



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

**APR 11 2011**

Mr. Robert Gray  
175 Lay Landing Road  
King William, Virginia 23086

Dear Mr. Gray:

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary – Indian Affairs (AS-IA) of the Department of the Interior (Department) has completed an initial technical assistance (TA) review of the petition of a group known as the “Pamunkey Indian Tribe” (Pamunkey). The Department issues this TA review letter under section 83.10(c) of 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.”

This TA review letter describes obvious deficiencies or significant omissions apparent in the documented petition the Department received on October 14, 2010. The group’s governing body certified this petition submission for Federal acknowledgment on October 4, 2010.

This TA review is done to ensure the group’s petition is not rejected because of technical problems it may have had while putting together its petition. After reading this TA review, the group may decide whether it falls within the scope of the regulations and choose to withdraw its petition from the acknowledgment process. The group may decide to conduct additional research and submit documentation which addresses the criteria or clarifies materials in its present submission. This TA review discusses only significant omissions in the materials submitted.

## **I. General Comments about the Petition**

- A. The petitioning group’s submission consists of a 17-chapter narrative, and documents including meeting minutes, maps, newspaper accounts, excerpts from scholarly monographs, and interviews.
- B. This TA review indicates there are significant omissions in the petition under criteria 83.7(d), (e), (f), and (g). The petitioner may also wish to provide additional information to further explain the material already submitted to satisfy criteria 83.7(b) and (c). For this reason, the OFA recommends the group review the entire section 83.7 carefully and direct its additional research toward providing the evidence that will demonstrate the group meets these criteria.
- C. The group should provide a narrative which is key to explaining how the evidence falls under each of the seven mandatory criteria, describing the history of the group. The current narrative does not specifically address how the evidence relates to the criteria in

certain instances. For example, the narrative includes an appendix which specifically addresses criterion 83.7(a) by presenting a chronological listing of newspaper articles, scholarly articles, and other external observers identifying a Pamunkey Indian entity throughout the 20th century. However, the information submitted to address the other six criteria is not organized in a similar fashion.

- D. The Pamunkey's submission provides some information regarding the relationship between group members during the mid-20th century, but the petitioner should provide additional information, particularly regarding the social relationships between those members who remained on the reservation and those who moved elsewhere to Philadelphia and Richmond.

The petitioner may wish to include additional items such as photographs or videos showing the members of the group doing things together, such as attending the annual Homecoming, and transcripts, videos or tape recordings of oral histories and reminiscences which discuss the group's activities, as well as additional interviews detailing the relationship between those on the reservation and those who moved away.

- E. Under the May 12, 2008, Federal Register notice, the petitioner's burden of providing evidence is reduced. The date of "the period of earliest sustained non-Indian settlement and/or a governmental presence in the local area" should be on or after March 4, 1789, reducing the period for which the petitioners should submit evidence.

## II. Specific Comments about Criteria (a) through (g)

It is important for the petitioning group to review the Federal acknowledgment criteria 25 CFR 83.7 (a)-(g) carefully and direct its additional research toward providing the evidence that will demonstrate it meets each criterion. Below is a discussion of the specific criteria.

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

This criterion requires external identification of the group as an American Indian entity since 1900. External identification must show that people other than the members, or the members' ancestors, identified the petitioner. The criterion is intended to exclude from acknowledgment those entities which have been identified as being Indian only in recent times or whose "Indian identity" is based solely on self-identification. The materials submitted are adequate to permit an evaluation under criterion 83.7(a).

### B. **Criterion 83.7(b): A Predominant Portion of the Petitioning Group Comprises a Distinct Community and Has Existed as a Community from Historical Times until the Present.**

This requires the petitioning group to show that it has been a community from historical times (1789 or first contact, if later) until the present. The materials the group has submitted, including interviews, meeting minutes, and other documents, permit an evaluation under criterion 83.7(b),

but the petitioner may wish to submit additional interviews and documents to describe further the social relationships among members of the group during the 20th century.

The OFA advises its petitioners to begin their analysis with the present members and their genealogies. The group should describe the community as it exists today, and then work backwards in time. For example, the group should describe what the community looked like in 2000, 1970, 1940, 1910, 1880, 1850, 1820, and 1790. Use the genealogies to determine which of the parents and grandparents were living together and acting as a group, and which of the great-grandparents were doing the same, and so forth. By doing this task, the petitioning group should be able to define a group of ancestors "traveling" or moving through history together. The petitioning group's task is to show the history of the Pamunkey group by tracing the specific activities of the named individuals who were part of this group.

The kinds of records useful in documenting community include: vital records that show the group's ancestors having children, marrying each other, witnessing for each other; land records that show the group's ancestors living near one another, buying and inheriting land from each other, migrating to new locations together; records such as meeting minutes, newsletters, correspondence files, membership lists and enrollment records, and any other record which show the group acting together; newspaper articles and other publications which discuss the activities of the group; photographs or videos showing the members doing things together; transcripts, videos, or tape recordings of oral histories and reminiscences which discuss the group's activities; and local, state, or Federal records showing governments dealing with the group.

The Pamunkey may find it useful to look at some prior findings which have focused on the issue of 20th century community. These prior findings are available on the Department's website. Notwithstanding the suggestions outlined above, the materials submitted are adequate to permit an evaluation under criterion 83.7(b).

**C. Criterion 83.7(c): The Petitioner Has Maintained Political Influence or Authority over Its Members as an Autonomous Entity from Historical Times until the Present.**

This criterion requires the petitioning group to demonstrate that it has exercised political influence over its membership since historical times. It requires that there have been leaders with followers who knew and cared about their actions. It does not require a formal structure with a chief and council. Nevertheless, the group must provide information concerning who led the group and how they exercised leadership.

The information submitted on historical leaders of the group permits an evaluation under criterion 83.7(c). However, the group may wish to provide certain information to further the understanding of its political processes, particularly the difference between *members* and *citizens* of the group. According to the materials included in the petition submission, males over the age of 18 may become voting citizens of the group with the approval of the elected council, while all females (regardless of age) and males under 18 are members of the group, but cannot vote or hold political office. According to the document "Laws of the Pamunkey Indians," voters must also reside on the reservation, and those on the reservation must also have paid their taxes to the

group. The petition may wish to describe whether these requirements have changed over time through ordinances or amendments.

Chapter 14 of the petition narrative is entitled "Tribal Government Since 1900." However, the chapter does not actually include a description of the "tribal government" during the 20th century. Instead, most of the chapter is devoted to discussions of the relationship between the group and the commonwealth of Virginia, rather than describing how the group's governing body has functioned throughout the 20th century. It is certainly relevant to include how the group and the group's governing body responded to legislation posed by the Virginia legislature, but it is also important to discuss how the group dealt with issues specific to maintaining the group on the reservation (such as distributing land, cooperative labor, and controlling or moderating the behavior of group members). Many examples of these types of actions are included in the narrative's Chapter 10 ("Minutes of Meetings"), but they have not been analyzed by the petitioner. While the interview excerpts included in chapter 14 address some of the issues important to the group, the chapter included little discussion of how the council functions, or how the members and citizens respond to actions taken by the council. Additionally, a number of the meeting minutes have been redacted without explanation, even minutes dating back more than 70 years. Information such as the price a person paid to rent an area for hunting or fishing is fine to redact, but other sections include redactions for no known reason. Please submit either the unredacted minutes or edit the redactions so that any indentifying information about individuals is eliminated. If this is done, OFA will still be able to examine the issues discussed at the meetings and the actions taken by the council without having to know the identity of the particular individuals involved.

The petitioner may want to describe events such as group meetings, powwows, parties, classes, memorials, and church revivals. It should discuss what happened at these events and who attended. The group included some sign-in lists, minutes, documents, and photographs, but may wish to submit additional documents from the Pamunkey Baptist Church and from the annual Homecoming. Church records are often an excellent source for illustrating group activities in the community. Be sure to give specific examples when describing how members emerged as leaders and then how they exercised their authority over the membership. For many petitioners, political processes are most apparent during changes in leadership. The petitioner provided many meeting minutes in its submission, but it may also wish to submit more information regarding how the membership interacts with the elected council. In other words, while the petitioner included many documents describing what issues the elected body discussed and how they voted, the petition included fewer documents describing how the members of the group responded to the decisions made by the governing body. This is particularly relevant information, considering that the female members of the group cannot vote or hold office, or attend meetings unless at the specific invitation of the council. The petitioner may specifically wish to examine the petition of the Mashpee Wampanoag (petitioner #15), available on the Department's website, for some examples of informal political activity.

A petitioning group must show that the political relationship exists broadly among members. The petitioner needs to document the activities of important leaders in the past and present, including informal leaders and female leaders who may have been important in the past or are important today. Not only must there be leaders, but there must also be followers. Discussions

concerning how the petitioning group makes important decisions on its various activities mentioned in the newspaper articles may illustrate important political processes.

Chapter nine of the petition narrative included a list of important leaders. For those who served in this capacity during the 20th century, the petitioner may wish to show how and over whom these leaders exercised their leadership in every decade. The form of political authority exercised by leaders does not have to be coercive, and leaders do not have to be elected as long as there is evidence the members of the group generally recognize the leader's authority. Informal kin-based leadership has also been accepted as evidence for political authority under the regulations, such as the leadership of influential elders.

Notwithstanding the suggestions outlined above, the materials submitted are adequate to permit an evaluation under criterion 83.7(c).

#### **D. Criterion 83.7(d): Governing Document**

The regulations under 25 CFR 83.7(d) require that the petitioning group submit its governing documents. A copy of the group's present governing document including its membership criteria is required. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

The materials the group has submitted are inadequate to perform an evaluation under criterion 83.7(d). The group has submitted a 1954 document entitled "Laws of the Pamunkey Indians" as its current governing document. To satisfy the criterion, the document should be dated and signed to show it was passed by the group's governing body. If the group has modified or changed this governing document since it was written in 1954, it may submit a copy of the full text of the changes made. The meeting minutes included in the petition indicated that the group has modified its governing document over time by enacting ordinances and by adding amendments. While some of these changes are noted in the meeting minutes, many are not.

The petition documentation does not include a copy of the group's membership criteria. Chapter seven of the petition narrative states that, "All current members descend from 40 direct lineal ancestors" (Narrative 2010, 7-12) who are listed on one or more of the lists identified in the document. The document includes this list of 40 individuals. However, nowhere in the governing document are membership requirements stated. There is no indication of whether descent from one of these 40 individuals is a recent standard, or one adopted many years ago. The narrative also maintains that, "as determined by Chief and Tribal Council, Pamunkey Tribal membership requires sufficient documentation of ancestry back to certain identified Tribe members and a social connection to the Tribe and current Tribal members residing on the Pamunkey Indian Reservation." (Narrative 2011, 7-9, 7-10; emphasis in original) The petition would be strengthened by describing how the vetting of members takes place. Some information in the meeting minutes indicates that *citizens* must make their application in person, but does not indicate whether or not *members* must make an application in person when they reach adulthood or if parents or guardians can enroll minor children. The petitioner should submit an explanation of how members are enrolled.

In view of the omissions outlined above, the materials submitted are inadequate to permit an evaluation under criterion 83.7(d).

**E. Criterion 83.7(e): Current Membership List and Descent from a Historical Indian tribe, or from Historical Indian Tribes which Combined and Functioned as a Single Autonomous Entity.**

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 regulations at 25 CFR 83.7(e)(2) require that the petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. 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.

A document dated October 4, 2010, and submitted with the group's official documented petition is entitled "Pamunkey Indian Tribe Membership Roll." This certified document includes the names, residential addresses, and birth dates for 182 group members, and includes three members with post office boxes rather than residential addresses. The petitioner should include residential addresses for those members who have only post office boxes. If the member does not have another mailing address, the petitioner should include a description of the member's location (for example, "10 miles north of the intersection of Route 123 and 7").

Changes in membership (due to birth, death, adoptions, expulsions, or voluntary relinquishments) must be noted. The inclusion of an application for membership and a description of the in-person interview for citizenship described in the group's meeting minutes would also be useful as part of the group's documentation. The narrative does not make it clear whether these documents will be part of the membership files the petitioner will make available to the Department. The petition does not include any previous membership lists, although the meeting minutes indicate that there was at least one list prepared in 1954. As was stated previously, the group must also submit copies of all previous membership lists, as well as a statement describing the circumstances under which both the former and current lists were prepared. If this list is not available, then its absence must be explained.

In evaluating other criteria such as 83.7(a), 83.7(b), and 83.7(c), the Department will focus on the community defined by the membership list. For this reason, it is extremely important that the membership be accurately defined. 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.

A supplemental membership list may be provided to OFA once the group is placed on "Active Consideration." This supplemental list should include those additions to the membership, such as children born since the compiling of the initial list. It should also include 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.

How the group maintains its files for each member is its decision; however, a membership 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 a minor or an incompetent applicant. The documentation in the membership 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.

The group's membership files will be audited during the active consideration phase to verify whether the petitioner's members descend from the historical tribe. The audit also determines whether the files are current, accurate, and consistent with the "certified" final membership list before a Final Determination is issued. Information in the group's "Master Index" indicates that the group's files will be available at the Washington, D.C., office of the Native American Rights Fund (NARF). OFA staff will contact NARF to schedule the necessary appointments to examine these records. Membership records generally are protected under Exemption 6 of the Freedom of Information Act and the Privacy Act.

The Federal acknowledgment process identifies those current members who descend from the historical Indian tribe, and those who do not descend. The governing body of the petitioner may take action either by adoption, constitutional revision, membership ordinance, or removal of individuals who do not meet the group's criteria for membership or who do not descend from the historical Indian tribe.

In view of the omissions outlined above, the materials the group submitted is inadequate to permit an evaluation of the group under criterion 83.7(e).

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

This criterion prohibits the Department from acknowledging groups which are composed principally of members of recognized Indian tribes. The group's governing document does not indicate whether or not the group prohibits dual membership in other groups or Indian tribes. A statement from the current members of the Pamunkey, perhaps included on an application for membership, that they are not enrolled members of a recognized Indian tribe would assist in evaluating this criterion. Such statements may be contained in the membership files to be reviewed at NARF. Please include a statement with the petition narrative that the predominant portion of current membership is not enrolled in any other federally acknowledged American Indian tribe.

In view of the omissions outlined above, the materials the group submitted are inadequate to permit an evaluation of the group under criterion 83.7(f).

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

Neither the group nor its members appear, from the materials submitted, to be the subject of congressional legislation expressly terminating or forbidding a Federal relationship. Although neither the group nor its members appear, from the materials submitted, to be the subject of congressional legislation expressly terminating or forbidding a Federal relationship, please provide a formal statement to that effect in the petition materials.

In view of the omissions outlined above, the materials the group submitted are adequate to permit an evaluation of the group under criterion 83.7(g).

### **III Summary**

This TA review letter has described obvious deficiencies which need to be addressed. These deficiencies pertain to the criteria in 25 CFR 83.7(d), (e), (f), and (g). The petition contains sufficient information to permit an evaluation of the petitioner under criteria (b) and (c), but may be strengthened by the submission of additional documentation.

The Department has not made a decision concerning the group's documented petition. This TA review is not meant to be a preliminary determination of the petition. It does not make conclusions that the petition will result in a positive or negative decision. In addition, the group should not assume that positive conclusions are made about portions of the petition not discussed in this letter. Finally, do not presume the group will meet the seven mandatory criteria by simply submitting additional data. Make certain any additional data is tailored to the criteria, and that all additional submissions are properly referenced, cited, and certified.

To make this letter as useful to the group as possible, the OFA staff is raising here any possible problems it detected while reviewing the submission. These are only obvious problems that were identified during this limited review. Other problems may be revealed after the OFA conducts a more in-depth review.

One purpose of this letter is to request information or documentation not currently in the petition which the Department's staff believes are needed to evaluate the group's case. Any research by the Department is to verify an already completed petition. The OFA staff's caseload does not permit it to do the research necessary to fill in gaps in the petition on behalf of the petitioner.

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, the OFA will determine whether or not your petition is ready to be placed on the List of Petitioners Ready for Active Consideration. In the case of the Pamunkey, OFA must have a narrative which thoroughly describes both the social and political history of the specific group. While the group has included a narrative, it may wish to include additional chapters or appendices in order to address the issues discussed in this letter under criteria 83.7 (b) and 83.7(c).

Under the May 23, 2008 Federal Register Notice, the Department is setting a time period for response. Based on the direction and advice given throughout this TA review letter, the Department is setting 180 days from the date the petitioner receives this letter for a response to this letter. If the petitioner needs additional time to respond, it should provide a research plan of action. Under most circumstances, if the Department does not receive a timely response, the Department should designate the petitioner petition as "inactive."

When OFA receives the response to this TA review letter from the Pamunkey, OFA will do one of the following: evaluate the petition for a preliminary review to permit OFA to recommend a waiver of the priority provisions in the regulations to move the Pamunkey petitioner to the top of the 'Ready' list (see Federal Register notice of May 23, 2008); place the petition on the list of petitioners waiting for active consideration; or request further documentation.

Once the Pamunkey's governing body has had an opportunity to review this letter thoroughly and share its contents with the group's researchers and general membership, the group's governing body may contact OFA for additional informal TA for the group's researchers.

If the group has any questions regarding this TA review letter, please write the Office of Federal Acknowledgment, Office of the Assistant Secretary – Indian Affairs, 1951 Constitution Avenue, N.W., MS-34B-SIB, Washington, D.C. 20240, or call (202) 513-7650.

Sincerely,

(sgd) R. Lee Fleming

Director, Office of Federal Acknowledgment

Enclosures: Preliminary Inventory of Petition  
Federal Register Notice

cc: Interested/Informed Parties List