



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

23 AUG 2023

## *Certified Mail – Return Receipt*

Mr. Alan Russell  
PO Box 111  
Kent, Connecticut 06757

Dear Mr. Russell:

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary – Indian Affairs (AS–IA) has completed a Phase I technical assistance (TA) review of the documented petition for Petitioner #401, a group named the Schaghticoke Indian Tribe (SIT). The OFA issues this review in accordance with section 83.26 of Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83).<sup>1</sup> The petitioner’s documented petition consists of materials initially submitted on December 30, 2020, and supplemented on July 1, 2021. The AS–IA accepted these two submissions, combined, as SIT’s documented petition via letter dated February 1, 2022.

During the comment period following publication of notice of the documented petition in the *Federal Register*, OFA received comments from the following parties: the State of Connecticut, the Town of Kent, and the Kent School Corporation (joint comment); Richard Velky, et al.; and Robin Coggsell. The OFA has reviewed these comments and may discuss them in a Phase I Proposed Finding, insofar as they relate to the evaluation of the criteria under § 83.11(d) Governing document, § 83.11(e) Descent, § 83.11(f) Unique membership, or § 83.11(g) Congressional termination. Any comments related to criteria § 83.11(a) Indian entity identification, § 83.11(b) Community, or § 83.11(c) Political influence or authority would be evaluated in Phase II.

This Phase I TA review is to inform the petitioner of deficiencies that would prevent it from meeting criterion 83.11(e). Upon receiving this TA review, the petitioner must submit a written response that takes one of the following actions: (1) withdraws the documented petition for further preparation; (2) submits additional information and/or clarification; or (3) asks OFA to proceed with the review (§ 83.26(a)(1)(i)(A)-(C)). OFA recommends the SIT petitioner review the information provided below, as well as the third-party comments and the enclosed workpaper, in formulating its response. The regulations do not impose any limit on the amount of time that the petitioner may take to respond to technical assistance.<sup>2</sup>

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<sup>1</sup> SIT’s petition is being evaluated pursuant to 25 CFR Part 83. See Reconsidered Final Determination for the Schaghticoke Tribal Nation 63 (Oct. 11, 2005) (explaining that “[t]he SIT claim will be considered when its petition is complete and is reviewed under the acknowledgment regulations”).

<sup>2</sup> See Federal Acknowledgment of American Indian Tribes, 80 FR 37862, 37878 (July 1, 2015).

## PHASE I TECHNICAL ASSISTANCE REVIEW

### § 83.11(d) *Governing Document*

**The petitioner must provide:**

- (1) A copy of the entity’s present governing document, including its membership criteria; or**
- (2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.**

#### *Governing Document*

The petitioner submitted a version of its governing document in the materials received by OFA on December 30, 2020. A second version was included with the materials received by OFA on July 1, 2021. The July 2021 version includes some changes, such as the addition of council member names to the top of what is noted as page 3.

The petitioner submitted a third version of its governing document in its response to third-party comments, received by OFA on November 1, 2022. The new constitution differs from the previously submitted versions, particularly in the section titled “Article II: Designation of Family Clans.” While the previous versions required descent from “eight (8) Clans, each with a representative totem animal,”<sup>3</sup> the 2022 version states, “The Schaghticoke Indian Tribe shall continue to be comprised of members who are direct descendants from one or more of the historical Schaghticoke core families that trace their origins to the l [sic] Schaghticoke ancestors from at least 1884.”<sup>4</sup> The document details additional changes under the heading “Amendments to This Constitution: Updated September 2022.”<sup>5</sup>

#### *Membership Criteria*

The petitioner describes membership criteria in all three of its above-described governing documents (designated as “Article III” in all three versions). Notably, the section pertaining to the criteria for enrollment was changed in the 2022 version. Whereas the earlier versions state that “[a]ny person who can document their direct descent from one or more of the Tribe’s recognized Clans is entitled to be enrolled as a member of the Tribe,” the 2022 version states that

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<sup>3</sup> “Constitution of the Schaghticoke Indian Tribe,” received by OFA, Dec. 30, 2020, art. 2; and “Constitution of the Schaghticoke Indian Tribe,” received by OFA, Jul. 1, 2021, art. 2.

<sup>4</sup> “The Constitution of the Schaghticoke Indian Tribe,” updated Sep. 2022, art. 2; attached to “Comments of the Schaghticoke Indian Tribe in Response to the Petition Process for Schaghticoke Petition # 401,” received by OFA, Nov. 1, 2022.

<sup>5</sup> “The Constitution of the Schaghticoke Indian Tribe,” updated Sep. 2022, art. 2, and “Amendments to This Constitution: Updated September 2022.”

membership is based on “direct descent from one or more of the SIT recognized families.”<sup>6</sup> This change reflects the changes made in Article II, discussed above.

Membership is restricted in Section 4 of the governing document, which prohibits membership in “any other organized tribe, band, or Indian community, whether or not it is recognized by the Secretary of the Interior or the State of Connecticut, unless he or she has relinquished in writing his or her membership in such tribe, band, or community.”<sup>7</sup>

### *Summary*

This criterion requires a “copy of the entity’s present governing document, including its membership criteria,” which the petitioner provided. Therefore, this Phase I technical assistance review found no deficiencies that would prevent the petitioner from meeting the Governing Document criterion.

### **§ 83.11(e) Descent**

**The petitioner’s membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).**

#### *Petitioner’s Claim of Historical Indian Tribe*

In its narrative, the petitioner refers to a “Schaghticoke Indian Tribe” that “has been identified as a distinct, continuous community from historical times to present” and that “has resided in and around what is now Kent, Connecticut, for over hundreds of years.”<sup>8</sup> The narrative also discusses that there were several petitions relating to Schaghticoke Indians that were put forward in 1799, 1876, 1884, and 1892.<sup>9</sup> Further, the petitioner claims that “[t]he 400-acre reserve at Kent, Connecticut [,] is central to the tribe’s identity.”<sup>10</sup> It appears that a historical Schaghticoke Indian tribe existed in what is now Kent, Connecticut. However, the petitioner should clarify its claim regarding the identity of the historical Indian tribe and its members. Summary descriptions of a group from the 18th or 19th centuries that do not identify members of the group are insufficient for an evaluation of the descent criterion.

A petitioner must demonstrate that its members descend from a historical Indian tribe (or tribes that combined and functioned as a single entity). In evaluating a petition under criterion 83.11(e), OFA considers several issues. First, OFA considers whether a petitioner has identified a historical Indian tribe or tribes for the purpose of calculating descent under criterion 83.11(e).

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<sup>6</sup> “Constitution of the Schaghticoke Indian Tribe,” Dec. 30, 2020, art. 2; “Constitution of the Schaghticoke Indian Tribe,” Jul. 1, 2021, art. 2; and “Constitution of the Schaghticoke Indian Tribe,” updated Sep. 2022, art. 2.

<sup>7</sup> “Constitution of the Schaghticoke Indian Tribe,” updated Sep. 2022, art. 3 § 4.

<sup>8</sup> “Petition for Federal Acknowledgment of the Schaghticoke Indian Tribe (also known as SIT),” submitted c. Nov. 20, 2020, received by OFA, Dec. 30, 2020, Part I, p. 4 (hereafter cited as “SIT Petition, Nov. 20, 2020”).

<sup>9</sup> SIT Petition, Nov. 20, 2020, Part 2, p. 5-7.

<sup>10</sup> SIT Petition, Nov. 20, 2020, Part I, p. 4.

Second, OFA considers whether a petitioner has demonstrated that this claimed historical Indian tribe existed before 1900, using evidence listed in § 83.11(e)(1) and § 83.11(e)(2).

Documentation should show that the members of the claimed historical Indian tribe were in tribal relations or were otherwise a tribal entity. Third, OFA considers whether a petitioner has documented that its current members descend from individuals who belonged to that claimed historical Indian tribe.

Identification of a historical Indian tribe, demonstration of its existence, and documentation of the petitioner's descent from it are important because, as the preamble to the regulations state,

The Department recognizes descent from a political entity (tribe or tribes) as a basis from which evaluations of identification, community, and political influence/authority under criteria (a), (b), and (c) may reveal continuation of that political entity. Evidence sufficient to satisfy (e) is utilized as an approximation of tribal membership before 1900.<sup>11</sup>

That is, the petitioning entity evaluated under criteria (a) through (c) in Phase II should be a continuation of the historical entity (tribe or tribes) identified in Phase I, or an entity evolving from that entity. To that end, the petitioner's narrative and supporting documentation should identify ancestors of current petitioner members as members of a historical Indian tribe that existed prior to 1900.

The petition contains several references to documents that could potentially demonstrate the existence and the composition of a historical Indian tribe.<sup>12</sup> The petitioner may wish to review the Department's findings for former Petitioner #79, which provided a description and analysis of documents related to Schaghticoke Indians. In your response to this Phase I TA review, please keep in mind that the extent to which your claimed history is shared with former Petitioner #79 may be considered in the Department's evaluation of your case. If the petitioner chooses to submit additional information or clarification in response to the TA review, the petitioner should include a description of the historical Indian tribe from which it claims descent, identifying ancestors of current members who were in tribal relations with one another in that historical Indian tribe. The petitioner also should provide documentation supporting these claims. OFA would then evaluate the petitioner's claimed historical Indian tribe under the *Descent* criterion in the Phase I Proposed Finding. In addition, as noted above, the petitioner's claimed historical Indian tribe would form a basis for the Department's evaluation under the *Identification*, *Community*, and *Political Influence/Authority* criteria in Phase II, post-1900.

### *Descent*

The petitioner submitted member files for each of the 44 members on its certified current membership list. Each member file contains a "Statement Regarding Membership" with the member signature, a handwritten pedigree chart, and a birth certificate. Some member files also

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<sup>11</sup> 80 FR 37867.

<sup>12</sup> For example, the petitioner's narrative mentions a reservation at Kent, as well as several petitions relating to Schaghticoke Indians that were put forward in 1799, 1876, 1884, and 1892. These petitions might identify individuals whom the petitioner might claim belonged to a historical Indian tribe that it wishes the Department to use to calculate descent for the purposes of criterion (e); SIT Petition, Nov. 20, 2020, Part 2, p. 5-7.

include documentation of marriages, divorces, or other relevant documents. In several instances, the pedigree charts do not reflect the information provided on the accompanying birth certificates, with no explanations of these discrepancies.<sup>13</sup> Additionally, the petitioner has not provided sufficient supporting documentation for generation-to-generation relationships from current members to members of a claimed historical Indian tribe living prior to 1900, as discussed above.

### *Summary*

The deficiencies described above would prevent the petitioner from meeting the Descent criterion. Therefore, in response to this Phase I TA review, OFA recommends that the petitioner:

- a) submit further documentation identifying the membership of a claimed historical Indian tribe, living in tribal relations, as discussed above; and
- b) submit further documentation supporting the generation-to-generation relationships from current members to members of the claimed historical Indian tribe. Additionally, in those instances where information/identification in the submitted vital records conflicts with the pedigree charts, the petitioner should provide explanation to clarify the relationships and allow for verification of the claimed relationships.

For reference, successful past petitioners have satisfied criterion (e) by demonstrating that at least 80% of current members descend from the historical Indian tribe.

### **§ 83.11(f) *Unique Membership***

**The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe.**

The SIT petitioner's member files do not indicate that the petitioner's members are enrolled in a federally recognized Indian tribe. The petitioner's membership forms, submitted for each of the 44 members, include the following statement: "I attest that I am not a member of any other federally recognized tribe." Each of the forms has been signed and dated by the individual members. The Proposed Finding and Final Determination for the Schaghticoke Tribal Nation (former Petitioner #79)—with which SIT shares some history—similarly did not mention evidence of enrollment by significant numbers of descendants of historical Schaghticoke Indians in any federally recognized Indian Tribe.<sup>14</sup>

Moreover, the petitioner's governing document restricts membership to those descended from historical Schaghticoke Indians living in the area around Kent, Connecticut, and OFA found no federally recognized Indian tribes located in the immediate region of Kent, Connecticut.<sup>15</sup>

<sup>13</sup> See the enclosed workpaper for specific cases.

<sup>14</sup> Assistant Secretary – Indian Affairs, "Summary under the Criteria and Evidence for Proposed Finding, Schaghticoke Tribal Nation," approved Dec. 5, 2002, p. 34. *Also*, Principal Deputy Assistant Secretary – Indian Affairs, "Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Schaghticoke Tribal Nation," approved Jan. 29, 2004, p. 143.

<sup>15</sup> See <https://www.bia.gov/bia/ois/tribal-leaders-directory/> (providing a geographic directory of Tribal Leaders).

In sum, this Phase I TA review found no deficiencies that would prevent the petitioner from meeting the Unique Membership criterion.

**§ 83.11(g) *Congressional Termination***

**Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.**

Section 83.21(a)(2)(ii) states that the Department will conduct the research necessary to determine whether the petitioner meets the Congressional Termination Criterion (§ 83.11(g)).

The OFA conducted a review of congressional statutes via Congress.gov and did not find that the SIT petitioner or any Schaghticoke entity was the subject of congressional legislation expressly terminating or forbidding the Federal relationship.

Based on the materials submitted and OFA's research, the SIT petitioner does not appear to be a group or part of a group that is the subject of congressional legislation expressly terminating or forbidding the Federal relationship, and this Phase I TA review found no deficiencies that would prevent the petitioner from meeting the Congressional Termination criterion.

**SUMMARY**

The OFA has not yet made a Phase I finding concerning the SIT petitioner's documented petition. This TA review is not a Phase I proposed finding on criteria 83.11(d), (e), (f), and (g). Rather, the purpose of a Phase I TA review is to notify a petitioner of "any deficiencies that would prevent the petitioner" from meeting criteria (d) through (g) (§ 83.26(a)(1)(i)). Here, the deficiencies are in criterion 83.11(e).

This Phase I TA review discusses the deficiencies known to OFA at the time of review. However, the SIT petitioner's submission of additional information or clarification in response to the TA review, or other materials added to the administrative record, might raise additional deficiencies or other issues that OFA would have to address in the Phase I proposed finding. In addition, the SIT petitioner should not assume it will meet criterion 83.11(e) by simply submitting additional information or clarification. The SIT petitioner's ability to cure the deficiencies in criterion (e) will depend on the content of those submissions and the Department's review. Finally, the SIT petitioner should not assume OFA has made positive conclusions about claims and evidence not discussed in this letter.

After reviewing this letter, you must submit a written response that (1) withdraws the documented petition for further preparation; (2) submits additional information and/or clarification; or (3) asks OFA to proceed with the review (§ 83.26(a)(1)(i)(A)-(C)). If you have any questions, please feel free to contact the Office of Federal Acknowledgment at (202) 513-7650, via email at Lee.Fleming@bia.gov, or by mail at:

Department of the Interior  
Office of the Assistant Secretary–Indian Affairs  
Attention: Office of Federal Acknowledgment  
Mail Stop 4071 MIB  
1849 C Street NW  
Washington, DC 20240

Sincerely,

A handwritten signature in black ink, appearing to read "R. Lee Fleming". The signature is fluid and cursive, with the first name "R." and last name "Fleming" clearly visible.

Director, Office of Federal Acknowledgment

Enclosure  
Criterion (e) workpaper

cc: Other individuals or entities that requested to be kept informed receive letter only; no enclosures.