

Summary under the Criteria and Evidence
for the
Final Determination against Federal Acknowledgment
of the
Steilacoom Tribe of Indians

Prepared in response to a petition submitted to the
Assistant Secretary - Indian Affairs for Federal
acknowledgment that this group is an Indian tribe.

Date petition denied: MAR 12 2008

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Carl J. Artman
Assistant Secretary - Indian Affairs

Summary under the Criteria and Evidence
for the Final Determination of the
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INTRODUCTION

The Office of the Assistant Secretary-Indian Affairs (AS-IA) within the Department of the Interior (Department) issues this final determination (FD) in response to the petition received from a group known as the Steilacoom Tribe of Indians (STI), located in the town of Steilacoom, Washington. The STI petitioned for Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*.

The acknowledgment regulations, 25 CFR Part 83, establish the procedures by which groups may seek Federal acknowledgment as Indian tribes entitled to a government-to-government relationship with the United States. To be entitled to such a relationship, the petitioner must submit documentary evidence that the group meets each of the seven mandatory criteria set forth in section 83.7 of the regulations. The Department shall acknowledge the existence of the petitioner as an Indian tribe when it determines that the group satisfies all of the criteria in 83.7(a-g). The Office of Federal Acknowledgment (OFA), within the Office of the AS-IA, has the responsibility to review, analyze, and evaluate the petition. This FD concludes that the petitioner meets three of the seven mandatory criteria; however, it does not meet the other four mandatory criteria. Therefore, the STI is not an American Indian tribe within the meaning of Federal law.

The Department bases this FD upon all the available evidence in the record that the STI, the federally recognized Puyallup Tribe of the Puyallup Reservation, and the federally recognized Nisqually Indian Tribe of the Nisqually Reservation submitted, together with information that OFA researchers gathered for purposes of verification and evaluation. Most notably, this FD considers the material submitted during the comment and response periods that followed the Department's issuance of the Proposed Finding (PF) on January 14, 2000. The FD also considers the evidence, arguments, and conclusions discussed in the PF; therefore, this FD report should be read together with the PF.

After the publication of the FD notice, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures specified in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the notice of the FD is published in the Federal Register. The FD will become effective as

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provided in the regulations 90 days from the publication unless the IBIA receives a request for reconsideration within that time frame.

Summary of the Proposed Finding

The STI claims to have descended as a group from the historical Steilacoom Indians that occupied the territory north of the Nisqually River up to Point Defiance in the western part of the state of Washington. The Hudson's Bay Company founded Fort Nisqually in the 1830's, and the STI claims that its Steilacoom ancestors worked at the fort for over two decades. The STI claims its ancestors signed the Medicine Creek Treaty (10 Stat. 1132) in 1854 and that its ancestors resided briefly on the reservations created by the treaty. The STI further contends that some of these Indians left the reservations and settled in "community pockets" in their traditional homelands. These Indians, the STI claims, are the "ancestors of the modern-day Steilacoom tribe" who have formed "an unbroken line of leadership and a continuous existence of community pockets within their traditional territory" (STL Preface and Introduction 1986.09.18, v-vi).

The PF found that over 90 percent of the 612 STI members documented that they are Indian descendants, but only three of them are documented descendants of persons described in 19th and early 20th century documents as Steilacoom Indians. The PF found that STI members have Indian ancestry from other sources. One source of Indian ancestry is marriages between Indian women from various Indian tribes in the Pacific Northwest and employees of the Hudson's Bay Company. Just under two-thirds of the members descend from Indian women who were not Steilacoom and who, between 1839 and 1870, married employees of the Hudson's Bay Company who had come to the Pacific Northwest. The descendants of these marriages could not be classified as a métis, or mixed-blood, group descended from the historical Steilacoom band because the Indian wives came from a wide variety of tribal origins, including the Nisqually, Puyallup, Cowlitz, S'Klallam, Chimacum, Quinault, Duwamish, Skokomish, Yakima, and Snohomish Indian tribes. Furthermore, most of these women, after marrying, resided with their non-Indian husbands in non-Indian neighborhoods. A second source of Indian ancestry is descent from Canadian Indian tribes through Red River métis families from Manitoba, Canada, who settled in Washington and Oregon between 1844 and 1855. The petition claimed that these immigrants were adopted, sometimes by intermarriage, into a continuously existing Steilacoom community during the second half of the 19th century. However, the evidence in the record shows that the Red River immigrants married into families of the non-Steilacoom Indians or married the Hudson's Bay Company people described above.

The evidence in the record did not demonstrate that the STI maintained a community from historical times to the present, or that there was a group that maintained political influence or authority over its members. Even after the STI formally organized in 1974, there was not significant social interaction extending beyond individual family lines to members of the broader group, and STI political activities did not show a bilateral relationship between the leadership and the members.

Administrative History of the Petition before the Proposed Finding

The STI submitted a documented petition for Federal acknowledgment to the Department on August 28, 1974. On July 18, 1975, the Department received a petition from the Office of the President that the STI had originally sent to the President of the United States. However, the Department did not evaluate this petition because the Department was in the process of standardizing the procedures by which it handled requests for Federal acknowledgment. In 1978 the Department established regulations to process acknowledgment decisions on a uniform basis. The Department returned the 1975 petition to the STI in order to provide the STI an opportunity to revise the petition so that it would better address the new regulations.

On October 27, 1986, the STI submitted a “preliminary draft” of its revised petition, and sent further revisions in November 1986 and August 1987. In accordance with the acknowledgment regulations, the Department sent an obvious deficiency (OD) letter to the petitioner on November 30, 1987, which addressed shortcomings in the petition. The petitioner responded to the OD letter on March 24, 1994. After reviewing this response, the Department placed the STI on active consideration on July 11, 1995. The Department accepted supplemental submissions from the petitioner in 1995, 1996, 1997, and 1998. In 1996 and 1998, while the petition was on active consideration, two neighboring federally recognized Indian tribes—the Puyallup Tribe of the Puyallup Reservation and the Nisqually Indian Tribe of the Nisqually Reservation—submitted third-party comments opposing acknowledgment of the STI.

The Department issued a PF on January 14, 2000, which concluded that the STI did not meet four of the seven mandatory criteria—criteria 83.7(a), (b), (c), and (e). Therefore, the Department proposed that the petitioner was not an Indian tribe within the meaning of Federal law. (See the PF for a detailed administrative history up to January 2000.)

Administrative History of the Petition since the Proposed Finding

The Department published a notice of the PF in the Federal Register on February 7, 2000 (65 FR 5880). The Federal Register notice stated that its publication initiated a 180-day comment period during which “any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon.” The notice also stated that the STI would have an additional 60 days to respond to any third-party comments.

On May 10, 2000, the Department received a letter from the STI’s legal counsel. This letter briefly suggested a brief work plan for responding to the PF and expressed optimism that, if the Department granted an extension of time, the STI could present additional material to the Department that would remedy deficiencies found in the PF. The letter requested that the Department extend the comment period 320 days, until June 19, 2001.

The initial comment period ended on August 4, 2000. In response to the petitioner’s request, the Department extended the closing of the comment period to February 4, 2001. On March 15 and 16, 2001, at the petitioner’s request, the Department conducted informal technical assistance (TA) meetings with the petitioner, and on March 17, 2001, the petitioner submitted a written

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request to extend the comment period an additional 180 days to August 5, 2001. On March 28, 2001, and April 10, 2001, the petitioner requested further TA. In particular, the petitioner requested that the Department review the PF's analysis under criterion 83.7(b) for the period from the 1950's to the present. Due to workload and resource issues, the Department did not immediately respond to these TA requests or to the petitioner's request for an additional extension. Instead, on May 10, 2002, the Department decided to reopen and extend the comment period to August 5, 2002. The Department found good cause to reopen and extend the comment period because the STI proposed a work plan, because the Department had been unable to conduct the requested TA, and because the Department did not provide a timely response to the petitioner's request for an extension.

On June 4, 2002, the STI again requested that the Department reconsider its analysis under criterion 83.7(b) for the period since the 1950's and again requested additional TA on this issue. However, due to workload considerations and negotiated schedules approved by the courts, the Department was unable to provide the requested TA before the comment period closed on August 5, 2002. Consequently, on September 6, 2002, the Department elected to reopen and extend the comment period to February 1, 2003. During this extension, the Department provided the requested TA to the STI via the telephone (Roth to Fleming 12/17/2002; Fleming to Ortez 3/27/2007).

In January 2005, the Department discussed the status of the case with the STI's legal counsel. The petitioner's legal counsel agreed that the STI would provide a written request from its governing body requesting that the Department reopen the comment period to allow additional time to prepare its response to the PF. However, the STI did not send such a written request to the Department, despite several promptings by the Department.

On March 27, 2007, the Department sent a letter to the STI outlining a plan to bring the regulatory comment and response periods to a close and again providing the requested TA. This letter reviewed the rationales for repeatedly reopening and extending the comment period and noted that other than a specific question regarding a particular form of evidence under 83.7(b), the Department had not received any comments on the PF from the STI during the extended comment periods. The Department stated that it would reopen and extend the comment period for 90 days to allow the STI and other interested parties to file comments. The Department also noted that this comment period could be extended further, for a short period of time, if the petitioner filed a detailed description of a work plan together with a description of the work it had already completed, and demonstrated good cause for any further extension. To receive consideration for another extension of the comment period, the STI had to mail its request by June 14, 2007, within 70 days of the reopening of the comment period; otherwise, the comment period would close on July 6, 2007. This letter also included a discussion of the TA provided to the STI in face-to-face meetings and via telephone conversations held in March 2001, December 2002, and January 2005. The Department enclosed copies of comments submitted by third parties, and explained that the STI would have an additional 60 days after the comment period to respond to third party comments.

On March 30, 2007, the Department mailed additional materials to the STI. The Federal acknowledgment regulations require the AS-IA to "make available to the petitioner in a timely

fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law” (25 CFR 83.10(j)(1)). The letter’s enclosures satisfied this regulatory requirement, with the exception of several interview transcripts; the Department later mailed these transcripts on May 8, 2007. Though not required to do so by the regulations, the Department also provided the STI with a complete copy of all the materials submitted by the STI to date.

On June 25, 2007, the Department received a letter from the STI requesting to extend the comment period by an additional 180 to 300 days. The letter’s June 20, 2007, postmark was six days later than the June 14, 2007, deadline that the Department specified in its March 27 letter earlier that year. Furthermore, the petitioner’s letter contained neither a work plan nor a description of work completed, both of which the Department stated would be necessary for an additional extension. Consequently, in a June 27, 2007, letter, the Department declined to extend the comment period again. The letter notified the STI that the comment period would end on July 6, 2007. After the final comment period closed, during which the Department received no comments, the regulatory 60-day response period began. On September 4, 2007, the response period closed, without the Department having received a response from the petitioner.

During both the original comment period and the extended comment periods, the STI did not submit materials that addressed the many deficiencies noted in the PF. The STI did, however, comment on the PF’s analysis for 83.7(b) for the period from after the 1950’s. Overall, given the petition’s significant deficiencies in meeting criteria 83.7(a), (b), (c), and (e), the STI’s comments were limited and did not substantively address the PF.

On November 2, 2007, the Department sent a consultation letter to the STI and several interested and third parties. The letter informed them that in mid-November, the Department planned to begin evaluating the evidence for the FD on the STI petition. None of the parties raised an objection or responded in any other way to the Department’s intention to begin preparation of the FD. However, due to workload considerations, the Department was not able to begin work in November. On January 7, 2008, the Department sent a letter to the STI and interested parties stating that it would begin preparation of the FD on January 15, 2008, and complete it on or by March 15, 2008.¹

During the comment period on the PF, the Department received comments from the Puyallup and Nisqually Indian tribes. On July 14, 2000, the Department received a letter dated July 7, 2000, signed by both the Nisqually and the Puyallup Indian tribes. The Nisqually and the Puyallup Indian tribes supported the Department’s “findings and conclusions” regarding the STI’s acknowledgment petition. The letter made several statements disputing the veracity of the STI petition, and the letter emphasized the Nisqually and Puyallup Indian tribes’ belief that the historical Steilacoom Indian tribe was either “enrolled at Nisqually or Puyallup” or “absorbed into white society” (Simmons and Dillon 7/7/2000). On June 20, 2002, the Department received a letter from the Puyallup Indian tribe protesting the recent reopening of the comment period without the petitioner having presented any new evidence. The letter also asserted that the

¹ The Department received two letters from the STI on January 23, 2008 (one page in length), and February 8, 2008 (two pages in length). According to 25 CFR 83.10(l)(1), “[u]nsolicited comments submitted after the close of the response period . . . will not be considered in preparation of the final determination.”

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Puyallup and Nisqually Indian tribes were the only “legitimate successors to the historical Steilacoom Tribe.” The STI did not respond to these comments at any point during the comment and response periods.

The task for the FD is to review the STI’s and third party comments on the PF and evaluate them—together with the PF and the evidence in the record—with respect to the acknowledgment criteria. The Puyallup and Nisqually comments claim that the STI petition contains many “misstatements” of “historical fact,” stating that “the petitioner has systematically manipulated the historical record with several readily identifiable techniques designed to enhance its own history at the expense of the truth” (Simmons and Dillon 7/7/2000). The FD will focus on the Puyallup and Nisqually comments as they pertain to the acknowledgment criteria. The PF and the FD do not present any conclusions concerning successorship in interest to a particular treaty or other rights, nor any conclusions regarding any treaty right belonging to the federally recognized Puyallup and Nisqually Indian tribes.

For further explanation of the Department’s decision against Federal acknowledgment of the STI, consult the PF and its accompanying technical report.

SUMMARY EVALUATION UNDER THE CRITERIA

The following summary under the criteria for the FD is the Department's evaluation of all the evidence in the administrative record to date. This FD concludes that the available evidence meets three of the seven mandatory criteria: criteria 83.7(d), 83.7(f), and 83.7(g). However, the evidence is not sufficient to satisfy the other four: criteria 83.7(a), (b), (c), and (e). The PF concluded, based on the available evidence, that the petitioner did not meet these same four criteria. This FD affirms the PF's conclusions, and the Department finds that the STI is not an Indian tribe within the meaning of Federal law. In accordance with 25 CFR 83.10(m), the STI petition for Federal acknowledgment is denied because it did not meet all of the seven mandatory criteria set forth in the acknowledgment regulations.

Criterion 83.7(a) requires that

**the petitioner has been identified as an American Indian entity
on a substantially continuous basis since 1900.**

Summary of the Proposed Finding

The PF concluded that the evidence in the record did not demonstrate that external observers had identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. Consequently, the petitioner did not meet criterion 83.7(a). More specifically, the PF found that only after 1974 did external observers identify the petitioning group as an American Indian entity on a substantially continuous basis. (See the Steilacoom PF, 1-7, and its technical report for descriptions of these identifications.)

The task for the petitioner during the comment period with regard to criterion 83.7(a), therefore, was to submit evidence of external observers identifying the petitioner or an antecedent group as an American Indian entity on a substantially continuous basis from 1900 to 1973.

Summary of the Comments on the Proposed Finding

The Petitioner's Comments: The Department received no comments from the petitioner about the PF's conclusions on criterion 83.7(a).

Third Party Comments: The July 7, 2000, letter from the Nisqually and Puyallup Indian tribes stated that the Department "correctly denied the petitioner's request for recognition" because it "fails to meet the criteria for such recognition." Regarding criterion 83.7(a), the letter states that "the only organization identified [since 1900] was formed for the purpose of asserting claims against the federal government," and that "[n]o other entity was proven to have existed" (Simmons and Dillon 7/7/2000).

Analysis of the Comments for the Final Determination

The petitioner did not submit new evidence or arguments that addressed criterion 83.7(a), and thus provided nothing new for the FD to analyze. The assertion by the Puyallup and Nisqually Indian tribes that “[n]o other entity was proven to have existed” was not a conclusion that the PF reached under criterion 83.7(a). Criterion 83.7(a) only evaluates whether external observers had identified the petitioner as an American Indian entity on a substantially continuous basis since 1900, not whether any “other entity was proven to have existed.”

Final Determination’s Conclusions on Criterion 83.7(a)

The PF concluded, based on the available evidence, that external observers identified the petitioner as an American Indian entity on a substantially continuous basis since 1974, but not from 1900 to 1973. During the comment period, the Department received no additional evidence relating to this criterion. Based on the available evidence, the FD affirms the PF’s findings and concludes that there is sufficient evidence of external identifications of the petitioner as an American Indian entity since 1974, but that external observers did not identify the petitioner or an antecedent group as an American Indian entity on a substantially continuous basis before 1974. Because available evidence is not sufficient to demonstrate substantially continuous identification of the petitioner as an American Indian entity from 1900 to the present, the petitioner does not satisfy criterion 83.7(a).

Criterion 83.7(b) requires that

**a predominant portion of the petitioning group
comprises a distinct community and has existed as a
community from historical times until the present.**

Summary of the Proposed Finding

The PF concluded that the petitioner did not satisfy criterion 83.7(b) at any point from historical times until the present. In general, the PF concluded that the evidence required to satisfy the criterion was either absent from the record or too limited in nature.

The PF evaluated the STI’s claim that its ancestors resided in identifiable residential “pockets” throughout the drainage areas of Chambers Creek and the Puyallup and Nisqually Rivers from the post-treaty period to approximately World War I. The PF did not concur with this claim. Instead, the PF found that each “pocket” described by the STI consisted of an extended family or two or three closely related nuclear family households. They did not reside in the same area as other STI extended family lines, and the areas in which they lived were not identified as Steilacoom settlements at the time (Steilacoom PF, 8). Furthermore, census records “provided no indication that during this time period members of the individual ancestral family lines were living in a community, or several smaller communities, within which it could be presumed that they were interacting” (Steilacoom PF Technical Report, 113; see also 86-99). The PF found

that there was “little direct or circumstantial evidence of social relationships connecting individual members of the STI ancestral family lines with one another” (Steilacoom PF, 9), meaning that ancestral lines were not networked among “pockets.” The PF noted that throughout most of the 20th century, there was limited evidence of social interactions among STI ancestors, and that the interaction that did exist tended to be *intrafamily* interaction, rather than interactions among members of a larger group or interactions based on tribal membership. Even after the formation of the STI organization in 1974, there was not broad, informal social interaction among STI members as a whole that would satisfy the criterion.

The PF concluded that the petitioner did not satisfy criterion 83.7(b) at any point in time, remarking that the “current STI membership did not, historically, constitute either a single tribe or group whose history could be traced through time and place or an amalgamated tribe or group whose history could be traced through time and place” (Steilacoom PF, 9). STI did not provide sufficient evidence to demonstrate that it was a community as required by the acknowledgment regulations. (For more information, see the Steilacoom PF, 7-13, and the accompanying technical report.)

Summary of the Comments on the Proposed Finding

The Petitioner’s Comments: The petitioner commented on the PF’s conclusions directed to criterion 83.7(b) with regard to only one issue—the claimed persistence of a named, collective Indian identity over a 50-year period as described in 83.7(b)(1)(viii). The petitioner first raised this issue during the March 15-16, 2001, informal technical assistance meeting in Washington, D.C. The petitioner raised this issue again in letters the Department received on April 2, 2001, April 10, 2001, and June 4, 2002. The Department responded with over-the-phone technical assistance in December 2002 (Roth to Fleming 12/17/2002), and repeated this advice in conversations with the petitioner’s legal counsel in January 2005. The Department sent the petitioner a written explanation on March 27, 2007. Although the petitioner raised this issue regarding 83.7(b)(1)(viii) on several occasions, the petitioner did not provide additional evidence to strengthen its evaluation under criterion 83.7(b). The petitioner did not comment on any other aspect of the PF’s conclusions under criterion 83.7(b), nor did it present any evidence or arguments to demonstrate the existence of community during the 19th century or the first half of the 20th century.

Commenting on this criterion, the STI’s legal counsel inquired “whether the tribe had been given adequate consideration under Criterion (b)(1)(viii) concerning continuous tribal existence for 50 years” (Whittlesey to Fleming 4/10/2001). The STI’s legal counsel argued that, under 83.7(b)(1)(viii), the PF had implicitly acknowledged a “continuum of Steilacoom tribal existence” from “1950-1951” to “2000-2001.”

To support this argument, the STI’s legal counsel presented several excerpts of sentences that appeared in the PF. These excerpts pertained to discussion of different lists, organizations, and entities that were related to the petitioner between the 1950’s and the 1990’s.² (See Whittlesey to

² Three of the excerpts appeared in the PF’s “Summary Under the Criteria” section—two of these sentences came from the section that evaluated the evidence under criterion 83.7(b), and the other sentence came from the section that evaluated the evidence under criterion 83.7(a). The two other excerpted sentences came from the PF’s technical

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Fleming 4/10/2001, Marshall to Fleming 4/2/2001, and Whittlesey to Fleming 6/4/2002 with Thompson attachment.)

Third Party Comments: The Nisqually and Puyallup Indian tribes submitted comments in their July 7, 2000, letter stating that the Department “correctly denied the petitioner’s request for recognition” because the STI “fails to meet the criteria for such recognition.” Regarding criterion 83.7(b), the letter states that “[t]he ancestors claimed by the petitioner did not exist as a distinct community,” that “[m]any were Indian women who married white men,” and that “[o]thers were immigrant Canadian Indians” (Simmons and Dillon 7/7/2000).

Analysis of the Comments for the Final Determination

The petitioner did not submit any additional evidence that addressed criterion 83.7(b). However, the STI’s legal counsel suggested that the petitioner should receive further consideration under criterion 83.7(b)(1)(viii) “concerning continuous tribal existence for 50 years” based on the several sentences from the PF (Whittlesey to Fleming 4/10/2001).

This request brings several points to bear. First, this comment conflates criterion 83.7(b) with “continuous tribal existence.” Criterion 83.7(b) applies to the evaluation of *community*; the “tribal existence” of a petitioner is evaluated by a combination of the acknowledgment criteria, not by criterion 83.7(b) alone.

Second, criterion 83.7(b) lists several examples of forms of evidence that may be used to help satisfy the criterion. One of those examples is the form of evidence listed under 83.7(b)(1)(viii), “[t]he persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.” The regulations state that this as an example of evidence which, if used, must be used in *combination* with other evidence of community during a given time period to satisfy the criterion (25 CFR 83.7(b)(1)). The petitioner submitted no additional evidence with which any evidence under 83.7(b)(1)(viii) could be combined, nor did the petitioner explain further how evidence already in the record might be used in combination with their claims under 83.7(b)(1)(viii).

Third, whereas the PF discussed several Steilacoom-related organizations—such as a claims organization from the 1950’s and the STI organization that first requested Federal acknowledgment in the 1970’s—it is important to note that 83.7(b)(1)(viii) focuses on the persistence of a *named, collective Indian identity* continuously over a period of more than 50 years, not the existence of an organization. In reviewing the STI organization that formed in 1974, the PF found that the “identity asserted by the formal organization of a petitioner is entitled to weight as representing the view of the membership. However, the existence of a formal organization is not in itself sufficient to show collective group identity” (Steilacoom PF, 12). The Department’s March 27, 2007, letter to the petitioner emphasized this point and encouraged the petitioner to discuss how its evidence “demonstrates that the group collectively identified itself as an Indian entity for a period of 50 years and longer, taking into account the

report section, a section that summarized and discussed much of the evidence but did not explicitly evaluate that material with respect to the criteria.

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analyses in the PF and submitting any additional evidence” (Fleming to Ortez 3/27/2007). The petitioner did not respond to this letter and did not provide any additional evidence or discussion.

In sum, the petitioner requested that the Department revisit its evaluation of the petitioner under 83.7(b)(1)(viii) from 1951 to the present. However, the petitioner based this request on a misunderstanding of criterion 83.7(b). The Department clarified this point of misunderstanding to the petitioner, but the petitioner did not respond to this clarification and did not submit any additional evidence or explanation that would have helped the petitioner satisfy criterion 83.7(b) from 1951 to the present—or during any other point in time. Nevertheless, the Department did revisit its evaluation from 1951 to the present.

The comments from the Puyallup and Nisqually Indian tribes support the PF’s conclusion that the petitioner did not satisfy criterion 83.7(b).

Final Determination’s Conclusions on Criterion 83.7(b)

The PF concluded, based on the available evidence, that a predominant portion of the petitioning group did not comprise a distinct community that has existed as a community from historical times until the present. During the comment period, the Department received several comments from the petitioner about the Department’s analysis under criterion 83.7(b) from 1951 to the present. The petitioner based these comments on a misunderstanding of criterion 83.7(b). The Department clarified this point of misunderstanding to the petitioner, but the STI did not respond to this clarification and did not submit any additional evidence or explanation that would have helped the petitioner satisfy criterion 83.7(b) from 1951 to the present. Furthermore, the petitioner did not submit any additional material that would have satisfied the criterion during any other point in time. Following additional review of the evidence under 83.7(b)(1)(viii), this FD confirms the conclusion of the PF that the existence of a formal organization is not itself sufficient to show collective group identity under 83.7(b)(1)(viii). The record provides substantial evidence that the petitioner does not meet criterion 83.7(b) and does not provide sufficient evidence that it does. Therefore, the FD concludes that the STI does not meet criterion 83.7(b).

Criterion 83.7(c) requires that

the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

Summary of the Proposed Finding

The PF found that the STI did not meet criterion 83.7(c) from historical times until the present. The PF stated:

Generally, because there was no identifiable entity in the later 19th and early 20th centuries that comprised the petitioner’s ancestral lines, there were no identifiable group leaders or governing bodies prior to 1925. Insofar as the petition mentioned individual 19th century Steilacoom Indians as leaders, there was no evidence that most STI ancestral families associated with them. Insofar as it . . . identified STI ancestors as leaders, there was no evidence that their influence extended beyond their own family line. (Steilacoom PF, 14)

The PF determined that evidence that could satisfy this criterion was either altogether absent or too limited in nature. Furthermore, some of the limited evidence of political leadership demonstrated that individuals exercised leadership only over a small number of members, not over significant portions of the group, as required by the regulations. Even after the STI incorporated in 1974, its “functions and activities were not of a type to show a significant bilateral political relationship between the leadership and the members” (Steilacoom PF, 18). The PF concluded that at no time from first sustained contact to the present did the evidence in the record show that the petitioner had maintained political influence or authority over its members as an autonomous entity. Therefore, it did not satisfy criterion 83.7(c). (For more information, see the Steilacoom PF, 13-19, and the accompanying technical report.)

Summary of the Comments on the Proposed Finding

The Petitioner’s Comments: The Department received no comments from the petitioner on the PF’s conclusions directed to criterion 83.7(c).

Third Party Comments: The July 7, 2000, letter from the Nisqually and Puyallup Indian tribes stated that the Department “correctly denied the petitioner’s request for recognition” because it “fails to meet the criteria for such recognition.” Regarding criterion 83.7(c), the letter states that “the lack of a 19th century organization, and the limited claims purposes of the 20th century group fail to meet this standard” (Simmons and Dillon 7/7/2000).

Analysis of the Comments for the Final Determination

The petitioner did not submit any new evidence or arguments that addressed criterion 83.7(c), and thus provided nothing new for the FD to analyze. The comments from the Puyallup and

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Nisqually Indian tribes support the PF's conclusion that the petitioner did not satisfy criterion 83.7(c).

Final Determination's Conclusions on Criterion 83.7(c)

The PF concluded, based on the available evidence, that the petitioner did not maintain political influence or authority over its members as an autonomous entity from historical times to the present. During the comment period, the Department received no additional evidence relating to this criterion. The record provides substantial evidence that the petitioner does not meet criterion 83.7(c) and does not provide sufficient evidence that it does. Therefore, the FD concludes STI does not meet criterion 83.7(c).

Criterion 83.7(d) requires

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.

Summary of the Proposed Finding

The STI provided copies of its current constitution and by-laws, which include a description of membership qualifications and enrollment procedures. The PF evaluated the STI's 1975 constitution, with membership requirements amended in 1986, as the STI's governing document (Steilacoom PF Technical Report, 184-185). The STI also provided copies of prior constitutions, from 1936 and 1963. The group provided a copy of its current governing document including its membership criteria; therefore, the PF concluded that the STI satisfied criterion 83.7(d).

Summary of the Comments on the Proposed Finding

The Department received no comments, from the STI or any other party, on the PF's conclusions under criterion 83.7(d).

Final Determination's Conclusions on Criterion 83.7(d)

The Department's PF concluded that the STI's 1975 constitution and 1986 membership amendment satisfied criterion 83.7(d). During the comment period, the Department received no additional evidence or arguments concerning the petitioner's governing documents. Therefore, because the STI provided a copy of its present governing document including its membership criteria, the FD affirms the PF's conclusion that the STI meets criterion 83.7(d).

Criterion 83.7(e) requires that

the petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

Summary of the Proposed Finding

The PF concluded that the STI did not meet the requirements of criterion 83.7(e). To satisfy this criterion, the petitioner must identify its current members, and it must provide evidence that those members descend from a historical Indian tribe. The PF concluded that the STI identified its current members, but that the petitioner did not document that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

The STI identified its members on several membership lists, most recently a 1995 membership list.³ The PF analyzed the STI’s 1995 membership list, noting that the record did not contain ancestry charts for 56 of the 612 individuals (9.2 percent) on the petitioner’s membership list, and that the PF could not determine their ancestry.

The PF noted that the other 556 members (90.8 percent) are all Indian descendants. However, the PF stated that only three members (0.5 percent) are documented descendants of persons who were described in 19th and early 20th century documents as Steilacoom Indians. The PF found that the petitioner’s members have Indian ancestry from other sources:

- One source of Indian ancestry is marriages between Indian women and men of the Hudson’s Bay Company. Just under two-thirds of these 556 members descend from Indian women who were not Steilacoom and who, between 1839 and 1870, married employees of the Hudson’s Bay Company who had come to the Pacific Northwest. A few of these men had some Canadian Indian ancestry, but the majority were non-Indians. The PF stated that the descendants of these marriages could not be classified as a métis, or mixed-blood, group descended from the historical Steilacoom band because the Indian wives came from a wide variety of tribal origins.⁴ Furthermore, most of these women, after marrying, resided with their non-Indian husbands in non-Indian neighborhoods.
- A second source of Indian ancestry is descent from Canadian Indian tribes through Red River métis families from Manitoba who settled in Washington and Oregon between 1844 and 1855. The petition claimed that these immigrants were adopted, sometimes by

³ See the Steilacoom PF Technical Report, 13, 183-188, for a discussion of the STI membership lists.

⁴ The PF noted that their children identified these ancestors as Indians from the Pacific Northwest, including “Nisqually, Puyallup, Cowlitz, Clallam [i.e., S’Klallam], Chimacum, Quinault, Duwamish, Skoko[m]ish, Yakima, and Snohomish” Indians (Steilacoom PF, 20; see also the Steilacoom PF technical report, 52-69, for further discussion).

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intermarriage, into a continuously existing Steilacoom community during the second half of the 19th century. However, the evidence in the record shows that the Red River immigrants married into the families of the non-Steilacoom Indians or married the Hudson's Bay Company employees described above.

The PF noted that although STI ancestral family lines can be documented to the mid-19th century, a significant portion of them were not associated with each other or with the Steilacoom claims organizations of the 1920's and 1930's. The PF concluded that "although the petitioner's membership consists of Indian descendants, it does not consist of 'individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity' as required by criterion 83.7(e)" (Steilacoom PF, 20-21). (For more information, see the Steilacoom PF, 13-19, and the accompanying technical report.)

Summary of the Comments on the Proposed Finding

The Petitioner's Comments: The Department received no comments from the STI on the PF's conclusions directed to criterion 83.7(e).

Third Party Comments: The July 7, 2000, letter from the Nisqually and Puyallup Indian tribes stated that the Department "correctly denied the petitioner's request for recognition" because it "fails to meet the criteria for such recognition." Regarding criterion 83.7(e), the letter states that the "petitioner has completely failed to establish that its members descend from the historical Steilacoom tribe" and that the "only legitimate successors to the historical Steilacoom Tribe are the present-day Puyallup and Nisqually Tribes" (Simmons and Dillon 7/7/2000).

Analysis of the Comments for the Final Determination

The STI did not submit any new arguments or evidence that addressed criterion 83.7(e), and therefore provided nothing new for the FD to analyze. The material that the Puyallup and Nisqually Indian tribes submitted supports the PF's conclusion that the petitioner did not meet criterion 83.7(e). This FD does not present any conclusions concerning successorship in interest to a particular treaty or other rights, nor any conclusions regarding any treaty rights belonging to the federally recognized Puyallup and Nisqually Indian tribes.

Final Determination's Conclusions on Criterion 83.7(e)

The PF concluded, based on the available evidence, that the petitioner did not satisfy criterion 83.7(e). During the comment period, the Department received no additional evidence demonstrating that the petitioner meets this criterion. The petitioner did not submit an updated membership list for the FD. Based on the available record, the FD concludes that only 3 of the petitioner's 612 members (0.5 percent) on its 1995 membership list have been documented as descendants of persons who were described in 19th and early 20th century documents as Steilacoom Indians. The record provides substantial evidence that the petitioner does not meet criterion 83.7(e) and does not provide sufficient evidence that it does. Therefore, the FD concludes that the petitioner does not meet criterion 83.7(e).

Criterion 83.7(f) requires that

the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.

Summary of the Proposed Finding

The PF noted that the petitioner's constitution prohibited dual enrollment with another Indian tribe since 1973, at which time several families left the group in order to maintain Cowlitz enrollment. The PF concluded that, based on the petitioner's 1995 membership list, the membership of the STI was composed principally of persons who were not members of any North American Indian tribe.

Summary of the Comments on the Proposed Finding

The Department received no comments, from the petitioner or any other party, on the PF's conclusions under criterion 83.7(f).

Analysis for the Final Determination

The Department further examined whether STI members were enrolled in other federally recognized Indian tribes when it evaluated the STI petition. The Department compared the 1995 STI membership list, which is the most recent list in the available record, with other tribal membership lists contemporary to it. The Department compared the STI membership list with rolls of federally recognized Indian tribes under the jurisdiction of the Bureau of Indian Affairs (BIA) Northwest Region, including the Jamestown S'Klallam Tribe of Washington; the Lower Elwha Tribal Community of the Lower Elwha Reservation; the Port Gamble Indian Community of the Port Gamble Reservation; the Makah Indian Tribe of the Makah Indian Reservation; the Nisqually Indian Tribe of the Nisqually Reservation; the Puyallup Tribe of the Puyallup Reservation; the Quinault Tribe of the Quinault Reservation; the Squaxin Island Tribe of the Squaxin Island Reservation; and the Cowlitz Indian Tribe.⁵ They are, based on geographical proximity and the PF's genealogical findings, the Indian tribes most likely to include STI members. These comparisons revealed one STI member enrolled in the Port Gamble Indian tribe, one enrolled in the Makah Indian tribe, and one enrolled in the Squaxin Island Indian tribe. The Department discovered that the father of one STI member was enrolled in the Lummi Tribe of the Lummi Reservation. The Department found that the names of 11 STI members appeared

⁵ The Department compared the STI membership list with the Cowlitz 1998 membership list submitted with the Cowlitz acknowledgment petition. When the Department evaluated the STI petition, these individuals did not qualify as being enrolled with a federally recognized Indian tribe because the Department did not acknowledge the Cowlitz Indian Tribe until 2002. However, because the Cowlitz Indian Tribe is now a federally recognized Indian tribe, the FD compares the STI membership list with the Cowlitz membership list. The FD uses the 1998 Cowlitz membership list for this comparison because it is reasonably contemporaneous with the 1995 STI membership list. The comparison presumes that any STI found on the 1998 Cowlitz Indian Tribe membership list are still members of the Cowlitz Indian Tribe.

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on the 1998 membership list submitted for the Cowlitz acknowledgment petition, which became the base roll for the federally recognized Cowlitz Indian Tribe when the Department acknowledged the Cowlitz Indian Tribe in 2002. The Department has located no evidence indicating that any of the remaining 598 members (97.7 percent of 612) of the STI are enrolled in any federally recognized Indian tribe.

Final Determination's Conclusions on Criterion 83.7(f)

A review of the membership rolls of those recognized Indian tribes in the Pacific Northwest that would most likely include the petitioner's members revealed that the STI membership is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the FD concludes that petitioner meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that

neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Summary of the Proposed Finding

Based on a review of the available documentation, the PF discovered no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. The PF concluded that the petitioner met the requirements of 83.7(g).

Summary of the Comments on the Proposed Finding

The Department received no comments, from the petitioner or any other party, on the PF's conclusions under criterion 83.7(g).

Final Determination's Conclusions on Criterion 83.7(g)

Based on the available evidence, the FD affirms the PF and concludes that the petitioner meets the requirements of criterion 83.7(g).