



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245



OFFER TO

Tribal Government Services - AR

No	Case	Summary
16	380	95
		Weekend 3/20/95

MAR 21 1995

Mr. Richard Dauphinais
Attn: Mr. Mark Tilden
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036

Dear Mr. Dauphinais:

The Mashpee documented petition for Federal acknowledgment was submitted in 1990 and received a technical assistance review letter on July 31, 1991. The Native American Rights Fund and Dr. Jack Campisi, your researcher, met previously with the Branch of Acknowledgment and Research (BAR) staff in 1991 and again in 1994 to discuss the letter and assist in advising on the necessary research. It is our understanding that, to date, however, additional research has not been conducted.

At your meeting of February 16, 1995, with the BAR staff, you requested that the 1991 letter be reevaluated under the revised acknowledgment regulations which became effective March 28, 1994. It is our understanding that your researcher, Dr. Jack Campisi, is planning to conduct the necessary research to complete the documented petition this spring.

Enclosed in response to your request is a copy of the 1991 letter which has been marked to reflect the results of our reevaluation, as agreed in our meeting. Paragraphs or sentences which have been marked through do not need to be addressed in the petitioner's response. This does not mean that a conclusion has been reached concerning whether or not the Mashpee meet the acknowledgment criteria for the criteria and time periods that those paragraphs concern.

We have also marked, with vertical lines in the margins, the paragraphs that should be the main focus of your additional research. These represent the most important topic areas for which the present petition is deficient in providing information. These all refer to the post-1960 period, including the modern-day community.

Most of the remaining, unmarked paragraphs refer to secondary materials and questions which are still relevant and which should be addressed but which need not be the main focus of the

supplementary research. We have marked some other paragraphs concerning secondary priority materials with the notation, "post-1960." This indicates that for purposes of your response these should be interpreted to refer only to the period after 1960, although some earlier history may be useful for background purposes.

We have also left unmarked the general language in the letter concerning the "obvious deficiency" process. Since the Mashpee now come under the revised regulations, this language may to some degree have been superseded by section 83.10(b) of those regulations.

It is essential that the BAR have access to the notes of Dr. Campisi's field research during active consideration of the case (see page 8 of our letter). This refers to the field notes from the additional research as well as the research which is reflected in the documented petition submitted in 1990. There is no requirement, however, to provide copies of the notes with the response to the technical assistance letter.

With specific regard to the paragraph on page 2 concerning the New Seabury litigation, we responded in 1993 to questions NARF raised concerning this information. A copy of our 1993 letter is enclosed. In addition, we understand from previous conversations with NARF that the materials related to the trial referred to on page 8 (in the paragraph referring to Hale and Dorr) of our 1991 letter are not available to you.

If you have further questions, please contact the BAR office again.

Sincerely,

/s/ Holly Reckord

Chief, Branch of Acknowledgment
and Research

Enclosures

cc: Mashpee
Dr. Jack Campisi
Russell Peters
Governor William Weld, State of Massachusetts
Attorney General Scott Harshbarger, State of
Massachusetts

cc: Surname;440B
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<i>J. J. Mills 7/29/91</i>
<i>Manual</i>

Tribal Government Services -- AR JUL 30 1991

Mr. Earl H. Mills, Jr.
P.O. Box 1048
Mashpee, Massachusetts 02649

Dear Mr. Mills:

The Branch of Acknowledgment and Research (BAR) has completed an initial review for obvious deficiencies and significant omissions of the Mashpee Wampanoag petition for Federal acknowledgment as an Indian tribe. This letter describes the obvious deficiencies and/or significant omissions that have been found in the Mashpee documented petition.

The obvious deficiencies (OD) review is provided for in the Acknowledgment regulations (25 CFR 83.9(b)) to insure that a petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its merits. The OD review is not a preliminary determination of any case. This OD letter does not constitute any evidence that a positive conclusion has been or will be reached on the petition, or on the portions of the petition not discussed in this letter. Nor does the fact that a petitioner responds to the OD review imply in any way that the group will meet the seven mandatory criteria by simply submitting additional data. The OD review of the petition merely provides the petitioner with an opportunity to submit additional information or clarification prior to the actual active consideration period. The OD review is a limited review conducted over a period of several weeks by a staff anthropologist, genealogist, and historian. Only during active consideration is the petition reviewed and evaluated in-depth by the Acknowledgment staff to determine whether or not the group meets the requirements to be acknowledged as an Indian tribe.

With the requested information and/or documentation, the Acknowledgment staff can more fully evaluate the petition when it is placed on active consideration. The staff's research during the active consideration period is for the purpose of verifying and/or elaborating on an already complete petition. The staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent they have at times done in the past.

Petitioners have the option of responding in part or in full to the OD review or of requesting us to proceed with the petition using the materials already submitted. The decision as to whether the group chooses to address the deficiencies noted in the OD review should be made by the group and not solely by its researchers. If your group requests that the materials submitted in response to the OD review be reviewed as to the adequacy of the response, the Bureau of Indian Affairs (Bureau) will provide the

additional assistance. This additional review will not be automatic and will be conducted only at the request of the petitioner.

The limits of these preliminary reviews must be taken into consideration. We do not know all of the questions that an in-depth evaluation during active consideration might raise.

Our comments and questions are organized below in the following order: (1) general comments and questions regarding how the petition addresses the mandatory Acknowledgment criteria; (2) comments and questions regarding the group's governing documents and membership list; and (3) comments and questions regarding documentation/sources.

GENERAL COMMENTS AND QUESTIONS

Our review indicates that there are significant deficiencies in the Mashpee petition. As submitted, the petition leaves questions unanswered which are important in determining whether the Mashpee meet the Acknowledgment criteria. We recommend that the criteria be carefully reviewed and that any further research be directed at providing evidence demonstrating that your group meets them. We recommend that your researchers contact the BAR to discuss the criteria in order that the BAR staff can provide you with additional technical assistance.

Many of the questions raised are based on petition statements for which there is limited citation, description or supporting information. Others are based on information contained in the documentation submitted in the petition. In general, the petition documents contain significant additional materials which do not appear to have been utilized in preparing the narrative. Some of this information may strengthen the petition argument.

For the time periods since the formation of the plantation until the 1940's, there needs to be a clearer and more detailed discussion of the relationships with non-Indians that from the earliest period came to reside in the plantation, district, and town. How were distinctions maintained and access by non-Indian residents to resources restricted? How were the community and political system affected by the frequent presence of non-Indian spouses as proprietors and officeholders? Given the frequent absence of Mashpee males during the 19th century, e.g., for whaling, how and what role did these non-Indian spouses play in the community and the political system?

It is appropriate for the petition to address specifically evidence cited in major studies and reports which reach negative conclusions about the tribal existence of a group. This is not meant to suggest that it is necessary or appropriate to respond to negative statements that might appear in every possible source. The testimony and evidence presented in the Mashpee v. New Seabury trial have not been extensively examined for this preliminary review. Since the court found against the tribal existence of the Mashpee, you may wish to provide a specific response or comment on testimony and documentary evidence presented at that trial which indicated that the Mashpee did not exist as a tribe.

CRITERION (a).

While questions may arise during the course of active consideration concerning criterion a, this section of the petition has no immediately obvious deficiencies and is adequate for active consideration.

CRITERION (b).

Is there still extensive intermarriage between Mashpee families, as there was earlier? If not, at what point in time did the cited intermarriage between the major families become uncommon, and how has this affected the interlocking ties which the petition indicates has formed the basis for much of community cohesion and political relationships?

Please provide documentary and/or oral history evidence to support the statement that the Mashpee held an annual homecoming for over 200 years before 1928 (HN 77). How did it function in the past to "unite extended families" (p.123). Particularly important is more information on the nature of the homecoming/powwows and how consistently they were held between 1928 and the 1960's. The description should focus on evidence concerning the extent of involvement of tribal members, especially those not resident, and the homecoming's significance to the community and to political processes within the Mashpee. Can a more detailed description and evidence be provided concerning the clambakes, parties and the like that the petition indicates are part of the social activities of a homecoming/powwow?

Please provide documentary or oral evidence for the petition statement on page 122 that "family gatherings have a long history," and clarify what time periods are being referred to. What is the significance of these gatherings to the demonstration of cohesion of the community as a whole?

The petition narrative contains only limited discussion of the character and functioning of the Mashpee tribe from about 1935 until the mid-1970's, except that it remained "largely unchanged." Documentary and/or oral evidence should be provided concerning the character and functioning of community, to support this conclusion. The description of community for this period primarily discusses changing statistics of Indian and non-Indian populations in the town. Some of the material cited for the contemporary community, such as the Ludtke study and the activities of the church, appears relevant in part to community before the contemporary period. Other areas of data mentioned in the petition which appear to be relevant to a description of community between 1935 and the 1970's are the efforts of Earl Mills to restore the church and the hunting and fishing activities briefly referred to on page 128.

Please provide evidence concerning the extent and manner in which social contact and social relationships are maintained within the contemporary membership (i.e., approximately the past ten years). What social ties are maintained with nonresident members? Do there still remain neighborhoods or significant clusters of Mashpee within the town area? Page 122 states

that the tribal members interact with daily frequency. How and where and in what social contexts does this interaction take place? What is the extent of the membership that participates in them? What evidence is available to support the statements that the Mashpee tend to associate with other Mashpee to the exclusion of others (p. 124)?

The petition narrative emphasizes the role of the extended family in the contemporary community but provides only a limited description of it. How does it "provide a principal mechanism for Mashpee social cohesion," and "the vehicle of social interaction? How much interaction takes place between members of different extended families, and to what extent does the social control mechanism mentioned on p. 122 apply to interfamily relations? What has been the effect of intermarriage with non-Indians on the stated role of kinship in the maintenance of community?

CRITERION (c)

Please provide a description of, and citation to the data for, the petition statements indicating that decision-making processes in the 17th and 18th centuries followed the consensual model described in the Salwen quote, on p. 144, referring to the aboriginal period. Similarly, please also provide a description of and citation to the data relating to that period for the statement that: "kin ties formed an integral part of the political process, with intermarriage locking the families (playing dominant roles) together" (145).

Page 52 of the Historical Narrative notes that in the mid-1800's the Mashpee changed their religious orientation to Baptist, and that "from the very beginning, church and tribe were integrally and inseparably related." As there were no citations to sources for this statement, please clarify the evidence which exists to support it. How did the parish represent "a third element of the tribe's political structure" (165) in the past.

The petition states that the Mashpee made up the membership of the Baptist church and controlled the church's offices (116) and that the church was a "cohesive unit of Mashpee identity." What does the latter statement mean? Did all Mashpee belong to the Baptist church in the past, and were all church members Mashpee, or were there some non-Indian members before the present time? Please provide a discussion of the role the Baptist or other churches have had in relation to the community and their role if any in the exercise of political authority from 1834 to the present. What is the significance of the church building's having closed in 1900 due to declining use? (85)?

What direct evidence is there to support the conclusion that it can be assumed, based on Zimmerman's study relating to the 1930's, that "the tribe operated the town government for the benefit of its members and not the non-Indian residents and nonresident property owners of the town" after 1870 and, presumably, until control of the town was lost in 1974 (p. 158-9)? In relation to this, can more description or citation be provided concerning the nature, in other decades, of the informal tribal leadership described by Zimmerman? After Mashpee became a town, what is the

significance of non-Indian spouses filling the offices of selectman, etc.? Were there tribal issues separate from issues affecting the non-Indians, and how was this distinction made and handled? How were tribal interests handled in relations with outside political institutions, i.e., political parties and the district and state levels of government?

What was the effect on local control of the advisory commission appointed in 1932, which functioned for the next 30 years, to supervise town activities as a result of the near bankruptcy of the town in that year?

How has the political system which developed in the late 19th and early 20th centuries extended to influence the Mashpee who lived away from the community, i.e., those who had left to find work?

More information is needed concerning the exercise of tribal political authority after 1974. The petition provides only a brief description of the governing board incorporated in 1974 and the internal political processes through which it was established. The description of the modern political organization should fully describe events and changes occurring after 1979. Please provide evidence for, and a more thorough description, of the strong interest by Mashpee members in general in tribal affairs, and participation in elections and programs in the contemporary community, as indicated on page 162. Provide evidence for the support and involvement of the membership and the exercise of tribal political authority after 1974. Does the pattern of extended family influence that existed in the past continue to be characteristic of Mashpee politics?

Regarding the chief, the petition needs to elaborate upon what kinds of issues the chief mediates, how he shapes consensus and maintains tribal cohesion (163) and how this is accomplished. The discussion should make clear what time periods are involved.

CRITERION (d)

Current Governing Document

The petition includes a document entitled "Constitution and Bylaws of the Mashpee Wampanoag Indian Tribal Council, Inc.," which is identified as adopted in 1974, revised in 1978, and accepted in April 1979. This document is described as the group's "current" governing document. Elsewhere, however, the petition includes several amendments, which were adopted ten years later (April 9, 1989). To insure that BAR researchers have a full and complete set of the governing procedures currently used by the tribe to govern its affairs and its members, please provide an updated copy of the Mashpee governing documents, including all amendments and/or subsequent resolutions adopted by the council.

Prior Governing Documents

A meeting notice for a February 10, 1974 meeting of the Mashpee tribal council includes the words "Revision [emphasis added] of the by-laws ..." which suggests that an earlier set of bylaws were in place prior to

February 1974. It would be helpful to BAR's understanding of the evolution of the Mashpee membership and governing processes, if you would provide copies of all prior governing documents. We would also appreciate receiving copies of minutes taken of tribal meetings at which these documents or their amendments were discussed and/or adopted.

Membership Criteria

Article III, Section 1, states that "Any person of Mashpee Wampanoag Indian ancestry who has not abandoned his or her tribal affiliations, is eligible for membership in this council and shall be granted membership upon approval of the membership committee."

1. Explain the process by which the Mashpee Membership Committee determines an applicant's eligibility for membership.
2. Describe what the committee interprets as the abandonment of tribal affiliations. Is there a procedure through which a Mashpee Wampanoag who has been determined to have abandoned his/her tribal affiliations might be reinstated? Please explain.

Section 2 of Article III goes on to state that applications for membership must be submitted to the membership committee "upon approved application forms ... with documentation of birthright."

1. Please provide five or six examples of completed applications that were approved for membership by the committee, including the documentation of birthright. Examples should be from unrelated family lines, if at all possible.
2. Explain the basis on which the membership committee determines eligible Mashpee Wampanoag Indian ancestry. [Is the applicant required to be able to trace their ancestry to some historic document, i.e., perhaps the 1849 or 1861 lists?]

Section 4 of Article III states that "Other Wampanoags may be adopted by this council as an ASSOCIATE MEMBER [sic] ... after showing proof of Wampanoag Indian birthright...." What type of proof is required?

Criterion (e)

We note that for approximately 309 (37%) of the persons listed on the group's current (Oct. 1989) membership list some significant portion of their residence address is lacking. Lack of a complete address will make it virtually impossible for our researchers to contact them without additional information from or the help of a knowledgeable tribal member. [Some of the specific problems included 25 members with no address at all or with only the state or street identified; 284 have a city and state, but lack a street location.]

Despite problems having to do with addresses, it is obvious that the Mashpee membership list and supporting Ancestry and Individual History charts have been thoughtfully prepared. Your efforts are appreciated and will greatly facilitate review and analysis of the petition.

We suggest you take time to update your membership list now to insure that a current residence address is available for each living member. In most instances, you should be able to simply add the missing information on the existing list without redoing the list or the individual member's entry on the list. If the member's entry cannot be annotated to provide the missing information, we suggest you provide the needed information on a supplemental list and cross-reference the entries. There is no need to redo the list in its entirety. To report deaths and new births which have occurred since October 1989 list was prepared, as well as any members which may inadvertently have been omitted when the list was originally prepared, we recommend you prepare a supplemental list following the same format as the October 1989 list. We cannot emphasize too strongly the importance of providing a complete list of all of the group's members since, if acknowledged, this list will become the tribe's base roll for Bureau purposes.

Associate Members

In its present state, the Mashpee membership list does not distinguish between regular/full members and associate members. Please identify associate members on the current list, or provide a separate listing for our researchers' use.

Prior Lists

If membership lists prior to the October 1989 list exist, please provide copies.

DOCUMENTATION

Some of the citations to newspaper articles under §83.7(a)(6) do not include a source. Do the Mashpee Wampanoag maintain scrapbooks of newspaper articles or a clipping file? Also, please provide sample minutes from the years between 1958 and 1974 and from 1980 to 1981.

In the set marked "Historical Documents, 1796-1836," is a copy of pages 6-9 of Massachusetts Senate Report No. 8, January 1835. This report mentions that at a meeting at the Mashpee Meeting-house in May there was a "list of voters." Is a copy of that list available?

In the set marked "Historical Documents, 1836-1849," Massachusetts House Report No. 43 (March 1840) is noted as incomplete. If a complete copy of this report can be located, please provide a copy.

There are two pages in the set marked "Historical Documents, 1860-1978" with the notation "DOCUMENT MISSING." One is a 1911 State act relating to taxation of property in Mashpee; the other is a 1976 Governor's Executive Order (No. 126) recognizing the Mashpee tribal council as the groups governing body. If copies of these items can be found, please send them to us.

In the sets marked "Newspaper Articles, 1833-1925," "Newspaper Articles 1935-1947" and "Newspaper Articles, 1950-1977" some articles are incomplete, while others are illegible. The BAR staff will consult with your researchers and inform them of the specific problems found in this document set.

In various places, the petition cites Jack Campisi's ethnographic field notes or otherwise appears to be based on field research. Will these notes be available for use by BAR researchers? If so, in what format?

Please provide us with a copy of a history of the tribe and the town of Mashpee written by Amelia Peters Bingham in the 1970's and the 1974 Ludtke study which is frequently cited.

The petition mentions tape recordings and papers/town records that were sent to the Boston offices of Hale and Dorr regarding the land case. Will these materials be made available to our researchers and, if so, where? What restrictions, if any, will apply to our use of these records?

If your group chooses to respond to this OD review letter, we encourage you and your researchers to consult with the BAR before preparing a response, so that you might utilize your research resources more effectively. The BAR staff can provide technical assistance, but cannot be responsible for actual research on the part of the petitioner. It is likely that additional questions will be raised by your response to the OD review, and it may be necessary to request additional information during the period of active consideration of your petition. The Acknowledgment staff will make every effort to consult with you and your researchers regarding these questions and/or requests prior to the publication of a proposed finding.

We recommend that you contact Bruce Thompson, the Acknowledgment staff member who has administrative responsibility for Massachusetts petitioners, so that we can make arrangements to provide additional technical assistance to you and your researchers if you wish. You may write him c/o the Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 2612-MIB, 1849 C Street, N.W., Washington, D.C. 20240, or call him at (202) 208-3592.

Sincerely,

/s/ Ronal Eden

Director, Office of Tribal Services

cc: Jack Campisi
Henry Sockbeson, NARF
Eastern Area Office

cc: Surname;440B;Chron440;400
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