



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 26 2006



Mr. Lance A. Gumbs
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Southampton, New York 11969-0751

Gentlemen:

On May 30, 2006, Associate Deputy Secretary (Associate Deputy) James E. Cason, attorneys from the Office of the Solicitor, and representatives from the Office of Federal Acknowledgment (OFA) met with you and your attorneys to discuss the Shinnecock Indian Nation (Shinnecock) petitioner's requests that the Department of the Interior (Department) review certain documents and reconsider its position declining to place it on the list of federally recognized Indian tribes. Specifically, you claimed that the court in *New York v. Shinnecock Indian Nation*, 400 F.Supp.2d 486 (E.D.N.Y. 2005) had before it briefs and supporting materials that duplicated the type of analyses the Department would undertake pursuant to its acknowledgment regulations at 25 CFR Part 83. The Shinnecock group, therefore, asserted that it would be more efficient for the Department to rely on the court decision in *Shinnecock* and place it on the Federal Register list of Indian tribes instead of analyzing the petition for tribal status under the acknowledgment process.

During the May 30, 2006, meeting, the Associate Deputy informed you that the Department would not reconsider its position declining to establish a government-to-government relationship outside the regulatory process. The Department's review of the documents and analyses before the *Shinnecock* court found that they substantially differed from the materials required and the level of scrutiny that the agency routinely uses in the acknowledgment process. This review included the documents and analyses before the *Shinnecock* court, and the documents comprising the petition that the Shinnecock group submitted the Department.

While conducting the review that you requested, the OFA identified certain issues that may suggest areas to supplement in the Shinnecock group's petition for acknowledgment as an Indian tribe. The OFA staff raised some of the issues at the May 30, 2006, meeting, during which you also indicated that the group was preparing to submit evidence and analysis for modern community. We agreed to memorialize the Department's review in a second technical assistance (TA) review letter to supplement the one dated December 22, 1898, and provide the Shinnecock petitioner an opportunity to clarify, revise, or augment its petition before its placement on active consideration, projected to occur in October 2009. The Department has a heavy workload (see Enclosure A—Projected Schedule). There are 17 petitioning groups ahead of the Shinnecock in order of consideration, and the Department must issue a proposed finding (11) and/or final determination (15) for each of these.

This TA review letter describes potential deficiencies, omissions, and unresolved questions in the acknowledgment petition, consisting of materials the Department received in two installments on June 10, 2003, and September 9, 2003, and the materials previously submitted in 1998. Enclosed you will find an inventory of the documents generated by the OFA during the recent review (see Enclosure B—Inventory).

While this TA review letter is intended to assist the petitioner by detailing potential weak areas, it does not constitute the Department's determination that the Shinnecock group is or is not entitled to be federally acknowledged as an Indian tribe. Nor is it an offer to consult in depth with the Shinnecock group on these issues, or to provide aid in any response to the contents of this letter. To the contrary, the OFA's workload precludes its staff members from providing such assistance or even answering questions raised in this letter. Because the goal of the acknowledgment process is to determine whether a petitioning group has existed historically as a tribe based on the facts of its case, the TA review seeks to ensure that technical problems do not adversely affect a petition. After reading this review, the petitioner may submit additional information to clarify already submitted materials. The Department projects that the group might expect to go on active consideration by October 2009, so the Shinnecock may wish to submit any new information before that time. As provided in the Department's Federal Register notice, titled "Office of Federal Acknowledgment; Reports and Guidance Documents; Availability, etc.," dated March 31, 2005, the Shinnecock petitioner will have another 60 days after the petition goes on active consideration to supply additional material, such as an updated membership list, an amended constitution, meeting minutes, or newsletters, if desired.

The Department has organized its comments and questions below in the following order: 1) general comments about the petition; 2) specific comments regarding the manner in which the Shinnecock group's petition addresses the mandatory acknowledgment criteria; and 3) a summary of issues.

I. General comments about the petition.

This review shows there are potential deficiencies and omissions in the petition in criteria 83.7(b), (c), and (e). The OFA recommends that the Shinnecock petitioner review the acknowledgment criteria 25 CFR 83.7 carefully and direct its additional research particularly toward providing evidence that will demonstrate it meets each of the seven criteria.

Generally, the petition has solid documentation, particularly for the period before 1800; however, it still contains some deficiencies, as described in detail below. The petition would be improved if the evidence for criterion 83.7(a), identification by external observers since 1900, is analyzed and integrated into the discussions of community and political influence for those years. For criterion 83.7(b), substantially continuous community, the petitioner needs to augment its analyses of marriage and residency rates for the 19th century and then extend them to the present. Discussions of the group's Presbyterian Church and Indian school also need to cover the years after 1900. The petitioner also should supply a narrative analysis of the evidence for community during the 20th century, and provide evidence and analysis of the modern period (approximately the last 10 to 15 years). Regarding criterion 83.7(c), political influence or authority, the petitioner should augment its analysis of the group's leadership for the period from

1815 to 1879. The petitioner also needs to supply evidence and analysis of political influence for the modern period. Under criterion 83.7(e), descent from the historical tribe, the petitioner may wish to analyze additional state censuses to determine descent from the historical tribe and to furnish some copies of missing or abstracted vital records.

II. Specific comments about criteria 83.7(a) through (g).

A. Criterion 83.7 (a): External identification of the group as an American Indian entity on a substantially continuous basis since 1900.

Criterion 83.7(a) requires evidence of external identification of a petitioning group as an American Indian entity since 1900. The Shinnecock petitioner submitted materials that are adequate for the Department to make an evaluation. It may wish, however, to examine and integrate these documents as collateral evidence for community, criterion 83.7(b), and political influence, criterion 83.7(c), for the period since 1900.

B. Criterion 83.7(b): A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

Criterion 83.7(b) requires a petitioner to demonstrate it has existed continuously as a social community since historical times. The Shinnecock petitioner provided evidence to evaluate this criterion up to but not including the last 10 to 15 years. The narratives provided to explain this evidence, however, do not contain significant discussion of the period following 1900. For example, one narrative detailed two apparently important institutions for the Shinnecock petitioner—the Presbyterian Church and the Indian school on the reservation, but did so only for the 19th century, although the school remained in operation until the middle 1950's, and the church still exists today. Additionally, the petitioner presented numerous brochures and newspaper articles concerning its annual powwow in the 20th century, but offered little analysis of why this event is an important social occasion for its members. In cases where a petitioner offers a large body of unanalyzed data, it needs to explain its importance. For some petitioners these powwows function as a homecoming for its members. Additionally, some powwow events require considerable planning, financial support, or volunteer activity, which may demonstrate significant social interaction.

When discussing the 19th century, the petitioner relies heavily on a marriage analysis and its continuous occupation of the reservation as evidence. It also claims that it demonstrated a high level of evidence for political influence, defined under 83.7(c)(2)(i), showing leaders allocating land and resources, which it argues is sufficient as well to demonstrate community under 83.7(b)(2)(v). This overall argument may be inadequate for several reasons. First, the marriage analysis, if correct, shows only rates of extant marriages up to 1910. The marriage analysis also lacks a description of the methodology employed and copies of the supporting vital records. Second, the review under 83.7(b)(2) must analyze the number of new marriages within the group compared with the number of marriages outside the group. Third, the residency evidence neglects to account for members who lived in surrounding communities or who migrated away from the group but remained part of it, in order to calculate the percentage of members resident on the reservation. Fourth, the reliance on a high level of political evidence to meet community

seems inadequate because the lack of Shinnecock trustees' records, upon which the argument depends, from 1836 to 1879.

To address these apparent deficiencies, the petitioner may wish to take the following action—furnish an additional narrative on community covering the period since 1900, including the modern community. A good narrative history will include discussions of the group's location, membership, and settlement patterns, its dealings with surrounding Indian groups, non-Indians, and governments, an analysis of external observers' comments on the community, and a description of the interactions among its members across family lines.

The petitioner should also consider conducting an analysis of both new and extant marriages, broken down into 10-year intervals, extending into the modern period. By examining new marriages, the petitioner may supply sufficient evidence of community at a given point in time, under 83.7(b)(2)(ii), if it can demonstrate that at least 50 percent of the new marriages in the group are between members of the group. In addition, meeting this requirement at a given point in time would be sufficient evidence, under 83.7(c)(3), of political influence for the same period. If the percentage of intra-group marriages is less than 50 percent but still high, it is evidence for community under 83.7(b)(1). It is particularly strong evidence if, in addition, many other members are married to members of other Indian groups, with whom marriage is customary. In many cases, members remain closely related because of intra-group marriages from previous generations. Demonstrating close kin relationships based on such marriages is good evidence, because it shows significant social relationships. Distant relationships based on earlier intra-group marriages may be supporting evidence, but are not as strong.

The petitioner should also expand its discussion of the group's residency patterns by examining census data and other documentation to determine if more than 50 percent of the group's members lived in an exclusive or a nearly exclusive area, the Shinnecock Reservation, and maintained some interaction with the remainder who lived elsewhere, as defined under 83.7(b)(2)(i). Meeting this requirement at any given point in time also demonstrates sufficient evidence of political influence for the same period. This residency analysis should continue into the modern period, perhaps in 10- to 20-year intervals, using as many state and Federal census schedules as possible. For the period since 1930, when such census schedules are unavailable, the petitioner could reconstruct the residency patterns by using secondary sources, state and local records, land records, maps, and even eyewitness descriptions of older members. Be aware that even when residency rates in the exclusive area fall below 50 percent, they still may furnish supporting evidence of community if they remain significantly high.

For the period from 1836 to 1879, when the lack of Shinnecock trustees' records preclude a demonstration, under 83.7(c)(2)(i), of the allocation of group resources by the leadership, the petitioner should submit additional evidence and analyses of distinct community under 83.7(b).

The petitioner should provide more analysis of the Shinnecock Presbyterian Church and Indian school following 1900, particularly if group members made up the predominant membership of these institutions. Such organizations often formed the basis for many of the important relationships that make up the group and their analysis of the organizations and their role within the group is one way of demonstrating community. The petitioner should present a detailed

description of these institutions, their operation, and importance for members. The petitioner may wish to include a discussion of the reservation cemetery as well to determine if its maintenance involved any significant social interaction.

Finally, the petitioner should present additional evidence and analyses of modern community for the last 10 to 15 years. The failure to provide a complete and detailed description of the modern community is a common weakness of many petitions. The description of the current group should rest on a historical context. Present practices, institutions, settlements, and the like often evolve out of earlier patterns. Thus, the modern-day description should draw on and follow from the historical description.

Research for the modern group description is usually more dependent on ethnographic research than the historical portion; that is, research for the modern period often relies heavily on interviews and on-site field visits and observations. Documents useful in doing this task include vital records that show the group's ancestors marrying each other, having children, and witnessing for each other. Other petitioners have submitted meeting minutes, newsletters, correspondence files, diaries, and enrollment records as evidence for confirming residences and participation in the group's activities. The petitioner may need to submit other material such as newspaper articles and other publications which discuss the group's activities; photographs or videos showing members interacting; transcripts, videos, or tape recordings of oral histories and reminiscences which detail the group's activities; and local, state, or Federal records showing governments dealing with the group.

C. Criterion 83.7(c): The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

Criterion 83.7(c) requires evidence demonstrating that a petitioning group exercises political influence over its membership now and historically. This means there were, and still are, leaders with followers whom they influence, and who influence them significantly. This criterion calls for information concerning who led the group and how they exercised leadership, or about the informal processes by which the group made decisions and influenced its members.

The Shinnecock petition contains evidence to evaluate this criterion up to but not including the modern period. There appears to be considerable evidence for this criteria resulting from the relationships with the State of New York and Town of Southampton. The petitioner, however, relies heavily on the claim that the leadership's allocation of land and resources on the Shinnecock reservation provides sufficient evidence of political influence under 83.7(c)(2)(1) and thus community under 83.7(b)(2)(v). There is a significant evidentiary gap, however, in the Shinnecock trustee records from 1836 to 1879 that might support this claim. Further, even the available trustees' records, submitted only in abstracted form instead of the more useful complete format, show another interval from 1815 to 1833 when there was little evidence of resource allocation. Therefore, at present, the evidence from 1815 to 1879 is questionable for demonstrating the petitioner's argument under criterion 83.7(c).

In addition to these apparent gaps and limitations in the available trustees' records, the Shinnecock petition should better analyze the rest of the available documentary record from

1815 to 1879 for other evidence of informal or formal political influence. Furthermore, the group appears to have furnished very little evidence or analysis of political influence for the modern period of the last 10 to 15 years.

Rather than relying solely on evidence of allocation of group resources to demonstrate criterion 83.7(c) for 1815 to 1879, the petitioner likely would be well-served in examining the entire available documentary record, including the specifics of its contacts with the State of New York and the Town of Southampton, for evidence to demonstrate that a bilateral political relationship existed between the leaders and the members. The petitioner should be mindful that a demonstration of a distinct residential community, under 83.7(b), at more than a minimal level also could provide useful supporting evidence of political influence under 83.7(c)(1)(iv). Finally, the petitioner should submit copies and an analysis of all Shinnecock trustees' records to augment the abstracted submissions so that Department researchers can fully evaluate these records.

Most important, the petitioner should provide evidence and analyses of political influence for the modern period. It may want to describe any group meetings, events, powwows, parties, classes, memorials, church revivals, etc., in cases where these provide evidence of political processes. The group should discuss what happened at and who attended these events. It may need to provide any sign-in lists, minutes, newsletters, communications, or photographs to demonstrate these events occurred and were more than just family reunions or social gatherings. The group should describe the nature of business discussed at meetings, such as choosing leaders, making decisions, dealing with disagreements, and resolving conflicts. Be sure to give specific examples when describing how members emerged as leaders and exercised their authority over the membership. It may want to include evidence showing that the issues discussed were of importance to most of the members and involved valued group goals, policies, and/or decisions. A petitioning group must show the political relationship exists broadly among members. Not only must there be leaders, but also followers. On occasion, a small body of people carries out legal actions or makes agreements that affect the economic interests of a group, without the membership's awareness or consent and without significant political processes. A group operating in this manner generally does not demonstrate evidence to meet criterion 83.7(c).

D. Criterion 83.7(d): Governing Document.

Criterion 83.7(d) requires a petitioner to submit a copy of its present governing document including its membership criteria. Absent a written document, a petitioning group must provide a statement fully describing its membership criteria and current governing procedures. The materials submitted appear to be adequate for the Department to evaluate the group under this criterion. Any changes to the petitioner's governing document should be submitted to the Department.

E. Criterion 83.7(e): Current Membership List and Descent from a Historical Indian Tribe or Historical Indian Tribes that Combined and Functioned as a Single Autonomous Political Entity.

Criterion 83.7(e) requires a petitioner to demonstrate that its members descend from a historical Indian tribe, or from historical Indian tribes that combined and functioned as a single autonomous entity.

The petitioning group submitted to the Department a certified, current membership list, dated March 5, 2003, with information on 1,330 members. Approximately thirty-six of the names on this list lacked residential addresses. The petitioner should provide these addresses. The group also supplied a certified membership list, dated October 2, 1998, with data on 1,363 members. The petitioner should submit a statement describing the circumstances of the preparation of the current list and, insofar as possible, former lists. Please note that the group may wish to submit an updated, certified membership list before going on active consideration.

It is unclear if the petition record contains adequate evidence to evaluate this criterion fully. For instance, the petitioner did not submit any sample copies of key vital records like birth and marriage certificates from the members' enrollment records. In addition, the group furnished only abstracted portions instead of the originals of many critical genealogical records from the Town of Southampton. The petitioner should provide these documents in their entirety.

While the petitioner has the right to establish its own requirements for membership, there is evidence that the 1900 and 1910 Federal census Indian population schedules upon which the group relies to demonstrate Shinnecock ancestry may not be the best primary documents for determining descent from the historical tribe. Because the Shinnecock have a history of State of New York relations, state records from the 18th and 19th century may be a better source of primary information on tribal ancestry. The 1900 and 1910 Indian population schedules may be secondary information if they provide a tribal identification for the group's ancestors and if they record them residing in an actual settlement. The state records in the petition that might function as a more informative base roll include the 1790's New York State list of Shinnecock proprietors or the 1865, 1915, and 1925 state censuses of the reservation.

The record also indicates that New York State conducted censuses of the group and the surrounding communities in 1845, 1855, 1875, 1885, 1895, and 1905. If possible, the petitioner should submit copies of these censuses since they too might offer important primary evidence not only of descent from the historical tribe but also of community and political influence. The Department will determine which documents provide the best evidence of descent from the historical tribe only after fully examining the entire genealogical record. This would be the first and most important step in determining descent from a historical tribe. The Department also will review the vital records, currently absent from the record, to ensure that individual members have accurately demonstrated their own descent from claimed ancestors.

The group's enrollment records should contain a file for each person on the membership list. How the group maintains its files for each member is its decision; however, an enrollment file should contain some application form which is signed in ink by the adult applicant, parent, or legal parent (cases involving custody), or representative or guardian (in the case of a minor or an incompetent applicant). The documentation in the file should include, but not be limited to, clear legible records of certified copies of birth, marriage, divorce, death, and any other legal documents belonging to members or their ancestors. The file must document the connection

between each generation. It also must contain information about when the group accepted the member into membership and through what enrollment process. The group should have clear evidence, such as application forms, consent forms, and/or relinquishment forms, that the individual clearly intends to be a member of the petitioning group. The OFA normally requests the group submit some sample membership files from various family lines; however, it will also audit the files during the active consideration phase to ensure they are current, accurate, and consistent with the "certified" final membership roll before the completion of the Final Determination.

F. Criterion 83.7(f): Members of the Petitioning Group May Not Be Enrolled in Any Recognized Tribe.

Criterion 83.7(f) prohibits the Department from acknowledging groups composed principally of members of federally recognized tribes. The Shinnecock group has included in its petition narrative a statement, signed by the governing body, that the predominant portion of its membership is not enrolled in any other federally acknowledged American Indian tribe. This is sufficient to evaluate this criterion. During the evaluation of the petition, the OFA staff may compare the petitioner's membership list with the membership lists of federally recognized tribes.

G. Criterion 83.7(g): Neither The Petitioner Nor its Members Are the Subject of Congressional Legislation that Has Expressly Terminated or Forbidden the Federal Relationship.

The Shinnecock petitioner does not appear, from the materials submitted, to be part of a group that is the subject of congressional legislation expressly terminating or forbidding a Federal relationship. The petitioning group has included a formal statement to that effect in the petition materials.

III. Summary

This TA review letter describes potential deficiencies and omissions in the submitted material that the Shinnecock petitioner may wish to address. In particular, the apparent deficiencies are in criteria (b), (c), and (e). The Department has not made a decision concerning the status of the Shinnecock petitioning group. This TA review letter is neither a preliminary determination of the petition, nor a conclusion that it will result in a negative or positive decision. In addition, the group should not assume the Department has made positive conclusions about portions of the petition not discussed in this letter. Finally, the group should not presume it would meet the seven mandatory criteria by simply submitting additional data and analyses.

To make this letter most useful to the petitioning group, the OFA described problems it detected while reviewing the submission. These are only obvious problems identified during this narrowly focused review. There may be other deficiencies revealed after the completion of a more extensive review.

One purpose of this letter is to request information and/or documentation not currently in the petition that OFA believes it needs to evaluate the group's petition during active consideration. If a petitioner does not submit required material, then it may be impossible to evaluate them. Since the research during the active consideration period is to verify an already completed petition, it is the petitioner's burden to present evidence that it meets the criteria.

The Shinnecock petitioner has the option of responding in part or in full to this TA review. Enclosed are sample forms to assist the governing body in its contacts with OFA. When submitting additional documentation, the governing body needs to certify those materials to verify they are official petition submissions of the petitioning group (see Enclosure C).

Once the Shinnecock petitioner has had an opportunity to review this letter and share its contents with its researchers and membership, it may, if it chooses, submit its response to the Office of Federal Acknowledgment, Office of the Assistant Secretary-Indian Affairs, Department of the Interior, 1951 Constitution Street, N.W., MS-34B-SIB, Washington, D.C. 20240. The OFA has also enclosed a copy of the proposed findings for the Mashpee petitioner, the Reconsidered Final Determination and Interior Board of Indian Appeals decision for the Eastern Pequot petitioner, and Reconsidered Final Decision for the Schaghticoke petitioner, which the group and its researchers may find useful in their research and analysis (see Enclosures D, E, F, and G).

Sincerely,



Director, Office of Federal Acknowledgment

Enclosures: A: Proposed Schedule
B: Preliminary Inventory of Petition
C: Sample Forms
D: Copy of Mashpee Proposed Finding
E: Copy of Eastern Pequot Reconsidered Final Determination
F: Copy of Eastern Pequot Interior Board of Indian Appeals Decision
G: Copy of Schaghticoke Reconsidered Final Determination

cc: Interested Parties