in Mendocino County, Calif., described in deed dated March 13, 1911, recorded in Book 123 of Deeds, page 418; and deed dated September 15, 1911, recorded in Book 133 of Deeds, page 283, Recorder's Office County of Mendocino . . . This notice is issued pursuant to the [California Rancheria

into 19 individual parcels, which were then deeded in fee simple title to individual members living on the Rancheria.[21] Some of these Indian owners "sold or otherwise transferred all or portions of their parcels to non-members of the tribe" during the period of unlawful termination.[22] Consequently, today both Indians and non-Indians own property within the original Rancheria boundaries.[23] The Rancheria "consists of a checkerboard of parcels held in fee and trust by the Tribe and individual Tribal citizens, as well as parcels held in fee by non-Tribal individuals and entities, as a result of those years during which the Tribe was illegally terminated."[24]

In 1979, Indian residents from the original Pinoleville Rancheria joined Indian residents from other California Rancherias in a class action lawsuit[25] against the United States to restore the reservation status of their lands and the tribal status of their people.[26] According to the Complaint, three of the Pinoleville plaintiffs "were and are residents of the parcels of land to which they received fee simple title as a result of the purported termination of the Pinoleville Rancheria," and a fourth Pinoleville plaintiff was "a distributee of the Pinoleville Rancheria who alienated his land shortly after receiving title thereto."[27] All of the Pinoleville plaintiffs alleged that their lands, their special status as Indians, and the trust relationship they had with United States as Rancheria residents had been wrongfully terminated under the California Rancheria Act of 1958.[28] The plaintiffs sought, among other things, judicial recognition that "[t]he Secretary of the Interior is under a duty to 'unterminate' each of the subject Rancherias, and . . . to hold the same in trust for the benefit of the Indians of the original Rancherias; . . . to treat all of the subject Rancherias as Indian reservations in all respects; and . . . to treat the Rancherias and their Indians as unterminated in all respects."[29]

The litigation was ultimately settled. The plaintiffs entered into separate stipulations, approving entry of final judgments, with the defendants: the United States and the counties in which the purportedly terminated rancherias were located.[30] On December 22, 1983, judgment was entered against the United States, resulting in the Department of Interior ("Department")

Act] . . . that all restrictions and tax exemptions applicable to trust or restricted lands or interests therein owned by the Indians who are affected by this notice are terminated."

[21] Prior to the purported termination of the Pinoleville Rancheria in 1961, approximately 120 Indian persons resided on the Rancheria. Complaint at 7, *Hardwick v. United States ("Hardwick")*, No. C-79-1710 SW (N.D. Cal. 1979).

[22] *Id.*; *Duncan v. United States,* 667 F.2d at 41.

[23] *Id.*

[24] *See* letter, dated January 16, 2014, from Melissa Canales, Attorney for the Tribe, to the NIGC.

[25] Complaint, *Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. 1979). According to the Complaint, plaintiffs brought the action "on their own behalf and on behalf of a class of similarly situated persons. The class consists of all distributees of the Rancherias listed in Exhibit A [36 Rancherias, including Pinoleville Rancheria], any heirs or legatees of said distributees and any Indian successors in interest to such lands." *Id.* at 5. A total of 17 distributees were from the Pinoleville Rancheria. *Hardwick*, Complaint, Exhibit A at 1.

[26] *Id.* at 27.

[27] *Id.* at 4-5.

[28] *Id.*

[29] *Id.*

[30] *Hardwick*, Stipulation for Entry of Judgment ("Stipulation"), filed Dec. 22, 1983 (signed by U.S. Atty. for federal defendants); *Hardwick*, Stipulation for Entry of Judgment ("Stipulation"), filed May 22, 1985 (signed by counsel for Mendocino County); *see also Hardwick*, Stipulation to Restoration of Indian Country (Humboldt, Mendocino, Lake, Plumas, and Tuolumne Counties) ("Stipulation") and Order, filed March 5, 1986 (signed by U.S. Atty. for federal defendants).

restoring 17 of the Rancherias, including the Pinoleville Rancheria, to their tribal status.[31] On May 30, 1985, judgment was entered against Mendocino County, restoring the Pinoleville Rancheria.[32] The effect of the judgments was that all lands within the Rancheria's exterior boundaries, as they existed immediately prior to the wrongful termination, were declared to be "Indian Country," as defined by 18 U.S.C. § 1151.[33] Further, the United States and Mendocino County expressly agreed to treat the Rancheria like any other federally recognized Indian reservation.[34]

On March 23, 1985, the Pinoleville Indian Community reorganized its tribal government.[35] The Tribe is presently governed by a Tribal Council, in accordance with the Tribe's Constitution, which was ratified in 2005.[36] In 2005, under the terms of its Constitution, the Pinoleville Rancheria renamed itself the Pinoleville Pomo Nation.[37]

On May 18, 2004, the Tribe adopted an ordinance for both class II and class III gaming activities; on August 24, 2004, the Chair of the NIGC approved the ordinance.[38] Additionally, on January 26, 2012, a Tribal-State Compact for class III gaming, between the State of California and the Pinoleville Pomo Nation, was approved by the Secretary of the Interior.[39] It became effective on February 3, 2012.[40]

Applicable Law

In order for a tribe to authorize gaming activity under IGRA, the land upon which the tribe intends to conduct the gaming activity must qualify as "Indian lands," as defined in IGRA.[41]
IGRA explicitly defines "Indian lands" as follows:

> (A) all lands within the limits of any Indian reservation; and
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

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[31] *Hardwick*, Stipulation, filed Dec. 22, 1983.
[32] *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C. This stipulation, which restored the Pinoleville Rancheria and was ordered as to Mendocino County, was subsequently ordered as to the United States and the other federal defendants. *See Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶¶ 2-3.
[33] *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044-45.
[34] *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).
[35] *Governing Council of Pinoleville Indian Community*, 684 F. Supp. at 1044.
[36] *See* Pinoleville Pomo Nation Const. art. III, § 1; *see also Allen v. United States,* 871 F. Supp. at 985.
[37] *Id.*
[38] See letter, dated August 24, 2004, from NIGC Chairman Philip Hogen to James Cohen, Attorney for the Tribe, approving the "Pinoleville Band of Pomo Indians Gaming Ordinance."
[39] *See* "Notice of Tribal-State Class III Gaming Compact Taking Effect," 77 Fed. Reg. 5566 (Feb. 3, 2012).
[40] *Id.*
[41] *See* 25 U.S.C. §§ 2703(4), 2710; 25 C.F.R. §§ 501.2, 502.12.

NIGC regulations further clarify the definition of "Indian lands," providing that:

"Indian lands" means:

(a) Land within the limits of an Indian reservation; or
(b) Land over which an Indian tribe exercises governmental power and that is either—
  (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
  (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12.

Other statutory and regulatory definitions shed light on what constitutes "Indian lands." In 25 C.F.R part 292, the Department includes in its definition of "reservation" the following:

> . . . (2) Land of Indian colonies and Rancherias (including Rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland . . .

25 C.F.R. § 292.2.

IGRA also requires that a tribe possess legal jurisdiction over the land before it authorizes gaming.[42]

Once IGRA is deemed applicable, tribes have the exclusive right to regulate gaming "on Indian lands," providing that:

> [T]he gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701(5).

Analysis

In order to determine whether the Tribe can authorize gaming on the Parcels, the Tribe must demonstrate under subsection (A) of the definition of "Indian lands" that the Parcels qualify

[42] 25 U.S.C. § 2710(b)(1) ("An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if [it meets certain specified criteria] . . . ."); *id.* § 2710(d)(1)(A)(i) ("Class III gaming activities shall be lawful on Indian lands only if such activities are—(A) authorized by an ordinance or resolution that—(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands [and meets other specified criteria] . . . ."); *id.* § 2710(d)(3)(A) ("Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities . . . ."). *See also Rhode Island v. Narragansett Indian Tribe,* 19 F.3d 685, 701-03 (1st Cir. 1994) (citing Sections 2710(d)(3)(A) and 2710(b)(1) of IGRA as creating IGRA's jurisdictional requirement), *cert. denied,* 513 U.S. 919 (1994).

as "lands within the exterior boundaries of the reservation."[43] Accordingly, we must evaluate the following: (1) whether the Pinoleville Rancheria qualifies as a reservation; and (2) whether the Parcels are located "within the limits" of the Reservation. If both queries are answered affirmatively, we must then determine whether the Tribe has jurisdiction over the Parcels.

I. *The Parcels Qualify as "Indian lands" under IGRA*

IGRA recognizes the exclusive right of tribes to conduct and regulate gaming activity "on Indian lands"[44] and specifically requires that the gaming activity be conducted "on Indian lands."[45] Accordingly, any lands upon which a tribe intends to conduct gaming must first be determined to be "Indian lands" under IGRA.[46]

A. *The Pinoleville Rancheria Is an Indian Reservation*

We first examine whether the Pinoleville Rancheria is an Indian reservation under subsection (A) of the definition of "Indian lands" in IGRA.[47] If it is, we need not consider the application of subsection (B).[48]

The Tribe's Reservation occupies 99.53 acres in an unincorporated part of Mendocino County, near the City of Ukiah in northern California. In 1911, the United States government purchased 99.53 acres of land with Congressional funds allocated for this purpose, thereby establishing the Pinoleville Rancheria.[49]

Federal case law and long-standing Department practice confirm that California rancherias, including the Pinoleville Rancheria, are Indian reservations. In a case involving the Pinoleville Rancheria specifically, the United States District Court for the District of Northern California described California rancherias as "numerous small Indian reservations or communities in California."[50] Other federal courts have also described California rancherias as reservations, using the same, or similar, language.[51] Moreover, the Department has previously

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[43] 25 U.S.C. § 2703(4).
[44] 25 U.S.C. § 2701(5).
[45] 25 U.S.C. §§ 2710(a)(1)(2); 2710(d)(1)(A), (C). *See also* 25 C.F.R. § 501.2.
[46] 25 U.S.C. § 2703(4). "Indian lands" are defined in the NIGC regulations at 25 C.F.R. § 502.12.
[47] 25 U.S.C. § 2703(4)(A).
[48] 25 U.S.C. § 2703(4)(B).
[49] *See* original deeds, dated March 13, 1911, recorded in Book 123 of Deeds, p. 418, and September 15, 1911, recorded in Book 133 of Deeds, p. 283, Recorder's Office, County of Mendocino; *see also* "Notice of Termination of Federal Supervision Over Property and Individual Members," 31 Fed. Reg. 2911 (Feb. 18, 1966).
[50] *Governing Council of Pinoleville Indian Cmty.*, 684 F. Supp. at 1043 n.1 (citing *Duncan v. United States*, 667 F.2d 36, 38, 229 Ct. Cl. 120 (1981), *cert. denied*, 463 U.S. 1228 (1983)).
[51] *Duncan v. United States*, 667 F.2d at 38 ("Rancherias are numerous small Indian reservations or communities in California"); *Big Lagoon Rancheria v. California*, Nos. 10-17803, 10-17878, 2015 WL 3499884, at *1-7, *2 n.1 (9th Cir. June 4, 2015) ("Rancherias are numerous small Indian reservations or communities in California . . ."); *Williams v. Gover*, 490 F.3d 785, 787 (9th Cir. 2007) ("Rancherias are numerous small Indian reservations or communities in California . . ."); *Artichoke Joe's Cal. Grand Casino v. Norton*, 278 F. Supp. 2d 1174 n.1 (E.D. Cal. 2003) ("Rancherias are small Indian reservations . . .").

stated in legal opinions, one of which was issued in 1939, that a California rancheria qualifies as a reservation.[52]

The Department's long-held view that rancherias are reservations dates back to at least the passage of the Indian Reorganization Act ("IRA")[53] in 1934. On June 10, 1935, as part of its implementation of the newly enacted IRA, the Department held a special election at the Pinoleville Rancheria to provide Rancheria residents with the opportunity to vote to reject application of the IRA to the Rancheria, as required by the IRA.[54] These special elections were to be held at *reservations*,[55] and the calling of such an election at the Rancheria demonstrates that the Department concluded at that time that the Pinoleville Rancheria was a "reservation" at which an election should be held.

In the 1960s, pursuant to the California Rancheria Act, the Rancheria's tribal status was terminated through distribution of the Rancheria lands.[56] The Rancheria lost its status as a federally recognized Indian tribe.[57] Its lands ceased to be held by the federal government and were broken up and distributed in fee simple parcels to individual tribal members.[58]

Nearly two decades later, the Pinoleville Rancheria was relieved of the deleterious effects of the California Rancheria Act. Between 1983 and 1986, the Rancheria's tribal status and the status of its lands were restored as part of the *Hardwick* settlement (mentioned in the background section).[59] The settlement included stipulations between the Rancheria and the United States, and the Rancheria and Mendocino County.[60]

These stipulations establish several critical points, which are dispositive of our analysis today: (1) the tribal status of the members of the Pinoleville Rancheria is restored and the Rancheria is restored to federal recognition (the 1983 Stipulation[61]); (2) the Pinoleville Rancheria was never, and is not now, lawfully terminated under the California Rancheria Act (the May 1985 Stipulation[62]); (3) the Pinoleville Rancheria "shall be treated by . . . the United States of America as any other federally recognized Indian Reservation" (the 1985 Stipulation[63]);

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[52] *See* Solicitor's Op. M-28958 (Apr. 26, 1939); 1 Op. Sol. On Indian Affairs 891 (U.S.D.I. 1979) available at http://thorpe.ou.edu/aol_opinions/p876-900.html (finding that the State of California lacks jurisdiction over land located within a rancheria—land purchased for landless Indians in California with funds appropriated by Congress—because rancherias are "for all practical purposes, small reservations," making them Indian country).

[53] 25 U.S.C. §§ 461-494a.

[54] *See* Theodore Haas, Ten Years of Tribal Government Under I.R.A. (1947) at 15 (reporting Pinoleville Rancheria election results showing that the Tribe voted to not reject, i.e., accept, the IRA) *available at* http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf.

[55] 25 U.S.C. § 478 (providing that the IRA "shall not apply to any *reservation* wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application"). (emphasis added)

[56] P.L. 85-671, 72 Stat. 619-621(1958) (amended 1964), §§ 3(e), 9, 10(a)-(b), 11; *see also* "Notice of Termination of Federal Supervision Over Property and Individual Members," 31 Fed. Reg. 2911 (Feb. 18, 1966).

[57] *Id.*

[58] *Id.*

[59] *Hardwick*, Stipulations, filed May 30, 1985, and March 5, 1986. *See also Hardwick*, Stipulation, filed Dec. 22, 1983.

[60] *Id.*

[61] *Hardwick*, Stipulation, filed Dec. 22, 1983, p. 3, ¶¶ 3-4.

[62] *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ B(2).

[63] *Hardwick*, Stipulation, filed May 30, 1985, pp. 4-5, ¶ D.

and (4) the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored and all land within the restored boundaries of the Pinoleville Rancheria are declared to be "Indian Country"[64] (the May 1985[65] and March 1986[66] Stipulations).

Additionally, we note that, not long before IGRA was enacted, the legal status of non-Indian fee lands within the exterior boundaries of the Pinoleville Rancheria was addressed by a federal district court in a non-gaming context. In *Governing Council of Pinoleville Indian Community v. Mendocino County*,[67] the Pinoleville Rancheria maintained that it had regulatory authority over the use of non-Indian owned fee land located within the exterior boundaries of the Rancheria because of the *Hardwick* stipulations. The court examined the effects of the stipulations on the Pinoleville Tribal Council's power to regulate non-Indian fee land within its Rancheria's boundaries and found that it was Mendocino County's express undertaking, in its stipulation with the Pinoleville Rancheria, "to treat the *entire* Rancheria as a reservation . . ." Moreover, the Court found that it was "the clear and fundamental intent" of the *Hardwick* judgments to "restore *all* land within the original Rancheria as Indian Country. . ."[68]

Accordingly, we conclude that the Pinoleville Reservation is an Indian reservation and, therefore, meets the definition of "Indian lands" under IGRA.[69]

In support of our conclusion, we find that the exterior boundaries of the original Pinoleville Reservation, as described in Exhibit A of the first *Hardwick* Stipulation,[70] are the same as the Reservation's exterior boundaries today; they have not changed. The legal description of the current Pinoleville Reservation is the same as the legal description of the original Pinoleville Rancheria, created in 1911, and both are the same as the legal description of the Pinoleville Rancheria restored by the *Hardwick* settlement.[71] This legal description has been confirmed by the Tribe[72] and is consistent with official maps of the Reservation prepared by the BIA[73] and additional maps prepared by other entities.[74]

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[64] We note that the IGRA definition of "Indian lands," i.e. "all lands within the limits of any Indian reservation" uses the same language as the definition in 18 U.S.C. § 1151(a), "all land within the limits of any Indian reservation."
[65] *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.
[66] *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.
[67] *Governing Council of Pinoleville Indian Community*, 684 F. Supp. 1042 (N.D. Cal. 1988).
[68] *Id.* at 1046.
[69] 25 U.S.C. § 2703(4)(A).
[70] *Hardwick*, Stipulation, filed Dec. 22, 1983.
[71] *See* BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, with enclosures, including "copies of the map delineating the exterior boundaries of the Pinoleville Rancheria as recognized by the United States along with the 1985 Stipulation and therein referenced Exhibit 'A' as attached to the 1983 Order and Stipulation for Entry of Judgment. Said boundaries are also shown on that Record of Survey for the Pinoleville Rancheria recorded in the Official Records of Mendocino County filed in Map Case 2, Drawer 1, Page 74."
[72] *See* e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).
[73] *See* BIA letter, dated Sept. 8, 2009, from Dale Morris, BIA Regional Director, Pacific Regional Office, *supra* note 64.
[74] *See* 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels' location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. *See also* map on p. 39.

B. *The Parcels Fall Within the Exterior Boundaries of the Reservation*

After concluding that the Pinoleville Rancheria, as restored by the *Hardwick* stipulations, constitutes a reservation, we now examine whether the Parcels, upon which the Tribe intends to conduct gaming, qualify as "lands within the limits of an Indian reservation," as required by IGRA.[75]

The fee lands at issue consist of two adjacent parcels, which together comprise approximately 8.8 acres of the 99.53-acre Pinoleville Reservation. The parcels are owned in fee simple by a non-Tribal entity, Kandy Investments, LLC, and are currently being leased by the Tribe until 2016, with an option to purchase. The Tribe has provided us with a legal description of the Parcels;[76] a map of the Parcels, showing their location within the Reservation;[77] a Draft Tribal Environmental Report, prepared for the Tribe in 2010, which includes two maps showing the Parcels' location within the Reservation;[78] and maps of the Reservation, including the Parcels, which were prepared by the BIA.[79] The Tribe has also confirmed, in writing, that the fee lands are located within the exterior boundaries of the Reservation.[80]

Based upon our review of the maps, legal descriptions of the Parcels, legal descriptions of the Reservation's exterior boundaries, and other materials provided to us by the Tribe, coupled with our own investigation of the Parcels' status and location, we conclude that the Parcels, owned in fee simple by a non-Tribal entity, are located "within the limits" of the Pinoleville Reservation, thereby satisfying part of the definition of "Indian lands" under IGRA.

The fact that the Parcels are owned in fee simple by a non-Tribal entity and not by the Tribe or a Tribal member (in trust or in fee) does not affect our Indian lands analysis. IGRA's definition of "Indian lands" includes "*all lands* within the limits of any Indian reservation."[81] As explained above, the *Hardwick* stipulations were intended to restore *all* land within the Pinoleville Rancheria and treat the *entire* Rancheria as a reservation,[82] and the United States, as a party to the litigation, remains bound by these stipulations. The restoration of the status of Rancheria lands as Indian Country, as defined by 18 U.S.C. § 1151, included land that had been sold or conveyed to non-Tribal members during the time in which the Rancheria was purportedly terminated. We note that, in our previous Indian lands opinions, we have not distinguished

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[75] 25 U.S.C. § 2703(4)(A); *see also* 25 C.F.R. § 502.12.

[76] *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 7).

[77] *See* 2013 Preliminary Title Report, prepared by the First American Title Co. (p. 9). The Parcels are identified on the maps as Nos. 26 and 27, with APNs of 169-211-26-00 (Parcel One) and 169-211-27-00 (Parcel Two).

[78] *See* 2010 Draft Tribal Environmental Report, which includes a number of maps showing the Parcels' location within the Reservation in Figure 3.1-2, p. 37; Figure 3.1-3, p. 38; and Figure 3.1-4, p. 40. *See also* map on p. 39.

[79] *See* BIA letter, dated September 8, 2009, from Dale Morris, BIA Pacific Regional Director, *supra* notes 69, 71. *See also* BIA letter, dated January 3, 2001, from Dale Risling, Sr., Superintendent, BIA Central California Agency, confirming "that lands within the boundaries of the Pinoleville Rancheria are 'Indian lands' within the meaning of IGRA," and enclosing a map of the Pinoleville Rancheria, including the location of Tribal trust land, trust allotments and fee land.

[80] *See* e-mail from Melissa Canales, Attorney for the Tribe, to Kathy Zebell, NIGC Staff Attorney (Feb. 11, 2014, 14:41 EST) (on file with NIGC).

[81] *See* 25 U.S.C. § 2703(4).

[82] *See Governing Council of Pinoleville Indian Community,* 684 F. Supp. at 1046; *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C.

between non-Indian owned fee land and fee land owned by a tribe or an individual tribal member, if the fee lands are located within the exterior boundaries of a reservation. Fee lands within the exterior boundaries of a reservation are "Indian lands" under IGRA, regardless of ownership.[83]

II. *The Tribe Has Jurisdiction Over the Parcels*

Finally, we examine whether the Pinoleville Pomo Nation is the tribe that has jurisdiction over the Tribe's Reservation, i.e. the lands within the Reservation's exterior boundaries. Before conducting gaming under IGRA, a tribe must satisfy IGRA's requirement that it is, in fact, the tribe exercising jurisdiction over the Indian lands upon which it intends to game. IGRA states that a tribe may engage in class II gaming "on Indian lands *within such tribe's jurisdiction*" if, among other things, the tribe has an ordinance approved by the NIGC's Chair.[84] The requirements for conducting class III gaming likewise include: "Class III gaming activities shall be lawful on Indian lands only if such activities are (A) authorized by an ordinance or resolution that (i) is adopted by the governing body of *the Indian tribe having jurisdiction over such lands. . . .*"[85]

Generally speaking, Indian tribes possess jurisdiction "over both their members and their territory."[86] A tribe is presumed to have jurisdiction over its own reservation.[87] Further, it is well settled that a tribe retains primary jurisdiction over the land that the tribe inhabits if the land qualifies as "Indian country," and reservation land is one type of "Indian country."[88]

As part of the *Hardwick* settlement, the United States and Mendocino County stipulated that "the original boundaries of the Pinoleville Rancheria, as they existed immediately prior to their purported termination under the Rancheria Act, are restored, and all lands within these restored boundaries are declared to be 'Indian Country,' as defined in 18 U.S.C. § 1151."[89]

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[83] *See* Letter from NIGC Acting General Counsel to Pyramid Lake Paiute Tribal Chairwoman ("Pyramid Lake Paiute Tribe Indian lands opinion"), dated Sept. 27, 2005; Memorandum from NIGC Attorney to NIGC Acting General Counsel re: White Earth Band of Chippewa Indians ("White Earth Reservation Indian lands opinion"), dated March 14, 2005; Letter from NIGC Acting General Counsel to Judith Kammins Albietz, Attorney for Buena Vista Rancheria of Me-Wuk Indians ("Buena Vista Rancheria Indian lands opinion"), dated June 30, 2005; Letter from NIGC Attorney to California Dept. of Justice ("Picayune Rancheria Indian lands opinion"), dated Dec. 3, 2001.

[84] 25 U.S.C. § 2710(b)(1).

[85] 25 U.S.C. § 2710(d)(1). *See also id.* § 2710(d)(3)(A) ("Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities . . . .").

[86] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).

[87] *See* NIGC's Buena Vista Rancheria Indian lands opinion, dated June 30, 2005, p. 6 (explaining that, if the gaming is to occur within a tribe's reservation under IGRA, we can presume that jurisdiction exists for that tribe over its reservation lands).

[88] "Indian Country" is defined in 18 U.S.C. § 1151, in relevant part, as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . ." *See also Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 458 (1995); *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 n.1 (1998); *United Keetowah Band of Cherokee Indians of Oklahoma v. United States Dept. of Housing and Urban Development*, 567 F.3d 1235, 1240 n.5 (10th Cir. 2009).

[89] *Hardwick*, Stipulation, filed May 30, 1985, p. 4, ¶ C; *Hardwick*, Stipulation, filed March 5, 1986, pp. 1-2, ¶ 2.

We have already determined that the Pinoleville Reservation, inclusive of the fee lands within the exterior boundaries of the Reservation (the Parcels), qualify as "Indian lands" under 25 U.S.C. § 2703(4)(A). We now conclude that the Pinoleville Nation has exclusive jurisdiction to regulate gaming on lands within its Reservation.

Based on the record before us, the Tribe meets IGRA's requirements that the lands upon which the Tribe intends to conduct gaming be "within such tribe's jurisdiction."

Conclusion

Based upon the foregoing analysis, including the language of IGRA, the NIGC regulations, case law and other materials, as well as our review of the Tribe's submissions and our own investigation of the status and location of the Parcels, we conclude that the Parcels upon which the Tribe proposes to conduct gaming are Indian lands eligible for gaming under IGRA.

The Department of Interior, Office of the Solicitor, concurs in our opinion. If you have any questions, please contact Katherine Zebell at (202) 632-7003.

Sincerely,

Michael Hoenig
General Counsel

cc: Melissa Canales, Esq.