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Message from the ILTF President

Restoring Indian lands: a long process

Issues involving Indian land tenure began in North America centuries ago and have been growing steadily since. Take a few minutes to begin to understand these issues and some potential solutions and you will become familiar with the plight of Indian tribes and people.

At the end of the armed conflicts between Indians and European settlers, the various tribes across the country secured treaties with the United States. For Indian people, the treaties and executive orders meant a chance to secure peace and retain the exclusive use of some amount of their homelands. For the federal government, entering into the treaties often was seen as the most expedient way to open new areas to the ever-increasing number of homesteaders.

However, less than a decade after the signing of the last treaty and formation of a reservation, the U.S. government began a wholesale abrogation of treaty provisions. The passage of the General Allotment Act in 1887 provided the means to take millions of reservation acres that had been guaranteed to Indians.

Perhaps even more destructive to Indian tribes and people, the Allotment Act marked the beginning of misguided paternalism by the federal government toward Indian people that continues today. The Allotment Act made this paternalistic relationship explicit through its provisions of holding land titles in trust for individual Indians and tribes.

Other federal policies and solutions to problems that were ostensibly for the good of Indian people, more frequently meant further problems and losses for the tribes and their members. Notable examples include the Burke Act of 1906, Indian Reorganization Act of 1934, Self-determination Act of 1976, Indian Land Consolidation Act of 1983, and most recently, the amendments proposed in 2000 to the Land Consolidation Act.

While Indian people have long discussed self-determination for the tribes and individual Indian people, there is a very serious movement toward that end today. Increasingly, the Indian community is eager to find its own solutions and set its own course of action or risk losing what it has. It was with that sense of urgency that several hundred Indian people participated in a three-year planning process involving land issues and maintenance, as well as reacquisition, of the Indian land base.

Those who participated represented a wide range of Indian people — young and old; Bureau of Indian Affairs employees; representatives from large tribes and small tribes; former, current and future landowners. All provided insight and guidance in setting a vision of the future for Indian land that they desire and a course of action for getting to that vision.

Their collective goal, which now drives the Indian Land Tenure Foundation, is: Land within the original boundaries of every reservation and other areas of high significance where tribes retain aboriginal interest are in Indian ownership and management.

The community of participants harbored no illusions that this goal would be reached easily or quickly. They did, however, understand and make clear how important it is to begin now. They also recognized the fundamental need to take control of the regulatory and administrative processes that control Indian land and prevent Indians from effectively using their land. The continuance of tribes as sovereign nations is at stake when the land base is diminished.

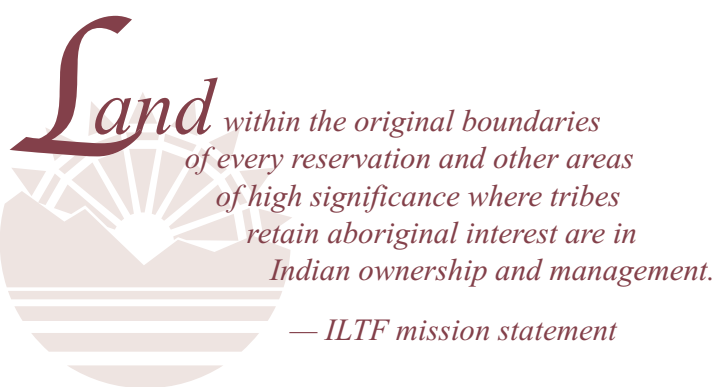
While it may take several decades and several hundred million dollars to achieve its goal, the community is resolved to make progress. The wrongs perpetrated on Indian people by the General Allotment Act have continued unabated for the past 115 years. It is time to stop the wrongs.

Today, tribal members and their governments are piecing together homelands acre by acre through purchases, gifts or the return of land now held by the federal government. The process is slow and expensive, but necessary for the long-term survival of tribes. Generations of American Indians have witnessed the loss of their homelands. Generations of American Indians will witness the recovery of their homelands.

You can help the Indian community right the wrongs in several ways. Take time to understand Indian land tenure issues. Whether you are Indian or non-Indian, these issues affect you. For Indian people, the land is a fundamental component of their culture. If the important ceremonies and ways of life are to continue, the land base must be restored.

For non-Indians, the situation provides insight into the negative outcomes that are possible when a government becomes unduly involved in individuals' lives. While most non-Indians take for granted the control of their land assets, Indian people have been deprived of that right for more than a century.

Also, you can support the long-term efforts of the Indian land tenure community by making a financial contribution to the Indian Land Tenure Foundation. The funds the Foundation receives go directly into activities to help Indian people regain control of their land assets. The Indian Land Tenure Foundation appreciates your support as it works to right the wrongs of the past.



Most treaties or executive orders required that tribes cede very large land areas in exchange for much smaller areas reserved for their exclusive use and the right to continue their usual and accustomed practices in the ceded area alongside the new settlers. In return, the settlers would have access to new land and would not be attacked by the tribes. Indian people entered into the treaties on a government-to-government basis with the full expectation that each party would maintain the treaties as the supreme law of the land.

Many people believe that with an intact reservation land base, albeit relatively small, most tribes would have been able to maintain their cultural base, language and governance practices. Certainly governance and jurisdiction over the land would have remained with the sovereign nation.



General Allotment Act reviewed 115 years later

Imagine receiving a gift that today could be worth anywhere from several thousand dollars to millions of dollars!

But what would you think if the person giving you the gift took the money from your bank account to pay for the gift? What's more, the purchase of the gift didn't deplete all of the money in the account, and the person determined you didn't need the rest of the money and then gave it away!

vidual Indians and taking the remainder for non-Indian use.

The Allotment Act authorized the distribution of 160-, 80- or 40-acre land parcels or "allotments" for ownership by adult Indians. All remaining land within the boundaries of the reservations — usually the most productive lands — were declared to be "in excess of Indian needs" and opened to non-Indians for ownership and use. These excess lands were quickly homesteaded or claimed by industrial interests. The immediate tribal land losses through the Allotment Act provisions were estimated to total 60 million acres. The tribes did not receive compensation for these lands — lands that were guaranteed by treaty or executive order and shortly thereafter taken away under the Allotment Act.

The concept of owning the earth was new to most of the Indian tribes of North America. They used the land and natural resources according to the tribe's needs, customs and relationships with neighboring tribes. The territories or areas that each tribe used and defended were often large and overlapped with other bands and tribes, particularly on the Great Plains. Many had permanent or seasonal settlements that were regularly occupied but they also would travel to other areas to harvest food or to conduct cultural ceremonies and events. Never before had Indian people encountered boundaries or fences that designated where they could or could not go.

With the creation of the reservations, the concept of being confined to a smaller piece of the world was introduced to Indian people. No longer could the tribe move about freely to hunt, fish or gather materials to support the tribe and its families.

The Allotment Act took this foreign concept one step further. The initial reservation lands had been held in common ownership of tribes. The Act now divided common ownership into individual ownership of even smaller pieces. For many Indian people, it meant that in less than two decades the land they used to support themselves and their tribe went from an area that may have taken months to traverse to an area that could be crossed in less than an hour.

As individuals signed what became known as the Dawes Commission rolls, they were given their piece of land. In areas where there had been little schooling for the natives, some merely marked their names with an X or some other symbol. Many individuals were suspicious of the process, however, and decided not to register, preferring instead to blend in with the waves of rapidly arriving settlers. Interestingly, these documents have become important tools for determining today's membership in various tribes.

Originally, allotted land was to be designated for each Indian but held "in trust" by the U.S. government as Indians were thought to be incompetent. However, the Burke Act in 1906 allowed land to be taken out of federal government ownership and trust once the Indian landholder was judged to be "competent." As the allotted land was removed from trust status, the original allottee was given what was called a "fee patent," or full ownership of the land. Not all fee patents were issued at the request or desire of the individual Indians — these were known as "forced-fee patents."

Many natives did not understand the principle

of taxation and, after forced fee patents were issued, their land was sold at public auction to satisfy property tax debt. Although others grasped the concept, the only way they could raise the cash to pay their taxes was to sell part of their land.

In later years, the loss of land through forced-fee patents came about as young Indians joined the military and were subsequently declared competent. Upon returning home from service, they would find their property had been sold. Other times, Indian people were simply not notified that their land had been changed from trust status to fee status.

A combination of the initial lands that were declared in excess of Indian needs, the properties lost through tax foreclosure, and land sales by Indians, resulted in a mixed ownership pattern on reservations. This pattern of ownership is known as the "checkerboard effect." As the land base became more fractured, the cohesiveness of the Indian community continued to disintegrate.

Another related effect of the allotment process was the creation of the "undivided interest," the ownership of a fraction of a parcel of land. The Allotment Act directed that the estates of all Indian people should be divided among heirs in accordance with state and territorial probate laws. However, only the ownership is divided, not the land parcel. Hence, the ownership interests were undivided.

As original allottees began to pass on, the ownership of their allotments began to be spread among a large number of succeeding heirs. Today, it is not uncommon to have more than 100 owners involved with an allotment parcel. Many parcels have well over 500 owners. The number of undivided ownership interests dramatically increases with each successive generation.

The growing fractionated ownership presents not only a bookkeeping challenge for the federal government but also an economic drain for the Indian community. Indian landowners with very small ownership interests have not developed a sense of ownership and have largely abandoned their role in managing the property. The ineffectiveness of the federal government in managing the land and income from the land is now well documented as a result of the Cobell v. Norton class-action lawsuit.

The Allotment Act failed its mission completely for American Indian people. It made reservation land readily available to non-Indians, created checkerboard land ownership and introduced fractionated ownership and triggered enormous jurisdictional conflicts that have lasted more than 100 years.

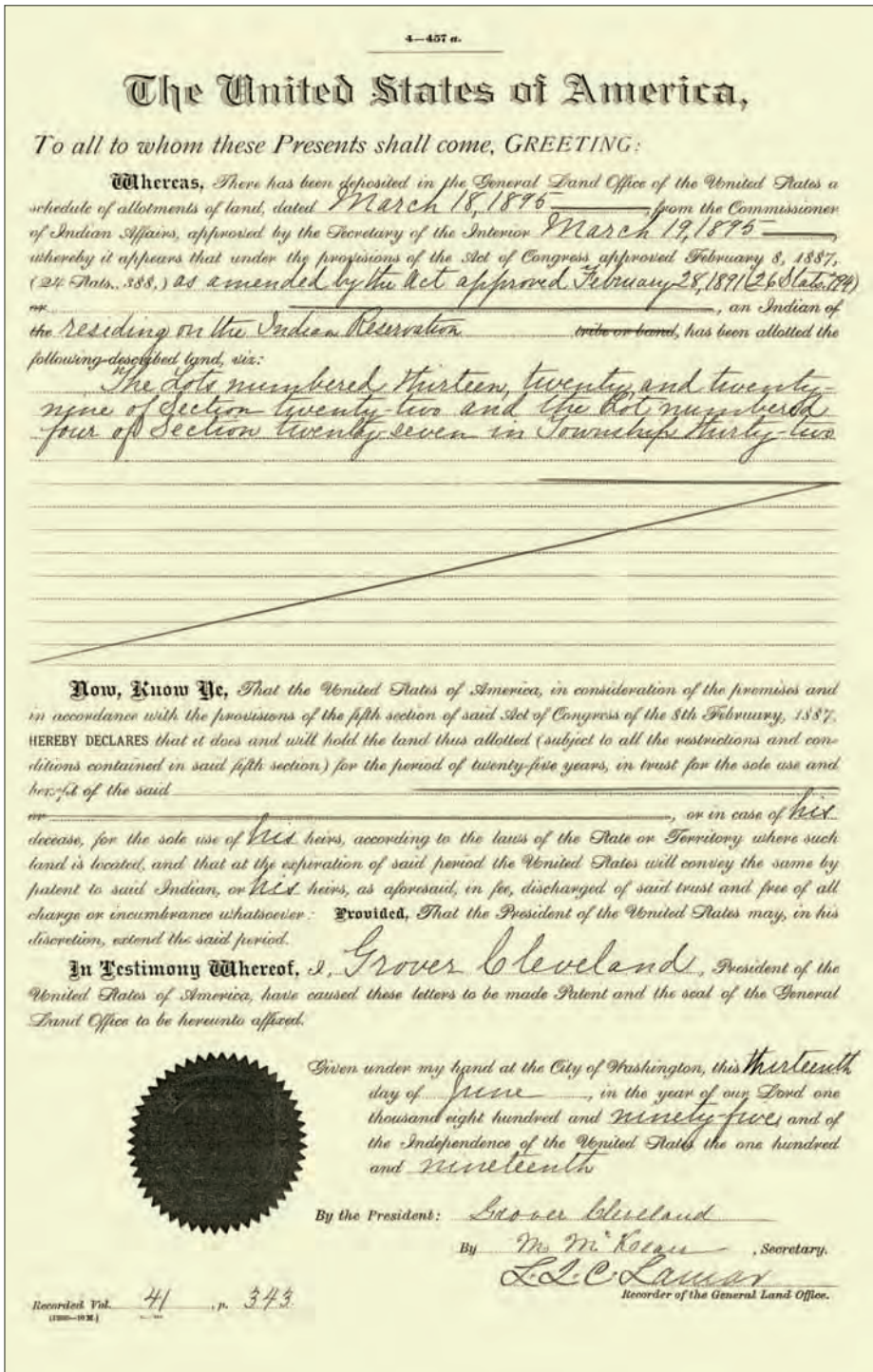
Although the end result was probably not anticipated, the intended change to Indian lifestyle brought about by the Allotment Act has caused widespread social, cultural and economic hardships for Indian people. In historical perspective, the Allotment Act might be seen, at best, as a failed moral obligation of the United States to honor treaty agreements with tribes.

In spite of treaty stipulations drafted and executed years before memorializing the United States' land tenure relationship with tribes, Indian people were not consulted for approval or disapproval of

the General Allotment Act. Many tribes opposed the legislation and traveled to Washington, D.C., to attempt to stop the allotment of tribal lands. The Allotment Act simply was passed by Congress, signed into law by the president, and implemented by what is now

the Bureau of Indian Affairs (BIA). As a result, nearly 90 million acres have been lost from Indian ownership either directly or indirectly. It also brought to an end the centuries of close attachment the Indian people had to the land that had provided for the needs of their ancestors.

The very basis of the culture was eroding, leading to weakened tribal structures, threatened tribal sovereignty and Indian peoples' despair over the loss.



This is a sample of the document that was issued to original allottees under the 1887 General Allotment Act. The document is dated June 13, 1895.

That is pretty much the hand that American Indians were dealt by the U.S. government during the land allotment process of the late 1880s. Indian people were given parcels of land but the parcels were from lands that already belonged to them. Tribal treaty lands were broken up and distributed to individual Indians.

The signing of treaties and creation of reservations were seen by the U.S. government as the fastest way to open the West to settlement by the growing population of European immigrants. It was a commonly held view that the Indians could be "tamed" if they were confined. Reservations were designated throughout the country and the exclusive use of lands within the boundaries were guaranteed for the members of the tribe or tribes for which the reservation was established.

Less than a decade had passed after the creation of the last major reservations when pressure for more land from mining, railroad, timber and homesteading interests began to build. Politicians eager to please their constituencies moved quickly to further reduce the Indian land holdings and in 1887, the General Allotment Act was passed. Also referred to as the Dawes Act after its chief sponsor, Sen. Henry Dawes, the Allotment Act defined a process for distributing reservation lands to indi-

“Generations of American Indians have witnessed the loss of their homelands.”

Checkerboard effect fractures land base

Not since the slaughter of the buffalo herds has a problem been so threatening to the future of many American Indian communities. Many native families are living next to land — once held by ancestors or fellow tribal members — that they cannot use to their own advantage for farming, ranching, as a home site or development.

It is as though someone tore a map and scattered its very tiny pieces to the wind. Now, hundreds of tribal officials and others are trying to figure out how to put the pieces back together again. The problem is called checkerboarding — a condition in which land ownership becomes intermingled with Indian and non-Indian landowners.

“When you look at our reservation, about half the land is owned by non-Indians,” says Lois Broncheau, a land acquisition coordinator for the Confederated Tribes of the Umatilla Indian Reservation in Oregon.

“We have some problems here with people locking gates so we can’t get to traditional hunting or root-gathering areas or places where we used to pick berries.”

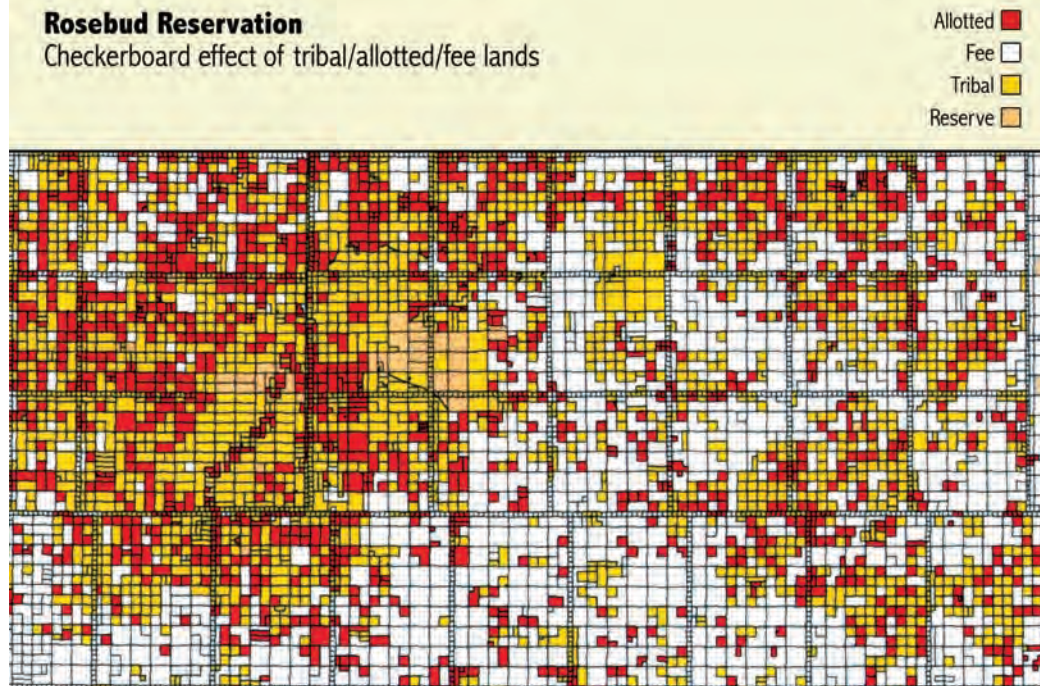
In some cases, she added, the tribe owns a traditional area, such as a river fishing site for salmon, but still can’t get to it because private property bars the way. “That’s why we want to buy the land back.”

Once-sizeable native land holdings have been reduced substantially over several decades. Worse yet, through land sales to non-Indians combined with the fact that many original native land allotments were interspersed with land given to non-Indians, it quickly became almost impossible to use the land in a meaningful manner.

Today, tribal leaders are attempting to acquire those lands. Individual Indians also are erasing the checkerboard effect when they acquire fee land and convert it into trust land.

By having adjoining parcels of land, individuals and tribes can gain cultural, economic, agricultural and jurisdictional benefits.

Rosebud Reservation
Checkerboard effect of tribal/allotted/fee lands



This map of the Rosebud Reservation in Todd County, South Dakota, demonstrates the checkerboard ownership pattern found on many reservations today. Economic development, traditional hunting, fishing, gathering and religious practices are jeopardized because of the mixed ownership patterns. States, counties and tribes clash on jurisdiction, management and use of these checkerboard areas.

Randy Scott, a probate clerk for the Warm Springs Tribe in Oregon, says the General Allotment Act was a blow to tribes.

“The problem was that the land didn’t stay in the tribe anymore,” Scott says. “Once it went into allotment status, it was then open for purchase, which wasn’t the case before. That created checkerboard reservations.”

The Red Lake Band in Minnesota is at one end of a success story among tribes of the United States. Thanks to seven stubborn chiefs who outmaneuvered white negotiators in 1889 at a place called Pike Creek, the tribe managed to resist complying with the General Allotment Act of 1887.

Like the Red Lake Band, the Warm Springs Tribe is another success story in dealing with that problem.

Scott says that’s because the tribe enacted its own constitution and bylaws in 1938 under the provisions of the Indian Reorganization Act, passed a few years earlier.

Then in 1961 the Warm Springs Tribe began buying back lands the tribe had lost, starting with a series of hot springs that had once been on tribal land.

“We are now about 97 percent tribally owned,” Scott says.

LAND DEFINITIONS

Tribal Homelands were originally areas of land held in communal ownership by Indian nations where they could live and self-govern. In the late 1700s, reservations were created through treaties with the federal government or by executive orders.

FRACTIONATED LAND

A trust parcel owned by more than one owner as undivided interests. These single pieces of land often have hundreds of owners, which makes it difficult for any one of the owners to use the land (i.e. farming or building a home). This is because, by law, a majority of owners must agree to a particular use of the land. Fractionated land is a result of land ownership interests being divided again and again when an owner of the interest dies without a will providing for the distribution of the asset.

UNDIVIDED INTEREST

A share of the ownership interest in a parcel of trust land is referred to as an undivided interest. The number of interests grows with the division among heirs of these interests according to state or tribal probate laws. Writing a will for distribution of an owner’s interest could help overcome the growth of undivided interest. The income derived from the parcel is divided according to the interest held by an individual.

TRIBALLY OWNED LANDS

Land that is owned by a group of Indians recognized by the federal government as an Indian tribe.

OFF-RESERVATION TRUST LAND

Off-reservation trust land is land that is protected by the federal government for Indian use. After reservations were created, some tribes and individual Indians were given land to use outside of the reservation boundaries. For example, these pieces of land could be religious sites or pieces of land allotted to individual Indians.

FEDERAL TRUST LAND

Indian-owned land, the title to which is held in trust and protected by the federal government. Indian people and tribes have use of the land, but the ultimate control over the land remains with the federal government.

FEE SIMPLE

The most basic form of ownership. The owner holds title and control of the property. The owner may make decisions about most common land use without government oversight.

RESTRICTED FEE LAND

The ownership is the same as Fee Simple land, however, there are specific government-imposed restrictions on use and/or disposition.

FORCED FEE PATENTS

A forced fee patent is a trust-to-fee conversion without the request or consent of the landowner. Forced fee patents led to the loss of many land parcels through tax foreclosure sales. This was particularly true for Indians serving in the military who were unaware that their land status had changed and taxes were due.

CHECKERBOARD EFFECT

Land within reservation boundaries may be in a variety of types of ownership — tribal, individual Indian, and non-Indian, as well as a mix of trust and fee lands. The pattern of mixed ownership resembles a checkerboard.

IIM ACCOUNT

Individual Indian Money (IIM) Accounts are fund accounts administered by the Department of the Interior. The funds deposited into these accounts come from a number of sources including, for example, land-related income from leases, timber harvest or mineral extraction. In general, each Indian person with an undivided interest in trust land holds an IIM Account.

ALLOTTED LAND

These are the lands that were distributed to individual Indians by the federal government. Generally, the allotments were 40-, 80-, or 160-acre parcels of reservation land. Allotted land was commonly held ownership that became individually owned.

FEE-TO-TRUST CONVERSION

Original allotted trust lands that were transferred to fee status by the allottee or the BIA under the “forced fee” patent era can be returned to trust status in a fee-to-trust conversion. Tribes or individual Indians can initiate the process on fee lands they already own or lands they acquire.

TRUST-TO-FEE CONVERSION

With the passage of the Burke Act in 1906, Indian lands held in trust were converted to fee status if the Secretary of the Interior, in his discretion, determined that the Indian landowner was competent. Today, trust lands can be converted to fee status in 30 days. On the other hand, converting land to trust status can take years. Only individual Indian landowners can request a trust-to-fee conversion.



Allotment ownership gone awry

“Land was divided and divided and divided again,” says Norman Cambridge, a Navajo who has spent years researching American Indian land titles and other records. “I’ve seen cases where the land became so small that people literally owned a millionth of an acre. Most are a thousandth or ten-thousandth of an acre. Some Indians own less than a square foot of land. That’s a piece of land less than four inches by four inches square.”

This problem of fractionated land arose as original allottees — those who were given 160-, 80- or 40-acre parcels of land under the 1887 General Allotment Act — began to die. With each passing generation, individual interests became smaller with multiple owners.

“I’ve seen cases where the land became so small that people literally owned a millionth of an acre.”
— Norman Cambridge

Until Indian land-owners were given permission by the U.S. government to write wills, in most cases, equal “undivided interest” in the allotment was given to heirs. That practice continues today in the absence of a will.

Del Le Compte, a member of the Standing Rock Sioux Tribe in North Dakota, relates how his own father left 160 acres to his wife and four children. Because his father died without a will, his mother was probated one-third of the land while each child received one-sixth of the 160 acres.

“Then my sister died and each of her 10 children got an interest in her share,” Le Compte explains. “Now, there are 26 of us who own part of the original 160 acres. It’s become like a parking lot. Each of us can’t do anything with it. To do anything, you’d have to get everyone to agree.”

The high level of ownership fractionation and the inability of the family to agree often lead to leasing the land to non-Indians. The land is then used for agriculture, timber harvest or mineral extraction. For example, Le Compte says that he owns another small piece of land that had been leased to cattle operators.

“It might bring in \$2,000 but it’s split about 200 different ways. One time I got a check for \$1.77. What are you going to do with that?”

Congress attempted to address fractionation with the Indian Land Consolidation Act of 1983 and its subsequent amendments. This law stated that 2 percent or less ownership of an allotment, earning less than \$100 in a five-year period, would revert to the tribe. The Supreme Court has since declared the law unconstitutional.

Pilot programs on several reservations are currently being tested with the Bureau of Indian Affairs purchasing “from willing sellers” 2 percent or less ownership interest in land. Eventually, this land will be turned over to the tribes.

Cambridge wants Indians to regain control of their scattered land holdings but at the same time doesn’t like government intervention.

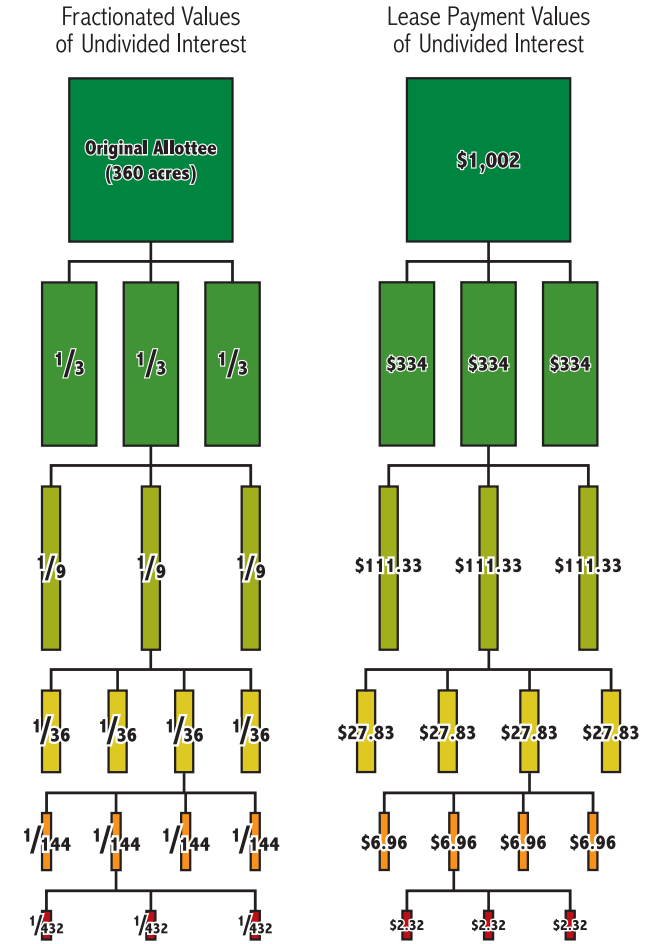
“If you are an enrolled Indian, you are considered a dependent — a ward of the U.S. government,” he says. “Someone has to sit in judgment over your action with your land. There must be about 2,000 rules that apply to Indians that don’t apply to other people. When will we be able to take care of our own affairs and our own land?”

Le Compte is part of the national Indian Land Working Group that meets annually to discuss ways to make the fractionated lands useful again. Indians are encouraged to consolidate their family’s ownership interests through a variety of methods including purchase, exchange or gift deeds when they can.

Some tribes are trying to buy up fractionated land to eliminate this problem.

“Fractionation is a horror story,” Le Compte says. “I wish we could go to Congress and tell our stories like

A Six-Generation Example of Undivided Heirship



Source: “Planning for the Passing of Fort Belknap Land to Future Generations Fact Sheet #2: Undivided Heirships—What are They?” by Marsha A. Goetting and Donald P. Addy, Montana State University Extension Services.

those people who were harassed by the IRS (Internal Revenue Service). We have our own horror stories to tell. But we just live with it.”

USING FRACTIONATED LAND



GRAZING



AGRICULTURE



BUSINESS



HOME



TIMBER



RIGHT OF WAY

Types of Consent

Because fractionated land is held in common, owners with undivided interests face many hurdles to use their land, whether they want to build a home, lease the land to others or start a business. Following are different types of consent required to use the land. The consent required depends on the type of transaction. In some cases, the number of owners with undivided interest in the land determines the level of consent as outlined in the Indian Land Consolidation Act. Final approval rests with the superintendent of the Bureau of Indian Affairs.

Majority Consent: In some instances, land can be used with majority consent. If the BIA had pre-existing authority prior to the passage of the Indian Land Consolidation Act on Nov. 7, 2000, their position is that majority consent will suffice. Agricultural leases, rights-of-way and timber sales generally have pre-existing majority consent authority.

In some instances, the superintendent can act on behalf of undetermined heirs. For instance, if 33 percent of the undivided interest is in pending probate, the superintendent can act on behalf of the undetermined heirs to achieve the required consent.

Sliding Scale: If a pre-existing majority consent authority did not exist prior to the passage of the Indian Land Consolidation Act, the BIA uses the new sliding scale outlined in the ILCA. Consent requirements are as follows:

1 to 5 owners = 100%; 6 to 10 owners = 80%; 11 to 19 owners = 60%; and 20 or more owners = majority of the interests

Under the ILCA, the superintendent can act on behalf of undetermined heirs and individuals whose whereabouts are unknown to achieve the required consent.

Types of Consent (continued)

Grant Authority: Sometimes the BIA superintendent can grant on behalf of all undivided heirs without their express consent so long as they are fairly compensated and all statutory requirements are met. For example, surface leases may be granted after a three-month negotiation period if none of the owners is in possession. If the heirs cannot negotiate a lease within 90 days, the superintendent can sign a lease — usually after advertisement — at fair market value on behalf of everyone. Many agricultural leases and grazing permits are made through grant authority.

Steps for Obtaining Consent

1. An individual or group of co-owners contacts the Bureau of Indian Affairs office about proposed use.
2. A land appraisal is completed to determine land value. Due to the Cobell v. Norton class-action lawsuit over Indian trust lands, appraisals are now done through the Office of the Special Trustee.
3. BIA sends out notices to all co-owners to ask for consent of proposed use.
4. The BIA realty officer sends a recommendation to the BIA superintendent once the required number of co-owners have consented. They also provide proof that an attempt has been made to contact all co-owners.
5. The BIA superintendent makes a ruling based on the recommendation of the BIA realty officer. When appropriate, a lease is made. Non-consenting co-owners will receive fair market lease payments.

Value and Payments of Leases

Under some circumstances, consenting co-owners have the right to lease at less than market rent. The superintendent can require fair market lease payment to non-consenting co-owners.

Land appraisals are generally required prior to any type of use transaction and most advertised leases are granted at not less than the market rent.

Co-owners share revenues based on the value of their proportionate undivided interests, unless otherwise agreed.

Selling and Partitioning the Land

Majority consent has been required from co-owners to sell or gift deed one’s shares to a non-owner and tribal consent has been required for gifts and sales to non-Indians and/or non-tribal members. The regulations that impose these consent requirements may be revised — or deemed to have been repealed — under Section 217 of the ILCA.

If all co-owners consent, the land can be partitioned.

All title transactions regarding trust land must be approved through the Bureau of Indian Affairs.

Relationship with land defines people

When Nellie Roush travels back to South Dakota from her home in Fairfield, Calif., she checks on her land.

Roush, a 91-year-old Sicangu Lakota, is an original allottee of the land on the Rosebud Reservation in south-central South Dakota. She moved away from the Rosebud Reservation in the early 1950s, but steadfastly holds onto her land.

“I don’t want to get rid of my land,” she says. “I think about my children and think they can build upon the land.”

Land is the heart and spirit of American Indian societies. Land is the key to their survival. It is their past, their present and their future.

The land distinguishes the Indian people as a group, for without it, they are like any other citizens in this country. The ancestors of Indian people fought for their land so that future generations could continue to exist as a people.

The land has always been the people, and the people have always been the land. It provides food and shelter and spiritual comfort. The ancient ones taught the people to hold the land sacred because of their belief that it was infused with life-giving spirit. That is why Indians ceremonially honor the land and their relationship to it.

No matter the diversity of the terrain, American Indians value their relationship with the land. They behold the beauty of the landscape in mountains, valleys, plains, mesas, flatlands, canyons, forests, islands, rivers, streams and open spaces. They believe the land is a sacred gift from the Creator.

Indians have survived on their ancestral lands for thousands of years. Their ancestors taught them it was their law to protect the land. The land was to be stewarded and used in a respectful and thankful way. They learned this through teachings, songs and ceremonies.

Almost all cultural and spiritual memories involve the land.

Tucked into the hills are sites where early Indians went to fast and seek visions. Places have been discovered where buffalo kills took place and still other sites have been found where eagles were caught and sacred rocks were found. Indians have always relied upon nature to provide places and objects for expressing their spirituality.

For Leonard Wabasha, a Mdewakanton Dakota of Morton, Minn., the land is spiritually important because of its strength and wisdom. Wabasha says: “She knows how to heal herself when man places the infection of greed upon her. She is the ultimate provider and we are honored by her allowing us to walk upon her.”

“The land provides the basis of our stories, our traditions,” says Gwen Griffin, a Sisseton-Wahpeton Dakota living in Mankato, Minn. “I think it provides that foundation for community as well. When we all have a common background ... (it) provides us material for our culture, our artwork, our stories, our songs.”

Most Indians believe that the land cannot be separated from their history, culture, spirituality or economy.

“They all work together,” says Valerian Three Irons, who has Mandan, Hidatsa, Crow and Cree ancestry. “The economic, historic, cultural and spiritual aspects are all part of a bigger view of our lives and land. And they can’t be separated.”

Three Irons says when he goes to a place where a sun dance has been held, he can feel the emotion and prayers and sacredness of the land. When he goes to Wounded Knee, the site of the 1890 massacre, he feels the sadness there.

“We can smell the earth, smell the prairies, the fields,” he says. “With the land, there is a smell, a feel and an emotion tied to it.”

Land has always helped define different Indian societies. Consequently, the loss of two-thirds of reservation land through time has had a dramatic impact.

That loss has challenged the very survival of Indians in political, spiritual, physical and economic ways, says Jaime A. Pinkham, a Nez Perce in Portland, Ore. “You see the strength that tribes had when they had a strong land base. We need to return to that kind of status as a community.”



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American Indian tribes maintain a sacred relationship with the buffalo. In the 1800s the buffalo were killed and near extinction. On many reservations today Indian people are reintroducing the buffalo to tribal lands in the hope that they will help heal the spirit and restore the land.

On most reservations the land is the basis of the tribes’ value systems. Many political decisions are based on the land. Individuals once took only what they needed from the land. Timber harvest, mining, oil exploration and agriculture challenge the core land values taught by the ancestors.

Historically, tribal people held land in common and preserved its natural state. Now, because it has become such a limited resource, and because of contemporary challenges, it is especially important that land is used for the long-term health and welfare of Indian people. On some reservations unemployment is as high as 80 percent. Tribal members, especially children, remain in poverty.

Blackfeet cattle rancher Jerry Lunak of Browning, Mont., says the use of the land poses a conflict between cultural and economic values. “Is the land the answer? Could it pull us up out of poverty? How much are we willing to give up for our financial freedom?”

Delmar “Poncho” Bigby, an Assiniboine tribal member from Fort Belknap, Mont., understands the dilemma. “We’re indoctrinated to think that we have to have wheat growing or towns erected to make us think our land is productive,” he says.

For many Indian people, the land is a sanctuary. It is a home where they can raise their children and teach their values. It is a place where they go to regroup, spiritually and culturally. Contact with the land recharges them. They go back to the land to reconnect to their roots.

Undeniably, some Indians treat the earth less reverently than others do. “People who do not use the land treat it differently,” Bigby says. “If you grew up on the land, you have a better appreciation for it.”

Mike Her Many Horses, an Oglala Lakota from Manderson, S.D., believes careless treatment of the earth by some people comes from self-loathing among some Indians and a dependency mentality. “With the imposition of every level of government, there were injustices toward Indians,” he says. “Some Indians have the mentality that somebody owes us something for all the terrible things done against us.”

One way anger is exhibited is through disrespectful behavior. “We have to recapture self-worth,” Her Many Horses says.

It is important to understand the traditional tribal respect for the land as an entity. “We have always thought the land has a voice and a rhythm of its own,” Pinkham says.

Pinkham says many people identify with physical landmarks, but the land contains the stories of people and places and legends in intangible ways too. “It’s a spirit in history that is tied to the land — which you don’t see but you can only feel. As long as we protect that landscape, we protect our spirit and we protect our history,” he says.

“Some people cover their ears and refuse to hear what the land has to say. But there are those of us who still listen, and more important, those of us who still believe in what we hear.”

Charlotte Black Elk, an Oglala Lakota from Manderson, S.D., agrees that it is important to treat the land with honor and dignity. “Honor it,” she says, “so that each day of your life you can walk the soft earth in a dancing manner and all that lives there will dance with you.”

“ We can smell the earth, smell the prairies, the fields. With the land, there is a smell, a feel and an emotion tied to it. ”

Valerian Three Irons



Protection needed for sacred sites

Many American Indians practice a land-based religion, where the place and space of worship are fundamental. Holding ceremonies or vision quests at some sacred sites is difficult because of competing interests for land use. As they seek legal protection, they face a world with different definitions for what is sacred and how to treat it.

Because many sacred sites are located on what the federal government recognizes as public land, American Indians have struggled to continue using them in the traditional way. For example, they want to hold ceremonies privately, without having to obtain a special permit to enter a state park.

Historically and legally, these sites don't have much protection from overuse, inappropriate use or vandalism.

Until the American Indian Religious Freedom Act (AIRFA) of 1978, the American Indians' religious practices were basically outlawed. AIRFA is a policy statement saying the federal government will preserve and protect the right of American Indians to practice traditional worship. While it does give some protection by acknowledging problems with sacred site access, many say it doesn't have any "teeth" for finding a solution and enforcing it.

Although court interpretations vary, AIRFA is generally viewed as a policy-setting document, and not anything that requires the federal government to protect American Indian religious rights beyond the First Amendment.

Historian Vine Deloria Jr. says AIRFA tried to "offer a philosophical basis for understanding religions that are related to places, as opposed to religions where there is belief in a set of historical facts."

In 2002 Rep. Nick Rahall, D-W.Va., introduced the Native American Sacred Lands Act to strengthen federal protection of sacred American Indian sites on public land. The legislation intends to elevate former President Clinton's 1996 order into

law. That order demands that federal agencies such as the Bureau of Land Management and the Forest Service work more closely with tribes on use of public lands important to the tribes.

Even gaining religious protection for spiritual sites under the First Amendment presents a challenge. Courts typically require American Indians to meet a strict standard of proof. For example, they have to prove an activity, such as using a sacred site, is central to the religion. In other words, they must show how loss of that activity would destroy the religion.

Because everything in nature is connected, proving the centrality of one sacred site or one ritual is difficult. Beyond that, the context of the site is also crucial.

To even begin the process of protecting a site, it's necessary to divulge its location. This creates problems because tribes historically prefer to keep the location secret.

If a site's location is known, tribes fear spirits will leave the site or vandals will destroy it. Because American Indians have been oppressed in practicing their religion, many are hesitant to divulge where they practice it.

Thus, tribal leaders today face a dilemma in trying to preserve sacred sites. If a sacred site is threatened, they have to choose between sharing its location or taking the risk of keeping it a secret.

Perhaps the answer is education.

In 1991 Deloria wrote: "No real progress can be made in environmental law unless some of the insights into the sacredness of land derived from traditional tribal religions become basic attitudes of the larger society."

More than a decade later, Deloria noted the lack of progress. "We have not adopted the idea that a place should be left alone because it has some beauty and power all its own."

“ No real progress can be made in environmental law unless some of the insights into the sacredness of land derived from traditional tribal religions become basic attitudes of the larger society. ”

—
Vine Deloria Jr.

10 THREATS TO SACRED SITES

- Recreational use/tourism
- Oil and gas exploration and drilling
- Nuclear waste
- Wind development
- Clear-cut logging
- Mining for natural resources like gold, coal and ground water
- Dam diversion
- Vandalism
- Urban land development and city expansion
- Cultural clashes about land use

Near the Columbia River in Washington, tall stone cairns mark the aboriginal land of the Yakama Tribe. Some sacred cairns served as markers for fishing boundaries to indicate where tribal bands could fish. The cairns were also kinship and trail markers important for migratory people. As the Indians passed by the cairns they added a stone and said a prayer for good fortune and to show respect to their ancestors.





Land important to spiritual beliefs

“All the life, death, birth of a kinship system is tied to the land.” —Faith Spotted Eagle

Instead of building churches or creating monuments, American Indians look for the intrinsic spirituality found in nature. Everything in creation has a spirit, including plants, rocks and animals. Everything in creation is connected, including sacred sites.

To an American Indian, a sacred site is more than a mountain, stream or butte. It is a keeper of memories, a portal to the spirit world, a place to go for guidance and strength.

Some spiritual leaders say a sacred site is a portal to reach that which is sacred, like spirits of ancestors. Many sacred sites are high above the ground because they are closer to the spirits. Dreams and visions are the typical ways of using that portal. The time of day, time of year and environment around the site help determine when the sacred site is used.

In his book, “Sacred Objects and Sacred Places: Preserving Tribal Traditions,” author Andrew Gulliford writes that common sacred site features include land that must be undisturbed; plants, animals, rocks and waters that must be accessible; and opportunities for solitude, free movement and access to the site must be available.

“This is essential because there must not be such intensive intrusion into the natural landscape that the spirits inhabiting the landscape are forced to leave,” Gulliford writes.

Keith Basso, professor of anthropology at the University of New Mexico and a leading expert on the San Carlos Apache, agrees. Mount Graham has significant spiritual meaning to the San Carlos Apache. Not only is the mountain part of their original homeland and an ancient burial ground, but it is the spiritual object for personal prayers — a place where their spiritual leader, Ga’an, dwells. Mount Graham is a place of great importance to Apache religious beliefs and practices.

Sacred sites may include geological features like waterfalls or mountain peaks and rocks with artwork that depicts history. Although all parts of the land are valued, many tribes have sacred sites that are especially important, such as the rock art in Montana’s Valley of the Chiefs, the Black Hills of South Dakota or Pipestone National Monument in Minnesota.

Tribes control land for cultural use

Indigenous people were hunters, fishermen, gatherers and farmers. They honored the land and took only what was needed and used all that was taken. They recognized the balance of nature and the need to live in harmony with the land.

The land provided subsistence in different ways. Indian people adjusted their way of life to fit the environment, while traditional hunting, fishing and gathering rituals were performed for time immemorial and passed from generation to generation.

When Indian tribes made treaties with the United States, the tribes ceded land in exchange for promises including sovereignty, religious freedom and confirmation and protection of fishing and hunting rights. Today, many American Indians recognize the importance of these treaty rights and are increasingly trying to recapture the balance and harmony of the land.

According to the Columbia River Inter-Tribal Fishing Commission, “Hunting, fishing, and gathering rights are known legally as usufructuary rights and are property rights.” As sovereign nations, tribes rightfully regulate uses such as hunting, fishing, grazing and gathering on Indian reservations.



© Andrew Gulliford from Sacred Objects and Sacred Places

The Dowa Yalanne Mesa is recognized by the National Register of Historical Places because of its importance to the Zuni. According to Andrew Gulliford, author of “Sacred Objects and Sacred Places,” the mesa was used as a hiding place for villagers during wars in the late 1600s.

Burial grounds, sites where historic battles occurred and places where sacred medicine, plants or rocks are gathered, can all be considered sacred. Some sites are connected to a tribal story of origin.

Vision quests and important ceremonies that give thanks or ask for spiritual guidance usually occur at sacred sites. During a vision quest, an individual goes to a sacred site to fast and pray for a direction in life.

For some tribes, sacred sites teach all quadrants of the medicine wheel — the emotional, spiritual, mental and physical — because of the spiritual history they contain. Faith Spotted Eagle, a member of the Yankton Sioux tribe, said: “It (the land) is a manuscript for kinship memory. All the life, death, birth of a kinship system is tied to the land.”

Many treaties also provide American Indians the right to practice these cultural traditions in “all usual and accustomed places” on ceded lands off the reservation as well.

Unfortunately, an appreciation for the right to practice these activities is not shared by many non-Indians, and American Indians find their rights in conflict with tourism, development on public lands and barriers on private land.



GUIDELINES FOR VISITING A SACRED SITE

Get permission from the right authorities, and be sensitive to those people who don’t have jurisdiction over their sacred sites.

Learn the traditions and taboos associated with a site, then follow them.

Don’t assume you can perform your own rituals, and don’t participate in theirs unless invited.

Don’t leave offerings without learning the usual process and whether it’s allowed.

Don’t take pictures without permission.

Stay on marked paths.

Leave everything as you found it.
Don’t remove anything.

Source: Sacred Sites International Foundation at <http://www.sitesaver.org/tours/guidelines.html> ©1996

Tribal control is needed to protect native plants important to Indian people. The Echinacea plant, native to the Great Plains, is used for medicinal purposes.



Ceremonial conservation practices rediscovered

On the banks of the Applegate River in southern Oregon, the Takelma people performed their sacred salmon ceremony after a hiatus of 150 years. Once again, the willow sweatlodge was built, the tribe did a purification sweat, the first salmon was ritually cooked and eaten, and the young men brought the bones to the bottom of the river and released them with a prayer inviting the salmon people to come back and feed the tribe.

“After the ceremony, the Fish and Game told us that was the most salmon they had seen and they wanted to thank me,” says Agness Pilgrim, the self-described clan grandma of the Takelma. “We gave thanks to the Creator for returning our food to us.”

At Kanaka Gulch, just yards from the ceremony site, the Takelma Intertribal Project has begun restoring edible, medicinal and basketry plants, using an ancient regimen of burning and pruning. The “cultural landscape restoration,” headed by indigenous forest ecologist Dennis Martinez, will bring back oak, beargrass, angelica, yerba santa and other species of an ecosystem that has suffered from the loss of its native human element.

“My ancestral people, the women, did cool (low-intensity understory) burnings; they knew the rotation, they knew the perimeters and when to do it. Made new browse for the deer,” says Pilgrim. “Now the deer are getting smaller, because the leaves are old on the bush. The deer get full on worthless leaves before they get all the nutrients they need. Because there are no more cool burnings.”

Done on 40 acres with the cooperation of the U.S. Forest Service, Jobs in the Woods and the World Wildlife Fund, the cultural landscape restoration on the Applegate River is part of a burgeoning movement among tribes to reclaim their role as biodiversity protectors. Guided by increasingly open and vocal elders, helped by the forest service, and backed by federal environmental justice mandates that require tribal consultation on land management, tribes have found ways to revive long-dormant practices — and cultures.

“There’s big spiritual issues here,” says Martinez. “There are issues of the land, there are actual identity issues. It’s all about who am I in an increasingly homogenized world.”

The Takelma project is one of a number of cultural landscape restoration projects on national forests in the region.

On about 50 acres in the Sierra National Forest, Western Mono tribes are cutting, clearing and transplanting to encourage redbud, sourberries and other basketry plants.

The revival is not limited to public land.

In Indian Canyon, Ann-Marie Sayers has opened up 279 acres of her Mutsun Ohlone land for intertribal ceremonies, use of sacred water, and gathering of mugwort, elderberry and other cultural plants.

According to Lorrie Planas, a Sierra National Forest tribal re-



The Willow Peak Flat Top Mountains in Colorado, the ancestral homeland of the Ute Indian Tribes, was a favorite place for Ute families to hunt, fish, gather berries and seeds, collect eagle feathers and medicine plants, and worship among the tall stands of spruce trees and high mountain meadows.

© Andrew Gulliford from Sacred Objects and Sacred Places

source manager of Western Mono, Indian people have more confidence in making their voice louder.

The Forest Service has been within hearing range. In 47,000 acres of the Little Applegate Valley, the Forest Service is preparing an Environmental Impact Statement for a stewardship project drawing on the work at nearby Kanaka Gulch.

And, with the cooperation of Planas, about 30 tribe members have renewed what she calls “neglected gardens,” traditional use areas overgrown from the lack of firewood gathering or understory burning. Tribal members have family claims to at least 30 sites on more than 100 acres to burn for plants like redbud and sourberry. “The (basket) weavers are collecting in an impoverished area,” Planas says. “What they need is the intensive management they had before.”

On a separate 150-acre Sierra National Forest site, where an oak woodland is being restored, “you burn under the oak to help the soil, clean out the underbrush (to aid in gathering acorns), and protect from infestation of weevils,” Planas says. “It’s true maintenance.”

Apart from efforts like Planas’, the Forest service’s practices often miss the message. There’s more to it, for example, than the techniques of burning; it is a ceremonial act, giving back to the land.

“Most of the translations of American Indian practices into natural resource management are done in a cookie-cutter way,” says Gay Bradshaw, a researcher helping translate Martinez’ restoration practices for the Little Applegate Valley EIS. “The method is stripped of its cultural context.

“The sum of the parts is not equal to the whole,” Bradshaw says. “We need to preserve relationships. And those are typically embodied in ritual.”

“When your life, your food, your clothes, everything is linked to the earth, there is nothing apart or disconnected,” says Planas. “And so you pray before you gather plants or food.

“You don’t have church just on Sunday and you are something else the rest of the week,” Planas says. “Your life is dependent on gathering at the right time, making offerings at the right time, understanding your place among the other animals, understanding that you die, understanding a bigger picture, understanding a whole cosmology. It’s still very much alive in the hearts of

many Indian people.”

There was no separation between conservation and spirituality, Martinez says. “All animals have souls or spirits. If you (mess) with them when you kill them, they are still alive watching what you are doing.”

In traditional ceremonies tribes give thanks for the fruits of the land. “The land is so much more alive because of all the ceremonies,” says Sayers.

Ceremonies require land. “There’s an incredible need for some land base,” says Charlie Toledo, a member of the Suscol Council. “Native Americans do not have access to their traditional materials and we’re a land-based culture. Without land, Native people cannot pray.”

A version of this article “In the Ancestors Garden, Stories of Indigenous Survival,” originally appeared in Terrain magazine (Spring 2001) published by the Ecology Center in Berkeley, Calif. 510-548-2220 or www.ecologycenter.org

“When your life, your food, your clothes, everything is linked to the earth, there is nothing apart or disconnected.”

Lorrie Planas





Changing the course of Indian land tenure

A few examples of efforts to change the direction of Indian land ownership and management

A new movement is unfolding for Indian tribes and Indian people. The following pages provide a few examples of success stories.

Trust for Public Land efforts illustrate the importance of working together to achieve a common goal.

The Cobell v. Norton lawsuit demonstrates the ability of one person to initiate change for the benefit of thousands.

The Tribal Land Enterprise is an example of addressing fractionated heirship problems.

Revolutionary ideas emphasizing the culture offer hope for tribes. One example is the Blackfeet Indian Land Conservation Trust.

Each person needs to do his or her part in planning for the future of Indian people as outlined in the article "Make plans to save land."

These stories highlight a few of the successes in reversing the course of Indian land tenure. These efforts, along with many more, are models providing hope and inspiration for Indian tribes and Indian people.

Tribes successfully reacquire land

Founded in 1972, the Trust for Public Land (TPL) is working to protect land for human enjoyment and well-being. TPL helps conserve land for recreation and spiritual nourishment and to improve the health and quality of life of American communities. In 2000, TPL started working in partnership with tribes and created the Tribal Lands Initiative. The Initiative brings traditional American Indian lands under tribal ownership — or into federal ownership that affords legal protections for spiritual, cultural and subsistence resources. Many success stories are highlighted below.

Yowkwala Preserve, Tacoma, Washington

For years this 15-acre site near Tacoma was listed as a priority acquisition by a multi-agency group working to restore fish and wildlife habitat in Commencement Bay. The eelgrass tidelands here offer critical habitat for juvenile salmonids as they leave the Puyallup River, Hylebos Creek, and other freshwater streams. As part of the project, TPL oversaw the demolition and removal of two derelict barges, a derelict dry dock and associated debris that had been an unsightly and environmentally damaging nuisance. TPL transferred the land to the Puyallup Tribe, which named the new wildlife preserve "Yowkwala," the tribal word for eagle.

Miller Island, Wasco County, Oregon

TPL purchased this 777-acre island and conveyed it to the U.S. Forest Service in January 1989 for permanent protection. The former site of an ancient Native American village, the island had been threatened by cattle grazing and gravel mining, which had damaged many of the ancient pictographs on the basalt cliffs of the southeast shore. The Nez Perce, Warm Springs, Umatilla and Yakama tribes are currently working with the Forest Service on a management plan to protect the island's unique cultural and natural resources.

Wocus Point, Klamath Basin, Oregon

Situated below Mt. Mazama in south central Oregon's Klamath Basin, this is a 138-acre private inholding surrounded by the Klamath Marsh National

Wildlife Refuge and the Winema National Forest. Covered with artifacts, Wocus Point was an American Indian settlement for thousands of years and is one of the major ancient burial sites in the Klamath Basin. The acquisition of this property was complicated by a large number of recreation and hunting leases that were sold on the property in the 1960s. TPL cleared these leases and placed Wocus Point in the ownership of the U.S. Forest Service in 1993, preventing further vandalism of the gravesites and looting of artifacts.

"This is an old, old dream of my people, and I am grateful I have lived to see the day."

—
John Peters

Wilderness State Park, Mendocino County, California

The nation's first inter-tribal wilderness park has been created on a 3,900-acre forested parcel that runs the length of Sinkyone Wilderness State Park, located north of Fort Bragg. Cherished by American Indians as sacred ground, valued by hikers and other trail users who seek better access to the adjacent state park, and coveted by the local timber industry, the parcel was acquired by a consortium of 11 local tribes who worked with TPL, the Pacific Forest Trust and the State Coastal Conservancy to regain control of their ancestral lands. Under the tribes' management, Sinkyone will remain in productive use, combining watershed and habitat protection with sustainable timber harvesting, a native plant nursery, ecotourism and public access.

Bufflehead Bay, Cape Cod, Massachusetts

With strong support from the Wampanoag tribe, TPL acquired 345 acres on Bufflehead Bay and transferred 270 of them to the U.S. Fish and Wildlife Service as part of the Mashpee National Wildlife Refuge. In a new model of multiple ownership, the 5,871-acre refuge is managed by a council that includes federal, state and town governments as well as the Mashpee Wampanoag tribe and private groups. "This is an old, old dream of my people, and I am grateful I have lived to see the day," said John Peters, supreme medicine man of the Mashpee Wampanoag tribe.

Burgdorf Meadows, Idaho County, Idaho

TPL is attempting to acquire a conservation easement over 94 acres in the Salmon River watershed that is a culturally significant site to the Nez Perce Tribe. The tribe has a history of using the watershed for hunting, fishing and gathering. An easement prohibiting development of Burgdorf Meadows also will protect important big game foraging habitat for deer, elk and moose and maintain one of the Secesh River's only remaining strongholds for spawning summer Chinook salmon. Once the easement is in place, TPL will convey it to the Idaho Department of Fish and Game and the Nez Perce Tribe.

Boiling Springs, Scott County, Minnesota

Boiling Springs is an active artesian spring that bubbles up from a pool within Eagle Creek, the last naturally reproducing trout stream in the Twin Cities area. The spring itself is a sacred site for the nearby Shakopee Mdewekaton Sioux community. TPL facilitated transactions with the private landowners to create a 52.5-acre protected corridor of land along Eagle Creek's west branch. As a result, the creek's water quality and trout habitat will be maintained and a trail will be installed to assure continued low-impact public access. The Minnesota Department of Natural Resources manages the area jointly with the adjacent cities, Trout Unlimited and other environmental groups.

Source: Trust for Public Land Web site at <http://www.tpl.org>.

Cobell v. Norton lawsuit forces government to remedy mismanaged Indian trust accounts

For Randy Scott, a trust landowner on the Umatilla Reservation in Oregon, relying on the federal Bureau of Indian Affairs to manage his fractionated interest is an uncertain business.

“I get about \$10 or \$20 every two or three years,” Scott said. “I never know when it’s coming or how much it is.”

For George Heavy Runner, a Blackfeet, and his wife, Rena, a Navajo, it’s more predictable. A statement arrives regularly in their Montana mailbox letting Rena know her trust lands have generated another 3 cents and it is deposited into her Individual Indian Money (IIM) trust account. The same amount was deposited in her IIM trust account last year.

“It’s so ridiculous it’s almost comical,” said George Heavy Runner. “What’s that to her? Does she go in there and say, ‘I want to draw down on my account’? And you have to wonder, how much did it cost them to generate that statement of earnings?”

These are typical experiences for Indians who own lands that for decades have been managed in trust for them by the BIA — or mismanaged, critics say. That’s the reason Elouise Cobell, a member of the Blackfeet Tribe in Montana, and co-plaintiffs have sued the federal government. They want to force the government to account for the money and to reform the system of managing trust accounts.

Cobell v. Norton is a class-action lawsuit filed June 10, 1996, in federal court in Washington, D.C. The suit represents the interests of 300,000 to 500,000 Indian beneficiaries. The actual number is undetermined, the plaintiffs assert, because the BIA records are inaccurate and incomplete.

One of the primary goals of the lawsuit is to have the IIM trust accounts put under court supervision. The plaintiffs’ request is for court supervision ranging from receivership to a special monitor with investigatory powers.

The issue springs from the 1887 General Allotment Act, which allotted land to individual



Fences used to confine grazing areas on Indian lands are reminders of the clash between the Indian way of life that allowed the land to rule and the non-Indian way of ruling the land.

members of tribes. As trustee, the federal government held legal title to the parcels on behalf of the owner and assumed full responsibility for managing trust lands. The government set up an IIM trust account for collecting and disbursing to individual landowners any income from mining, oil and gas leases, timber sales, agricultural or industrial leases, or similar income-generating activities.

The court case contends Indian people are suffering from federal officials’ mismanagement, ineptitude, dishonesty and delay. The court ultimately concluded, based on the representations of defendants, the federal government’s “cry of ‘trust us’ is offensive to the court and insulting to plaintiffs.” The court determined the BIA must be monitored closely to ensure it is fulfilling its trust duties and conforming to the American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412).

Plaintiffs contend BIA has no accurate records, either for the vast sums of money that are owed or for the hundreds of thousands of American Indian beneficiaries to whom the money is due. The government, on the other hand argues that it is not in breach of any trust duties and, even if it was, there is already sufficient supervision of the IIM trust accounts to warrant the court’s denial of all continuing supervision requests.

When talking about the lawsuit, Lois Broncheau, a land acquisition coordinator for the

Confederated Tribes of the Umatilla Indian Reservation in Oregon, said, “I guess in a way it’s forcing the government to stand up and face what they’ve been ignoring all this time. You hope that down the line it’s going to make the BIA be more responsible in their trust duties, but it’s really going to take a lot of work.”

Already Judge Royce C. Lamberth found several federal officials in contempt in February 1999 for their delays in producing documents, destroying documents or giving misrepresentations under oath. Meanwhile, the case is proceeding along the lines the plaintiffs laid out: reforming the system and accounting for the money.

Judge Lamberth in September 2002 found the Secretary of Interior and the Assistant Secretary of Interior-BIA in contempt. Most significant is the fact that this new contempt trial was under a new White House administration. This provides evidence that the mismanagement, ineptitude, dishonesty and delay is entrenched within the BIA.

The court is retaining judicial oversight of the system for at least five years to ensure it is overhauled. The court also has told the Interior Department to give a full account of all trust funds.

Indian leaders have said they won’t back down on demands that an independent commission supervises the Interior Department’s management of \$1 billion a year in royalties from Indian land.

According to court documents, Civil Action 96-1285 (RCL) of September 2002, the following are orders by the courts:

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- The Department of the Interior shall submit a plan for historical accounting of the trust accounts.
- The Secretaries of the Interior and Treasury shall submit standards by which they intend to administer the trust account.
- The Plaintiffs can submit a plan of their own regarding administering the trust accounts.

MAY 2003

- Phase 1.5 trial to begin; it will encompass additional remedies to fixing the system and approving an approach to conducting a historical accounting of the IIM trust accounts.

High atop the Bitterroot Mountains of Idaho, The Smoking Place is a site of contemplation for the Nez Perce. As Andrew Gulliford notes in “Sacred Objects and Sacred Places,” early explorers did not appreciate the importance of The Smoking Place when their Nez Perce guides insisted on stopping for a Sacred Pipe ceremony offering gratitude for a safe passage.





Tribal Land Enterprise commits to increasing Rosebud land base

With nearly six decades of experience and more than 700,000 acres of ancestral land back in tribal ownership, the Tribal Land Enterprise (TLE) continues to be a force for the Rosebud Sioux Reservation in south-central South Dakota.

At the forefront of tribal land acquisition, the Rosebud Sioux Tribe created TLE in 1943 — 40 years before enactment of the original Indian Land Consolidation Act. In doing so, the tribe made a major commitment to preserve, restore and consolidate its tribal land base, says Ben Black Bear, a Rosebud Sioux tribal member and executive director of TLE.

“As soon as the General Allotment Act was put in place in 1889, land started fractionating immediately,” says Black Bear. “It was a problem all the way from the beginning, and it was quite serious by 1934 when the tribal government was organized. In 1943 TLE was set up to deal with that problem.”

The fractionated ownership has created serious problems for managing and using Indian land. Indian landowners are unable to use their land because of probate backlogs, difficulty contacting multiple co-owners, problems executing real estate transactions and mismanagement of funds derived from the land.

TLE is the Rosebud Sioux Tribe’s solution to those problems.

The enterprise leases tribal land to tribal and non-tribal farmers and ranchers, and then uses the proceeds to buy additional land. Each month the seven-member TLE board budgets about \$50,000 to buy fractionated heirship interests.

Between November 1996 and October 1999, TLE assisted the Rosebud Sioux Tribe in 841 transactions, acquiring 9,335 acres of trust and restricted land. Of those transactions, 489 involved interests in heirship land of 2 percent or less. Yet, the value of those 2 percent or less acquisitions was \$76,968 — just under 5 percent of \$1,674,478 in total trust land purchases during that period.

How does TLE operate? Tribal members transfer beneficial title to their trust or restricted interest in land, including fractionated heirship interests, in exchange for TLE shares. The shareholder may deposit their shares on TLE assignments of trust land that gives the holder surface rights to the land.

Shareholders are divided into two classes. A “Class A” shareholder is an enrolled member of the tribe and has the right to vote their shares at the annual TLE shareholders meeting. “Class B” shareholders are individuals, either Indian or non-

Indian, not enrolled with the tribe and having no voting rights. TLE shares may be transferred during the holder’s lifetime to family members. Upon death, the shares go to a named beneficiary. If no beneficiary is named, the shares may pass by descent and distribution by probate of the decedent’s estate in the Tribal Court.

TLE has, to the extent resources have been available, prevented further fractionation of land and the transfer of thousands of acres of the tribal land base out of trust. Even when creditors foreclose on allotments used as security for defaulted loans, TLE has satisfied the debt to prevent the land from being lost from the tribal land base.

“We started out with zero and today we have a little over 700,000 acres,” says Black Bear. The original reservation encompassed 3 million acres covering Todd, Mellette, Tripp, Gregory and Lyman counties. Today, the reservation spreads across 950,000 acres.

TLE is currently in the process of consolidating all land within Todd and Mellette counties. Lands in the remaining counties will be acquired as consolidation of Todd and Mellette near completion. Black Bear says, “We keep working steadily to increase our tribal land base.”

Blackfeet Indian Land Conservation Trust reconnects tribe with history and culture

When Chief Earl Old Person says “So-Keeps-Kim,” he is not just speaking the Blackfeet name for Flat Iron Creek Ranch. He’s proclaiming pride in the natural and cultural heritage of the Blackfeet people.

“This place is very important to the Blackfeet,” says Old Person.

The ranch, located in the aspen-studded hills just east of Glacier National Park and home to grizzly bears, elk and other animals held in reverence by the Blackfeet, will soon be the property of the first Indian land trust in the nation: the Blackfeet Indian Land Conservation Trust.

The 1,160-acre ranch was purchased in 2000 by The Nature Conservancy with the intention of transferring ownership to the Blackfeet Indian Land Conservation Trust once it raised the necessary funds for the land, startup expenses and a stewardship endowment. The fund raising is complete, thanks to a grant from the Charlotte Y. Martin Foundation.

“This is an exciting time for us,” says Elouise Cobell, a Blackfeet businesswoman and the main force behind Blackfeet Indian Land Conservation Trust. The land trust, with the ranch serving as its headquarters, is a way for “the Blackfeet to reconnect with their history and to work toward good stewardship of these lands,” she says.

The ranch is also being used as an education center, where Indians and non-Indians can come to learn about the biological and cultural heritage of the land. The ranch hosts camps for young people to learn about native plants, water quality, the land’s natural history and the culture of the Blackfeet.

Native Waters, an educational organization focused on Native American culture, is bringing youngsters not only from Browning on the Blackfeet Reservation, but from the Rocky Boy Reservation in north-central Montana and the Wind River Reservation in Wyoming to the Flat Iron Creek Ranch.

“My goal in five years is that this land trust will be viewed around the country as a shining example of how land in Indian country can be man-



“So-Keeps-Kim” Ranch is the first property purchased by the Blackfeet Indian Land Conservation Trust. “So-Keeps-Kim” is the English pronunciation of the Blackfeet word for Flat Iron Creek, which runs through this pristine property.

aged,” says Cobell. “Also, because of the educational efforts conducted at the ranch, I’d like to see young leaders — from the Blackfeet communities and other Indian nations — emerge who will lead the charge, and educate others about conservation and respect for our environment.”

SUCCESS STRATEGIES

- Tribal Acquisition Programs
- Management Strategies
- Land Consolidation Efforts
- Probate Codes
- Financing Programs
- Estate Planning
- Writing Wills
- Tribal Inheritance Codes
- Land Rights Education
- Curriculum Development
- Developing Archives
- Historical Accounting
- Access to Land Records

Make plans to save land

Tribes today are adopting tactics to make their lands whole again so that they can be used more efficiently and economically.

Probate codes are being put in place whereby a tribe can set up a provision to determine inheritance criteria. For instance, a code can limit people not enrolled in the tribe from inheriting land. Instead, the tribe can give a life estate or purchase inherited shares.

Tribes are encouraging their members to write wills so that land ownership is settled at their passing. Without a will, fractionation of the land continues. Heirs receive ever-smaller undivided interests in the title to the land rather than individual pieces of land.

“We’re telling people (that) you’ve got to go in

and write your will, you’ve got to take care of it or it will get stretched thinner and thinner,” says Lois Broncheau, a land acquisition coordinator for the Confederated Tribes of the Umatilla Indian Reservation in Oregon.

Tribes are starting to buy back lands within the boundaries of their reservations. Tribal land acquisition offices are becoming common as tribes use proceeds from gaming, timber sales, mineral leases or other sources to rebuild their land bases.

Tribal historians and archivists are adding site-specific knowledge about how the tribe used land historically.

Broncheau says such practical steps are ultimately the way tribes will reclaim part of their way of life, which is tied intimately to the land.



Indian Land Tenure Foundation works to improve Indian land use, ownership

Years of work have culminated in the formation of a new foundation to consolidate and support efforts for Indian land tenure — the condition under which Indians use, occupy, transfer and control land.

The creation of the Indian Land Tenure Foundation is the result of a three-year effort by members of the Indian land tenure community — people who have an interest in and are involved in working to improve Indian land use and ownership.

Bringing the Indian land tenure community together and starting the planning process was initiated and supported by the Northwest Area Foundation (NWAFF) under its Community Ventures Program. NWAFF is a private foundation in St. Paul, Minn., working to reduce poverty and empower communities.

The focus of the Indian Land Tenure Foundation is to educate, support activities and raise funds to carry out goals related to Indian land tenure. A nine-member board was drawn from the original Indian land tenure advisory committee. The board was recently expanded to 11 members from throughout Indian Country. Cris Stainbrook, a Lakota, is president of the St. Paul-based nonprofit organization.

“The many Indian people involved in the community planning process felt that having a foundation as a coordinating entity and support mechanism would add value to their work and result in a greater impact across all Indian communities,” Stainbrook said.

Additionally, the community felt that a central foundation with a long-term focus was necessary if its goals were to be accomplished.

The Foundation’s mission is an aggressive one, but the ultimate hope is for a time when Indian people and tribes once again own and manage the land within the boundaries of every reservation and those lands that are culturally important to them outside of the reservation boundaries.

The Indian land tenure community set four strategies to accomplish its mission:

- education about land and ownership
- the increase of economic assets
- discovery and maintenance of culture
- legal and policy reform

Initially, the Foundation will focus the bulk of its efforts and resources to educating individual Indian people and tribal leaders about land management, ownership and transference issues. The Foundation will begin to focus on the economics of land assets and cultural components after the initial two years. The legal and policy reform efforts would essentially grow from the work on the first three strategies and from the community.

One big push for the Foundation will be to convince the many skeptics that, in fact, working with individuals and tribes is the only way the land issues faced by the Indian community will be resolved equitably.

At the present time, too many people feel the federal government and changes in federal policy are the only way to get at the solutions to the land problems.

While the Foundation agrees that some changes to federal policy and functions are necessary, the new policies and functions should arise from within the Indian community.

“Given the knowledge and opportunity to manage their assets, Indian people will resolve their problems, and will do it well,” Stainbrook said.

After living with the negative consequences of the General Allotment Act for more than a century, the time is right for the creation of the Foundation.

Major attempts by the federal government to deal with the issues of fractionation began in earnest in the 1980s, but they mainly failed.

“These attempts and subsequent attempts to correct the federal policies point out how difficult it is to apply policies crafted in Washington to all of the diverse situations that exist in Indian Country,” Stainbrook said.

The filing of the Cobell v. Norton lawsuit has created a new momentum in Indian Country to correct the wrongs of the General Allotment Act.

STRATEGIES OFFER HOPE

The Foundation’s mission will be achieved with four strategies:

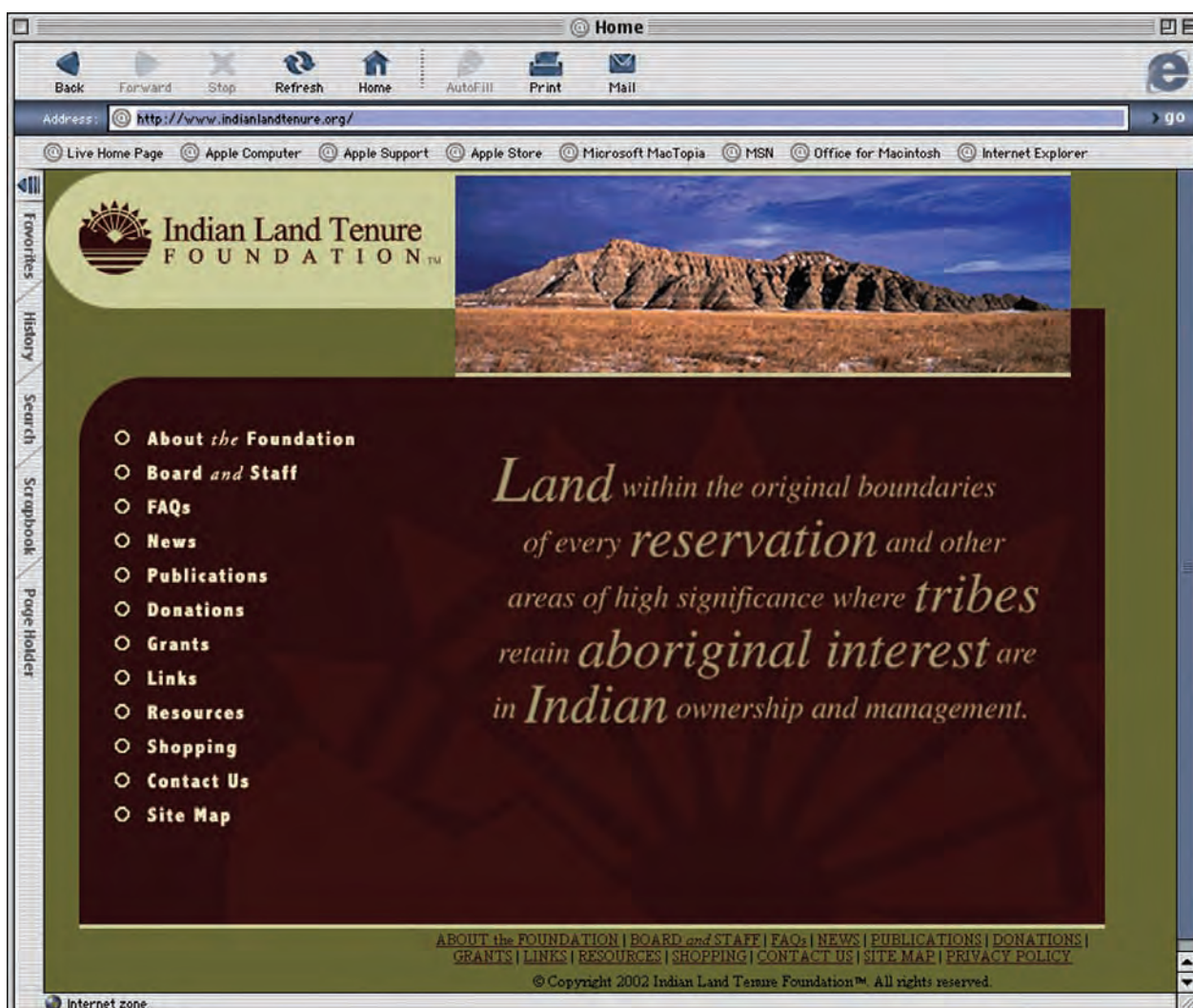
- Educate every Indian landowner about Indian land management, ownership and transference issues so that knowledge becomes power when decisions about land assets are made.
- Increase economic assets of Indian landowners by gaining control of Indian lands and creating financial models that convert land into leverage for Indian owners.
- Use Indian land to help Indian people discover and maintain their culture.
- Reform legal mechanisms related to recapturing the physical, cultural and economic assets for Indian people and strengthening sovereignty of Indian land.

It also makes the BIA and the Interior Department more receptive to local efforts to alter the continued pattern of further fractionation of land ownership.

The community plan recognizes the renewed movement toward tribal and individual self-determination. This can be attributed partly to financial resources from gaming, but all of the tribes, gaming or not, seem to have become more interested in maintaining the basics of their sovereignty: the land base and governance.

The Foundation is well aware that it must establish itself for the long haul. The problems of Indian land tenure have been around for many years and specific problems on which the Foundation is focusing have been in the making for the past 150 years or more. Fulfilling the Foundation’s mission is a monumental task.

The staff and Foundation’s Board of Directors realize that in all likelihood they will not be around to see the mission fully completed; however, they are committed to building the Foundation on solid footings that will take it well into the future.



ILTF Web site

Add the Indian Land Tenure Foundation Web site <<http://www.indianlandtenure.org>> to your list of favorites. The Foundation’s aim is to have the site evolve into a national clearinghouse for information on land tenure issues.

The site contains links to native organizations working on land issues, government sites, educational materials and estate planning resources. Guidelines for investment project applications will be announced on the Foundation’s Web site.

The Web site is one of the Foundation’s primary methods of distributing information. It is efficient, cost-effective and provides the greatest opportunity to reach many audiences.

The Foundation hopes to play a role in educating tribes, individual landowners and other key constituencies such as policy makers. To learn more about the Foundation and land tenure issues, or to participate in the Foundation’s efforts, visit the site.

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