

Committee on Natural Resources

Rob Bishop, Chairman

Markup Memorandum

November 3, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff,
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 1532 (Rep. Bradley Byrne)**, To reaffirm that certain land has been taken into trust for the benefit of the Poarch Band of Creek Indians, and for other purposes.
November 7 & 8, 2017; 1324 Longworth House Office Building

H.R. 1532 (Rep. Bradley Byrne), “Poarch Band of Creek Indians Land Reaffirmation Act”

Summary of the Bill

H.R. 1532 was introduced by Rep. Bradley Byrne on March 15, 2017 and has been referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. The bill would “reaffirm” and “ratify” the trust status of approximately 390 acres of land the Secretary of the Interior acquired in trust for benefit of the Poarch Creek Band of Creek Indians of Alabama. The tribe currently operates casinos regulated pursuant to the Indian Gaming Regulatory Act¹ on a portion of the lands under consideration, along with a health clinic, an assisted living facility and others. A map of the lands reaffirmed under the bill is attached to this memo.

Cosponsors

Rep. Robert Aderholt (AL-4), Rep. Mo Brooks (AL-5), Rep. Terri Sewell (AL-7), Rep. Mike Rogers (AL-3), Rep. Matt Gaetz (FL-1), Rep Tom Cole (OK-4), Rep. Paul Cook (CA-8), Rep. Jeff Denham (CA-10), Rep. Alexander Mooney (WV-2).

Background

The Poarch Band of Creek Indians (“Poarch Band”) is located approximately 56 miles north of the city of Mobile in southwestern Alabama. The Poarch Band is a segment of the original Creek Nation which covered areas of Alabama and Georgia. After the conclusion of the War of 1812, the Creeks who supported the U.S. subsequently signed the Treaty of Fort Jackson which resulted in the ceding of land in Alabama. In 1836, many Creeks were removed from Alabama to Oklahoma territory. Some Creek Indians remained around the town of Poarch, remaining a cohesive tribal group.

¹ 25 U.S.C. §2701 et seq.

After fighting for decades to be recognized as a distinct tribe, the Poarch Band was administratively recognized by the Bureau of Indian Affairs on August 11, 1984. After obtaining federal recognition, the tribe acquired lands in both Alabama and Florida, and these lands were then placed in trust by the Secretary of the Interior under the authority of Section 5 of the Indian Reorganization Act of 1934² (“IRA”), which gives the Secretary exceptionally broad power to acquire lands in trust for Indians. Land held in trust for Indians is generally immune from state and local jurisdiction and taxation, and depending on the location of the land and the date it was put in trust, a tribe may be able to operate a casino on it pursuant to the Indian Gaming Regulatory Act of 1988. Accordingly, the Poarch Creeks own and operate two Indian casinos and maintain several facilities for the use of its members on its trust lands.

The need for H.R. 1532 arises because the lawfulness of lands acquired in trust by the Secretary pursuant to the IRA for the benefit of tribes recognized after 1934 (i.e., the date of enactment of the IRA) is in question due *Carcieri v. Salazar*.³ *Carcieri* is a 2009 decision rendered by the U.S. Supreme Court limiting the Secretary’s power to take land in trust for certain Indians. Until *Carcieri*, the Secretary used the IRA to place land in trust for any tribe. However, the Supreme Court determined that trust land provisions of the IRA may be used only for the benefit of tribes “under federal jurisdiction” as of the date of enactment of the IRA. Since 2009, the Department of the Interior has failed to divulge to the Committee the names of tribes that were or were not under federal jurisdiction in 1934 despite repeated requests for this information from Republican Leaders of the Committee. Moreover, a controversial “M-Opinion” interpreting the meaning of “under federal jurisdiction” was issued by President Obama’s Interior Solicitor in order to provide legal backing to the continued acquisition of lands for tribes recognized after 1934. Thus, rather than work with the Committee to find a resolution to *Carcieri*, the Obama Administration increased the potential for litigation over the trust status of untold acres of lands owned by tribes.

The Committee has held several oversight and legislative hearings to address *Carcieri* and to explore potential reforms to improve the land-in-trust process administered by the Department of the Interior. It is important to note that the trust acquisition authority in Section 5 of the IRA has never been substantively amended since the IRA was enacted in 1934.

One of the oversight hearings held on *Carcieri* and the IRA includes a 2015 oversight hearing in which the Poarch Band of Creek Indians testified as to its situation.⁴ According to the tribe, many of its lands were placed in trust prior to 2009 pursuant to the IRA, and these trust lands have been developed with the construction of buildings and businesses, including casinos. If a court were to decide these lands are not lawfully held in trust on the grounds the Poarch Band was recognized after 1934, the lands could lose their trust status, exposing the tribe to state taxation and civil regulation, which in turn could lead to the closure of tribal businesses and the dismantling of facilities. In addition, the tribe’s casinos would become subject to Alabama State law, which could lead to the modification or closure of the gambling facilities, which employ large numbers of people and generate revenues for the tribe’s government.

² 25 U.S.C. §465 et seq.

³ 555 U.S. 379 (2009).

⁴ <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398481>

Like other post-1934 tribes, passing a “clean *Carciere* Fix” (a reversal of the Supreme Court opinion) is a high priority of the Poarch Creeks. However, pending a full resolution of *Carciere* for all tribes in the country is being explored by the Committee, H.R. 1532 would ratify and reaffirm the trust status of the Poarch Band’s lands the tribe obtained before 2009. This bill reflects a sense of fairness that pending reforms and modernization of the 83 year old statute, the Poarch Band lands should not be in jeopardy when they were acquired in trust at a time when no one challenged the Secretary’s power to acquire them.

It is important to note that the State of Alabama was one of 21 States that submitted a friend-of-the-court brief with the Supreme Court in support of the petition filed by Rhode Island in the *Carciere* lawsuit. These States generally argued that the Secretary lacks power under the IRA to acquire land in trust for tribes recognized after 1934. The position of these states including Alabama does not necessarily indicate opposition to or concern with H.R. 1532.

Section-by-section Analysis of the bill

Section 1. Short Title. “Poarch Band of Creek Indians Land Reaffirmation Act”

Section 2. Reaffirmation of Indian Trust Land.

Subsection (a). Provides that lands described below are confirmed to be held in trust and remain as Indian Country.

Subsection (b). Paragraphs one through provide acreage and legal descriptions for the lands to be reaffirmed as trust land for the Poarch Band, totaling 390 acres.

Subsection (c). Provides that this Act shall supersede any claims against the trust status of the 390 acres of land described under the previous subsection that are pending on or before the date of enactment.

Administration Position

Unknown.

Cost

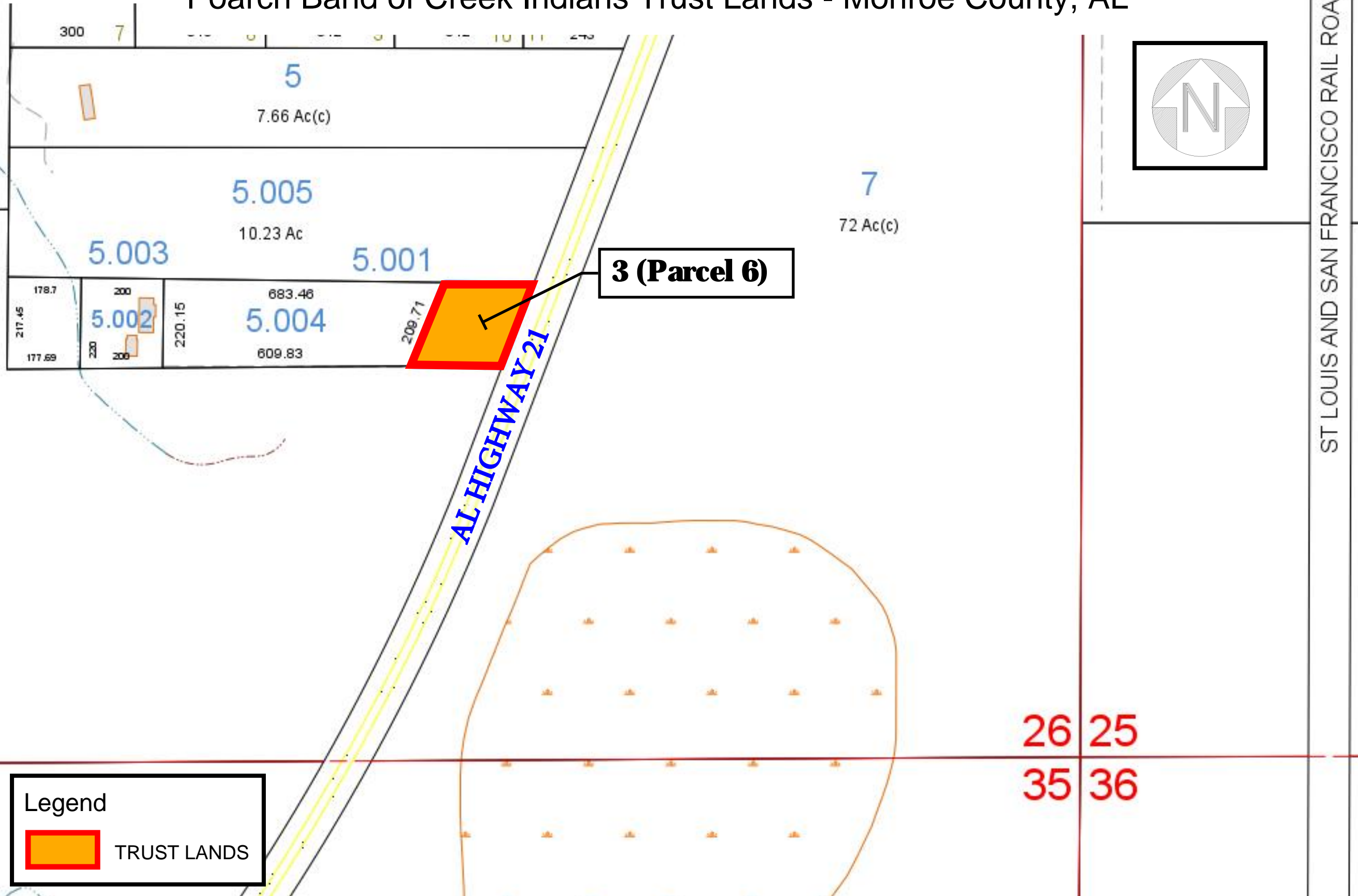
Unknown, however the Committee does not anticipate the bill having an effect on the federal budget.

Anticipated Amendment

None.

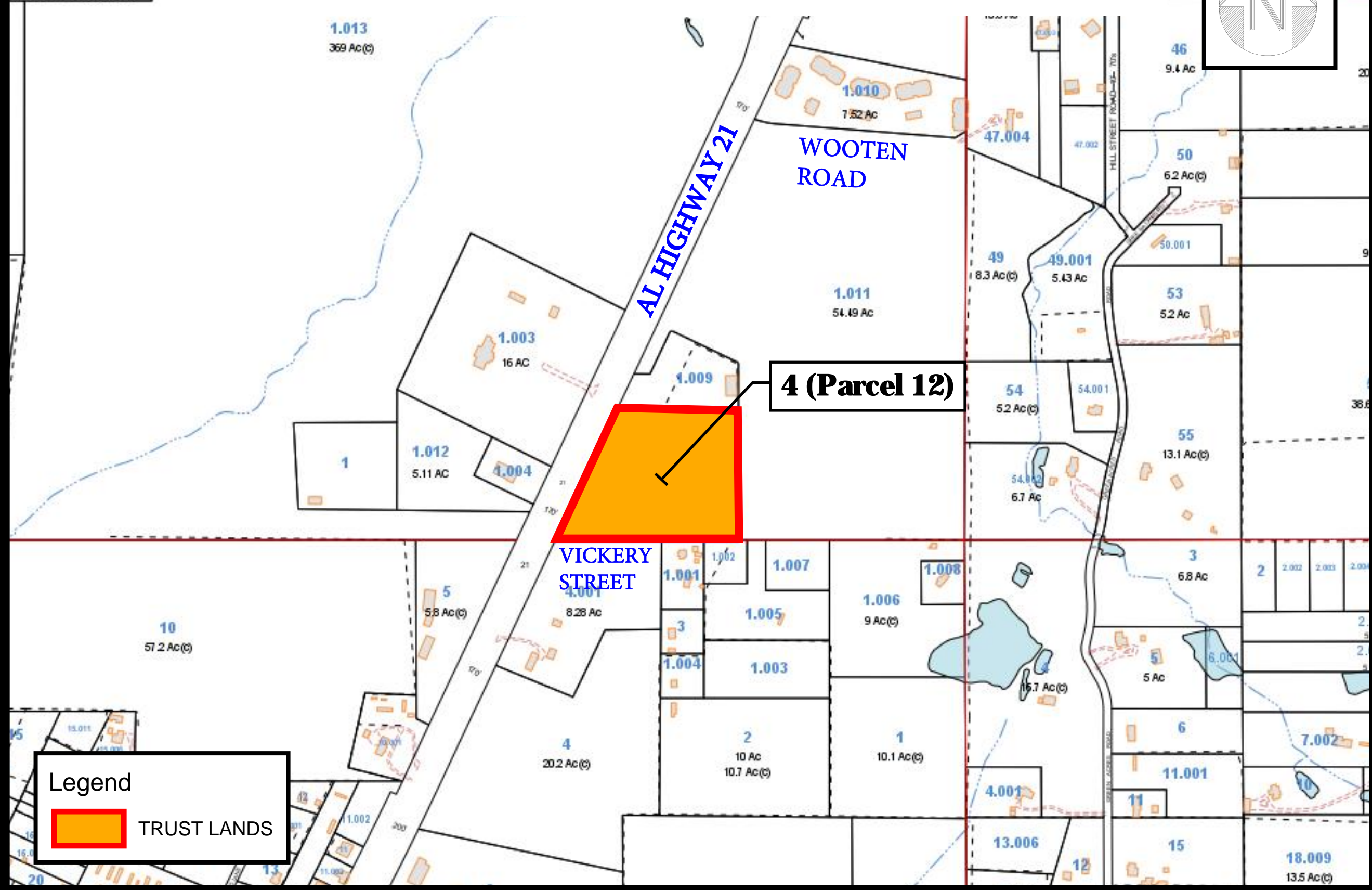
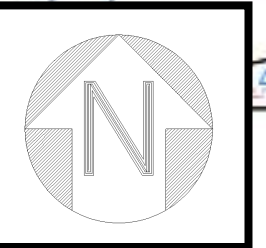
MAP 3

Poarch Band of Creek Indians Trust Lands - Monroe County, AL



MAP 4

Poarch Band of Creek Indians Trust Lands - Escambia County, AL



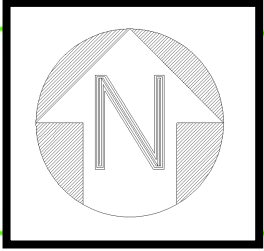
4 (Parcel 12)

Legend

 TRUST LANDS

MAP 5

Poarch Band of Creek Indians Trust Lands - Elmore County, AL



COOSA RIVER

1 (Reservation)

SOUTH MAIN STREET

U.S. HIGHWAY 231

KIDD BEND SUBDIVISION
ROUSE PLAT

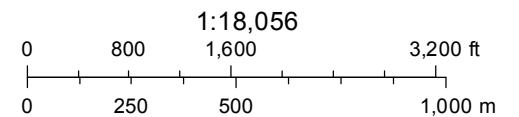
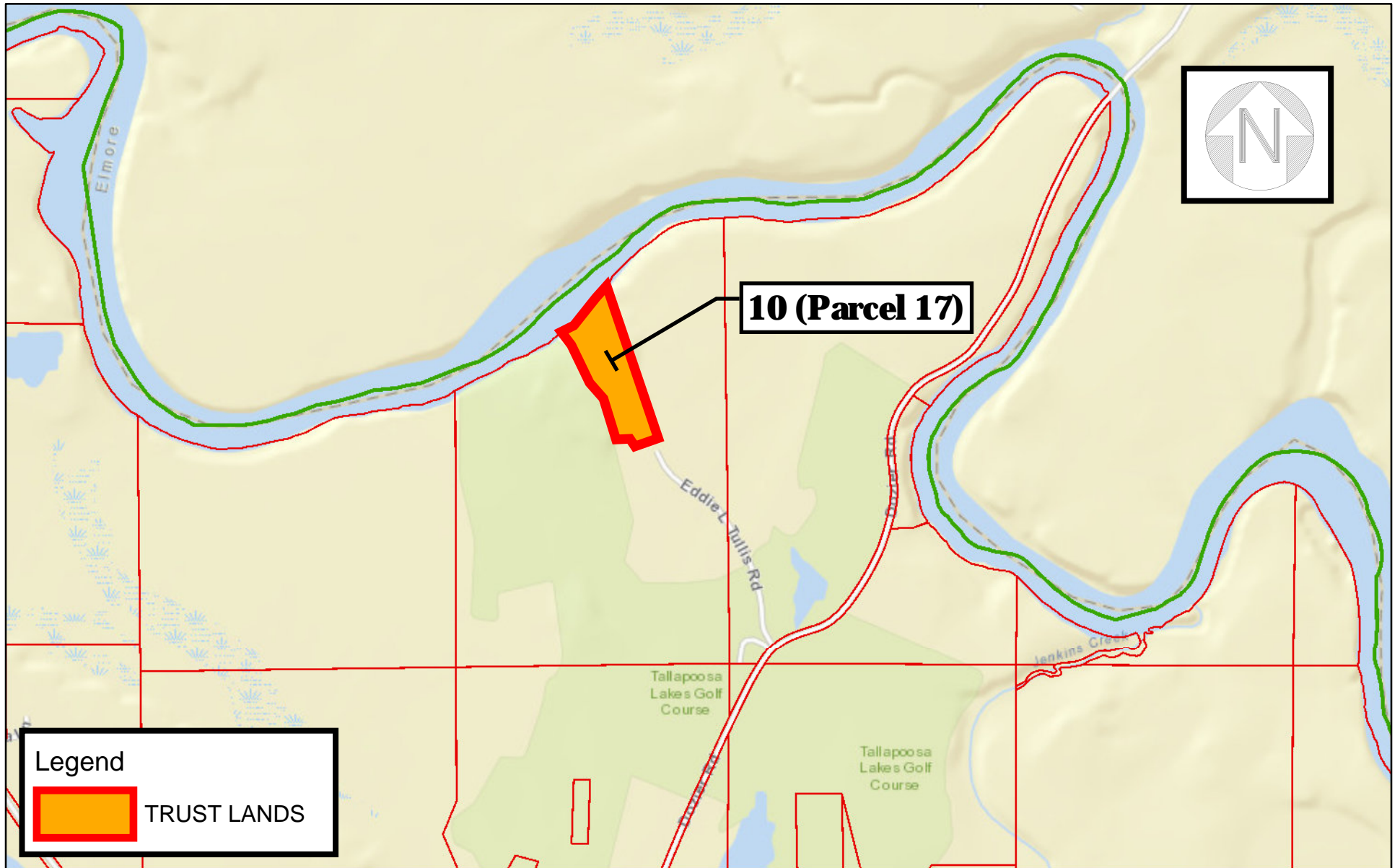
RETDOMPA CITY LIMITS

Legend



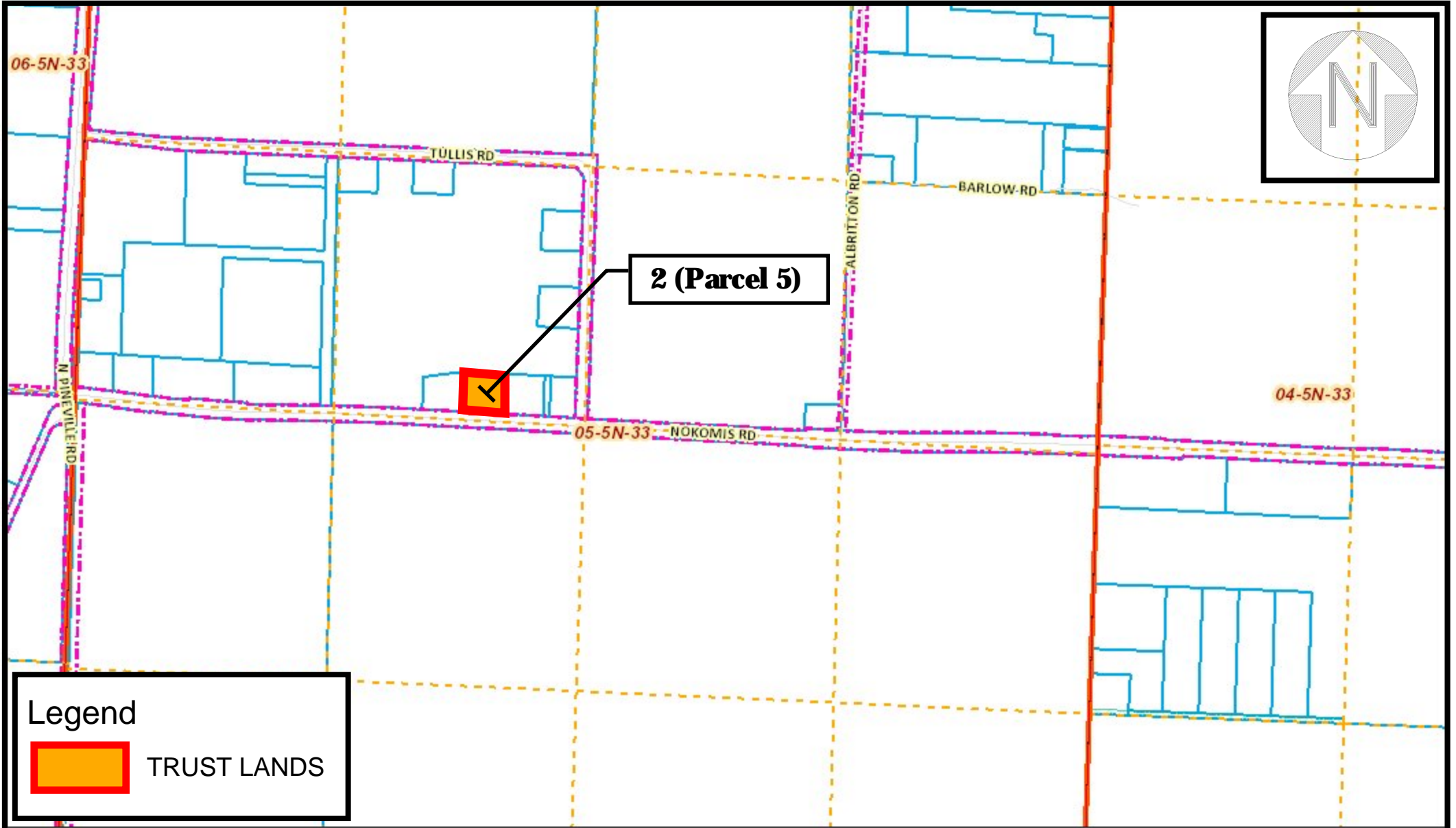
TRUST LANDS

MAP 6 Poarch Band of Creek Indians Trust Lands - Montgomery County, AL



MAP 7










Poarch Band of Creek Indians Trust Lands - Escambia County, FL



Legend

 TRUST LANDS

May 23, 2016

- | | | | |
|---|---|--|---|
|  Map Grid |  City Road |  State Road |  Right of Way |
|  Section Line |  County Road |  US Highway |  Easement |
|  Govt Lot Line |  Interstate |  All Roads |  Property Line |

