



# United States Department of the Interior

PACIFIC REGIONAL OFFICE  
2800 COTTAGE WAY, ROOM W-2820  
SACRAMENTO, CA 95825

*after 12pm*  
Governor's Office of Planning & Research

IN REPLY REFER TO:  
Real Estate Services  
TR-4609-P5

JUL 13 2020

Case Number: 15402

STATE CLEARINGHOUSE

## NOTICE OF NON-GAMING LAND ACQUISITION APPLICATION

Pursuant to the Code of Federal Regulations, Title 25, INDIANS, 151.10 On-Reservation, notice is given of the application filed by the Habematolel Pomo of Upper Lake, California (applicant) to have real property accepted "in trust" for said applicant by the United States of America. The determination whether to acquire this property "in trust" will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior, or his authorized representative, U.S. Department of the Interior. To assist us in the exercise of that discretion, we invite your comments on the proposed acquisition. In order for the Secretary to assess the impact of the removal of the subject property from the tax rolls, and if applicable to your organization, we also request that you provide the following information:

- (1) If known, the annual amount of property taxes currently levied on the subject property allocated to your organization;
- (2) Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization;
- (3) Any governmental services that are currently provided to the property by your organization; and
- (4) If subject to zoning, how the intended use is consistent, or inconsistent, with the zoning.

We provide the following information regarding this application:

### Applicant:

Habematolel Pomo of Upper Lake, California

### Legal Land Description/Site Location:

See "Exhibit A" for legal descriptions.

### Project Description/Proposed Land Use:

The subject property consists of a parcel of land, encompassing approximately .50 acres more or less, commonly referred to as Assessor's Parcel Number 004-058-240. The subject property is contiguous to Tribal trust land. The use of the property is to facilitate tribal self-determination, as well as to reestablish tribal jurisdiction and sovereignty over an area of historical importance to the Tribe.

NOLAQ01



Office Codes: J, J, 51, 636 AD Number: 4200197082 Case: 15402

This application is not for gaming. The Tribe amended their 2018 application on May 4, 2020 to use the Property for an early childhood development center. The Tribe has placed a modular building (1,512 square foot), wood fence, concrete patio and sidewalk on the parcel to accommodate the use of an early childhood development center. The Tribe intends to employ three full-time employees and one part-time employee to oversee a maximum of 20 children at the early childhood development center. As indicated above, the purpose for seeking your comments regarding the proposed trust land acquisition is to obtain sufficient data that would enable an analysis of the potential impact on local/state government, which may result from the removal of the subject property from the tax roll and local jurisdiction.

This notice does not constitute, or replace, a notice that might be issued for the purpose of compliance with the National Environmental Policy Act (NEPA) of 1969.

Your written comments should be addressed to the Bureau of Indian Affairs office listed at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record. You may be granted one thirty day extension of time to furnish comments, provided you submit a written justification requesting such an extension within thirty days of receipt of this notice. Additionally, copies of all comments will be provided to the applicant for a response. You will be notified of the decision to approve or deny the application. If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy to said party.

A copy of the application, excluding any documentation exempted under the Freedom of Information Act (FOIA), is available for review at the above address. A request to make an appointment to review the application, or questions regarding the application, may be directed to the Pacific Regional Office attention, Arvada Wolfen, Supervisory Realty Specialist, (916) 978-6069.

Sincerely,

AMY DUTSCHKE

Digitally signed by AMY DUTSCHKE  
Date: 2020.06.24 12:27:12 -0700

REGIONAL DIRECTOR

Enclosure(s)

NOLA001



Office Codes: JJJ51-636 AD Number: 4200197082 Case: 15402

CC:

BY CERTIFIED MAIL:

CALIFORNIA STATE CLEARINGHOUSE OFFICE OF PLANNING AND RESEARCH  
P.O. BOX 3044  
SACRAMENTO, CA 95814  
Certified Mail ID: 7019 0140 0000 7334 1561

SENIOR ADVISOR FOR TRIBAL NEGOTIATIONS OFFICE OF THE GOVERNOR  
STATE CAPITOL BUILDING, SUITE 1173  
SACRAMENTO, CA 95814  
Certified Mail ID: 7019 0140 0000 7334 1578

UNITED STATES SENATOR DIANNE FEINSTEIN  
331 HART SENATE BUILDING  
WASHINGTON, DC 20510  
Certified Mail ID: 7019 0140 0000 7334 1585

UNITED STATES HOUSE OF REPRESENTATIVES THIRD DISTRICT  
412 G. ST.  
DAVIS, CA 95616  
Certified Mail ID: 7019 0140 0000 7334 1592

LAKE COUNTY BOARD OF SUPERVISORS  
255 NORTH FORBES ST.  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1608

LAKE COUNTY - OFFICE OF THE ASSESSOR  
255 NORTH FORBES ST.  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1615

LAKE COUNTY - PLANNING DEPARTMENT  
255 NORTH FORBES ST.  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1622

LAKE COUNTY - PUBLIC WORKS  
255 NORTH FORBES ST.  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1639

NO LAQ01



Office Codes: JJJ51636 AD Number: 4200197082 Case: 15402

LAKE COUNTY - TREASURER & TAX COLLECTOR  
255 NORTH FORBES ST.  
2ND FLOOR, ROOM 215  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1646

LAKE COUNTY SHERIFF'S DEPARTMENT  
1220 MARTIN ST.  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1653

SARA DRAKE, DEPUTY ATTORNEY GENERAL STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2250  
Certified Mail ID: 7019 0140 0000 7334 1660

ELEM IND COL SULPHUR CALIFORNIA  
P.O. BOX 757  
LOWER LAKE, CA 95457  
Certified Mail ID: 7019 0140 0000 7334 1530

ROBINSON RANCHERIA OF POMO INDIANS  
P.O. BOX 4015  
NICE, CA  
Certified Mail ID: 7019 0140 0000 7334 1547

SCOTTS VALLEY BAND OF POMO INDIANS OF CALIFORNIA  
1005 PARALLEL DRIVE  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1554

BIG VALLEY BAND OF POMO INDIANS OF THE BIG VALLEY RANCHERIA  
2726 MISSION RANCHERIA ROAD  
LAKEPORT, CA 95453  
Certified Mail ID: 7019 0140 0000 7334 1677

HOPLAND BAND OF POMO INDIANS, CALIFORNIA  
3000 SHANEL ROAD  
HOPLAND, CA 95449  
Certified Mail ID: 7019 0140 0000 7334 1684

NO LA Q01



Office Codes: JJJ51636 AD Number: 4200197082 Case: 15402

EXHIBIT "A"

Legal Description

Assessor's Parcel Numbers: 004-058-240

THE LAND REFERRED TO HEREIN BELOW IS LOCATED IN THE SW¼ OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 9 WEST OF THE MOUNT DIABLO BASE AND MERIDIAN, SITUATED IN UNINCORPORATED OF UPPER LAKE, COUNTY OF LAKE, STATE OF CALIFORNIA:

ALL THAT PORTION OF PARCEL "B" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID LAKE COUNTY ON JUNE 29, 1976 IN BOOK 11 OF PARCEL MAPS AT PAGE 8, LAKE COUNTY RECORDS DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL AND RUNNING THENCE ALONG THE SOUTHERLY LINE THEREOF, SOUTH 83° 26' 20" EAST 81.89 FEET; THENCE IN A NORTHERLY DIRECTION, 270.00 FEET TO A POINT THAT IS SOUTH 83° 26' 20" EAST OF A POINT ON THE WEST LINE OF SAID PARCEL THAT IS NORTH 13° 03' 43" EAST 270.18 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 83° 26' 20" WEST, 80.30 FEET TO SAID POINT ON THE WEST LINE, AND THENCE ALONG SAID WEST LINE, SOUTH 13° 03' 43" WEST 270.18 FEET TO THE POINT OF BEGINNING, CONSISTING OF .51 ACRES, MORE OR LESS.

APN: 004-058-240

**SCHEDULE A**

1. Commitment Date: January 15, 2019 at 7:30 A.M .
2. Policy or Policies to be issued: Amount  
  
(A) ALTA United States Owner's Policy (09-28-91 Rev. 12-3-12)  
  
\$255,000.00

Proposed Insured:

THE UNITED STATES OF AMERICA IN TRUST FOR THE  
HABEMATOLEL POMO OF UPPER LAKE, CALIFORNIA; A  
FEDERALLY RECOGNIZED INDIAN TRIBE

3. (A) The estate or interest in the land described in this Commitment is:

A fee.

(B) Title to said estate or interest at the date hereof is vested in:

HABEMATOLEL POMO OF UPPER LAKE, A FEDERALLY RECOGNIZED INDIAN TRIBE

4. The land referred to in this Commitment is described as follows:

Real property in the unincorporated area of the County of Lake, State of California described as follows:

THE LAND REFERRED TO HEREIN BELOW IS LOCATED IN THE SW1/4 OF SECTION 7, TOWNSHIP 15 NORTH, RANGE 9 WEST OF THE MOUNT DIABLO BASE AND MERIDIAN, SITUATED IN UNINCORPORATED OF UPPER LAKE, COUNTY OF LAKE, STATE OF CALIFORNIA:

ALL THAT PORTION OF PARCEL "B" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID LAKE COUNTY ON JUNE 29, 1976 IN **BOOK 11 OF PARCEL MAPS AT PAGE 8**, LAKE COUNTY RECORDS DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL AND RUNNING THENCE ALONG THE SOUTHERLY LINE THEREOF, SOUTH 83° 26' 20" EAST 81.89 FEET; THENCE IN A NORTHERLY DIRECTION, 270.00 FEET TO A POINT THAT IS SOUTH 83° 26' 20" EAST OF A POINT ON THE WEST LINE OF SAID PARCEL THAT IS NORTH 13° 03' 43" EAST 270.18 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 83° 26' 20" WEST, 80.30 FEET TO SAID POINT ON THE WEST LINE, AND THENCE ALONG SAID WEST LINE, SOUTH 13° 03' 43" WEST 270.18 FEET TO THE POINT OF BEGINNING, CONSISTING OF .51 ACRES, MORE OR LESS.

APN: 004-058-240

**SCHEDULE B**  
**SECTION ONE**  
**REQUIREMENTS**

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must give us the following information:
  - A) Releases(s) or Reconveyance(s) of Item(s): NONE
- (E) Furnish for review copies of the following:
  - 1) Current organizational documents of The HABEMATOLEL POMO OF UPPER LAKE, A FEDERALLY RECOGNIZED INDIAN TRIBE ("Tribe") including, but not limited to the Constitution, Charter, and By-Laws.
  - 2) The Resolution, Minutes of Meeting, Ordinance, Code, Statute, or Law setting out the person or persons approved to sign a deed giving the land described in Schedule A to the United States of America in Trust for The HABEMATOLEL POMO OF UPPER LAKE, A FEDERALLY RECOGNIZED INDIAN TRIBE.
  - 3) Documentation confirming said Resolution, Minutes of Meeting, Ordinance, Code, Statute or Law was adopted in compliance with Tribal Law adopted by the governing body of The HABEMATOLEL POMO OF UPPER LAKE, A FEDERALLY RECOGNIZED INDIAN TRIBE.
  - 4) Certification from an authorized tribal officer or the tribal attorney, certifying that the version of documents furnished are current and accurate.
- (F) The Company requires a certified Title Status Report from the appropriate Bureau of Indian Affairs Land Title and Records Office.  
  
**The Company reserves the right to make further requirements or add exceptions upon review thereof.**
- (G) The Company requires recordation in the county records of original or certified copies of any conveyance documents or other instruments affecting the land found in the appropriate Bureau of Indian Affairs Land Title and Records Office but not already found in the county records.

- (H) Furnish for review opinion of Tribal Attorney affirming the following:
1. No matters exist in Tribal Court, tribal land records or tribal tax records which could create liens on the land or affect the Tribe's right to convey the property to Trust.
  2. No challenge has been made to the authority of those parties holding official positions within the Tribe that are submitting the application to the Department of the Interior or making other decisions on behalf of the Tribe pertaining to this transaction.
- (I) Furnish documentation that sets forth that the HABEMATOLEL POMO OF UPPER LAKE, FEDERALLY RECOGNIZED INDIAN TRIBE was a recognized Indian Tribe under federal jurisdiction on June 18, 1934. (This requirement is necessary pursuant to *Carcieri v. Salazar*, 555 US 379, the Supreme Court held that under the Indian Reorganization Act of 1934, the Secretary of the Interior was not authorized to take land into trust from tribes that were not recognized and under federal jurisdiction at that date).
- (J) Proof of compliance with applicable laws and regulations relating to the acquisition of title by the United States of America in Trust (25 U.S.C. 465 and 25 CFR, Part 151), including the following (Note: the following requirements are independent, and must all be satisfied in order to insure):
1. Proof of notification of the proposed acquisition by the Secretary of the Interior to state and local governments having regulatory jurisdiction over the land (25 CFR 151.10, 151.11).
  2. Confirmation that: (i) an administrative appeal has not been filed pursuant to 25 CFR Part 2, or (ii) if an appeal has been filed, proof that all administrative and judicial appeal rights and remedies have been exhausted.
  3. Proof of publication of the Secretary of Interior's decision to take the land into trust (may be described as "notice of final agency determination") and that Interior shall acquire title in the name of the United States no sooner than 30 days after the notice is published. 25 CFR 151.12 requires publication as follows:
    - If the BIA official makes a decision to approve the request, publish the Public Notice in a newspaper of general circulation serving the affected areas.
    - If the AS-IA makes a decision to approve the request, publish the Public Notice in the Federal Register
  4. Confirmation that more than 30 days have passed since the publication of the Secretary of the Interior's notice of final agency determination to take the land in trust, without appeal or challenge of any kind. Confirmation shall include an express representation that the records of the United States District Court or the Interior Board of Indian Appeals for proceedings challenging the decision by the Assistant Secretary of the Interior – Indian Affairs or the Bureau of Indian Affairs to take the land into trust brought against any of the following: the United States of America, the Department of Interior, the Secretary of Interior (by name and/or title), the Bureau of Indian Affairs, and the Tribe.) (25 CFR 151.12) have been researched.
  5. If the land being transferred into trust is greater than 200 acres in aggregate, we require proof that the BIA official notified the AS-IA of the fee to trust application.
  6. Provide a copy of the decision issued by the BIA or AS-IA to acquire land in trust.

- (K) A properly executed Grant Deed from Habematolel Pomo Of Upper Lake, Federally Recognized Indian Tribe to the United States of America in Trust for Habematolel Pomo Of Upper Lake, Federally Recognized Indian Tribe, approved by the Secretary of the Interior, to be filed with the office of the county recorder in Upper Lake, County of Lake and the Bureau of Indian Affairs Land Title and Records Office.  
Said instrument must be dated more than 30 days after publication of the Secretary of Interior's final determination. (25 CFR 151.14, 151.12)
  
- (L) If the Company is asked to perform escrow services in connection with the transaction vesting the interest set forth in item 3 on Schedule A in the Proposed Insured, the Company will require an Agreement for Settlement Services on its form. Alternatively, a separate document agreed upon by the Tribe and the Company that contains a clear and express waiver by the Tribe of its sovereign immunity, submission of jurisdiction to the courts of the United States of America or of the State where the land is located and a stipulation that the choice of law for disputes shall be the law of the State where the land is located may be acceptable to Company, at its discretion. The Company will require sufficient documentation evidencing the authority of the individual signing on behalf of the Tribe to execute either document.
  
- (M) If the existing or intended use of this property is for gaming purposes, the Company must be informed and the Company will have additional requirements.

**Upon review of the above Requirements, we reserve the right to make further Requirements.**

## SCHEDULE B

### SECTION TWO

#### EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

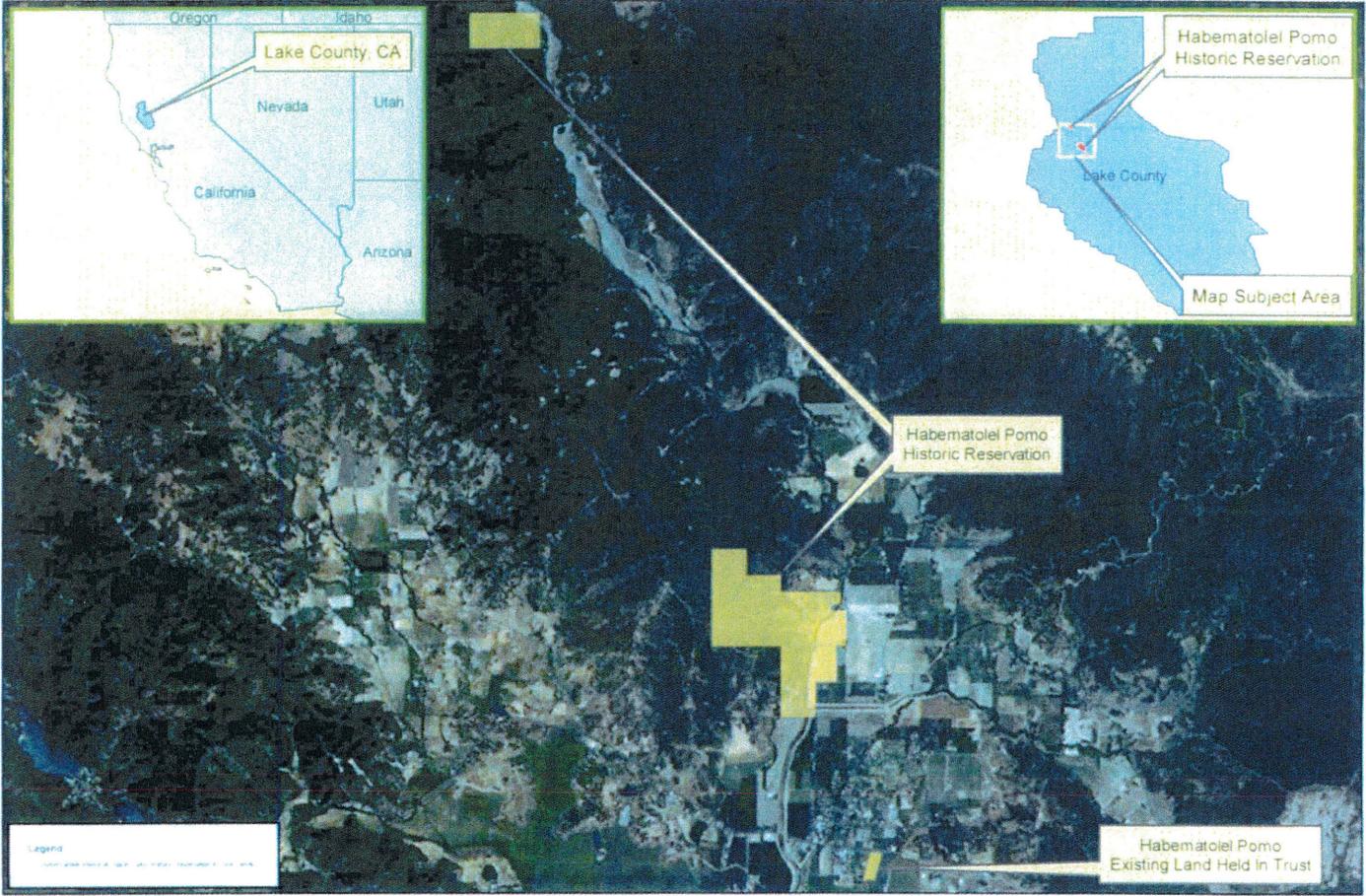
#### PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
6. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

#### PART II:

7. Any claim that the United States lacks proper authority to acquire or hold title to the land, or arising from or related to an alleged defect in the process of approving or authorizing the acquisition of title by the United States of America in Trust for HABEMATOLELE POMO OF UPPER LAKE, a federally recognized tribe.
8. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is (a) a fraudulent conveyance or fraudulent transfer or (b) a preferential transfer. (Not necessary if US Policy form Rev. 12-3-12 is used)
9. Any claim arising from the failure of a Deed to the United States of American in Trust for the HABEMATOLELE POMO OF UPPER LAKE, a federally recognized tribe, to record in the Bureau of Indian Affairs Land Title and Records Office.

10. Paragraphs 1 and 2 of the Exclusions from Coverage are expressly extended to include those laws, ordinances or regulations of an Indian tribe or nation.
11. Public records as defined in this Policy do not include records of an Indian tribe, band, pueblo, nation, community, village, Rancheria or similar entity or association of Indians or any other repository of Indian Land Records, including, but not limited to the Bureau of Indian Affairs Land Titles and Records Office.
12. Tribal records for any tax, law or regulation are not "public records" within the meaning of this policy, and this policy provides no coverage respecting any loss occasioned by any such tribal tax law or regulation.
13. General and special taxes and assessments for the fiscal year 2019-2020, a lien not yet due or payable.
14. Intentionally Deleted
15. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
16. A notice of assessment recorded May 26, 1989 as **BOOK 1463, PAGE 345** of Official Records, executed by CLERK OF THE BOARD OF DIRECTORS LAKE COUNTY SANITATION DISTRICT.
17. The fact that the land lies within the boundaries of the NORTSHORE Redevelopment Project Area, as disclosed by various documents of record.
18. The policy contemplated by this report/commitment will not insure the title to any mobilehome or manufactured home that may be located on the land. The Company will consider issuing such coverage only upon the customer's specific request.
19. Rights of parties in possession.



**Historic Reservation & Existing Trust Land**



Pomo of Upper Lake  
Habematolel



**Disclaimer:** The Habematolel Pomo of Upper Lake makes no warranty for fitness of use for a particular purpose, express or implied, with respect to this map product. Every reasonable effort has been made to assure the accuracy of the maps and data provided nevertheless, some information may not be accurate. Any user of this map product accepts its faults and assumes all responsibility for the use thereof and further agrees to hold the Habematolel Pomo of Upper Lake harmless from and against any damage, loss or liability.



**Contact Information**

Manager	Garet Couch, GISP
Phone	573-358-2522
Date	January 1, 2018



**2016 fee-to-trust Parcels**



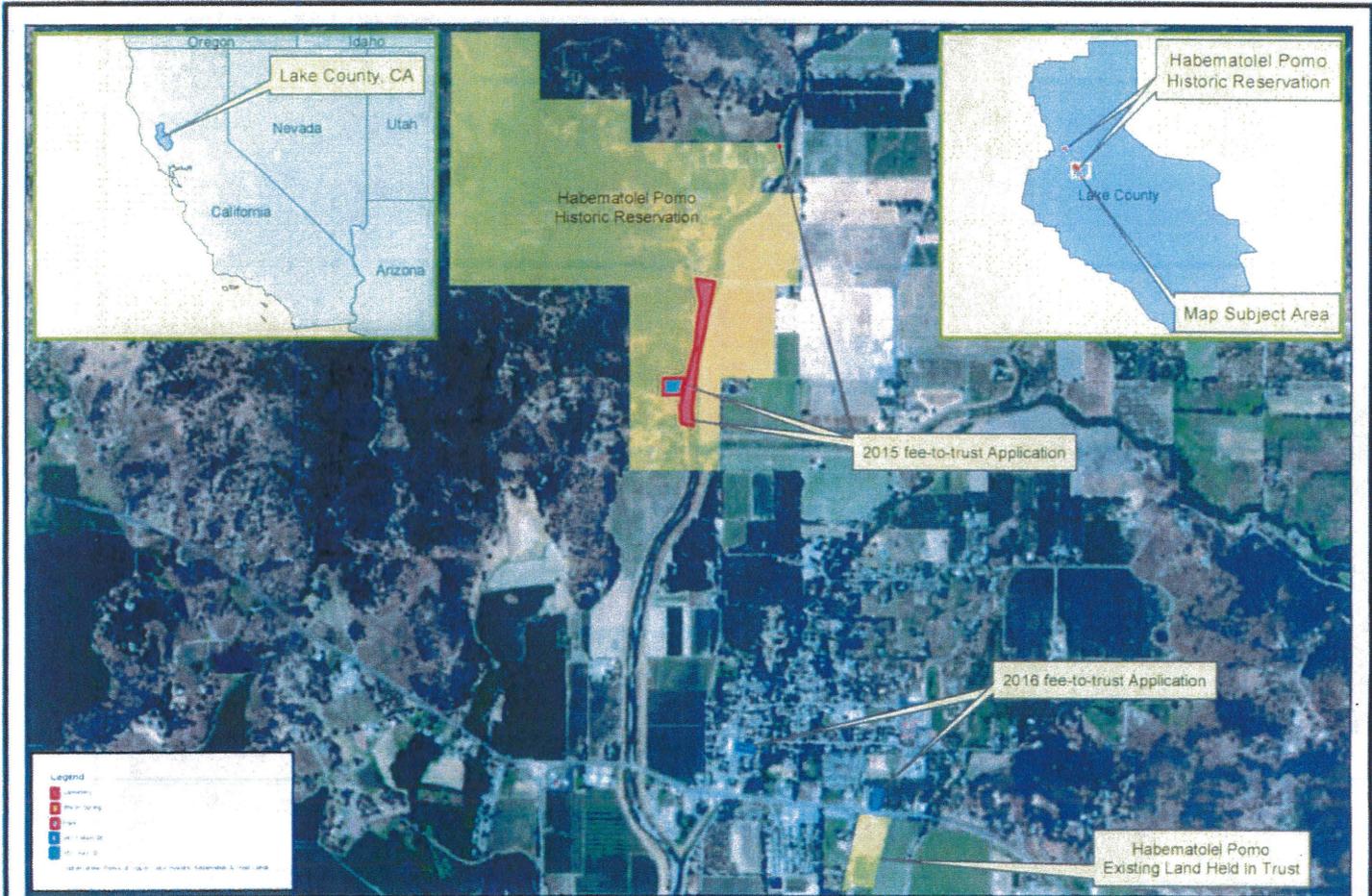
**Pomo of Upper Lake  
Habematolel**



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Contact Information	
Contact	Garet Couch, GISP
Phone	573-358-2522
Date	January 1, 2018



**2015 & 2016 fee-to-trust Parcels**



**Pomo of Upper Lake  
Habematolel**

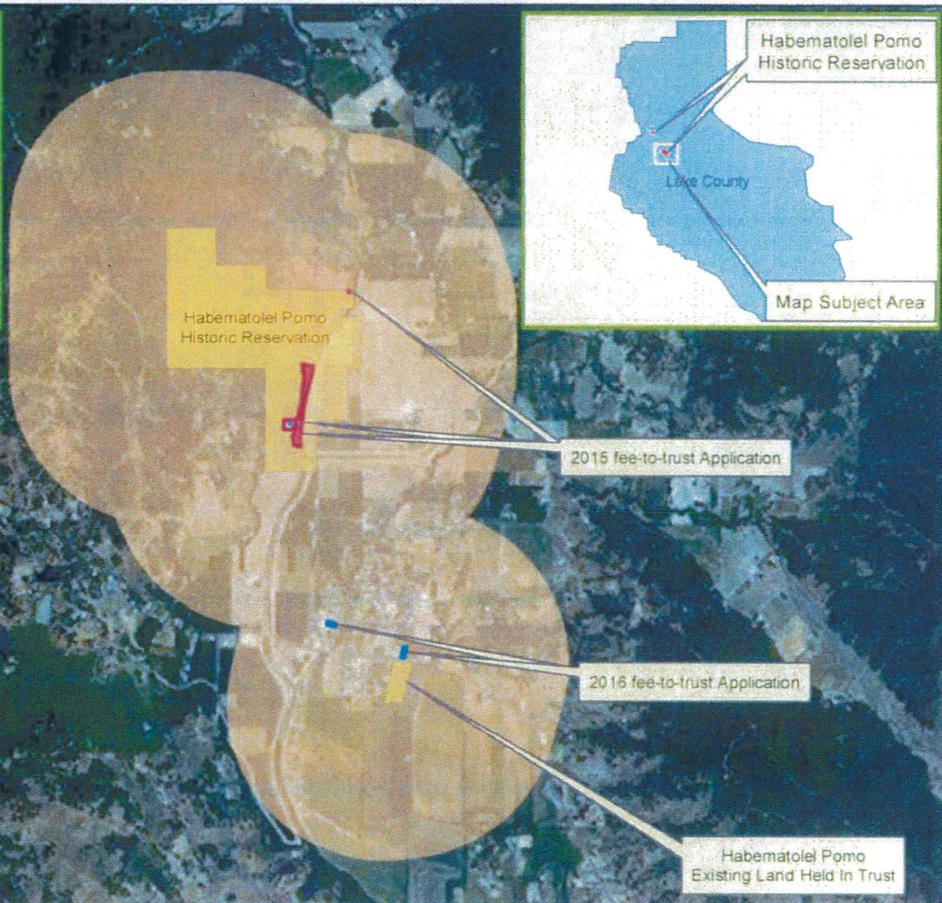
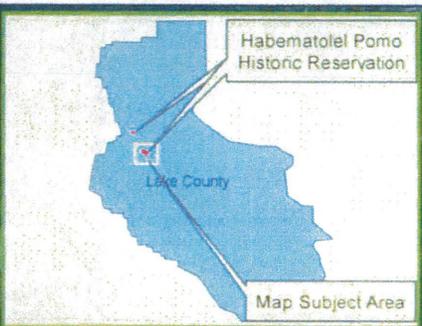


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**Contact Information**

Contact:	Garet Couch, GISP
Phone:	573-358-2522
Date:	January 1, 2018

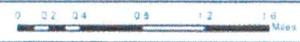


**Legend**

- Land Held In Trust
- Historic Reservation
- Fee-to-Trust Application
- 2015 Fee-to-Trust Application
- 2016 Fee-to-Trust Application

Map data: County of Lake, GIS, California Department of Public Resources & Planning  
 1 mile buffer of Historic Reservation & Existing Trust Land

**1 Mile Buffer to Historic Reservation and Existing Trust Land**



**Pomo of Upper Lake  
Habematolel**



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Contact Information	
Contact:	Garet Couch GISP
Phone:	573-358-2522
Date:	January 1, 2018



# Parcel Viewer

004-058-24



Show search results for



FIRST ST

004-058-23

004-058-40

OLD LUCERNE RD

004-058-25

004-058-26

004-058-27

004-058-28

004-058-23

004-058-24

004-058-25

004-058-26

004-058-27

004-058-28

004-058-29

004-058-30

004-058-31

004-058-32

004-058-33

004-058-34

004-058-35

004-058-36

004-058-37

### Parcel: 004-058-24

Approx Acres	0.51
Jurisdiction	County
Base Zoning District	SR
Full Zoning - 1	SR
Full Zoning - 2	
Full Zoning - 3	
General Plan - 1	SRe
General Plan - 2	
General Plan - 3	
Supervisor Dist	3
Census Tract	1
Data Updated On	5/31/2016 5:00 PM

[Zoom to](#)

004-010-19

004-010-20

004-010-21

004-010-24

004-010-14

004-010-15

004-010-16

004-010-40

004-010-17

004-010-18

300ft

## Bureau of Indian Affairs, Interior

## § 151.1

Titles and Records Offices are designated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR part 2, appendix A.

### § 150.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

## PART 151—LAND ACQUISITIONS

Sec.

- 151.1 Purpose and scope.
- 151.2 Definitions.
- 151.3 Land acquisition policy.
- 151.4 Acquisitions in trust of lands owned in fee by an Indian.
- 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.
- 151.6 Exchanges.
- 151.7 Acquisition of fractional interests.
- 151.8 Tribal consent for nonmember acquisitions.

- 151.9 Requests for approval of acquisitions.
- 151.10 On-reservation acquisitions.
- 151.11 Off-reservation acquisitions.
- 151.12 Action on requests.
- 151.13 Title examination.
- 151.14 Formalization of acceptance.
- 151.15 Information collection.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1466, 1495, and other authorizing acts.

CROSS REFERENCE: For regulations pertaining to: The inheritance of interests in trust or restricted land, see parts 15, 16, and 17 of this title and 43 CFR part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see part 103 of this title; the exchange and partition of trust or restricted lands, see part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see parts 900 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR part 2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR parts 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR part 1823, subpart N; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations.

[79 FR 76897, Dec. 23, 2014]

## § 151.2 Definitions.

(a) *Secretary* means the Secretary of the Interior or authorized representative.

(b) *Tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, "Tribe" also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) *Individual Indian* means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, *Individual Indian* also means a person who meets the qualifications of paragraph (c)(1), (2), or (3) of this section where "Tribe" includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) *Trust land* or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) *Restricted land* or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) *Land* means real property or any interest therein.

(h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

## § 151.3 Land acquisition policy.

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

(2) When the tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status:

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(1) When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or

(2) When the land is already in trust or restricted status.

**§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.**

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

**§ 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.**

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

**§ 151.6 Exchanges.**

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

**§ 151.7 Acquisition of fractional interests.**

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

**§ 151.8 Tribal consent for nonmember acquisitions.**

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

**§ 151.9 Requests for approval of acquisitions.**

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

**§ 151.10 On-reservation acquisitions.**

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

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(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

### § 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in § 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired in-

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creases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

[60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995]

### § 151.12 Action on requests.

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the FEDERAL REGISTER a notice of the decision to acquire land in trust under this part; and

(iii) Immediately acquire the land in trust under § 151.14 on or after the date

such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Immediately acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(3) The administrative appeal period under part 2 of this chapter begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.

(4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR part 2.

[78 FR 67937, Nov. 13, 2013]

#### § 151.13 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States*, issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

EFFECTIVE DATE NOTE: At 81 FR 10479, Mar. 1, 2016, § 151.13 was revised, effective Apr. 15, 2016. For the convenience of the user, the revised text is set forth as follows:

#### § 151.13 Title review.

(a) If the Secretary determines that she will approve a request for the acquisition of land from unrestricted fee status to trust status, she shall require the applicant to furnish title evidence as follows:

(1) Written evidence of the applicant's title or that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust; and

(2) Written evidence of how title was acquired by the applicant or current owner; and

(3) Either:

(i) A current title insurance commitment; or

(ii) The policy of title insurance issued at the time of the applicant's or current owner's acquisition of the land and an abstract of title dating from the time the land was acquired by the applicant or current owner.

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(b) After reviewing submitted title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition, and she shall require elimination prior to such approval if she determines that the liens, encumbrances or infirmities make title to the land unmarketable.

§ 151.14 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

§ 151.15 Information collection.

(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337-SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076-0100], Office of Management and Budget, Washington, DC 20502.

[60 FR 32879, June 23, 1995; 64 FR 13895, Mar. 23, 1999]

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**PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS**

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- 152.1 Definitions.
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**ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS**

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