



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

Tribal Services - AR
MS-4603 MIB

DEC 22 1998

Messrs. Peter E. Smith, Bradden N. Smith, Kevin C. Eleazer
P.O. Box 59
Southampton, Long Island, New York 11969

Dear Sirs:

The Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR) has completed an initial technical assistance (TA) review under sections 83.10(b) and (c) of the acknowledgment regulations, 25 CFR Part 83, of the Shinnecock Indian Tribe of New York's petition for Federal acknowledgment as an Indian tribe.

The letter of intent to petition received by the Assistant Secretary - Indian Affairs (AS-IA) in 1978 was on behalf of the "Shinnecock Tribe." The resolution certifying the documented petition was on behalf of the "Shinnecock Indian Tribe of New York." However, the letterhead upon which this September 24, 1998, resolution was printed read as follows: "Shinnecock Nation of Indians." In his letter dated September 25, 1998, your attorney, Mr. Mark C. Tilden of the Native American Rights Fund (NARF) listed your group as the "Shinnecock Indian Tribe of New York." However, in his letter dated November 23, 1998, your attorney named your group as the "Shinnecock Nation of New York."

Please clarify for the BIA the official, legal, formal, name of your petitioning group. This is important, since we need verification that the organization which submitted the documented petition is the same organization that submitted the letter of intent. There have been recent instances in which groups have separated from an original petitioner, adopted similar names, and sought to petition under the original letter of intent.

This TA letter is issued under section 83.10(c). It describes obvious deficiencies or significant omissions apparent in the documented petition submitted by the Shinnecock Indian Tribe of New York. Your documented petition, accompanied by a letter dated September 25, 1998, signed by Mark C. Tilden, was received by the BIA on September 25, 1998. An accompanying resolution dated September 24, 1998, signed by the trustees of the Shinnecock Indian Tribe of New York, certified "as official the attached documented petition for acknowledgment . . ." Mr. Tilden's letter stated:

We are asking you to conduct a preliminary review of the petition under §83.10(b) to determine if it contains any obvious deficiency or significant omission. And to

allow the Tribe under §83.10(b) an opportunity to submit additional information or to clarify its petition to remedy any obvious deficiency or significant omission (Tilden to Gover 9/25/1998).

A second letter from Mark C. Tilden, dated October 6, 1998, stated: "I am sending you a membership role [*sic*] for the Shinnecock Indian Tribe of New York, and a resolution certifying the membership roll." The roll was not included in the copy of the letter received by the BAR at the BIA. Mr. Tilden sent a second hard copy of the membership list, printed in two parts, under cover letter dated November 23, 1998, received by BAR on November 30, 1998.

The Federal Government acknowledgment regulations provide this TA review to ensure that your case is not rejected because of technical problems you may have putting together your petition. The goal is to clarify your group's status based on the historical and genealogical merits of your case, not on your ability to deal with bureaucratic requirements. After reading this TA review, your group may withdraw your petition for further work or submit additional information and/or clarification.

General comments about your petition

The Shinnecock Tribe of New York submission consists of five black three-ring binders, the pages printed on one side, and a hard copy of the group's membership list, printed in two parts. A total of approximately 3,000 pages were submitted. We are including for your reference an inventory of the contents of the submission. The first binder was labeled "Book 1 of 1." The remaining binders were labeled "2 of 5," "3 of 5," "4 of 5," and "5 of 5." Unless you notify the BIA to the contrary, we will assume that the first notebook, containing the narrative, should have been labeled "Book 1 of 5." There were duplicate copies of several documents (see enclosed inventory of the submission), while only selected pages of the New York laws in Appendix I, Book 2 of 5, pertained to the Shinnecock.

Our review indicates that there are significant omissions in your petition in criteria 83.7(b), 83.7(c), 83.7(d), and 83.7(e). For this reason, we recommend that you review the acknowledgment criteria 25 CFR 83.7 (b)-(e) carefully and direct your additional research toward providing the evidence that will demonstrate that your group meets each criterion.

Your petition presents a chronological narrative of your case, referring section-by-section to each criterion, 83.7(a) through 83.7(g). The narrative also discusses issues and interpretations of the evidence to some extent. However, your submission does not deal adequately with the critical issue of what your ancestors have done with one another as a tribe since first sustained contact with non-Indians, and whether there was a bilateral political relationship between the named leaders and the members at various time periods. If you study the BIA reports and the proposed and final determinations, you will see that the regulations require petitioners to demonstrate that their ancestors, who are named and located and discussed in documents, were "in tribal

relations,” which is a term that has been used by the Government to indicate that a group of Indians have continued to interact socially and politically with one another and to act together on behalf of their tribe. Your petition provides extensive documentation concerning the lands of the Shinnecock reservation and the litigation which has arisen concerning those lands. However, it provides much less documentation concerning the people who have lived on those lands since first sustained contact with non-Indians in the 1640's.

Specific comments about criteria (a) through (g)

It is important that you review the Federal Government acknowledgment criteria 25 CFR 83.7 (b)-(e), and the guidelines issued by the BIA, carefully. You should direct your additional research toward providing the evidence that will demonstrate that your group meets each criterion. Below is a discussion of the specific criteria.

Criterion 83.7 (a): External Identification of the Group an American Indian Entity on a Substantially Continuous Basis since 1900

This criterion requires proof of the external identification of your group as an American Indian entity since 1900. The material you have submitted, particularly the data in Book 4 of 5 and Book 5 of 5, is adequate for the AS-IA to make an evaluation of your group under criterion 83.7(a).

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 you to show that the petitioning group has been a community from historical times until the present. The narrative statement in your petition concerning criterion 83.7(b) comprises, in its entirety, the following sentence:

The petitioner meets the criterion in 25 C.F.R. §83.7(b), community, under 25 C.F.R. §83.7(b)(2)(v), by using evidence described in 25 C.F.R. §83.7(c)(2), political authority (Shinnecock Petition 1998, 1 of 1:18).

At a minimum, the narrative statement under criterion 83.7(b) needs to explain which items of the data presented under 83.7(c)(2) you believe are pertinent to 83.7(b), and how you see them as applicable.

Apparently because of the above statement indicating that for criterion 83.7(b), you intend to rely entirely on showing a level of “sufficient evidence” under criterion 83.7(c) at all points in time,

the petition as submitted contains essentially no information concerning either the historical community of the Shinnecock since first sustained contact with non-Indians or the group's modern community.

The demographic summary of Shinnecock population which the narrative provided under criterion 83.7(e) (Shinnecock Petition 1998, 1 of 1:82-83), is valuable for criterion 83.7(b) also. However, without information defining the membership of the Shinnecock community through time since the 1640's, it is virtually impossible for us to determine if the members interacted in a community at any given point in time, and whether your group meets this criterion under the types of evidence enumerated in any subsection of criterion 83.7(b) other than 83.7(b)(2)(v). Thus, the material that you submitted is far short of the documentation needed by the BIA to begin to evaluate your petition under criterion 83.7(b) except under this one provision.

You may wish to consider whether you want to limit yourselves to provision 83.7(b)(2)(v), or whether you wish to submit additional data concerning both historical and modern community. To strengthen your petition, you will need to supply a much more detailed written narrative, with copies of documents, that supports your case for community, as outlined under the remaining portions of 25 CFR 83.7(b). Much of the material that you have already submitted under criterion 83.7(a) for the period since 1900 would be applicable to criterion 83.7(b) for the same time frame. You may wish to consider whether you have comparable material--newspaper articles, correspondence, etc.--from the 19th century.

If you choose to expand your submission under criterion 83.7(b), your task will be to show the history of your group by tracing the specific activities of the named individuals who were part of the group. The kinds of historical records which others have found especially useful in doing this task include: vital records that show your ancestors marrying one another, witnessing for each other, burying one another, and so forth; census records and land records that show your ancestors living near to one another, buying and inheriting land from each other, and so forth. For the modern period, other petitioners have submitted tribal records such as newsletters and correspondence files, photographs or videos showing the members of the tribe doing things together; transcripts, videos or tape recordings of oral histories and reminiscences which discuss your group's activities.

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 a demonstration that a petitioning group does now and has in the past exercised political influence over its membership. This means that there were in the past, and are now, leaders who have followers whom they influence, and who influence them in significant ways. The majority of the citations in your petition narrative under criterion 83.7(c) for the pre-1792 period are to secondary sources (e.g. Kammen, Strong). While you state that trustees'

records extend from 1792 to the present (Shinnecock Petition 1998, 1 of 1:29), you submitted copies of tribal meetings minutes only since 1938 (Book 3 of 5).

The petition narrative contains a listing of elected officials from 1792 through 1835, for 1862, and from 1871 through the present. This is useful and valuable for an evaluation under criterion 83.7(c). Does the group's oral history and tradition contain any information concerning mid-19th century leadership for the period during which the written records are no longer extant? Does your group have information concerning how members emerged as leaders? For many petitioners political processes are most apparent during changes in leadership. Answers to questions such as the following would further our understanding of the political processes of your group. "How was the transition made?" "Did anyone compete for the position." "How did the membership line up behind the various candidates?" The narrative's description of the electoral processes (Shinnecock Petition 1998, 1 of 1:76) is very brief, and based upon field notes which the petition did not submit as part of its documentation.

Since you assert the activity of the trustees in assigning the land, "sanctioned and complied with by the tribe's membership," is "high evidence of the exercise of political authority by the tribe's membership" and that "the allotment, lease, or rental of tribal lands are the principal means by which bilateral political activity and leadership are demonstrated" (Shinnecock Petition 1998, 1 of 1:30), you need to submit photocopies (not just the typed excerpts contained in the narrative on pages 37-62 of your narrative) of the transactions summarized on pages 31-36 of the narrative. We take note of your information that the Third Book of Records which contained the minutes of the trustees' meetings from 1836 through 1879, has been missing since the 1950's (Shinnecock Petition 1991, 1 of 1:29). However, we must point out that in the absence of that source of documentation, it will be necessary for you to find other material showing Shinnecock political activities in the mid 19th century, particularly in light of your expressed intent to use the carry-over provisions from criterion 83.7(c) to criterion 83.7(b) as your way of demonstrating the existence of historical community. It would also be helpful if your narrative explained why there were so many documents in 1793-1794, then one in 1815, and apparently no more through 1835. Please provide the data from 1880 through the present.

The documents contained in notebooks 4 of 5 and 5 of 5 indicate that the Shinnecock were approached about organizing under the Indian Reorganization Act (IRA) after 1934. You may wish to include an analysis of this episode in your narrative, including information on the response of the leaders, the response of the membership, and reasons for the decisions that were reached. In general, try to describe in detail how your group has, in the past, responded to important issues in addition to the defense of its lands. Be very specific in describing the issues involved and how the group managed the issue. The materials submitted for criterion 83.7(a) indicate that the Shinnecock conducted numerous group activities, such as powwows. Do you have internal documentation which provides information on how these group events have been organized and carried out? What happened at these events? Who attended? Do you have any sign-in lists, minutes, documents or photographs to demonstrate who managed them? How were decisions made and what were the decisions? Did disagreements arise? How were conflicts resolved?

You must show that there is a political connection between the membership and leaders which exists broadly among the members. It has sometimes been phrased that not only must there be leaders, but there must also be followers. This policy has withstood several District Court challenges. On occasion, a small body of people carries out legal actions or makes agreements affecting the economic interests of a group, and the membership may be significantly affected without the slightest awareness or consent of those affected and without significant political processes occurring. A group which operates in this way, generally does not demonstrate evidence which would meet criterion 83.7(c).

Criterion 83.7(d): Governing Document

The submission does not contain copies of current or prior governing documents. Book 1 of 1, under Criterion 83.7(d), states that current governing procedures are covered under 83.7(c) (Shinnecock Petition 1998, 1 of 1:81). The coverage under 83.7(c) is a narrative which states that the "Shinnecock Council operates under a set of working by-laws that define its mission and responsibilities" (Shinnecock Petition 1998, 1 of 1:77). It describes the current activities of the trustees, but contains no copies of current or prior governing documents, enrollment ordinances, articles of incorporation, or other documentation for criterion 83.7(d).

This criterion illustrates the importance of tribal political status. The United States, in the Federal Government acknowledgment process, extends acknowledgment to political entities, not merely to the individuals, groups of unaffiliated individuals or families who have Indian heritage. The regulations, therefore, require that you submit your group's governing documents. This requirement is found at 25 C.F.R. 83.7(d):

A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

The document presented must be dated, signed, and certified to show that it has been passed by the group's governing body. Do any earlier governing documents exist? If so, they should be submitted. If your group is acknowledged this document will be used to organize your tribe and hold elections.

The narrative contains a one-paragraph description of membership process and criteria. Do you have any documentation concerning this process? Is it written? Is there an application form for membership. Is the consultation process between the Board of Trustees and the elders formal or informal? If there is a written procedure, please submit a copy. If there is no written procedure, please state this in your narrative. Please provide a blank copy of your application form, and indicate what "genealogical material" linking the applicant "to an identifiable tribal ancestor listed on the 1900 or 1910 federal census" is considered acceptable.

Criterion 83.7(e): Current Membership List

This criterion is designed to show that the members of a petitioning group descend from a historical Indian tribe, or from historical Indian tribes which combined and functioned as a single autonomous entity. The narrative states that, "the members of the Shinnecock Tribe in 1998 are all descendants of the members of the Shinnecock Tribe who appear on the 1900 and 1910 federal censuses" (Shinnecock Petition 1998, 1 of 1:84). Please submit copies of these censuses: the brief description as contained in the narrative is not adequate.

You also have not submitted the ancestry charts and individual history forms which would show the connection of your current members with the 1900 and 1910 Shinnecock listings on the Federal census. Mr. Tilden's October 6, 1998, letter stated: "I can send you computer disks containing the membership roll and the Roots IV genealogy material when you need it." Mr. Tilden's letter indicated that you use a computer program, Roots IV, to keep track of the genealogies. By providing the BIA with electronic copies of the ancestry files at this time, you can speed up the evaluation time considerably. If you prefer, you may submit hard-copy printouts of the ancestry charts. The guidelines provide information about how you may group nuclear and extended family lines to reduce the bulk. Although BAR requested the genealogical material, both in a meeting with you and by telephone, Mr. Tilden did not include it with his November 23, 1998, letter.

Because you have not submitted either copies of the 1900 and 1910 Federal censuses identifying Shinnecock Indians, or the ancestry charts which track your current membership to those ancestors, the BIA researchers will not be able to evaluate whether or not your group meets criterion 83.7(e). Your documented petition, as you have submitted it, is seriously deficient under criterion 83.7(e).

You have submitted your group's current membership list, formatted in accordance with the 25 CFR Part 83 regulations. However, the submission does not include either prior membership lists or any discussion of whether such prior lists existed. The regulations at 25 C.F.R. § 83.7(e)(2) read as follows:

The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists."

We cannot overemphasize the importance of a group's membership list. It defines the group, that is, those people who make up the community. If recognized, the list of members submitted for acknowledgment purposes will become the group's base roll for BIA purposes, and, as such, will be binding on the group for some time to come, except for minor corrections. Thus, it must be complete.

In evaluating other criteria such as 83.7(a), (b), and (c), the BIA evaluators will focus on the community defined in the membership list. For this reason, it is extremely important that the membership be defined accurately. Otherwise, the petitioner runs the risk of failing to meet other criteria because the group, as defined by its membership list, represents only a portion of a community or, conversely, includes a large number of people who are not demonstrably part of the community.

After you have responded adequately to this TA letter, you will be notified when the petition is being placed on active consideration. At that time, it will be appropriate to submit a supplemental list. The supplemental list should include those additions to the membership, such as new births, who are considered to be members, any individuals who were inadvertently omitted from the list submitted with the petition, and a note of those members on the original list who are deceased at the time the petition is placed on active consideration.

Your enrollment files should be consistent with your membership list. How you maintain your files for each member is your decision; however, an enrollment file should contain some application form which is signed in ink by the adult applicant, parent, legal parent (cases involving custody), legal representative, or legal guardian of minor or incompetent applicant. The documentation in the enrollment file should include, but not be limited to, clear legible records that are certified copies of birth, marriage, divorce, death, and any other legal document(s). Each generation must be documented. It should also contain information about when the member was accepted into membership and through what enrollment process.

Your files will be audited during the active consideration phase to make sure that the files are current, accurate, and consistent with the "certified" final roll before a Final Determination is made. You 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.

This regulated process must identify exactly those who descend from the historic tribe, and those who do not descend. The governing body of the petitioner may take action by either adoption, constitutional revision, membership ordinance, or removal of individuals who do not meet your own criteria for membership or who do not descend from the historical tribe.

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

Your statement in the petition (Shinnecock Petition 1991, 1 of 1:86) meets this criterion formally. It would be helpful if you would submit information concerning the data upon which it is based--perhaps, for instance, there is a section included on your membership application for the individual to state that the applicant for membership in the Shinnecock Indian Tribe of New York is not an enrolled member of a recognized Indian tribe. You do not need to submit such a statement for each member, but we advise you to submit at least a sample of the documentation used to verify the petition statement.

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.

You have included a formal statement to the effect that neither the Shinnecock Tribe nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship in the petition (Shinnecock Petition 1998, 1 of 1:87). This is sufficient to permit an evaluation under criterion 83.7(g).

Summary

We have pointed out to you in this letter that there are critical deficiencies in the petition as submitted. These critical deficiencies are in criteria 83.7 (b), (c), (d) and (e). The problems under criterion 83.7(e), if not addressed, will allow the BIA to issue an expedited finding under §83.10 (e) before your petition is placed on active consideration. This would be unfortunate, because it appears from the narrative that you do have evidence of tribal descent for your membership: you have not, however, submitted it. Under §83.10(b), you now have an opportunity to submit additional information or to clarify your petition to remedy the significant omissions which we have identified in this technical assistance (TA) letter. Because of the very extensive number of excerpts contained in your petition already, rather than making many more photocopies, you may find it convenient simply to purchase a copy of the following book and submit it as part of your petition documentation: Gaynell Stone, ed., *The Shinnecock Indians: A Culture History*. Readings in Long Island Archaeology and Ethnohistory. Vol. 6. Lexington, Massachusetts: Ginn Custom Publishing.

The Government has not made a decision concerning your case. This TA review is not meant to be a preliminary determination of your case. It does not make conclusions that your petition will result in a positive or negative decision. In addition, you should not assume that positive conclusions are made about portions of the petition that are not discussed in this letter. Finally, do not presume that your group will meet the seven mandatory criteria by simply submitting additional data.

In order to make this letter as useful to you as possible, we are raising here any possible problems that we detected reviewing your submission. These are only obvious problems that were identified during this limited review. There may be others that may be revealed after a more in-depth review is conducted.

One purpose of this letter is to request information and/or documentation not currently in the petition which the BIA experts believe they need to evaluate your case when it is placed on active consideration. The BIA's research during the active consideration period is to verify an already completed petition. The staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent they have sometimes done in the past.

Petitioners have the option either of responding in part or in full to the TA review, of withdrawing the petition, or of requesting in writing that the AS-IA proceed with the active consideration of the documented petition using the materials already submitted. However, we will determine whether or not your petition is ready to be placed on active consideration. Sometimes, petitioners have not submitted required materials and it has been impossible to evaluate them. As detailed in this letter, critical documentation, including genealogies of your group's members, the governing documents, and documentation of tribal activity for much of the 19th century is missing.

If your group asks us to evaluate the new materials you submit in response to this review, we will do that. However, you must request a second TA letter in writing. When more materials are received from you, we will do one of the following: we may evaluate your petition and issue an expedited finding under §83.10(e) of the acknowledgment regulations; we may place your petition on the list of petitioners waiting for active consideration; and finally, we may request further documentation.

Once you have had an opportunity to review this letter thoroughly and share its contents with your researchers and general membership, we recommend that you contact the BIA staff so that we can make arrangements to provide additional TA to you and your researchers. We also invite you to visit the BAR's home page at: http://www.doi.gov/bia/ack_res.html. There, you will find an assortment of findings, guidelines, the regulations, and decisions which should be helpful in completing your petition. You may write the BIA, Branch of Acknowledgment and Research, 1849 C Street, N.W., MS 4603-MIB, Washington, D.C. 20240, or call (202) 208-3592.

Sincerely,



Acting

Director, Office of Tribal Services

Enclosure

cc: Mark C. Tilden, NARF
Interested/Informed Parties List

bcc Surname;Chron;400;Hold
VED/12/09/1998/Shinnecock disk/shincock.ta1\jkc:12/21/98