



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services - AR

JAN 27 1987

MEMORANDUM

To: Assistant Secretary - Indian Affairs

From: ~~ACG~~ Deputy to the Assistant Secretary - Indian Affairs
(Tribal Services)

Subject: Recommendation for Final Determination that the Wampanoag Tribal Council of Gay Head, Inc., exists as an Indian tribe pursuant to 25 CFR 83.

RECOMMENDATION

We recommend that the Wampanoag Tribal Council of Gay Head, Inc., be acknowledged as an Indian tribe with a government-to-government relationship with the United States and be entitled to the same privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.

This determination will supersede the proposed finding against acknowledgment, filed on June 27, 1986, which concluded that the Gay Head Wampanoags did not meet two of the seven mandatory criteria set forth in 25 CFR 83. The petitioner submitted substantive new evidence and arguments demonstrating that it did meet the two criteria. A brief summary of the evidence for the final determination that the petitioner does meet the two criteria can be found in the attached Federal Register notice. More detailed information appears in the accompanying report on the conclusions drawn by the Acknowledgment staff in response to the rebuttal evidence and arguments presented by the petitioner and six other interested parties.

We request that you sign the attached Federal Register notice and indicate your approval of the accompanying supplemental report which discusses the evidence and arguments and recommends Federal acknowledgment for the petitioning group.

Enclosures

EVIDENCE SUPPORTING FINAL DETERMINATION FOR FEDERAL ACKNOWLEDGMENT OF THE WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC.

I. RECOMMENDATION

The Branch of Acknowledgment and Research recommends that a final determination be made that the Wampanoag Tribal Council of Gay Head, Inc. (hereafter referred to as WTCGH) is acknowledged as an Indian tribe entitled to a government-to-government relationship with the United States. It further recommends that a letter of such determination be forwarded to the tribe, and that a notice of Final Determination that it exists as an Indian tribe within the meaning of Federal law be published in the Federal Register.

II. INTRODUCTION

On June 30, 1986, the Assistant Secretary - Indian Affairs published in the Federal Register a Proposed Finding (cited as Bureau of Indian Affairs 1986 in the bibliography) to decline to acknowledge that the WTCGH exists as an Indian tribe within the meaning of Federal law. This finding was based on a determination that the petitioning group did not meet two of the seven mandatory criteria set forth in 25 CFR 83.7 (specifically, criterion 83.7(b) and criterion 83.7(c)). Upon publication of this preliminary determination, in accordance with 25 CFR 83.9(g), the petitioner and all other interested parties were provided a 120-day response period, or until October 28, 1986, to present factual or legal arguments and evidence to rebut or support the evidence relied upon in the Proposed Finding.

On September 10, 1986, a "rejoinder" challenging the Proposed Finding was submitted by Professor Gloria Levitas, Assistant Chairman of the Department of Anthropology of Queens College in Flushing, New York. On September 23, 1986, the petitioner's legal counsel, the Native American Rights Fund (NARF), requested that the response period be extended an additional 34 days or until December 1, 1986. By a letter of October 15, 1986, the Assistant Secretary - Indian Affairs granted this extension. During the extended comment period five letters were received which opposed the findings: one from Dr. Francis Jennings, the Director Emeritus of the D'Arcy McNickle Center for the History of the American Indian of the Newberry Library in Chicago; one from Professor William S. Simmons, Chairman of the Department of Anthropology at the University of California, Berkeley; one from Mr. Robert T. Morgan, Sr., Chairman of the Dukes County (Massachusetts) Commissioners; one from Mr. Doug Cabral, editor of the Martha's Vineyard Times in Vineyard Haven, Massachusetts; and one from Reverend Peter R. Sanborn, pastor of the Community Baptist Church in Gay Head, Massachusetts. Finally, an extensive rebuttal was submitted by the WTCGH on December 1, 1986, the last day of the extended comment period.

The comments of Dr. Levitas, Dr. Jennings, Dr. Simmons, and Rev. Sanborn were critical of the Proposed Finding, while those of Mr. Morgan and Mr. Cabral were neutral in this regard. Observations regarding the political influence

of the petitioner were presented by Dr. Levitas, Dr. Jennings, Dr. Simmons, Mr. Morgan, and Mr. Cabral. In addition, Dr. Jennings, Dr. Simmons, and Rev. Sanborn commented on the community activities of the petitioner. Dr. Simmons also elaborated on the petitioner's retention of traditional Wampanoag legends. Letters were received after the expiration of the extended comment period from Mr. William Honey, a bank president from West Tisbury, Massachusetts and from Mr. James L. Quarles, III, an attorney in the Washington, D.C. office of Hale and Dorr, a Boston law firm which serves as legal counsel for the Gay Head Taxpayers Association. These two letters have not been considered as part of the official response materials.

The rebuttal materials were carefully considered, the new evidence submitted was evaluated, and data and conclusions in both the original petition and the Proposed Finding were reconsidered in light of the arguments presented. Most of the petitioner's rebuttal (111 of 147 pages) consisted of ad hominem arguments aimed at discrediting the Acknowledgment staff and its methodology, including charges of incompetence, racism, and a prejudice against the petitioner. However, the petitioner's rebuttal also presented 36 pages of substantive new evidence and arguments which served to strengthen greatly the group's petition; evidence which would have resulted in a positive Proposed Finding if it had been submitted with the initial petition materials.

Although it may not be readily apparent from the tone of the "Summary Under the Criteria (83.7 a-g)" in the Proposed Finding, the preliminary determination that the petitioner failed to meet criteria 83.7(b) and 83.7(c) was a close and difficult decision. Thus, it has been found that the new evidence, when considered in light of the arguments and observations presented by the other interested parties and a reconsideration of factual data in the Proposed Finding, shifts the determination in favor of the petitioner and, therefore, warrants amending the preliminary decision that the WTCGH does not meet two of the criteria set forth in 25 CFR 83.7. However, the favorable determination in light of the new evidence was similarly difficult to decide, and this decision remains commensurably close.

I. THE NATURE OF THE TECHNICAL REPORTS

The rebuttal materials make it evident that the petitioner and some of the interested parties do not have a clear understanding of the nature of the technical reports drafted by the three Branch of Acknowledgment and Research evaluators (hereafter referred to as the BAR team) and contained in the Proposed Finding. It is apparent from the page-by-page analysis of the finding included in the petitioner's rebuttal that the petitioner drew conclusions from every sentence of these reports and implications relevant to the finding's conclusions from almost every phrase.

The technical reports represent the chronological or categorical recitation of the data and evidence collected by the anthropologist, the genealogist, and the historian in the course of their evaluations. These reports try to relate as much information as possible about the petitioner and are not intended to be conclusory or argumentative. It is not until after these reports are completed that the BAR team, in consultation with other Acknowledgment staff, drafts a summary of its conclusions as they apply to the seven mandatory criteria. Thus, the reports often contain data which

are found not to be pertinent to the criteria or the final summary of conclusions, but which remain in the reports in order to convey a more complete picture to the reader. It is, therefore, the specific language and conclusions in the "Summary Under the Criteria (83.7 a-g)" which contains the essential arguments, conclusions, and reasoning of the recommendation. It is these that should be most closely scrutinized and not the body of information in the technical reports.

Much of what the petitioner and some of the other interested parties view as offensive references, negative inferences, and/or innuendo is information which did not effect the final conclusions. For example, the petitioner's rebuttal charges that the factional division which began in the Gay Head Wampanoag community in 1976 was described in the technical reports in such a way as to cast "doubt upon the legitimacy of the tribal council and the integrity of the Gay Head Indian community" (p.III-4). It further charges that this matter of factionalism was treated differently in the WTCGH finding than it was in the Tunica-Biloxi finding, where a factional dispute of long standing did not effect the Acknowledgment staff's conclusion that the Tunica-Biloxi tribe met criteria 83.7(b-c). Yet, the dispute between the Gay Head Wampanoag factions was not referred to in the "Summary Under the Criteria (83.7 a-g)," and was not considered directly relevant to the preliminary determination that the petitioner did not meet criterion 83.7(c).

The petitioner's rebuttal also cites portions of the technical reports in an effort to demonstrate that the retention of unique cultural attributes "was an important consideration in the BAR team's determination in the case" (p.III-19). It should be clear that the retention of aboriginal culture or language is irrelevant to the Acknowledgment criteria, except as it might reflect positively on an Indian identity, tribal political processes, or the maintenance of a distinct community. While the technical reports in this case made reference to Tantaquidgeon and others who noted the loss or decline of Wampanoag cultural traits among the Gay Head Wampanoags, these data, again, had no direct influence on the final conclusions and were not included in the "Summary Under the Criteria (83.7 a-g)."

Professor Simmons has noted in his response to the finding and has demonstrated in his recent monograph, Spirit of the New England Tribes, that the Maushop legends of the Gay Head Wampanoags "are among the oldest continually recorded body of Indian traditions known anywhere in North America." Unfortunately, Dr. Simmons' book was not published until after the BAR team began the writing phase of its evaluation.

Both the petitioner's rebuttal (p.II-5) and Dr. Jennings' letter object to the use of racial terminology in the technical reports and assert that such usage was in itself "racist." However, the racial identifications in the reports merely reflect a unique historical record. Moreover, it cannot be demonstrated that such terminology was used in a discriminatory way or was derogatory or pejorative in its use, meaning, or intent. Part 83.7(a) of the Acknowledgment regulations mandates that a petitioner must establish that it has been identified throughout history as an American Indian entity. The identification which outside governing bodies, institutions, scholars, and the media give to an Indian entity, and even that entity's self-identity, may be as much a racial identification as it is a cultural or legal one. Since at least the late 18th century, Gay Head was identified as a community of

"Indians and People of Colour." The documentary history of this community reflected this dual identification more than has the history of any previous petitioner, and it was more of an issue or point of distinction to historical observers. Beyond reflecting this unique historical record, the technical reports only probed the possible origins and ramifications of these racial identifications in order to present enough information on which to base a decision of whether or not the petitioner met criterion 83.7(a). After evaluating all the data, it was concluded that the petitioner had been identified sufficiently from historical times until the present as an American Indian entity.

The petitioner's rebuttal maintains that the technical reports did not accept Massachusetts' official recognition of the WTCGH, while similar recognition by state governments was accepted at face value in four previous Acknowledgment findings. As evidence of this the rebuttal cites a quote from the Proposed Finding which states that the WTCGH was not a "tribal organization" but rather an "Indian descendency group" (p.78). In fact, the finding does not refute or deny that the WTCGH is an organization which has been incorporated under Massachusetts law and recognized by Governor Dukakis as the official governing body of the Gay Head Wampanoag Indians. The quotation referred to merely summarized the conclusion of the Anthropological Report which found that the WTCGH did not have substantial support among tribal members and was, therefore, not a "tribal organization." State incorporation and recognition can be relevant to the mandatory Acknowledgment criteria. Yet nearly all petitioners, including most of those who have previously been denied Federal acknowledgment, have been granted some degree of State recognition, and there are several State-recognized "Indian" entities which cannot demonstrate that a majority of their members are of Indian descent.

IV. THE BURDEN OF PROOF AND THE WTCGH PETITION MATERIALS

The burden of proof that a petitioner for Federal acknowledgment meets the seven mandatory criteria established by the the Acknowledgment regulations (25 CFR 83.7) rests clearly on the petitioner. The regulations do not require Bureau staff members to conduct any original documentary or field research. The primary mission of the Acknowledgment staff is to evaluate the petitions as they relate to the mandatory criteria. Further research is conducted by the Bureau to verify, deny, or supplement the factual information contained in the petitioner's documentation at the discretion of the Acknowledgment staff.

The Proposed Finding concluded that the petitioner did not meet criterion 83.7(b) because the absence of extensive social contact within the extended Gay Head Wampanoag community precluded the maintenance of tribal relations. It found that the petitioner did not meet criterion 83.7(c) because it could not demonstrate that it had maintained tribal political influence or other authority over all of its members throughout history. These two areas, community cohesion and political leadership in the 20th century, were points of weakness which were indicated explicitly to the petitioner following the Acknowledgment staff's preliminary review of the WTCGH petition for obvious deficiencies and significant omissions in June of 1985, and in conversations with the petitioner's researcher. However, the petitioner initially did not

respond adequately to this review by providing new information about these subjects.

By a letter of June 6, 1985, the Bureau requested that the petitioner provide, among other things, more information about the Gay Head Wampanoag's agreement or lack of agreement to have the Indian district converted into a town in 1870, to clarify the nature of the political system of the tribe in relation to the town government, and to demonstrate how tribal members viewed the town government during different periods of time. This letter also asked for a description of the informal structure of the tribe, i.e., important leaders, networks, and factions, and to describe specifically how the Pawkunnawakutt Council functioned. A more detailed description of the current community, including its degree of social cohesion and distinction from non-members was likewise requested. The Bureau asked further for a description of any informal concepts of membership, of who was or was not considered a tribal member, of the social connections between island and off-island members, of the political influence of off-island members, and the social role played by the community Baptist church (Elbert 1985).

On June 25, 1985, the petitioner submitted a report entitled "Supplement to Criteria 83.7(b) and 83.7(c) with Exhibits," which addressed some of the questions posed by the Acknowledgment staff in its preliminary review. Among other things, this supplemental response described the political division and social polarization of the town along a north-south axis. However, it did not discuss such issues as tribal opposition to town status, informal concepts of membership, the political functions of leaders or organizations which operated outside of the town government, or the political relationship of off-island members to the tribe. Neither did it adequately describe social connections between island and off-island members, the degree of social cohesion within the Gay Head Wampanoag community, or distinctions between tribal members and non-members (GHWT 1985). It was not until the submission of the rebuttal materials after publication of the Proposed Finding that these subjects were addressed adequately by the petitioner, although the Proposed Finding presented some data which shed further light on all of these subjects and issues.

What follows is an evaluation of the rebuttal evidence and arguments and a reconsideration of the evidence presented in the WTCGH petition and by the BAR team in their technical reports as they relate to the specific criteria which the petitioner was found not to meet in the Proposed Finding.

V. CRITERION 83.7(b): COMMUNITY COHESION

The Proposed Finding presented evidence to show that a substantial portion of the Gay Head Wampanoags lived in a specific area or a community viewed as American Indian, and distinct from other populations in the area and that the tribe's members were descendants of an Indian tribe which historically inhabited the area. However, there was insufficient evidence to support a positive finding for social interaction and social cohesion.

The research and evaluation presented in the Proposed Finding relied on the available evidence provided by the petitioner's documented petition (cited as GHWT 1983 in the bibliography) and existing published resources. This

evidence suggested that community cohesion which had existed previously had broken down and was minimal or non-existent. In a previous and extensive anthropological study of Gay Head, Professor Levitas concluded that the Gay Head Wampanoag community boundaries had weakened and that there had been a breakdown in community cohesion (Levitas 1980: 562-3). The petitioner did not respond adequately to the Bureau of Indian Affairs' preliminary review questions about community cohesiveness and the political and social relationships between members who lived away from Martha's Vineyard and those members on island. The absence of this information suggested that the data were not available. The limited observations made during the BAR team's field visit supported the statements in Dr. Levitas' study. The conclusions drawn were in keeping with the evidence available at the time. In their rebuttals the petitioner and others provided additional information and evidence relevant to the existence of social interaction and community cohesiveness.

The most extensive response addressing these issues of group interaction and/or community cohesion was the WTCGH rebuttal. Some other respondents also had comments which are relevant. Mr. Cabral observed that "The Indians also maintain among themselves a tribal relationship that is exercised in a private way, and does not interface with the non-Indian island population. It involves business and social meetings to which outsiders are occasionally invited. Often social occasions are ceremonial and unmistakably reflective of the heritage peculiar to Gay Head Wampanoags." Dr. Jennings stated that when the post office at Gay Head was closed and its services transferred to nearby Chilmark by the Postmaster General, "The sociability normally to be expected at a rural post office continues at the Chilmark office...." Reverend Sanborn provided information about Gay Head Wampanoag funerals. He states, "I have found that when a member of the Gay Head Community dies that MANY, and I mean MANY, of the people of that good community DO come and share in those final rites, and share in support and love for the family of the deceased."

The petitioner's response provided a considerable amount of additional information and documentation. Had this supporting evidence been supplied when it was requested (Elbert 1985), a positive Proposed Finding most likely would have resulted. The petitioner, by providing additional data describing the contemporary community and the interaction of the members of the groups, answered questions in the rebuttal raised during both the preliminary review of their petition and in the evaluation of the evidence for the Proposed Finding.

There is, however, a misunderstanding on part of the petitioner regarding the use of some of the information presented in the Proposed Finding. The rebuttal implies that the scattered residence pattern of the extended Gay Head Indian community was used as the basis for denying that the WTCGH met criterion 83.7(b). In order to define the parameters of the Gay Head Wampanoag membership, statistics regarding the residence of members were presented in all three of the technical reports in the Proposed Finding and these figures were also cited in the "Summary Under the Criteria (83.7(a-g))". The issue was not the geographic dispersion of the membership, but rather the degree of communication and interaction maintained within this extended community. The petitioner was denied criterion 83.7(b) not because the members did not live "within such a reasonable proximity as to allow

group interaction and a maintenance of tribal relations" (see definition of community under 25 CFR 83.1(o)), but rather because the evidence indicated that the group did not maintain social cohesion or tribal relations within this specific geographic area or elsewhere.

The WTCGH's rebuttal provided a detailed description of "how the pattern of residence and kinship incorporates those who live outside the town of Gay Head, and how it serves to keep them informed on political and community matters" (p.I-1). An extensive description of the communication network is provided demonstrating how the principal Gay Head Wampanoag families maintain social contact. These networks connect the Gay Head Wampanoag Indians living in Gay Head with their relatives who live in Boston, New Bedford, and other areas such as Cape Cod.

Included in the network system are the officers of WTCGH and, as the rebuttal indicates, most of the principal families are represented on the WTCGH Board of Directors (p.I-12). As was pointed out in the narrative of the rebuttal, "These networks are used for overtly political purposes by the tribal leaders who hold town offices to make sure that they get out the tribal vote for elections and town meetings where critical issues are to be discussed" (p.I-21). In addition the point was made that the political positions held by members of the WTCGH in key town-offices gives them the power to control the leasing of those commercially valuable properties held by the town, e.g. the cliffs and Herring Creek. These properties have always been leased by Gay Head Wampanoags.

The petitioner's rebuttal also presented a discussion and analysis of social columns in the newspaper. When Gay Head Wampanoags were the social reporters for the Vineyard Gazette, a newspaper published in Edgartown which has an island wide distribution, the news was almost exclusively about Gay Head Wampanoags to the exclusion of the non-Indians. When the social reporters were non-Indian, the social news focused on the non-Indians to the virtual exclusion of the Gay Head Wampanoags. When in existence, these columns served to disseminate information about the Wampanoags at Gay Head to other members of their tribe on-island; the columns also demonstrated the existence of the social boundaries between the Indians and non-Indians in Gay Head.

The petitioner's rebuttal supplied additional information about the activities of WTCGH members activities, including funerals and celebrations such as birthdays and marriages. There were five major social events described in the rebuttal including two birthdays, one retirement and two funerals. The rebuttal pointed out that events of this nature can bring together several hundred members of the Gay Head Wampanoags. Rev. Sanborn's comments about the numbers of members who attend funerals support the petitioner's statements. Assemblies of this size provide additional evidence that the group maintains active social relations.

After evaluating this additional evidence as well as re-examining the Proposed Finding and other available evidence, we conclude that the Wampanoag Tribal Council of Gay Head meets criterion 25 CFR 83.7(b).

VI. CRITERION 83.7(c): TRIBAL POLITICAL INFLUENCE

The Proposed Finding concluded that the Gay Head Wampanoags were essentially self-governing prior to 1870 when the Commonwealth of Massachusetts incorporated Gay Head as a township and it lost its status as an Indian district (p.4). Thus, it is the period since 1870 which is at issue.

In the Acknowledgment staff's opinion, the WTCGH petition focused too narrowly on the town government as being the only means by which tribal political influence or authority was maintained over the Gay Head Wampanoags between 1870 and 1972, the year in which the WTCGH was organized formally. The Proposed Finding found problems with this interpretation because of the limitations it placed on tribal sovereignty. How, for example, could such a municipal government maintain authority or influence over the increasing number of tribal members who left the municipality? Conversely, how could a tribal government maintain authority over the increasing number of non-Indians who moved into the town? A tribe may not maintain equal influence and authority over all of its membership and the degree of participation in political processes may vary, especially among those, if any, outside the social core of the membership. Even for the latter, some authority and influence is exercised over internal tribal affairs which affect them, such as the definition of membership and the allocation of tribal resources.

The picture that emerges from the rebuttal evidence and arguments and from a reconsideration of the evidence in the Proposed Finding is of a tribal political situation which is considerably more fluid and diffused than that which was described originally in the WTCGH petition. The Gay Head Wampanoag Indians adapted principal elements of the town governmental structure which was imposed on them and, within the limits possible, they have used and continue to use this structure to serve the best interests of tribal members. Political influence and authority has also been maintained over members through organizational bodies such as the WTCGH which have functioned outside of and/or parallel to the town government and by leaders who have often functioned both outside and within the municipal structure.

The Proposed Finding determined that between 1870 and 1972, at least 34 of the individuals elected or appointed to town offices were not Gay Head Indian descendants (p.32). The BAR team is aware that non-Indians and/or non-members have played key political roles in other tribes. The data on Gay Head town officers were used not to refute the petition's assertion that the town government functioned as the political system of the Gay Head Wampanoags, as the petitioner's rebuttal claims (pp.II-5,II-26), but rather to refute the petition's claim that tribal members held virtually all town offices during this period (GHWT 1983,I-57 & 83.7(c),8). The Proposed Finding pointed out that most of the town officers who were not Gay Head Wampanoag Indians were, nevertheless, married to Gay Head tribal members (p.4). The petitioner's rebuttal still maintains that these spouses were "undoubtedly regarded by tribal members as members of the tribe"(p.II-5). Yet, the fact remains that during certain periods of the tribe's history, including the years since 1972, spouses were not admitted to tribal membership, and no evidence has been submitted by the petitioner or found by the BAR team to indicate what the specific membership criteria were between 1870 and 1972.

The petitioner's rebuttal is correct in asserting that the issue is not the form of a tribal government but rather the maintenance of tribal political

influence or other authority over tribal members (p.II-27). The WTCGH petition established that the town government functioned as the tribal government until the WTCGH was organized in 1972, and the Proposed Finding took issue with how the town government, given its jurisdictional limitations, could maintain influence or authority over the significant number of Gay Head Wampanoag Indians who left the town (the Indian population decreased by 61 percent between 1900 and 1970) (p.5).

While it is not known precisely what the criterion for membership in the tribe was, it is clear that some informal concept of membership, commonly found in unrecognized tribal groups, maintained if not established by tribal leaders, was in existence. If this criterion excluded non-residents then the issue of influence and authority over non-residents becomes moot. But if non-residents did not forfeit their tribal membership upon leaving the town, which was probably the case given the residential mobility of the Gay Head Wampanoag Indians, then this informal concept of membership, in and of itself, can be viewed as one of the ways in which the tribe maintained political influence over its non-resident members. The Proposed Finding concluded that the town government itself may have also exercised authority over those non-resident Indians who still held property or paid taxes in the town (pp.5,33). The fact that Lorenzo Jeffers, and perhaps others, continued to hold town offices during periods when he was not a resident or taxpayer of Gay Head (Ibid.,41), can be seen as evidence that non-residents participated in the town government. More importantly, it indicates that, in the operation of the town government, tribal relationships were sometimes considered more important than municipal legalities. This is one factor which served to make this government distinct from that of other small towns in Massachusetts.

The petitioner's rebuttal emphasizes that the Gay Head Wampanoags independently formed a governmental structure not unlike the town system as early as 1827 (pp.II-30-31). The Proposed Finding indicated that Gay Head Wampanoag Indians have controlled the leadership of the town government since the town was incorporated in 1870 (p.4). It also cited census data which indicated that tribal members comprised the majority population of the town until sometime in the 1970's (p.44). All but one of the town selectmen have been tribal members, and that individual was the spouse of a tribal member. Dr. Jennings, in his letter of response to the Proposed Finding, wrote that "As the town was in charge of Indian selectmen or persons married to Indians, there was no need for a distinct tribal organization to do what the Indians wanted done. The tribe, as a social, communal group, coexisted with the political form of the town." Therefore, we conclude that the town government provided the primary --but not sole-- structure by which the Gay Head Wampanoag Indians maintained political influence and authority over their resident members. This report has already indicated ways in which the tribe maintained limited political influence or authority over non-resident members.

The petitioner's rebuttal presented new and convincing evidence indicating ways in which the Gay Head Wampanoags used their control of the town government to serve the best interests of tribal members. The Proposed Finding noted that town officers have refused at certain times to take action against tribal members whose property taxes were in arrears (pp.37,41). The petitioner's rebuttal provides further examples of how the tribe used its

control of the town government to monopolize economic resources in the cliff area, the cranberry bogs, and Herring Creek (pp. I-21-22).

As a further example of how town officers supported Indian interests in the community, the petitioner's rebuttal cites the West Basin Road controversy of 1965. Funds for the construction of a mile-long road connecting the Lobsterville section of Gay Head with the West Basin of Menemsha Pond were unanimously approved by Gay Head voters in the annual town meeting in March of 1964 (Vineyard Gazette 1964). The primary benefit of this project, which also required State and County funding, would be to protect and enhance the Indian scalloping industry. A group of influential non-Indians, who called themselves the "Friends of the Island," opposed the road because they feared it would destroy the dunelands, endanger the habitat of a rare bird known as the night heron, and lead to commercial development of the area. This group was comprised mostly of off-islanders, many of whom were prominent nationally. A small minority of tribal members, including one of the town selectmen, C. Earle Vanderhoop, also opposed the project because of the negative effect it might have on the actual scalloping grounds. Nevertheless, these Indians never allied themselves with the non-Indians, and Vanderhoop declined to vote against funding the project at the annual town meeting (Banner 1965).

In June of 1965, the Friends of the Island were successful in petitioning the Governor of Massachusetts to halt State funding of the West Basin Road. Unintimidated by the influence of the Friends, the Gay Head Wampanoags rallied behind the leadership of Leonard Vanderhoop, the chairman of the Board of Selectmen, who led a successful campaign to have State funding restored. Thus, the West Basin Road was completed. As the petitioner notes, this controversy "is a clear example of the distinctions that exist between Indian and white views of issues and the ability of tribal members to manipulate the town government for the benefit of the tribe" (pp.I-25).

A further example of the political dichotomy between Indian and non-Indian interests is the issue of ownership of the common lands at Gay Head. Even though Lorenzo Jeffers had petitioned the Massachusetts' legislature in 1962 to have the title to a portion of the common lands conveyed from the Town to the Gay Head Wampanoags, it was apparently not until ten years later that the majority of the tribal members realized that the Town owned the common areas which they had always considered to be their own. This discovery in 1972 precipitated an important series of events at Gay Head, including the formation of the WTCGH as a corporate body to receive title to the common lands, the mobilization of an essentially non-Indian organization, the Gay Head Taxpayers Association, to prevent such a transfer, the filing of a suit to settle title, and prolonged negotiations to settle the issue out of court to the satisfaction of both Indian and non-Indian interests. Throughout this controversy, the town government demonstrated its desire to serve the best interests of the Indians, including its willingness to turn the common lands over to the tribe before being challenged legally in 1976, and its refusal in 1981 to appropriate funds for the town's legal defense against the land suit filed by the tribe (Bureau of Indian Affairs 1986, 48,70). In a 1981 interview, the town's three Indian selectmen acknowledged that they supported the WTCGH's efforts to regain title to the common lands (White 1981).

The petitioner's rebuttal indicates that Gay Head Taxpayers Association was

founded in part because of the Indian town officials refusal to purchase beach land for the recreational use of non-Indian summer residents (pp. I-26-27). In 1976 this organization argued before a Federal judge that the town's selectmen were not representing non-Indian interests adequately (Bureau of Indian Affairs 1986, 46).

In his letter of response to the Proposed Finding, Mr. Cabral, a newspaper editor who has covered Gay Head affairs since 1972 wrote: "the town government is run by and for the benefit of Indians. . . . To the extent that the tribal, social, and economic interests of the Indians depend on decisions made by the town government, those decisions are made with the Indians' joint interest exclusively in mind." Mr. Morgan also wrote in response: "I am 63 years old and I have never thought of Gay Head as being anything but an Indian town governed by Indians. . . .I have perceived Gay Head in no other way than as a town being governed by what appears to be a synonymous government made up of Town and Wampanoag ways. . . .I've always thought of town government in fact perceived as Wampanoag government first, i.e., all the Wampanoags of Gay Head and their descendants fighting to preserve their customs and heritage."

The Proposed Finding established that the town government "did not change perceptibly in either form or actions from what it had been prior to the formation of the Tribal Council" in 1972 (p.45). It also pointed out that since that time all but one of the town selectmen have been tribal members, that many of the town officers have been closely related to Tribal Council leaders, and that tribal members continue to demonstrate great interest and participation in the affairs of town government (pp. 6,45,69-70). Thus, we conclude that the town government continues to serve as a vehicle of political influence or authority for the Gay Head Wampanoags.

The WTCGH petition did not adequately describe the informal political structure of the Gay Head Wampanoags in terms of identifying leaders and networks, a weakness pointed out in the preliminary review letter. The supplemental materials submitted by the petitioner also failed to shed much light on this subject. Consequently, the technical reports sought to examine and describe the role and function of organizations like the Howwaswee Council and of leaders such as Lorenzo Jeffers. The Proposed Finding concluded generally that the various organizations and leaders that functioned outside of the town government lacked continuity and/or consensus support in the community. Nevertheless, it did acknowledge that various civic organizations, such as the Aquinnah Club, the Civic Association, the Improvement Association, and the Community Council "have had some political impact within the community," (p.5) and that Lorenzo Jeffers also "exercised some influence and authority within the community and outside of the town government" (p.6) and was the "most controversial political figure at Gay Head during this century" (p.33). It likewise established that for 20 years the Howwaswee Council "worked to assert a Wampanoag identity and establish ethnic pride in the community" (p.37).

The petitioner has provided new information about the role and function of the Howwaswee and Pawkunnawakutt councils and the leadership of Harrison Vanderhoop, Lorenzo Jeffers, Napoleon Madison, Walter Manning, and Donald Malonson (pp.I-28-34). These new data give a much clearer perspective on the fluid pattern of political relations at Gay Head.

The WTCGH petition made little mention of the leadership of Lorenzo Jeffers except to assert that many of the Gay Head Indians did not share his "enthusiasm for attention or support his desire to be recognized as the Gay Head 'traditional' tribal leader" (p.I-73). It also noted that his leadership of the pan-Indian Wampanoag Nation "would appear to have been of little interest in the [Gay Head] community (p.I-83.7(c),13-14). In contrast, the petitioner's rebuttal describes him as "Perhaps the most visible tribal leader during the period from the 1920s to 1970" (p.I-29). The technical reports provided a detailed description of his political activities, and this evidence, in and of itself, is sufficient to conclude that Lorenzo Jeffers did exercise political influence or authority over Gay Head tribal members.

The petitioner's rebuttal sheds new light on the leadership role of Harrison Vanderhoop by indicating that his home was used as a town hall and community center before a building specifically for those purposes was constructed in the late 1920's (p.I-29). Documents submitted with the initial WTCGH petition indicate only that he served as one of the town selectmen in the early 1920's (see Vol.VI,Town Officers). The Proposed Finding concluded that he had served as the Chief of the Aquineah Council, which Gladys Tantaquidgeon identified as representing the "tribal government" at Gay Head in 1934 (p.36). The petitioner's rebuttal indicates that given this leadership role it was not surprising that Vanderhoop was selected to represent the community at the Bourne Bridge dedication in 1933 or that he was elected to serve as the first Chief of the Howwaswee Council (p.I-29). The rebuttal states that during the ten years he served in this position he was "very instrumental in getting the tribe more visibility as Indian people" and that he "represented the tribe at civic affairs and in the Wampanoag council meetings at Mashpee, Herring Pond, and Gay Head" (Ibid.).

The petitioner's rebuttal demonstrates further that Napoleon Madison, who served as the Medicine Man for the Howwaswee and Pawkunnawakutt councils and as a town selectman, played a key role in the Gay Head Improvement Association and organized a number of community projects aimed at benefiting the year-round residents of Gay Head, most of whom were tribal members (p.I-31-33).

Another tribal member who has demonstrated leadership over an extended period both within and outside of the town governmental structure is Donald Malonson. The petitioner's rebuttal indicates that he succeeded Harrison Vanderhoop as Chief of the Howwaswee Council in the 1940's (p.I-33). Documents in the WTCGH petition also show that he served simultaneously as one of the town selectman between 1947 and 1950 (see Vol.VI,Town Officers). The Proposed Finding indicated that after the Howwaswee Council was reorganized as the Pawkunnawakutt Council in the 1950's, Malonson continued to serve as Chief and that he has been sustained in this role since the latter council was absorbed by the WTCGH in 1972 (pp.39,45). The petitioner's rebuttal points out that he organized and continually worked to improve the volunteer fire department at Gay Head and served as its Chief for over 30 years (p.I-33). It also indicates that because of his popularity, his reputation for impartiality, and his talent for arbitration, he has been able to play an important role as a community mediator, balancing opposing views and effecting compromise between diverse interests for the overall benefit of the tribe. He has likewise organized community celebrations and youth activities (p.I-33-34).

Besides demonstrating the fluid pattern of tribal leadership at Gay Head, the petitioner's rebuttal shows that the social networks which it has illustrated are also used for political purposes. The town officers use these networks to disseminate information about important issues and to muster votes and attendance at town meetings. The WTCGH officers use the networks for the same purposes "as well as a way to keep and enhance support for the tribe (p.I-21). Although the petitioner did not state specifically that this was the case, these lines of communication are also probably used to bring issues and opinions to the attention of tribal/town leaders.

The Proposed Finding did not deny that the Wampanoag Tribal Council of Gay Head maintained some political influence or other authority over its members. The finding provided some examples of activities and achievements of the WTCGH organization. What was not established, however, was the degree to which these activities arose as a result of the WTCGH's exercise of political authority over the membership at large and the extent of the participation of the membership in the decision making.

Based on the new evidence presented by the petitioner and other interested parties and a reconsideration of the data and conclusions previously presented in the WTCGH petition and the Proposed Finding, we conclude that the Gay Head Wampanoag Indians have maintained tribal political influence or other authority over their members, independent of the control of any other Indian governing body, throughout history until the present.

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