



CONSTITUTION BOOK OF CODES & ORDINANCES

Habematolel Pomo of Upper Lake

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CONSTITUTION *of the* HABEMATOLEL Pomo of Upper Lake

PREAMBLE

WE, the people, of Habematolel, Pomo of Upper Lake (hereinafter “Tribe”), in order to establish a more effective form of government, including, but not limited to, the exercise of the privileges and powers of a sovereign self-government; to secure our rights and privileges, and social economy and general welfare; to promote the stability and security of our tribe and families, and protect the interests of our children; to preserve, promote and protect our Pomo culture; and to use, conserve and control our lands and natural resources, hereby establish and adopt this Constitution. This Constitution shall govern the Tribe from the date of its adoption and any subsequent amendments approved and adopted in accordance with this Constitution.

ARTICLE I - NAME

The name of the Tribe shall be the Habematolel Pomo of Upper Lake.

ARTICLE II - TERRITORY AND JURISDICTION

Section 1. Territory

The Territory of the Tribe shall consist of the following:

- A. All lands, water and resources that the Tribe has acquired.
- B. All other lands, water and resources as may be hereafter acquired by the Tribe, under any grant, transfer, purchase or adjudication.

Section 2. Jurisdiction

The jurisdiction of the Tribe, its Tribal Council, and its Judiciary, shall extend to the following:

- A. All persons and property within any territory under the jurisdiction of the Tribe and;
- B. All judicial authorities reserved to the Tribe shall be set by Code and Ordinance, consistent with Federal Statutes of the United States.

ARTICLE III - MEMBERSHIP

Section 1. Membership

The membership of a person eligible under Section 2.A. of this Article shall not become official until all enrollment requirements have been met, the application is in compliance with the Constitution and the Enrollment Ordinance, the Enrollment Committee has submitted the application for approval, and the application has been approved by the Executive Council.

Article III – Membership
Cont'd.

Section 2. Eligibility

The following individuals shall be eligible for enrollment in the Habematolel Pomo of Upper Lake:

- A. All persons listed as individuals whose names appear on the partial summary judgment in *Upper Lake Pomo Association, et al., v. Cecil Andrus et al., No. C-75-0181 SW*, entered May 15, 1979,
- B. Persons who are lineal descendants of individuals listed in Section 2.A. of this Article may apply for membership regardless of whether the ancestor through whom eligibility is claimed is living or deceased, provided the ancestor is not ineligible under the terms of Section 3 of this Article.

Section 3. Ineligible/Relinquishment

Individuals over the age of 18 who relinquish their membership are ineligible to re-apply for membership. Children who have had their membership relinquished prior to their eighteenth birthday may apply for membership.

- A. A person who is an enrolled member of another federally recognized tribe, band, colony, pueblo, rancheria, reservation, group or organization shall not be eligible for enrollment until such time as that person has relinquished all rights incident to that enrollment, such as, but not limited to, land assignments, housing, per capita payments, voting, and membership.
- B. The Tribe will not enroll any person who will not relinquish their membership with another tribe.

Section 4. Enrollment Procedures

- A. Enrollment procedures will be set forth in an Enrollment Ordinance enacted by the General Membership.
- B. The Enrollment Committee shall consist of five persons selected by the Executive Council. In the event that less than five submit a request, the Executive Council shall appoint the necessary remaining persons at any time in lieu of the selection process.

ARTICLE IV - GOVERNING BODY

Section 1. Executive Council

The governing body of the Tribe shall be known as the Executive Council. The Executive Council shall consist of seven (7) members elected at large from the eligible voters of the Tribe.

- A. The Chairperson, Vice-Chairperson, Treasurer and Secretary shall be known as the Administrative Officers of the Executive Council.

Article IV – Governing Body
Cont'd.

- B.** The Executive Council shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer and three (3) Members-at-Large, each elected by a majority vote of the voters participating in any such election provided at least 51% of those eligible to vote have voted.
- C.** Except for the first election as provided for in Article VI, Section 5. B., all members of the Executive Council shall be elected for four-year terms.

Section 2. Qualifications

The qualifications of the Executive Council members shall be as follows:

- 1. Must be an enrolled member of the Tribe.
- 2. Must have tribal governing experience, including a minimum of 12 months experience and/or observation at Tribal Council meetings. Experience may include committee membership, an internship, employment by the Tribe and or employment by a Tribal program.
- 3. Treasurer must have knowledge of Record Keeping/Bookkeeping to perform those duties. Must submit a resume for review of experience.
- 4. Must be 25 years of age.
- 5. Must reside physically in the State of California for at least 1 year immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee's appointment to office.
- 6. Must not have been convicted of a felony crime for at least 5 years immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee's appointment to office.
- 7. Must not have been incarcerated at any time during the three years immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee's appointment to office.
- 8. Must not be currently on probation or parole.
- 9. Must submit to drug testing immediately prior to either (a) the election in which the candidate seeks nomination and election to office, or (b) the prospective appointee's appointment to office.

ARTICLE V – DUTIES

Members of the Executive Council are representatives of the people and shall be under the duty to work at all times toward the advancement of the Tribe. The duties and description of the Executive Council members shall be as follows:

Section 1. Chairperson

- A.** The Chairperson shall be the Chief Administrative Officer of the Executive Council, and for the Tribe.

Article V – Duties
Cont'd.

- B. It shall be the duty of the Chairperson to preside over all Regular, Special and General Membership meetings of the Tribe.
- C. She/He shall have overall responsibility for the administration and representation of the Tribe and shall ensure that all orders, resolutions, codes, ordinances or statutes adopted by the Executive Council or the General Membership are put into effect.
- D. All members of the Executive Council shall assist the Chairperson in all appropriate ways to carry out the orders as approved at all Regular, Special and General Membership meetings.
- E. The Chairperson shall have the power to vote only in the event of a tie.

Section 2. Vice-Chairperson

The Vice-Chairperson in the absence of the Chairperson assumes the duties of the Chairperson.

Section 3. Treasurer

- A. The Treasurer shall keep full and accurate accounts of all receipts and disbursements and shall keep and safeguard funds in the custody of the Tribe. The Treasurer shall deposit all such funds on behalf of the Tribe.
- B. The Treasurer shall keep accurate records of such funds and shall report on all receipts and expenditures, the amounts and nature of all tribal funds in her/his custody to the Executive Council. She/He shall deposit all funds and other valuables in the name of the Tribe in an account designated by the Executive Council for such funds.
- C. The Treasurer shall disburse the funds of the Tribe as ordered by the Executive Council and prepare statements as they may direct.
- D. The books and records of the Treasurer shall be audited at least once a year by a certified auditor employed by the Executive Council, and at other such times as the Executive Council directs, or as required.
- E. The Treasurer shall be able to obtain a surety bond or insurance that is satisfactory to the Executive Council.
- F. In the case of the Treasurer's resignation or removal from office, all books, papers, vouchers, funds and any and all records that are in her/his possession, under her/his control considered property of the Tribe shall be returned within 24 hours of the effective date of resignation or removal.
- G. The Treasurer shall oversee and supervise the fiscal department of the tribal business office.
- H. The Treasurer may receive or have rescinded a payment for services as approved or revoked by a majority vote of the full seven-member council. The Treasurer shall abstain from voting on any issues regarding a payment for services for this position. The payment for services may be revocable at any time by the General Membership; their decision is final, only they can reinstate the payment for that treasurer. Revocation of payment, whether by the Executive Council or the General Membership, shall take place only after the Treasurer receives notice and an opportunity to respond in a hearing before the body considering revocation.

Article V – Duties
Cont'd.

- I. All disbursements, check approval and release of checks, other duties, authority and powers shall be regulated by procedures approved by the Executive Council in the Code of Accounting Procedures Manual and Generally Accepted Accounting Principles.
- J. As a member of the Executive Council, the Treasurer shall have the power to vote at any time, unless acting as the presiding officer.

Section 4. Secretary

- A. The Secretary shall attend all meetings of the Executive Council and General Membership. She/He shall record all votes, actions and the minutes of all proceedings in a book to be kept for that purpose. These records will be available for inspection by the General Membership during regular business hours.
- B. The Secretary shall give, or cause to be given, notice of all meetings of the Executive Council or the General Membership.
- C. The Secretary shall be under the supervision of the Chairperson. She/He shall perform such other duties and have other such authority and powers as the Chairperson shall delegate or as shall be established by motion of the Executive Council and as evidenced by approved minutes, or duly adopted ordinances or resolutions.
- D. The Secretary shall have only one vote.
- E. The Secretary may receive or have rescinded a payment for services as approved or revoked by a majority vote of the full seven-member Executive Council. The Secretary shall abstain from voting on any issues regarding a payment for services for this position. The payment for services may be revocable at any time by the General Membership, whose decision is final. Only the General Membership may reinstate the payment for services, with the motion of the Executive Council and certified by the minutes. Revocation of payment, whether by the Executive Council or the General Membership, shall take place only after the Secretary receives notices and an opportunity to respond in a hearing before the body considering revocation.

Section 5. Members-at-Large

Members-at-Large shall have the power to vote at any meeting. Members-at-Large shall have other such duties or authority as provided by duly adopted code, ordinance, statute or resolution. She/He shall perform such other duties and have other such authority and powers as the Chairperson shall delegate or as shall be established by motion of the Executive Council and as evidenced by approved minutes, or duly adopted ordinances or resolutions. Members-at-Large shall not possess executive power or authority to conduct business individually on behalf of the Executive Council or the Tribe.

ARTICLE VI - NOMINATION AND ELECTIONS

Section 1.

Any enrolled member of the Tribe who will be eighteen (18) by or on Election Day shall be an eligible voter.

Section 2.

The quorum requirements for the election shall be that number of eligible voters who cast their vote at that election.

Section 3.

Nominations shall occur at a special meeting called by the Election Committee for that purpose. All nominees shall either accept or decline a nomination. All nominees must be present and shall speak as to their desire, ability or qualification regarding the position for which they have been nominated.

Section 4.

Any enrolled member of the Tribe shall be eligible to be a candidate for election to the Executive Council if she/he will attain the age of twenty-five (25) by Election Day, and meets the requirements and qualifications as established by this Constitution.

Section 5.

- A. The first election of the Executive Council members shall be held thirty (30) days after the effective date of this Constitution. Elections shall be every two years thereafter.
- B. At the first election the Chairperson, Secretary, and two (2) Members-at-Large shall be elected to four (4) year terms. The Vice-Chairperson, Treasurer, and one (1) Member -at-Large shall be elected for two (2) year terms. Of the candidates for the three offices of Members-at-Large, the two candidates receiving the highest and second highest number of votes, respectively, shall be elected to the two offices of Members-at-Large having the four-year term. The candidate receiving the third highest number of votes shall be elected to the office of Member-at-Large, having the two-year term. Thereafter, all terms of office shall be for four (4) year terms on a staggered basis.

Section 6.

The Executive Council shall appoint an Election Committee of no less than (4) persons to a two (2) year term to preside over all elections during their term. Their authority, responsibilities, procedures, and appeals shall be prescribed in an Election Ordinance enacted by the Executive Council. Should a vacancy occur and replacement be appointed, the appointment will be the remainder of the term.

Section 7.

All elections shall be announced in writing at least thirty (30) days before the election pursuant to the election ordinance. Ballot voting is required for elections to be valid.

Article VI – Nominations and Elections
Cont'd.

Section 8.

Elected members of the Executive Council will be seated and shall take office at a meeting after elections are held.

Section 9.

Each official, elected or appointed, shall take an Oath of Office, prior to assuming her/his duties which shall be as follows: "I _____, do solemnly swear that I will carry out faithfully and impartially the duties of my office, that I will to the best of my ability achieve and maintain a respect for the traditions of our Pomo culture, and for the people that I represent and that I will uphold, promote, and protect this Constitution of Habematolet Pomo of Upper Lake.

ARTICLE VII - VACANCIES

Any Executive Council seat that has been vacated, whether it is by removal, recall, or forfeiture, shall be filled by appointment at the same Executive Council meeting. The appointee shall only be seated until the next quarterly meeting in which an election to fill the seat is conducted by the General Membership. The election shall be for the unexpired term of office. No more than two Executive Council members shall be removed or recalled at the same time. No more than one Executive Council member shall be removed or recalled if a seat has been forfeited, and the vacancy has not been filled.

ARTICLE VIII - REMOVAL, RECALL AND FORFEITURE

Until such time as a full working Tribal Court system is established, the Executive Council may sit as, or appoint from the Voting General Membership consistent with Article XII, a Tribal Court and/or a Tribal Court of Appeals for the purposes of this Article.

Section 1. Removal

- A. Any member of the Executive Council or other official of the Tribe who, during the term for which she/he is elected or appointed, is convicted of a felony in any Tribal, Federal or State Court shall automatically be removed from office effective on the date of her/his initial conviction in court.
- B. Any Tribal official formally accused of behavior involving misconduct reflecting on the dignity and integrity of the tribal government, malfeasance in office or gross neglect of duty shall be suspended by the Executive Council, until such time that a hearing is conducted by the Tribal Court (Chief Judge and three (3) Associate Judges) or the highest ranking official of the Executive Council. Any Tribal official found guilty by the Tribal Court, or the Executive Council if no court has been established or appointed, of such charges shall be removed by the Executive Council.

Article VIII – Removal, Recall and Forfeiture
Cont'd.

- C. Before any decision for removal, such member or official shall be given a written statement of the charges against her/him within 24 hours after suspension. A hearing shall be set before the Tribal Court within ten days after said suspension. She/He is to appear in person, and she/he shall be given an opportunity to answer any and all charges at the designated hearing.
- D. Should the person choose not to appear, the Tribal Court shall request by motion for removal by default. This decision shall be final; no further remedy shall be available.

Section 2. Appeal

- A. Any Tribal Official removed by operation of Section 1. A., B., or C., of this Article shall have the right of appeal. Appeals must be filed with the Secretary of the Executive Council or the established Tribal Court of Appeals within three (3) working days after a decision. A decision shall be made within 30 days after date of receipt of filing. If the Executive Council sat as the Tribal Court in the removal action under appeal, the Executive Council shall appoint a Tribal Court of Appeals from the Voting General Membership, consistent with Article XII.
- B. Upon receipt of a petition signed by at least 51% of the eligible voters of the General Membership, to the Election Committee and the Secretary, the Election Committee shall call and conduct within thirty (30) days an election to consider the appeal of any Tribal official.
- C. The election shall be conducted pursuant to the election Articles of this Constitution and the Election Ordinance. The decision of the General Membership is final.

Section 3. Recall

- A. Upon receipt of a petition signed by at least 51 % of the eligible voters of the General Membership to the Election Committee and the Secretary, the Election Committee shall call and conduct within thirty (30) days an election to consider the recall of any Tribal official.
- B. The election shall be conducted pursuant to the election Articles of this Constitution and the Election Ordinance. Once an individual has been subjected to recall proceedings she/he shall not again be subjected to such action during the balance of her/his term of office.
- C. A recalled official shall not be eligible to be nominated or seated in any capacity of the Tribe for a period of two (2) years.

Article VIII – Removal, Recall and Forfeiture
Cont'd.

Section 4. Forfeiture

- A. After due notice, it shall be the duty of the affected governmental body immediately to declare vacant any position and to promptly fill such vacancy in the manner provided in Article VI, when it is determined that the incumbent:
1. Has resigned,
 2. Has been convicted of a crime involving dishonesty while in office,
 3. Has been convicted of a felony while in office,
 4. Has falsified or omitted information concerning any qualification or conviction of a felony or any crime involving dishonesty when elected for office,
 5. Has been absent for two (2) consecutive meetings without being excused by the applicable body, in which case, he/she shall forfeit that position at the third meeting; this loss of office shall not deny a person from becoming a candidate for office in subsequent elections, or
 6. Has ceased to reside physically in the State of California.

ARTICLE IX - MEETINGS

Section 1. Meetings and Order of Business

- A. In order to conduct business at a Regular or Special meeting a quorum must be present in accordance with the following: a quorum shall exist if five (5) Executive Council members are present. A quorum for General Membership meetings shall be established by those members who are present for that legally called meeting.
- B. The Executive Council decisions shall be in accordance with this Constitution.
- C. All Executive Council members shall have a correct and clear understanding of the Constitution, their duties and responsibilities as tribal officials, management of the Rancheria affairs, tribal charters, codes, ordinances and procedures. Executive Council members demonstrating a lack of such understanding will be subject to recall pursuant to Article VIII, Section 3.

Section 2. Additional Requirements

- A. Regular Executive Council Meetings**
1. Regular meetings of the Executive Council shall be held monthly, on a day established by consensus or motion by a majority of the Executive Council.
 2. All meetings shall meet the requirements to establish a quorum as identified by this Constitution.
- B. Special Executive Council Meetings**
1. Special Executive meetings shall be called if at least five Executive Council members agree.

Article IX – Meetings
Cont'd.

2. All special meetings shall meet the requirements to establish a quorum as identified by this Constitution.
 3. Special Executive Council meetings shall allow at least three (3) days prior notice, or be set at a Regular Meeting to conduct unfinished business. Notice of such meetings must be posted at the Tribal Office.
- C. General Membership Meetings**
1. General Membership shall meet quarterly with the Executive Council.
 2. Special General Membership meetings with the Executive Council shall be convened if 51% of the voting General Membership request so, by petition. The person responsible for convening the meeting will be first the Chairperson, and in the absence of the Chairperson will then be the Vice Chairperson, Secretary then the Treasurer in that order.
 3. The meeting shall take place on the 10th day after the date the petition is submitted with the Secretary of the Executive Council.
 4. The petition shall be submitted to the Secretary of the Executive Council and the Secretary shall place the meeting on the calendar.
 5. Notification to the General Membership shall be sent within three (3) working days after the Secretary of the Executive Council's receipt of the petition.
- D. Order of Business**
1. Until such time as the Tribe shall adopt their own Rules of Order the following shall apply:
 2. The current edition of Robert's Rules of Order shall apply in the conducting of Business, except when they are inconsistent with the express provisions of this Constitution.
 3. All Regular Meetings shall be open to all members of the Tribe, except during Personnel or Executive Sessions.
 4. The order of business at any Regular or Special Executive Council or General Membership meeting shall be specified in an agenda prior to meetings, and approved by that body once any such meeting is convened. To the extent practicable, the agenda will be posted or circulated to the General Membership prior to the meeting.
 5. Voting at all meetings may be by voice or hand, but upon a motion duly approved by that body, a secret ballot vote shall be taken.
 6. Matters brought to a vote before the Executive Council or General Membership shall be approved by a simple majority, unless specified otherwise within this Constitution.
 7. An Executive Council member shall abstain from voting on any matter coming before the Executive Council, which represents a conflict of interest. Failure of an Executive Council member to abstain from voting, or a subsequent finding by either the Executive Council or General Membership that an Executive Council member in fact profited or was personally enriched by the outcome of his/her vote, shall be grounds for removal by the Executive Council or recall by the General Membership. A conflict of interest exists when the individual would profit or be enriched personally by the outcome of his/her vote.

ARTICLE X - POWERS

Section 1.

The Executive Council shall exercise the following powers:

- A.** To act in all matters that concerns the general welfare of the Tribe, and to make decisions consistent with this Constitution;
- B.** To negotiate and make contracts with Federal, State, Local and Tribal governments and with any individual, firm or company;
- C.** To consult and make recommendations to the Secretary of the Interior, or to his authorized representative, with regard to all appropriation, estimates for all projects which are for the benefit of members of the Tribe, prior to the submission of such estimates to the Congress, or to the State of California. To make appropriation requests to the all Tribal, Local, State, Federal entities on behalf of the Tribe;
- D.** To employ legal counsel;
- E.** To prevent the sale, disposition, lease or encumbrance of tribal lands, interests in tribal lands, or other tribal assets without the consent of the Tribe.
- F.** To manage, develop, protect and regulate the use of water and minerals and to protect and preserve the wildlife and natural resources, to regulate hunting, fishing or trapping on Tribal lands within Tribal jurisdiction and to negotiate permits and leases for businesses, home site and other purposes, and generally to provide for the proper use and development of all Tribal lands, natural resources and other Tribal properties;
- G.** To preserve, protect and conserve the Pomo culture of the Tribe;
- H.** To appropriate, administer and set aside funds under Tribal control for the use and benefit of the General Membership;
- I.** To mortgage or to otherwise encumber Tribal trust land and to borrow from any source and assign chattels as security therefore, with the approval of the Secretary of the Interior or his authorized representative;
- J.** To enact codes and ordinances to regulate the use of all Tribal land through taxation or otherwise;
- K.** To manage and control Tribal property, community enterprises, for the development of economic projects and programs for the benefit of Tribe and establish planning, programming, development, commissions and to abide by federal laws and statutes regarding environmental impact, hazardous materials and any future circumstance;
- L.** To authorize, charter, and regulate enterprises, associations, and corporations formed by members of the Tribe for business or charitable purposes and to authorize formation of corporations under Federal Law for economic, charitable or public purpose;
- M.** To provide by resolution or ordinance the conditions upon which non-members may enter or remain within the Tribe's territory and provide for their removal or exclusion should their presence become injurious harmful to Tribal members or to the interests of the Tribe;
- N.** To regulate the domestic relations of members as recognized in Article III of this Constitution; to provide for the guardianship of minors and incompetent persons within tribal jurisdiction; to advocate services for the health, education and welfare of its members under tribal jurisdiction;

Article X – Powers
Cont'd.

- O.** To protect those rights of inheritance, and lines of inheritance per their wishes, to those members with individual trust land in accordance with Tribal and federal law;
- P.** To adopt resolutions, ordinances, set codes, to regulate its own procedures, to appoint subordinate committees, commissions, boards, Tribal officials and employees not otherwise provided for in this Constitution and to prescribe their salaries, tenure and duties. Appointees may or may not be tribal members;
- Q.** The Executive Council may exercise such other power as may be delegated to the Tribe by statute or federal law as authorized by the Congress or its representative.
- R.** The Executive Council may acquire real and personal property.
- S.** To explicitly waive the Tribe's sovereign immunity from suit, provided, however, that any such waiver must be specifically approved by the General Membership to be valid and enforceable. Except to the extent such immunity is explicitly and expressly waived in accordance with this provision, nothing in this Constitution is intended to nor shall be construed to waive the Tribe's sovereign immunity from suit.

Section 2. Reserved Powers

The foregoing enumeration of powers shall not be construed to limit the powers of the Tribe, and in no way shall be deemed an abdication or forfeiture of the Tribe's inherent attributes of sovereignty, and such powers may be exercised through the adoption of appropriate resolutions, ordinances or constitutional amendments. Powers not specifically delegated are reserved to the people of the General Membership.

ARTICLE XI – LAND

Section 1. Definition

The word "land" and the phrases "Tribally-owned land" and "Tribal land", as used in this Article, mean all interests in real property of the Tribe, whether title to which is held in trust by the United States on behalf of the Tribe or in fee. This definition specifically excludes any lands identified in the Plan for the Distribution of the Assets of the Upper Lake Rancheria, as approved by the Secretary of the Interior on January 14, 1960, when persons or entities other than the Tribe hold such lands.

Section 2. Equitable Title

Equitable title to existing tribal land or land which may be acquired in the future shall be vested in the Tribe.

Article XI – Land
Cont'd.

Section 3. Assignments

The Executive Council shall make all assignments of land. Any member of the Tribe who has received a standard assignment may hold, use and enjoy life tenure, provided, that land must be used in an intelligent and husband-like manner. Any attempt by the assignee to lease the land on either cash or sharecrop basis shall be sufficient cause for cancellation of Standard assignments. It shall be the duty of the Executive Council to revoke standard assignments, (1) for non-use after a period of two years and (2) for any attempt of assignee to lease it. In case of physical disability of assignee, the Executive Council, by a two-thirds (2/3) majority, may grant the assignee permission to lease his assignment, provided, that such permission shall in no event extend beyond a total period of two years during the life of the assignment, except upon special dispensation of the Executive Council.

Section 4. Assignments of Heirs

At the death of a standard assignee, his or her heirs shall be given preference in the reassignment of the land, provided that such persons are members of the Tribe who would be eligible to receive a standard assignment.

Section 5. Inheritance of Lands

The Executive Council shall have the authority to regulate the inheritance of all lands within Section 1 Definition, of this Article in accordance with all applicable law.

Section 6. Trust Deeds for Assistance

Any head of a family shall be entitled to a standard assignment of land provided he deeds to the Tribe any land held in trust, or interest in land held in trust, which he or she may own at the time of such assignment. The amount of such assignment shall be based upon a calculation of the amount and quality of the land available for assignment, the number of applicants and the dependents in each family, and the expectancy of inheriting land.

Section 7. Leases

Unassigned tribal land may be leased to individual members or associations of members of the Tribe for personal, agricultural, business and other related uses to be at a price per acre to be determined by the Executive Council in accordance with a tribal Land Ordinance and for a period not exceeding fifteen (15) years.

All leases shall be formalized in a written lease agreement between the Tribe and the lessee/tribal member, and shall be effective upon approval by the Secretary of Interior or his/her authorized representative as required. Proceeds from such leases shall be deposited in the treasury of the Tribe and used for the benefit of the Tribe.

Section 8. Leases for Housing

Unassigned tribal land may be leased to individual members or associations of members of the Tribe for housing purposes at a price per acre to be determined by the Executive Council in accordance with a tribal Land Ordinance and for a period not to exceed up to twenty-five (25) years with an option for another twenty-five (25) years. All leases shall be formalized in a written lease agreement between the Tribe and the lessee/tribal member, and shall be effective

Article XI – Land
Cont'd.

upon approval by the Secretary of Interior or his/her authorized representative as required. A lessee/tribal member shall have two (2) years to improve and occupy such leased land. Proceeds from such leases shall be deposited in the treasury of the tribe and used for the benefit of the Tribe.

Section 9 Appeals

Appeals from the acts of the Executive Council in land matters, and any other land disputes, may be taken to Tribal Court of Appeals, whose decision shall be final and binding upon all parties concerned. If no working Court of Appeals has been established, the Executive Council shall appoint one from the Voting General Membership, consistent with Article XII, for purposes of an appeal under this Article.

Section 10 Land Ordinance

The Executive Council shall have power to promulgate ordinances regulating the use, assignment, and inheritance of lands, the ownership and disposition of improvements thereon and all other land matters, on all lands within the jurisdiction of the Tribes.

ARTICLE XII - JUDICIARY

Section 1. Judiciary

The judicial power of the Tribe shall be vested in the Judiciary, which shall consist of a Tribal Court and a Tribal Court of Appeals and other lower courts as deemed necessary by the Executive Council.

Section 2. Jurisdiction of the Courts

The Judiciary shall exercise jurisdiction over cases and controversies within the jurisdiction of the Tribe, in law and equity, that arise under this Constitution, the laws and customs of the Tribe, by virtue of the Tribe's inherent sovereignty, or by authority vested in Federal law.

Section 3. Power of the Courts

The Judiciary shall have the power to:

- A. Interpret, construe and apply the laws of, or applicable to, the Tribe;
- B. Declare the laws of the Tribe void if such laws are not in agreement with this Constitution;
- C. Issue injunctions, attachments, writs of mandamus, quo warranto, review, certiorari and prohibition, and to issue writs of habeas corpus to any part of the Tribe upon petition by, or on behalf of, any person held in actual custody;
- D. Establish court procedures for the Tribal Judiciary, except that the Executive Council may by ordinance alter such procedures consistent with this Constitution.

Section 4. Composition of the Tribal Court

The Tribal Court shall be composed of one Chief Judge and three (3) Associate Judges.

Article XII – Judiciary
Cont'd.

Section 5. Composition of the Tribal Court of Appeals

The Tribal Court of Appeals shall consist of one Chief Justice and Two Associate Justices.

Section 6. Manner of Selection

- A. The Executive Council shall appoint one Chief Judge to the Tribal Court. The Chief Judge shall serve for a period of three (3) years.
- B. The Executive Council shall appoint one Chief Justice to the Tribal Court of Appeals. The Chief Justice shall serve for a period of four (4) years.
- C. The General Membership shall elect the three (3) Associate Judges of the Tribal Court and the two (2) Associate Justices of the Tribal Court of Appeals. The candidates for the three (3) Associate Judge positions on the Tribal Court who obtain the first, second and third highest number of votes that meet or exceed the majority vote requirement shall be seated. All persons after third highest shall be listed sequentially and shall be considered available for the Tribal Court of Appeals.
- D. Should a vacancy occur through death, resignation or otherwise, for any of the judicial positions, the Executive Council shall appoint a person or persons to fill such vacancy or vacancies for the remainder of the term. Unless suspended, dismissed, or removed in accordance with Section 10 of this Article, appointed Chief Judges and Chief Justices shall be eligible for reappointment, and elected Associate Judges and Associate Justices shall be eligible for reelection.
- E. The selection of judicial officers specified in subparagraphs a, b and c of this Section shall occur when the Executive Council determines that the Tribe is financially and otherwise prepared to maintain a Tribal Judiciary.

Section 7. Qualifications

The qualifications for Chief Judge and any Associate Judges of the Tribal Court shall be established by ordinance enacted by the Executive Council. The Chief Justice of the Tribal Court of Appeals and at least one other Associate Justice of the Tribal Court of Appeals shall be graduates of an accredited law school. No additional requirements may be added during the tenure of any of the Judges or Justices already in office, unless the additions exempt the present Judges and Justices during their term.

Section 8. Compensation

All Judges and Justices shall receive for their services reasonable compensation at rates established by the Executive Council. The Executive Council shall not diminish the compensation of any Judge or Justice during his or her term of office.

Section 9. Disqualification to Act

No Judge or Justice shall be qualified to act in any case wherein he or she has any direct interest or wherein any relatives by marriage or blood in the first degree is a party. A Judge or Justice in such circumstances must disqualify himself or herself by giving notice to the Executive Council, or in accordance with other rule or procedure established by the Executive Council.

Article XII – Judiciary
Cont'd.

Section 10. Removal of Judges and Justices

- A. The Executive Council may suspend, dismiss or remove any Judge or Justice for any of the following reasons:
 - 1. Conviction of a felony,
 - 2. Failure to disqualify himself or herself in accordance with Section 9 of this Article,
 - 3. Unnecessary and repeated lengthy delays in hearing and adjudicating matters filed in Tribal Court,
 - 4. Gross neglect of duty
 - 5. Other good cause.
- B. The Executive Council may suspend, dismiss or remove a Judge or Justice for cause only by a vote of at least six (6) members of the Executive Council.
- C. A Judge or Justice shall be given full due process rights including a full and fair opportunity to reply to any and all charges for which he may be suspended, dismissed or removed from judicial office.
- D. No Justice shall hear a case before the Tribal Court of Appeals if he or she presided over the original proceedings or if disqualified under this Section.

Section 11. Right to Appeal

Any party to a civil action or any defendant in a criminal action who is dissatisfied with the judgment or verdict, may appeal therefore to the Tribal Court of Appeals. All matters of law and procedure may be decided by the Court of Appeals. Findings of Fact shall be made by the Tribal Court; the Court of Appeals shall reverse the Tribal Court only upon a determination that the lower court's Findings are (1) arbitrary and capricious, and/or (2) contrary to law.

Section 12. Court Rules

The Tribal Court of Appeals consistent with the terms of this Constitution shall establish the duties and procedures of the Judiciary, and all other court matters not enumerated in this section of the Constitution.

ARTICLE XIII - TRIBAL ENACTMENTS

Section 1. Codes

All regulations regarding matters such as, but not limited to, business, environmental, jurisdiction, health, education, and welfare, shall be embodied in a Book of Codes available to the General Membership. These shall also include all federal mandates pertaining to federally recognized tribes.

Section 2. Ordinances

All final decisions on matters of general and permanent interest to members of the Tribe shall be embodied in ordinances, such as an enrollment ordinance or an election board ordinance. Such

Article XIII – Tribal Enactments
Cont'd.

enactments shall be available for inspection by the General Membership during normal business hours.

Section 3. Motions

Other decisions of a temporary nature or relating to particular individuals, officials or committees shall be put in the form of motions and noted in the minutes and shall be available for inspection by the General Membership during normal business hours.

Section 4. Resolutions

All final decisions on matters of short term or one time interest where a formal expression is needed shall be embodied in resolutions. All resolutions are available for review.

Section 5. Procedure

Without exception, all ordinances and resolutions shall be dated and numbered, and shall include a certification showing the presence of a quorum and the number of members voting for, against and abstentions to the proposed enactment and shall be attested to by the Chairperson and Secretary. Any ordinance or resolution that does not conform to the requirements of this section shall be void.

- A. No enactment of the Tribe shall have any validity or effect in the absence of a quorum of the Executive Council thereof at a legally called session.

Section 6.

All records and/or official tribal documents in possession of outgoing Executive Council members shall be turned over to the new Executive Council within 48 hours.

ARTICLE XIV - INITIATIVE AND REFERENDUM

Section 1. Initiative

The General Membership may enact laws through the initiative process. Upon presentation to the Election Committee of a petition of at least thirty percent (30 %) of the eligible voters of the General Membership, any initiative shall be submitted to that body for a vote. The Election Committee shall, upon receipt of such petition, forward a copy to the Executive Council. The Election Committee shall meet and set a time, place, and date for the initiative election in accordance with Election Committee procedures. At least fifty-one percent (51 %) of the qualified voters must vote in such an initiative election, and a two-thirds (2/3) majority of those voting shall be required for the initiative to become law. The Executive Council shall adopt an ordinance setting out the procedures governing the initiative process.

Section 2. Referendum

The Executive Council may propose legislation to the General Membership for adoption by referendum. The Executive Council Secretary shall submit any issue proposed for a referendum

*Article XIV – Initiative and Referendum
Cont'd.*

vote by the General Membership to the Election Committee. The Election Committee shall meet and set a time, place and date for the referendum election in accordance with Election Committee procedures. A two-thirds (2/3) majority of those voting shall be required for the referendum to become law. The Executive Council shall adopt an ordinance setting out the procedures governing the referendum process.

ARTICLE XV - BILL OF RIGHTS

In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77,) the Tribe in exercising its powers of self-government shall not:

- A. Make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- B. Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and neither seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- C. Subject any person for the same offense to be twice put in jeopardy;
- D. Compel any person in any criminal case to be a witness against himself;
- E. Take any private property for a public use without just compensation;
- F. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense, to have the assistance of counsel for his defense;
- G. Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year and a fine of \$5,000.00 or both;
- H. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- I. Pass any Bill of Attainder or Ex Post Facto law or;
- J. Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE XVI – SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of this Constitution shall continue in full force and effect to the extent that they are consistent with this Constitution. If prior enactments are not consistent with this Constitution, this Constitution governs and the prior enactments are null and void to the extent of their inconsistency with this Constitution.

ARTICLE XVII – SEVERABILITY

If a court of competent jurisdiction shall in the future declare any provision of this Constitution

*Article XVII – Severability
Cont'd.*

invalid, the invalid provision(s) shall be severed and the remainder of this Constitution shall continue in full force and effect.

ARTICLE XVIII - ADOPTION

This Constitution was adopted by the Tribe and effective on May 12, 2004. Any subsequent amendments to this Constitution shall be made in accordance with Article XIX and effective immediately upon certification by the Tribe's Election Board.

ARTICLE XIX - AMENDMENTS

Section 1.

This Constitution may be amended in an election called specifically for that purpose by the Election Board, and pursuant to a vote, as set forth below. It shall be the duty of the Election Board to call an election on any proposed amendment to this Constitution at the request of the Executive Council or upon receipt of a petition setting forth both (i) the section(s) of this Constitution to be amended; and (ii) the proposed amendment(s), provided such petition is signed by at least thirty percent (30%) of the then-registered voters of the General Membership, as verified by the Election Board. In order for the amendment to be enacted, at least thirty percent (30%) of the registered voters (as of the time the Election Board calls the election) must have voted in the election, and the amendment(s) must be approved by a two-thirds (2/3) vote of those actually voting in the election. No amendment shall become effective until the election regarding such amendment is certified by the Election Board.

Section 2.

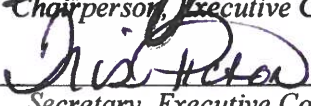
The Executive Council itself, or, if so delegated, a Constitutional Review Committee, shall examine, review and make recommendations on possible constitutional revisions at least annually. Changes considered necessary may be made at any time.

CERTIFICATION

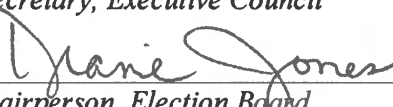
We, the undersigned as Chairperson and Secretary of the Habematolet Pomo Upper Lake and Chairperson of the Election Board, do hereby certify this First Amended Constitution was ratified on the 15th day of October, 2019 with the vote being as set forth on the attached Certificate Results of Election.



Chairperson, Executive Council



Secretary, Executive Council



Chairperson, Election Board

CERTIFICATE OF APPROVAL

See the attached Certificate of Approval, signed by Amy Dutschke (Regional Director, Pacific Regional Office, Bureau of Indian Affairs, United States Department of Interior) on November 5, 2019, certifying approval of the Secretary of Interior for Amendment I (containing revisions to the Preamble, Article XVIII-Adoption, and Article XIX-Amendments, as incorporated into this First Amended Constitution).



IN REPLY REFER TO

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room. W-2820
Sacramento, California 95825

PROPOSED AMENDMENT A

CERTIFICATE OF RESULTS OF ELECTION

Under a Secretarial election authorized by Amy Dutschke, Regional Director, on August 28, 2019, the attached amendment to the Constitution of the Habematolel, Pomo of Upper Lake was submitted to the registered voters of the tribe and on OCT 15, 2018, duly adopted/rejected by a vote of 34 for, and 4 against, and 0 cast ballots found to be spoiled in an election in which at least 30 percent of the 54 entitled to vote cast their ballot in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended.

Signed:

Carol Spindler
Chair, Secretarial Election Board

JDBN

Diane Jones
Secretarial Election Board Member

Adrienne Hobbs
Veronica Krohn
Secretarial Election Board Member

Date:

OCT 15 2019

AMENDMENT TO THE CONSTITUTION OF THE
HABEMATOLEL, POMO OF UPPER LAKE

AMENDMENT I

Article XVIII – Adoption

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IN REPLY REFER TO

United States Department of the Interior

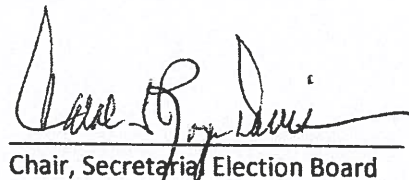
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Pacific Regional Office
2800 Cottage Way, Room. W-2820
Sacramento, California 95825

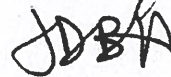
PROPOSED AMENDMENT B

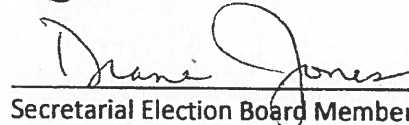
CERTIFICATE OF RESULTS OF ELECTION

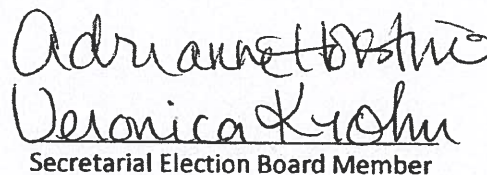
Under a Secretarial election authorized by Amy Dutschke, Regional Director, on August 28, 2019, the attached amendment to the Constitution of the Habematolel, Pomo of Upper Lake was submitted to the registered voters of the tribe and on OCT 15, 2019, duly adopted rejected by a vote of 35 for, and 3 against, and 0 cast ballots found to be spoiled in an election in which at least 30 percent of the 54 entitled to vote cast their ballot in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. § 477), as amended.

Signed:


Chair, Secretarial Election Board




Secretarial Election Board Member


Secretarial Election Board Member

Date:

OCT 15 2019

AMENDMENT TO THE CONSTITUTION OF THE
HABEMATOLEL, POMO OF UPPER LAKE

AMENDMENT I

Article XIX – Amendments

This Constitution may be amended in an election called specifically for that purpose by the Election Board, and pursuant to a vote, as set forth below. It shall be the duty of the Election Board to call an election on any proposed amendment to this Constitution at the request of the Executive Council or upon receipt of petition setting forth both (i) the section(s) of this Constitution to be amended; and (ii) the proposed amendment(s), provided such petition is signed by at least thirty percent (30%) of the then-registered voters of the General Membership, as verified by the Election Board. In order for the amendment to be enacted, at least thirty percent (30%) of the registered voters (as of the time the Election Board calls the election) must have voted in the election, and the amendment(s) must be approved by a two-thirds (2/3) vote of those actually voting in the election. No amendment shall become effective until the election regarding such amendment is certified by the Election Board.



IN REPLY REFER TO

United States Department of the Interior

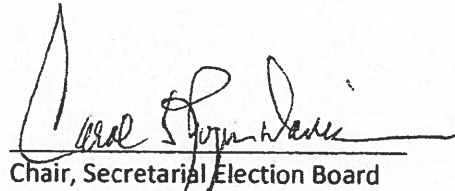
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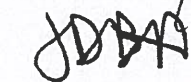
PROPOSED AMENDMENT C

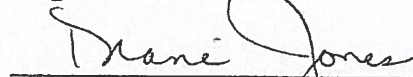
CERTIFICATE OF RESULTS OF ELECTION

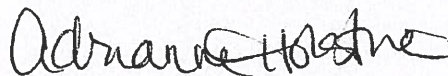
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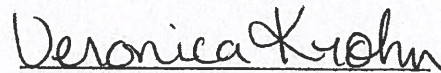
Signed:


Chair, Secretarial Election Board




Secretarial Election Board Member




Secretarial Election Board Member

Date:

OCT 15 2019



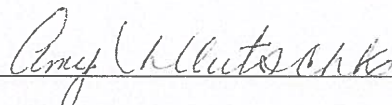
United States Department of the Interior

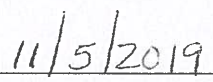
BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room. W-2820
Sacramento, California 95825

CERTIFICATE OF APPROVAL

AMENDMENT I

Amendments A through C to the Constitution of the Habematolet, Pomo of Upper Lake, which were adopted by the qualified voters of the Habematolet Pomo of Upper Lake, California, on October 15, 2019, are hereby approved pursuant to the authority delegated to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984, 25 USC § 5124), as amended and delegated to me through the Indian Affairs Manual Part 3, Chapter 4, Section 1.4, B, Authorities that are Redelegated only to Regional Directors, No. 15-31, issued October 23, 2015. The amendments shall be designated Amendment I. This approval is effective as of this date, provided nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.


Regional Director


Date

