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Third-Party Comments
on the January 16, 2104,
Proposed Finding
for Acknowledgment of the
Pamunkey Indian Tribe (Petitioner #323)

Compiled by the Office of Federal Acknowledgment
Posted to the Office of Federal Acknowledgment web page on September 10, 2014

Contact information:

Office of Federal Acknowledgment
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Hours of operation: Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time; holidays excluded.

MILO C. COCKERHAM, INC.

PETROLEUM DISTRIBUTOR

P.O. Box 659 Galax, Virginia 24333 Ph: 276-236-5194 Fax: 276-236-5192

July 12, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of the membership of Virginia Petroleum Convenience and Grocery Association, a 66 year old Virginia trade association representing approximately 400 businesses engaged in the petroleum marketing and convenience store industries. On June 25, the VPCGA board of directors voted unanimously to oppose the proposed finding for federal acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pumunkey meet seven mandatory historic criteria, if sovereignty is ultimately approved, it will change Virginia forever in a very negative way.

We oppose this proposed finding because it places a small special interest ahead of more than 8.1 million other Virginians. It bypasses the US Congress, which has considered and failed to enact recognition legislation.

Our principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion. Has the Interior Department considered the transfer of wealth that would occur when the Pamunkey nation is able to sell gasoline without charging state gas tax of approximately 15 cents per gallon? If tribal stations manage to capture just 10 percent of the state's fuel sales, state and local governments would lose at least $75 million annually. The situation is the same for tobacco products. Each year Virginia collects more than $350 million in tobacco products excise and sales taxes. If only 10 percent shifted to an independent Pamunkey nation, the state would experience a budget shortfall of more than $35 million dollars, taking money from youth smoking prevention, compliance checks on tobacco sellers and the tobacco regions of our state.

7/11

There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by **non-tribal** members. The chief of the Chickahominy tribe testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

Danny C. Cockerham, President
Milo C. Cockerham, Inc.
P. O. Box 659
Galax, VA 24333

CC: Mr. Kevin M. Brown
331 Pocket Road
King William, VA 23086

MILO C. COCKERHAM, INC.
PETROLEUM DISTRIBUTORS

P.O. BOX 659 • GALAX, VIRGINIA 24333
ADDRESS SERVICE REQUESTED

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

emmart oil company
p.o. box 2247
winchester, va 22604

July 15, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of my industry, Virginia retailers and more importantly, the citizens within the Commonwealth of Virginia that depend and trust our Federal Government to do the right thing.

For over ten years now the Commonwealth's Native American tribes have sought Federal Recognition for government sovereignty thru Congress. Congress has not acted due to the lack of a compromise from vocal opposition.

THE principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion.

Is it your contention that you have never heard of this issue? Responsible government would inquire with representatives of New York, Kansas or Washington States.

There is a compromise that has been on the table since day one. Recognize the tribes, but include stipulations that require the Pamunkey nation, should they elect to venture into commercial enterprises, that they must collect and remit to the Commonwealth, all taxes due on revenues generated from **non-tribal** members. The chief of the Chickahominy tribe testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

Some might have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Doesn't this support and simplify execution of our suggested compromise?? Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state.

I urge you to act responsibly and preserve the financial integrity of the Commonwealth of Virginia by assuring recognized tribes do not engage in tax evasion.

Sincerely,

James C. Emmart, VPCGA Board member

540-662-3835 800-421-3835 fax: 540-667-2211

THRIFT OIL COMPANY, PETROLEUM PRODUCTS, P.O. BOX 430, URBANNA, VIRGINIA 23175 (804) 758-2366

Mr. Kevin Washburn
Office of Assistant Secretary-Indian Affairs
Attn: Office of Federal Acknowledgment
1951 Constitution Avenue, NW
Mail Stop 34B-SIB
Washington DC 20240

July 15, 2014

Dear Mr. Washburn:

I am writing on behalf of Thrift Oil Company, a Fuel distributor in the Middle Peninsula and as a member of the Virginia Petroleum Convenience and Grocery Association. On June 25, the VPCGA voted unanimously to oppose the proposed finding for Federal Acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pamunkey meets seven mandatory historic criteria, if sovereignty is ultimate approved, it will change Virginia forever in a very negative way.

We oppose this proposed finding because it places a small interest ahead of more than 8.1 million other Virginians. It bypasses the U.S. Congress, which has considered and failed to enact recognition legislation.

Our principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion. Has the Interior Department considered the transfer of wealth that would occur when the Pamunkey nation is able to sell gasoline without charging state gas tax of approximately 15 cents per gallon? If tribal nations manage to capture just 10 percent of the state's fuel sales, state and local government would lose at least 75 million dollars annually. The situation is the same for tobacco products. Each year Virginia collects more than 350 million dollars in tobacco products excise and sales taxes. If only 10 percent shifted to an independent Pamunkey nation, the state would experience a budget shortfall of more than 35 million dollars, taking money from youth smoking prevention, compliance checks on tobacco sellers and the tobacco regions of our state.

There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by non-tribal members. The Chief of the Chickahominy tribe testified to the U.S Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you to consider the concerns of all Virginians and not a select few.

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to our organization.

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

Chappy Wake
President

Virginia Petroleum Convenience and Grocery Assn.

Virginia Petroleum, Convenience and Grocery Association

7275 Glen Forest Drive, Suite 204, Richmond, VA 23226
(804) 282-7534 (800) 552-9819 FAX (804) 282-7777 www.vpcga.com

July 14, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of the membership of Virginia Petroleum Convenience and Grocery Association, a 66 year old Virginia trade association representing approximately 400 businesses engaged in the petroleum marketing and convenience store industries. On June 25, the VPCGA board of directors voted unanimously to oppose the proposed finding for federal acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pumunkey meet seven mandatory historic criteria, if sovereignty is ultimately approved, it will change Virginia forever in a very negative way.

We oppose this proposed finding because it places a small special interest ahead of more than 8.1 million other Virginians. It bypasses the US Congress, which has considered and failed to enact recognition legislation.

Our principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion. Has the Interior Department considered the transfer of wealth that would

#7/16

occur when the Pamunkey nation is able to sell gasoline without charging state gas tax of approximately 15 cents per gallon? If tribal stations manage to capture just 10 percent of the state's fuel sales, state and local governments would lose at least $75 million annually. The situation is the same for tobacco products. Each year Virginia collects more than $350 million in tobacco products excise and sales taxes. If only 10 percent shifted to an independent Pamunkey nation, the state would experience a budget shortfall of more than $35 million dollars, taking money from youth smoking prevention, compliance checks on tobacco sellers and the tobacco regions of our state.

There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include requirements (stipulations) that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by **non-tribal** members. The chief of the Chickahominy tribe testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

http://www.indian.senate.gov/sites/default/files/upload/files/June212006.pdf

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

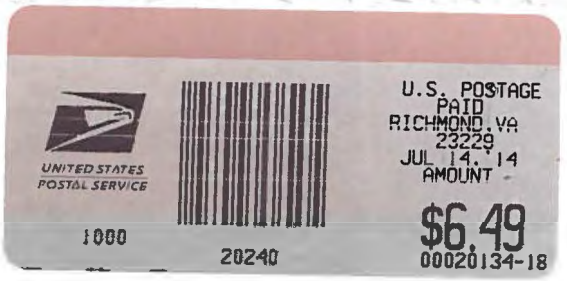
We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

Michael J. O'Connor
President, VPCGA

CC: Mr. Kevin M. Brown

Virginia Petroleum Convenience and Grocery Association
7275 Glen Forest Drive, Suite 204 • Richmond, VA 23226



SIB

Mr. Kevin Washburn
Office of the Assistant Secretary - Indian Affairs
Attention: Office of Federal Acknowledgement
1951 Constitution Ave.
Mailstop 34B-SIB
Washington, DC 20240

RETURN RECEIPT
REQUESTED

UNITED STATES POSTAL SERVICE

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USPS
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• Sender: Please print your name, address, and ZIP+4 in this box •

Mike O'Connor
VPCbA
7275 Glen Forest Dr., Ste. 204
Richmond, VA 23226

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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Mr. Kevin Washburn
Office Asst. Secretary
Indian Affairs
Office Federal Acknowledgment
1951 Constitution Ave
Mailstop 34 B-SIB
Washington, DC 20240

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X R Lee Fleming ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

RECEIVED
JUL 23 2014
ASIA-OFA

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7013 2630 0000 4286 6857

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Virginia Wholesalers and Distributors Association
INCORPORATED

4907 AUGUSTA AVENUE
RICHMOND, VIRGINIA 23230
PHONE (804) 254-9170
FAX (804) 355-8986

Mr. Kevin Washburn
Office of the Assistant Secretary-Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn,

On behalf of the Board and Membership of the Virginia Wholesalers and Distributors Association I am writing to oppose the proposed finding for federal acknowledgement of the Pumunkey Indian Tribe as published in the January 23, 2014 Federal Register.

Many may see the proposed notice as mere acknowledgement that the Pumunkey meet seven mandatory historic criteria, if sovereign recognition is ultimately approved, it will have a harmful negative economic effect on the Virginia economy.

Our opposition is soundly based on the same kind of economic harm experienced in other States with sovereign tribes, attributable to tax evasion. It is further confirmed by Virginia studies on illegal cigarette trafficking, tax evasion and counterfeit product traveling up and down the east coast and in fact I-95 is now being referred to as the new "Tobacco Road".

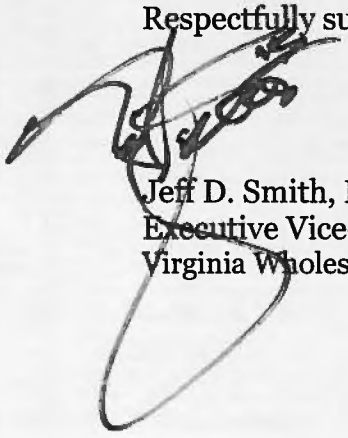
Annually, our licensed wholesale distributors play a critical role with enforcing Virginia's State and Local tax on tobacco and our monthly reports are significant evidence with the Attorney General's office in their MSA/Virginia Directory enforcements. Virginia collects more than $350 ml annually from tobacco taxes and local governments another $70 ml and without proper enforcement requirements, Virginia stands to lose revenue and create further negative impact with the State's overall enforcements. The Virginia State Crime Commission has reported frequently that their findings confirm the number one reason for illegal trafficking is tax evasion.

#47/16

As has been our consistent position with Congressional legislation, we insist that this process include requirements that the Pumunkey nation must collect and remit to the Commonwealth all taxes on purchases made by **non-tribal** members and further that the Governor of Virginia must enter into a "Compact Agreement" which would further include compliance with Virginia law. This would certainly address any future concerns with tribal land expansion into populated commercial areas.

It is very important that you preserve the integrity of Virginia Law for it's more than 8 million citizens by assuring compliance and include these provisions as part of any form of recognition.

Respectfully submitted,



Jeff D. Smith, III
Executive Vice-President
Virginia Wholesalers & Distributors Association

Virginia Wholesalers and Distributors Association
INCORPORATED
4907 AUGUSTA AVENUE
RICHMOND, VIRGINIA 23230

Mr. Kevin Washburn
Office of the Assistant Secretary-Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

fight litter

20240

WOODFIN
YOUR HOME TEAM

8180 Mechanicsville Turnpike
Post Office Box 277
Mechanicsville, Virginia 23111

July 14, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of the membership of Virginia Petroleum Convenience and Grocery Association, a 66 year old Virginia trade association representing approximately 55,000 Virginians, including 400 businesses engaged in the petroleum marketing and convenience store industries. On June 25, the VPCGA board of directors voted unanimously to oppose the proposed finding for federal acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pumunkey meet seven mandatory historic criteria, if sovereignty is ultimately approved, it will change Virginia forever in a very negative way.

We oppose this proposed finding because it places a small special interest ahead of more than 8.1 million other Virginians. It bypasses the US Congress, which has considered and failed to enact recognition legislation.

Our principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion. Has the Interior Department considered the transfer of wealth that would occur when the Pamunkey nation is able to sell gasoline without charging state gas tax of approximately 15 cents per gallon? If tribal stations manage to capture just 10 percent of the state's fuel sales, state and local governments would lose at least $75 million annually. The situation is the same for tobacco products. Each year Virginia collects more than $350 million in tobacco products excise and sales taxes. If only 10 percent shifted to an independent Pamunkey nation, the state would experience a budget shortfall of more than $35 million dollars, taking money from youth smoking prevention, compliance checks on tobacco sellers and the tobacco regions of our state.

There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by **non-tribal**members. The chief of the Chickahominy tribe

#7/17

Phone: (804) 730-5000 ❖ FAX: (804) 730-0861 ❖ www.AskWoodfin.com

testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

John H. Woodfin, Jr.
CEO

CC: Mr. Kevin M. Brown

WOODFIN
YOUR HOME TEAM
Post Office Box 277
Mechanicsville, Virginia 23111

Address Service Requested

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MAILED FROM ZIP CODE 23230

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

20240

LITTLE

LITTLE OIL COMPANY

July 12, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of the membership of Virginia Petroleum Convenience and Grocery Association, a 66 year old Virginia trade association representing approximately 400 businesses engaged in the petroleum marketing and convenience store industries. On June 25, the VPCGA board of directors voted unanimously to oppose the proposed finding for federal acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pamunkey meet seven mandatory historic criteria, if sovereignty is ultimately approved, it will change Virginia forever in a very negative way.

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There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by **non-tribal** members. The chief of the Chickahominy tribe testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in

P.O. BOX 6863 • RICHMOND, VIRGINIA 23230-0863 • PHONE (804)358-8877 / (800)868-5645 • FAX (804)359-1122

other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

Barry C. Grizzard

Sales Manager, Little Oil Company

LITTLE

LITTLE OIL COMPANY, INC.
P O BOX 6863
RICHMOND VA 23230-0863

ADDRESS SERVICE REQUESTED

RICHMOND VA 230
19 JUL 2014 PM 5 L

Mr. Kevin Washburn
Office of the Assistant Secretary - Indian Affairs
ATTN: Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

20240

PERKINS COIE LLP
PROOF OF DELIVERY

DATE: **July 22, 2014**

FROM: **Stand Up for California and MGM National Harbor (Perkins Coie LLP)**

DELIVERED TO:

Office of the Assistant Secretary for Indian Affairs (202) 513-7650 Attn: R. Lee Fleming, Director Office of Federal Acknowledgment 1951 Constitution Avenue, NW Mail Stop 34B-SIB Washington, D.C. 20240	

Received by:

R. Lee Fleming
Print Name and Title

R. Lee Fleming
Signature

7/22/2014
Date

Cheryl Schmit
Director
Stand Up for California!
P.O. Box 355
Penryn, CA 95663

Lorenzo D. Creighton
President & COO
MGM National Harbor
120 Waterfront Street
Suite #500 B
National Harbor, MD 20745

July 22, 2014

Office of the Assistant Secretary
for Indian Affairs
Attn: R. Lee Fleming, Director
Office of Federal Acknowledgment
1951 Constitution Avenue NW
Mail Stop 34B-SIB
Washington, DC 20240

Pamunkey Indian Tribe
c/o Mr. Kevin M. Brown
331 Pocket Road
King William, VA 23086

Re: Comments on the Proposed Finding for Federal Acknowledgment of the Pamunkey Indian Tribe

Dear Messrs. Fleming and Brown:

Please find enclosed the comments of Stand Up for California! National Project on Acknowledgment ("Stand Up!") and MGM Resorts International ("MGM") on the Proposed Finding for Federal Acknowledgment of the Pamunkey Indian Tribe ("Petitioner"). *See* 79 Fed. Reg. 3860 (Jan. 23, 2014).

Determining that an American Indian group exists as an Indian Tribe has important legal and practical significance. Federal acknowledgment is a determination that a group has a substantially continuous tribal existence and has functioned as autonomous entity throughout history until the present. Tribes enjoy sovereign immunity and may exercise jurisdiction over their territory. They may also administer funds under the Indian Self-Determination and Education Assistance Act, establish gaming facilities under the Indian Gaming Regulatory Act, and obtain other federal benefits.

The importance of an acknowledgment decision thus warrants strict adherence to the applicable regulations. As set forth in the enclosed comments, the Department failed to conduct the requisite analysis and incorrectly concluded that the Petitioner's evidence satisfied existing regulatory criteria. Evidence may be available to correct these problems, but the Department must adhere to the regulations it has imposed.

A separate question is whether the United States can acknowledge the Petitioner in light of its governing documents. The Petitioner's history under Jim Crow laws is a terrible one. Yet the Petitioner's governing documents appear to perpetuate some of those laws, including prohibiting marriage and membership on the basis of race. The governing documents also limit the right of Pamunkey women to marry outside the group, and to vote and hold office. Although the Petitioner appears willing to change the gender-based political restrictions, the Department cannot acknowledge a group whose laws deny its members equal protection.

In light of the Department's reconsideration of the acknowledgment standards, *see* 79 Fed. Reg. 30766 (May 29, 2014), Stand Up! and MGM also recommend that the Department place all final determinations on hold. What standards should apply is now an open question. Delay on all pending petitions is warranted as the Department evaluates the need for change.

With respect to Petitioner, Stand Up! and MGM are aware of the group's unique history and respect its perseverance. Ensuring that the Department adheres to its regulations, however, is essential to protecting the integrity of the acknowledgment process, particularly when the Department has questioned the process itself.

Respectfully submitted,

Cheryl Schmit, Director
Stand Up for California! National
Project on Acknowledgment

Lorenzo D. Creighton
President & COO
MGM National Harbor

Enc.

COMMENTS ON THE PROPOSED FINDING FOR FEDERAL ACKNOWLEDGMENT OF THE PAMUNKEY INDIAN TRIBE

A Notice by the Bureau of Indian Affairs (Jan. 23, 2014)

by

STAND UP FOR CALIFORNIA!
NATIONAL PROJECT ON FEDERAL ACKNOWLEDGMENT

and

MGM RESORTS INTERNATIONAL

Submitted on
July 22, 2014

INTRODUCTION

On January 23, 2014, the Department of the Interior ("Department") published notice in the Federal Register announcing that the Assistant Secretary—Indian Affairs proposes to determine that a petitioner group that identifies itself as the Pamunkey Indian Tribe ("Petitioner") is an Indian tribe within the meaning of Federal law. 79 Fed. Reg. 3860 (Jan. 23, 2014). The Petitioner claims descent from the historic Pamunkey Tribe, one of approximately 30 Algonquian-speaking tribes that made up the Powhatan paramountcy. The historic Pamunkey treated with King Charles II of England in 1677, swearing fealty to the English Crown pursuant to the Treaty of 1677 (also referred to as the "Treaty Between Virginia And The Indians 1677" or "Treaty of Middle Plantation").[1] As successor to the English Crown, the Commonwealth of Virginia assumed the Crown's rights and obligations, including with respect to the Treaty of 1677.

The January 23, 2014, Proposed Finding ("PF") concludes that the Petitioner descends from the historic Pamunkey and qualifies as an Indian tribe based on Petitioner's ability to satisfy seven mandatory criteria for acknowledgment set forth in 25 C.F.R. Part 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe. Id.* The evidence the Petitioner produced and the Department's analysis of that evidence do not support acknowledgment at this time. Evidentiary and analytical shortfalls in the PF for the Petitioner include the Department's failure to examine the historical period before 1789 and evidentiary deficiencies in establishing the requisite community and descent. These evidentiary and analytical deficiencies may be remediable, but they must be addressed to satisfy the current acknowledgment criteria.

A more fundamental question is the ability of the Department to acknowledge the Petitioner in light of its governing documents. Those, which are required by the acknowledgment regulations, prohibit members from marrying African-Americans. The governing documents also prohibit women members from marrying non-Pamunkey men, from voting, and from holding office. The PF states that the Petitioner agreed to remove gender-based restrictions on voting and holding office in 2012, but those restrictions have not yet been removed and there is no indication that the Petitioner has agreed to remove race-based restrictions on marriage. The history of the Petitioner indicates that race-based restrictions were necessary for self-preservation in Jim Crow Virginia. Such restrictions, however, have been unconstitutional since 1967. And in 1968, Federal law has required Indian tribes to guarantee their members equal protection. The United States cannot acknowledge or expend funds on an entity that retains laws declared unconstitutional decades earlier and continues to deny its members equal protection. Petitioner's

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[1] Following the violence against Virginia Indians that accompanied Bacon's Rebellion (1676–1677), several tribes, formerly part of the paramount chiefdom under Tsenacomoco, reunited under the authority of the Pamunkey chief Cockacoeske and promised fidelity to the Crown in exchange for its protection. The Tribes that signed the Treaty of 1677, per the spellings within the treaty, are the Appomattux, the Manakins, the Maherains, the Nansaticoes, the Nanzem'd, the Nanzemunds, the Nottowayes, the Pamunkey, the Pomunekey, the Portabacchoes, the Sappones, and the Wayonoake. Treaty between Virginia and the Indians, King Charles II -Queen of the Pomunekey et al., May 29, 1677, reprinted in 14 VA. MAGAZINE OF HISTORY AND BIOGRAPHY (1906-1907) 289-96.

governing documents must be revised and past violations—if any—remedied before acknowledgment is appropriate.

An additional complication is that, in May, the Department published notice of a proposed rule to revise the Part 83 procedures. 79 Fed. Reg. 30766 (May 29, 2014). The Department explains its purpose in proposing regulatory changes, in part, as follows: "the current process has been criticized as 'broken' or in need of reform," and the proposed regulations would, among other things, "establish[] objective standards, where appropriate, to ensure transparency and predictability." *Id.* at 30766. The Department has proposed to allow petitioners, including Petitioner here, who have submitted complete petitions, but not yet received a final agency decision, to choose whether to proceed under the existing or new regulations. *Id.* at 30774 (proposed § 83.7).

The Department has called into question the legitimacy of its regulations, including whether the standards it is applying are objective, transparent and predictable. Since 1978, the regulations have slowly, but increasingly, deviated from how the Supreme Court and John Collier Sr. and Felix Cohen, the principle architects of the Indian Reorganization Act of 1934, defined a tribe for purposes of Federal law. The Department has stated that "[t]he changes proposed in the proposed rule remain true to these fundamental standards and depart only in very modest ways from our existing Part 83 criteria." *Id.* at 30768. Yet it is evident to the commenters that the proposed changes actually represent a radical departure from long-established, judicially defined standards. The Department should not proceed with this Petition until it has resolved what standards are sufficiently "objective" for establishing that an American Indian group exists as an Indian Tribe that will "ensure transparency and predictability." In light of the deficiencies in the PF and the constitutional infirmities of Petitioner's governing documents, proceeding under the new regulations is unlikely to cause substantial delay.

Interested Parties

1. Stand Up for California!

Stand Up for California! ("Stand Up!") is a non-profit organization that focuses on gambling issues affecting California, including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming and the state lottery. Stand Up! has been involved in the ongoing debate of issues raised by gaming and its impacts for over a decade. Since 1996, Stand Up! has assisted individuals, community groups, elected officials, members of law enforcement, local public entities and the State of California with respect to gaming. Additionally, Stand Up! acts as a resource of information to local, state and federal policy makers.

Tribal acknowledgment directly affects the gaming environmental in California. The Department's proposed changes to the acknowledgment regulations set forth at 25 C.F.R. Part 83 would substantially reduce the standards for acknowledging tribes and could result in a dramatic increase in the number of recognized Indian governments in California. Other states could see dramatic changes as a result of the proposed regulations, including potentially Massachusetts, Connecticut, Michigan, Ohio, Virginia and others. The net effect of the proposed rules would be to replace longstanding, clearly defined criteria that have been in effect since 1978 with much

more lenient and subjective standards that grant enormous discretion to the Assistant Secretary for Indian Affairs.

Because the proposed acknowledgment regulations have the potential to impact California dramatically by increasing the number of tribes, the amount of land transferred to the United States for newly recognized tribes and the number of gaming facilities, Stand Up! established a National Project on Federal Acknowledgment to review and comment on the proposed regulations and to evaluate how the current regulations are being applied. The general purposes of the National Project are to: 1) evaluate the legal underpinnings for the acknowledgment process; 2) evaluate how the process has been and is being applied to pending and potential petitioners; 3) educate state and federal policy makers and elected leaders regarding the long-term implications of acknowledgment in their state; and 4) monitor the Department's development and application of federal regulations affecting state and tribal interests. Stand Up! has a legal and factual interest in this PF and others that the Department announces.

2. MGM Resorts International

MGM Resorts International ("MGM") is a publicly traded hospitality company whose primary business is the ownership and operation of casino resorts. MGM is one of the world's leading and most respected hotel and gaming companies. Since its inception, MGM has demonstrated a powerful commitment to the philosophy of social responsibility – a reflection of the fundamental integrity that informs MGM's business conduct and its relationships with its employees, guests, communities and the planet. Parallel to MGM's goal to excel financially, in an ethical and responsible manner, is its ambition to make a unique contribution in its singular way to solving the societal challenges that confront everyone. MGM supports responsible gaming and has implemented the American Gaming Association's Code of Conduct for Responsible Gaming at its properties. It has also been the recipient of numerous awards and recognitions for its industry-leading Diversity Initiative and its community philanthropy programs.

MGM operates destination casino resorts in a variety of jurisdiction. In each of these jurisdictions and in every gaming jurisdiction in the United States, operators must adhere to legal and regulatory standards that far surpass most other industries. With properties and investments located in Nevada, Mississippi, Michigan, New Jersey and Illinois (and Macau, China and Dubai), MGM also has a strong interest in protecting its investments, the investments of its partners, and the communities that have welcomed MGM into their fold. MGM has also partnered with federally recognized Tribes, has shared extensive industry expertise in development and operations with such partners, and continues to look for opportunities to invest in Indian country. MGM understands some of the unique challenges Indian country faces in seeking investment and experienced partners, challenges that the proposed acknowledgment regulations will greatly exacerbate by reducing applicable standards dramatically and destabilizing already volatile gaming markets.

As is widely recognized, the federal acknowledgment process is a significant factor in the development of gaming nationwide. Newly recognized tribes offer a unique opportunity to locate casinos in favorable gaming markets, and often petitioner groups located in attractive locations are the beneficiaries of significant outside investment. The acknowledgment process must

therefore be carefully monitored to ensure that the standards are applied rigorously and that financial interests do not improperly impact acknowledgment, including by influencing the rulemaking process itself. By reducing opportunities to participate in acknowledgment proceedings, the Department also reduces accountability and therefore institutional buffers that protect Departmental staff responsible for these critically important decisions. It is strongly in MGM's interest to participate in the Department's acknowledgment proceedings, with respect to both specific petitions and proposed changes to generally applicable acknowledgment regulations.

COMMENTS ON THE PROPOSED FINDING

1. The Department Cannot Acknowledge Petitioner While It Fails to Provide Equal Protection to Members.

Petitioner's governing documents violate equal protection, as guaranteed by the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, and later the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304. Since 1954, it has been clear that the United States can no more discriminate on the basis of race than can the States. *See Bolling v. Sharpe*, 347 U.S. 497 (1954) (stating that "[i]n view of [the] decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government"). Discrimination on the basis of sex is similarly impermissible. *See Frontiero v. Richardson*, 411 U.S. 677 (1973) (holding that classifications based on sex are inherently suspect). The federal government is also prohibited from expending funds on programs that discriminate on the basis of race. *See* Title VI of the Civil Rights Act of 1964, 2 U.S.C. § 2000d *et seq*.

In 1968, Congress passed the Indian Civil Rights Act ("ICRA"). 25 U.S.C. §§ 1301-1304. The declared purpose of ICRA is "to insure that the American Indian is afforded the broad constitutional rights secured to other Americans," and to "protect individual Indians from arbitrary and unjust actions of tribal governments." S.Rep. No. 841, 90th 73 Cong., 1st Sess., 6 (1967). ICRA prohibits any "Indian tribe in exercising powers of self-government ... [from denying] to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." 25 U.S.C. § 1302(a)(8). A tribe may structure its government any way it wishes, as long as it does not violate ICRA. *See Howlett v. Salish and Kootenai Tribes of Flathead Reservation, Montana*, 529 F.2d 233 (9th Cir. 1976). Congress prescribed fundamental limits on a tribe's exercise of its governmental authority, including prohibiting a tribe from engaging in discriminatory practices prohibited under the U.S. Constitution.

The Petitioner's practices and ordinances violate these fundamental principles and laws. The acknowledgment regulations require petitioner groups to submit "[a] copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures." 25 C.F.R. § 83.7(b). The PF states that "the first law of the Pamunkey" is that a member of the Pamunkey "may marry only white or Indian." PF at 47-48 (prior practice or custom first codified in 1886), 65 (same), 55 (current governing documents retain prohibition). The penalty for violation of this prohibition is forfeiture of all membership

rights, including the right to reside on the reservation. PF at 83-85. The penalties for all other violations were until recently limited to fines of $5 to $500. PF at 85. Men who married a non-white, non-Pamunkey woman have been required to provide evidence of the woman's ethnicity, and there are council minutes detailing accusations that a member's wife may have been "colored" or "negro." PF at 73. The PF explains that this prohibition was specifically intended to exclude African-Americans from residence on the state reservation and membership in the group. PF at 47-48.

As the PF describes, the Petitioner passed this ordinance in an attempt to preserve the Indian character of the community in the face of slavery,[2] segregation, and discrimination. PF at 32, 34, 43, 72-73. These ordinances, however, remain in effect today, decades after any such excuse could possibly be justified. Petitioner's ordinances currently deny members marrying African-Americans equal protection of the law. No member may retain his or her full membership rights or remain on the reservation if that member marries an African-American. Anti-miscegenation laws were declared unconstitutional almost 50 years ago. *See Loving v. Virginia*, 388 U.S. 1 (1967).

The Petitioner's treatment of its women members is similarly unconstitutional. Petitioner's governing documents also deny its women members the right to marry whomever they choose. Although Pamunkey men may marry white women (but not African-American women) and reside on the reservation, Pamunkey women may not marry any non-Indian. PF at 48, 55, 73, 79. Further, women members are not even allowed to vote, hold office, or attend council meetings without an invitation. PF at 79, 83; Technical Assistance Letter 1 at 4. Although the PF notes that the Pamunkey council recently voted to amend its governing documents to remove these restrictions against women (but not against African-Americans), the PF also states that the governing documents of the Pamunkey have not yet actually been amended and the changes have not been implemented. PF at 79, 79 n. 411, 83 n. 419. The PF fails to discuss why these changes have not been implemented. In an even greater deficiency, the PF fails to examine why the prohibition on African-Americans was left in place at the same time.

It is undisputable that racially-based marriage prohibitions violate equal protection and due process. *See Loving*, 388 U.S. 1. Prohibitions on women voting and holding office are similarly unconstitutional. *See White Eagle v. One Feather*, 478 F.2d 1311 (8th Cir. 1973). Even if tribes have the sovereign right to define the terms of their membership, *see Nero v. Cherokee Nation of Oklahoma*, 892 F.2d 1457 (10th Cir. 1989), the United States cannot acknowledge a petitioner if its governing documents violate constitutional protections. If the Petitioner is acknowledged with its current governing documents in place, it will immediately be in violation of federal law. Furthermore, it will be the actions of the Assistant Secretary-Indian Affairs to acknowledge the Petitioner that will result in the violation of federal law. The Assistant Secretary lacks the authority to do this. 5 U.S.C. § 706(2). The Petitioner cannot be acknowledged under federal law unless it amends its governing documents to repudiate and remove the unconstitutional provisions.

In addition, the acknowledgment regulations should be amended in the current rulemaking to require that tribal governing documents do not violate the ICRA, that any past

[2] The Pamunkey, however, themselves held slaves. PF at 7 n. 13 and 31 n. 141.

violations since ICRA was passed have been remediated to the extent possible (including, in this case, by requiring a list of previously illegally sanctioned members and impacted non-members, if any[3]), and a finding that acknowledgment of an Indian tribe will not result in violation of the ICRA, the Constitution, or any other federal law.

This modification to the acknowledgment regulations is required to ensure that petitioner groups appreciate their legal responsibilities under the Constitution and ICRA, and remediate current and past violations, before acknowledgment. The rulemaking should be completed and made applicable to all pending petitioners, including the Petitioner, before any acknowledgment decision is made.

2. Contrary to existing regulations and precedent, the Proposed Finding fails to evaluate whether the Petitioner has existed as a tribe for the full historical period.

The acknowledgment regulations require a petitioner to demonstrate that "[a] predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." 25 C.F.R. § 83.7(b). In addition, a petitioner must demonstrate that it "has maintained political influence or authority over its members as an autonomous entity from historical times until the present." These two criteria are fundamental to what it means to be a "tribe." The regulations further define the relevant terms. "Historically, historical or history means dating from first sustained contact with non-Indians," and "sustained contact" is defined as "the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically." *Id.* § 83.1. Therefore, "first sustained contact with non-Indians" unambiguously means contact with Europeans, and the Office of Federal Acknowledgment has consistently applied the definition in this manner. *See e.g.*, *United Houma Nation v. Babbitt*, Not Reported in F. Supp., 1997 WL 403425 (D.D.C. 1997) (OFA noting in proposed finding that the "federal acknowledgment criteria 83.7(b) and (c) require the petitioner to provide evidence that they fulfill criteria 83.7(b) and (c) from the time of first sustained contact with Europeans to the present"); *see also United States v. Washington*, 641 F.2d 1648 (9th Cir. 1981)(recognition as tribe requires Indian group to be lineal descendants of historic tribe and to have maintained tribal relations).

In 2008, however, the Assistant Secretary–Indian Affairs reinterpreted the regulations as requiring petitioners to document community and governmental continuity from 1789 only, the year that the Constitution of the United States became effective, ostensibly establishing the sovereign with which an Indian tribe could carry on a government-to-government relationship. Bureau of Indian Affairs, *Office of Federal Acknowledgment; Guidance and Direction Regarding Internal* Procedures, 73 Fed. Reg. 30146 (May 23, 2008). Indeed, prior to the Assistant Secretary's new interpretation, acknowledgment determinations uniformly evaluated

[3] ICRA prohibits an Indian tribe from violating the civil rights of "any person," 25 U.S.C. § 1302(a)(8), and therefore also applies to any non-members whose rights have been violated by these discriminatory practices, including non-Pamunkey spouses of members.

the continuity of tribal existence from dates of first sustained contact that occurred prior to 1789.[4]

This guidance contradicts the plain language of the acknowledgment regulations and is impermissible. The Assistant Secretary reinterpreted the regulations "[i]n order to reduce the evidentiary responsibilities of the petitioner." *Id.* at 30147. The Assistant Secretary explains that it chose the 1789 date because the Constitution was ratified on March 4, 1789, when Congress assumed the power to regulate commerce with the Indian tribes. *Id.* Accordingly, prior history need not be reviewed. *Id.*

The interpretation is incorrect for several reasons. To begin with, it is factually incorrect that the United States began with the Constitution. Before the Constitution, the United States existed under the Articles of Confederation, which also provided Congress with the power to regulate commerce with the Indian tribes. *See* Art. of Confed. Art. IX, sec. 4, cl. 3. Even before the Articles of Confederation, the Second Continental Congress dealt with the Indian tribes as the de facto provisional government of the United States. *See Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 558 (1832). Further, it is well established that, upon independence, the United States succeeded to the claims and rights of the Crown of England with respect to Indian tribes. *Id.* at 517. Moreover, judicial precedent establishes that tribal sovereignty derives not from the Constitution, but instead is retained from an inherent, aboriginal sovereignty that existed before colonization. *See U. S. v. Wheeler*, 435 U.S. 313 (1978); see also *U.S. v. Lara*, 541 U.S. 193 (2004) (Thomas, J. concurring) for extensive discussion of tribal sovereignty.

The acknowledgment regulations have always emphasized the principle that sovereignty is pre-constitutional and therefore tribal status requires an evaluation from first sustained contact with Europeans. The original acknowledgment regulations, promulgated in 1978, defined "historical" to mean "dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, *colonial or territorial governments, or if relevant, citizens and officials of foreign governments* from which the United States acquired territory." 43 Fed. Reg. 39361, 39362 (Sept. 5, 1978) (emphasis added). The notice of proposed rulemaking for the 1978 regulations emphasized that under the proposed rules, the Assistant Secretary would acknowledge "only those Indian tribes whose members and their ancestors existed in tribal relations *since aboriginal times* and have retained some aspects of their aboriginal sovereignty." 43 Fed. Reg. 23743, 23744 (June 1, 1978) (emphasis added).

The 1994 rulemaking established the current definition of "first *sustained* contact with non-Indians," but that change "was aimed at eliminating possible problems caused by the often sporadic and poorly documented nature of *initial* contacts." 59 Fed. Reg. 9280, 9284 (Feb. 25, 1994) (emphasis added). The 1994 rulemaking emphasized that "the standards of continuity of

[4] See, for example, the determinations for the Wampanoag of Gay Head, Ramapough, Miami of Indiana, and Narragansett petitioner groups. Since the Assistant Secretary's re-interpretation, only the Shinnecock petitioner group has been acknowledged without an evaluation of continuity from first sustained contact before 1789. Given the Shinnecock's prior adjudication as an Indian tribe by a federal court, it is unclear that a determination by the Assistant Secretary on this point was necessary. *See New York v. Shinnecock Indian Nation*, 400 F. Supp. 2d 486 (E.D.N.Y. 2005).

tribal existence remain unchanged" and "[n]one of the changes made ... will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations." *Id.* at 9280; *see also id.* at 9292 (tribal authority derived from "aboriginal sovereignty"). Furthermore, the 1994 rulemaking considered and rejected the Assistant Secretary's stated purpose in re-interpreting the regulations ("to reduce the evidentiary responsibilities of the petitioner"), explaining that the purpose of the acknowledgment process is "to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians" (not tribes that have existed since first contact with the United States) and that a demonstration of continuous tribal existence from a more recent date (1934 was specifically proposed by commenters) "would provide no basis to assume continuous existence before that time." 59 Fed. Reg. at 9281.

Notably, each of these changes has been implemented pursuant to notice and comment rulemaking, as the Administrative Procedures Act explicitly requires. 5 U.S.C. § 553. In fact, the proposed changes to the acknowledgment regulations would effectuate the change that the Assistant Secretary has illegally attempted through guidance, and it is in the context of that regulatory proceeding that the question of the legality of this change will be more fully addressed. But until the Department has legally revised its regulations, it must comply with the regulations in their current form or defer resolution of any pending application until new regulations are promulgated. *Miami Nation of Indians, Inc. v. Dep't of the Interior*, 255 F.3d 342, 348 (7th Cir. 2001).

Application to the Petitioner

The PF is deficient, due to the Assistant Secretary's application of its illegal guidance. The Petitioner claims to be the successor to the historic Pamunkey Tribe of the Powhatan Paramountcy, famous for the story of Pocahontas and Captain John Smith. The date of first sustained contact with non-Indians would therefore be 1607, the year of the founding of Jamestown. PF at 4. The PF states that "various sources, almost all submitted by the petitioner, show that a Pamunkey Indian tribe or settlement continued throughout the colonial period," but does not discuss or present all of that evidence, nor predicate its decision on that evidence. PF at 5. Instead, the PF only considers the period from 1789 to the present. PF at 4.

As a practical matter, the failure to consider a tribe's full history will almost inevitably distort any acknowledgment decision by ignoring historical context. What happened during the period of first sustained contact is a critically important period of any tribe's history. There were wars and alliances with Europeans, as well as between tribes, as happened from time immemorial. Tribes were decimated from small pox, war, genocide, and enslaved, all terrible events for which reparations may be appropriate. But the acknowledgment process is not intended to be reparatory; it is intended to identify for prospective purposes whether a sovereign entity continues to exist such that the United States should relate with that entity on a government-to-government basis. Thus, the Department must evaluate the full history of the historical tribe.

In this case, the PF considers the "historical tribe" to be the Indian community found on the Pamunkey Island "Indian town" in 1789. Except for a single, cursory paragraph, that finding almost completely ignores 182 years of Pamunkey history. PF at 4-6. It is impossible to

determine from the evidence in the PF that the Indian community at Pamunkey Island actually meets the criteria for tribal acknowledgment in 1789, i.e., that it existed as a self-governing tribe, rather than simply an increasingly assimilated community of Indian families.[5]

The available evidence is, in fact, in tension with the Department's conclusion that the Pamunkey Island community existed as a sovereign, self-governing political entity in 1789. The evidence presented in the PF of political authority within a generation before and after 1789 consists of a 1786 petition to the state legislature for non-Indian reservation trustees to be appointed, evidence from 1795 that the local community had run a non-Pamunkey Indian and his Pamunkey wife out of town, petitions from 1798, 1799, and 1812 regarding the non-Indian trustees, and a 1799 act of the state legislature regarding the trustees. PF at 58-60. Every one of these pieces of evidence (except perhaps the running out of town) argues not for the existence of a self-governing community, but rather for the opposite: a community governed by non-Indians appointed by the Commonwealth, with every instance of community concurrence in the actions of the trustees being an exercise of rights specifically authorized and delegated by the Commonwealth, rather than an exercise of inherent sovereignty. *Id.* For example, in 1769 the trustees and Pamunkeys petitioned to have the trustees empowered to settle disputes among the Pamunkey, and in 1798, the trustees were empowered to enact laws for the Pamunkeys and to "manage + [*sic*] transact all affairs relative to said Indians."[6] Significantly, the petitions to the Virginia legislature were signed during this period by all the adult males of the community, with no leaders (other than the trustees) identified.[7] PF at 7. A valid determination of the character of the Pamunkey community in 1789 would require analysis of the community's evolution over time, including a full evaluation of the trustee system from its inception.[8] The evidence relied upon by the PF does not support the existence of a self-governing tribe in 1789.

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[5] None of the circa 1789 evidence cited by the PF as establishing that a Pamunkey tribe existed at that time clearly identifies a tribe, as opposed to simply a remnant community of primarily Indian individuals and families, identified as an "Indian town" or settlement in the approximate location of the current state reservation. PF at 4-8. The third-party observations and opinions cited, although applicable to criterion 83.7(a), do not, of course, apply the full acknowledgment criteria. In particular, there is compelling evidence that the petitions and tax lists, which are relied on heavily by the PF as identifying members of a Pamunkey tribe, included non-Indians who lived, or perhaps leased land, on the reservation and therefore do not identify exclusively Pamunkey individuals. PF at 6-7, nn. 11, 13. The assumption that non-Indians living on the reservation were "likely" married to Pamunkey women, and therefore left offspring of Pamunkey descent, is not supported and is contrary to this evidence.

[6] Helen C. Rountree, Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries, Univ. of Oklahoma Press (1990) at 168. The trustees were empowered to approve or disapprove any laws proposed by the Pamunkey. *Id.* at 204.

[7] *See also,* Helen C. Rountree and E. Randolph Turner III, Before and After Jamestown, University Press of Florida (2002) at 190. In addition, there is evidence that the petitions cited were not signed exclusively by Pamunkey Indians. PF at 6-7 and nn. 11 and 13. For example, the Petitioner declines to include William Sweat as a Pamunkey Indian; he is identified as a white man and a signatory to the 1836 petition. *Id.*

[8] The conclusion that the Pamunkey satisfy criterion 83.7(c) (political authority) is contradicted by the evidence for other periods, as well. *See* PF at 36-37 (1850s-60s; internal differences resolved by the predominantly non-Indian Colosse Baptist Church); 43 (1877 Pamunkey petition emphasizing loss of self-sufficiency); 69 (1898-1902; lack of stability of elected positions).

In addition, the historical relationship between the Pamunkey and other tribes, especially the Mattaponi, bears directly on whether a distinctly *Pamunkey* community existed on Indian Island, yet this is almost entirely ignored in the PF. The 1677 Treaty of Middle Plantation was signed by the "Queen of the Pamunkey" on behalf of the Mattaponi tribe as well as the Pamunkey, and there is evidence that other tribes also sought refuge in the Pamunkey/Mattaponi Indian Town during the colonial period.[9]

The failure to consider this historical context, and the resulting conflation of this mixed community of Pamunkey, Mattaponi and other Indians[10] (and non-Indians as well[11]), as "exclusively" Pamunkey, undermines the PF's conclusions regarding descent from historical members of the Pamunkey tribe, which as described later in these comments, depends on the assumption that residents of the state reservation were exclusively Pamunkey Indians. Moreover, the analysis does not meet the basic regulatory requirements. Unless Petitioner proceeds under new regulations, if and when such regulations are promulgated, it must comply with current requirements, rather than guidance that illegally reinterprets current evidentiary requirements.

3. The determination that the Petitioner maintained political authority through the 20th century cannot establish the existence of a distinct community during this period when there is evidence that less than 30 percent of the group resided on the state reservation.

A petitioner must also produce evidence demonstrating that "predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." 25 C.F.R. § 83.7(b). A "predominant portion" means that "at least half of the membership [must] maintain[] significant social contact with each other." 59 Fed. Reg. 9280, 9287 (Feb. 25, 1994). The provision requires a "demonstration of the social solidarity of the tribe." *Id.* at 9287.

The acknowledgment regulations allow evidence of *political authority* to substitute for a demonstration of community for certain periods of time. 25 C.F.R. § 83.7(b)(2)(v). This provision is referred to as a "cross-over" provision. Under certain circumstances, it may be reasonable to rely on evidence of political authority when there is insufficient evidence of community to demonstrate continuity. However, when there is evidence that affirmatively establishes that a substantial portion of the petitioner ceased to participate in the group, the Department cannot ignore contrary evidence.

The Assistant Secretary's conclusion in the PF that the Petitioner meets criterion 83.7(b) (community) during the 20th century is based on "cross-over" evidence under 25 C.F.R. §

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[9] The Mattaponi and Chickahominy took refuge with the Pamunkey from wars with colonists and other Indian tribes at various times during the colonial period. *See* Rountree, Pocahontas's People, at 114-115.

[10] Intermarriage is documented with other Indians from as far away as the Catawbas of South Carolina. Rountree, Pocahontas's People, at 194.

[11] There is abundant evidence, even within the PF, of significant intermarriage with whites and blacks (despite the later-codified prohibitions), of the leasing of land to non-Indians, and even of squatters living on the reservation without authorization. PF at 6-7, 23 n. 110, 24-25, 31-33, 38, 38 n. 148, 43, 48, 51 n. 246, 60. The extent to which these historical patterns resulted in a non-Indian population living on the state reservation in 1789 cannot be assessed without an evaluation of the pre-1789 period.

83.7(b)(2)(v). The evidence that the PF cites to consists of council meeting minutes dealing with the allocation of land and residence rights on the reservation, and exerting other kinds of political authority over reservation residents.[12] PF at 53.

Here, the evidence establishes that less than the requisite "predominant portion" (meaning at least half) of the petitioning group comprised a distinct community during the mid-20th century. The PF repeatedly emphasizes that the Petitioner lived in an "exclusive settlement" or a "concentrated residence." *See, e.g.,* PF at 22-26, 28, 44, 50, 58, 70. The PF states that the existence of the state reservation as a geographic locus of group residence and social interaction is key to the evaluation of tribal existence: "One must understand Pamunkey social interaction in the context of *the exclusive settlement at Indian Town*, as well as within the context of the rural, isolated character of King William County." PF at 22 (emphasis added). The PF explains that "[t]he small size of the reservation also means that people see each other routinely." PF at 55. The PF concluded, "the fact that the Pamunkey lived in a nearly exclusive settlement assumes informal social interaction among members of the group." PF at 24.

Reliance on the existence on a reservation is not unreasonable, although it should not itself be determinative, in cases, for example, where a reservation was not actually used for residency. The regulations were revised to assist petitioners that did not have the benefit of a reservation to help preserve tribal community. 59 Fed. Reg. at 9287 (noting that the revision "takes into account the historical difficulties and limitations which may have made it impossible for unrecognized groups to maintain a separate geographical community"). Where a tribe has a separate geographical community, however, as the Petitioner does, abandonment of that community is highly relevant.

Yet the PF ignored the importance of the reservation in its evaluation of community for the 20th century, despite relying on it extensively for the prior periods. The PF states that "[t]he reservation continued to lose residents throughout most of the 20th century, as more and more people left rural King William County." PF at 54. By 1954, only 19 out of 70 adult male members remained on the reservation. *Id.* [13] That is less than 30% of the petitioner group, and far lower than the "predominant portion" the regulations require. The evidence shows that the absent members did not stay in the local area, but had left King William County, moving to cities such

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[12] Significantly, the record does not include evidence of any political authority over members living off the reservation. The PF, at 74-75, describes an instance in which the council tried to take action to prevent an off-reservation member from associating with "colored" people, but admits that there is no evidence that it did so, or that it was actually heeded by the off-reservation member. The minutes also record attempts by the council to secure financial contributions from off-reservation members, but do not record any success in this endeavor. PF at 77-78. The council minutes therefore contain no evidence that political authority on the reservation actually equates to social interaction with off-reservation members.

[13] No copy of the 1954 membership lists referenced has been submitted by Petitioner, despite being previously requested by OFA to either submit a copy or explain its unavailability. PF at 82, 89; Technical Assistance Letter 2 at 2. Petitioner claims that this document is "currently maintained in the County clerk's office, King William, Virginia." PF at 89. However, when the interested parties requested this document, the county clerk's office could not locate this document, was unaware of any such document, and expressed doubt than any of Petitioner's documents would be so maintained in that office. This document must be produced to verify the accuracy of Petitioner's representations, particularly the portion of the group's membership that resided on the reservation in 1954.

as Richmond or Philadelphia. *Id.* This pattern of dispersion continues to the present day. The 2012 membership list identified only 60 out of 203 members, again less than 30%, residing on the reservation. PF at 55.

The Department cannot assume that interactions took place, without evidence. *See* Muwekma FD 2002, 59 ("Although members live within an area where interaction is possible, such interaction was not documented, and may not be assumed.") Even if the Department is permitted *to assume*, without evidence, that first-degree relatives remained in contact with each other, there are only 38 first-degree relatives living off-reservation. PF at 55. Thus, the PF is, at best, ***assuming*** that approximately 48% (i.e., 60 living on reservation + 38 first-degree relatives/203 members) of Petitioner members interacted with the "core community." PF at 55. This is less than the requisite "predominant portion." The evidence therefore establishes that the Petitioner would not satisfy criterion 83.7(b).

For that reason, the PF attempts to rely on "cross-over" evidence of political continuity, required by 25 C.F.R. § 83.7(c). As explained above, the cross-over provision may be a reasonable proxy for demonstrated community in the *absence* of evidence to the contrary, but here, the evidence establishes that the Petitioner does not, in fact, satisfy criterion 83.7(b) because there was a steady and deliberate abandonment of the reservation by Petitioner's members. The reasons for the abandonment vary—e.g., desire to find jobs, Petitioner's discriminatory marriage policies. *See* PF at 54-55. Regardless of the reasons, the evidence shows that only a small portion of the members remained in social contact, and even then, more than a third of that group is only *assumed* to have maintained social relations. The regulations state that a petitioner "may be denied acknowledgment if the evidence available demonstrates that it *does not meet one or more criteria.*" 25 C.F.R. § 83.6(d). The Petitioner cannot be acknowledged on this basis.

The current rulemaking includes a proposal to lower to 30% the portion of the petitioning group that must comprise a distinct community. This proposal is insufficient on its face: it is nonsensical to conclude that a group forms a community when the evidence establishes that most of the group (in fact, up to 70%) does not form a community. The current regulatory requirement must therefore be maintained, and the cross-over provisions revised to apply only in the absence of evidence to the contrary. Thus modified, the current rulemaking should be completed and made applicable to all pending petitioners, including the Petitioner. The Petitioner cannot be acknowledged when the evidence establishes that it did not, in fact, comprise a community from at least the mid-20th century to the present.

4. The Petitioner cannot document the requisite descent from the historical Pamunkey.

The PF concludes that the Petitioner satisfies criterion 83.7(e) (descent from a historical tribe) because 80% (162 out of 203) of the Petitioner's members have documented descent from a member of the historical Pamunkey tribe. Eighty percent is the lowest percentage of documented descent that has been accepted in prior acknowledgment decisions, *see* Samish FD 1995, 14; it is also the minimum amount proposed to be specified in the current rulemaking. *See* 79 Fed. Reg. at 30769. Importantly, because the Petitioner group is small, the disqualification of just one member would drop the percentage of documented descent below this level (161 out of 203 equals 79%). In addition, descent has been documented from only six historical Pamunkey

Indians, each of which has at least one unique descendant. Therefore, the disqualification of just one of these six ancestors would cause the Petitioner to fail this criterion. In fact, at least one of these six ancestors, Matilda Brisby, cannot be documented to be a historical Pamunkey Indian.[14] The Petitioner has therefore failed to satisfy the requirements of criterion 83.7(e) and cannot be acknowledged under the current analysis.

Matilda Brisby is identified as the ancestor of 148 of the 162 members of the Petitioner group that can document descent from a historical Pamunkey Indian. The PF states that "[m]ost" (i.e., not all) of these 148 members can also document descent from one of the other five historical Pamunkey Indians. PF at 98. The Petitioner's ability to satisfy the descent criterion therefore depends on being able to document that Matilda Brisby was a Pamunkey Indian. The evidence that Matilda Brisby was a Pamunkey Indian is based on the ca. 1835 Colosse Baptist Church "Island List" and "testimony for an 1872-1877 SCC [Southern Claims Commission] claim filed on behalf of her estate by her son-in-law, John Langston." PF at 97. Neither of these documents establishes that Matilda Brisby was a Pamunkey Indian; at most, they establish that a "Matilda Brisby" was a resident of "Indian island" or "Pamunkey Island." In addition, it is clear that the PF has confused more than one person as "Matilda Brisby."

The Island List is a list of individuals, including a "Matilda Brisby" who joined the Colosse Baptist Church; its significance is that it identifies the individuals as "descendants of an Indian Tribe on Indian island." The PF asserts that "[b]ecause the historical Pamunkey Indians were the only tribe residing on an 'island' in this area, these individuals are presumed to be Pamunkey Indians." PF at 8. This presumption, however, is not supportable. First, it is doubtful that the church actually verified the specific tribal descent of the listed individuals (certainly no documentation exists to that effect); at most the document establishes that the listed individuals were Indians and residents of the state reservation.

Second, the PF itself admits, with respect to earlier Church documents listing "Indian" members, that these lists may include "non-Pamunkey women (particularly Mattaponi) married to Pamunkey men." PF at 29. In addition, there is evidence throughout the PF that whites, blacks, and other (non-Pamunkey) Indians lived and formed families on the state reservation (despite the later-codified prohibitions). PF at 6-7, 23 n. 110, 24-25, 31-33, 38, 38 n. 148, 43, 48, 51 n. 246, 60. Finally, there is abundant evidence to contradict the premise that "the historical Pamunkey Indians were the only tribe residing on [the state reservation]." The close association of the Mattaponi tribe with the Pamunkey tribe is largely ignored throughout the PF. The foremost scholar of Powhatan history, Helen Rountree, concluded that the Mattaponi and Pamunkey tribes, as members of the historic Powhatan Chiefdom, were administratively considered as parts

[14] In addition, there is reason to believe that Edward "Ned" Bradby (Sr.) and his brother William Bradby were not of Pamunkey descent. Helen Rountree documents a long-standing tradition that one James Bradby, a non-Indian, married into the Chickahominy tribe, converted the people to Christianity, and "became the ancestor of the Bradby families among both the Chickahominy and Pamunkey tribes." *See* Helen C. Rountree, Change Came Slowly: The Case of the Powhatan Indians of Virginia, 3 J. Ethnic Studies 1, 13 (1975), *citing* Theodore Stern, Chickahominy: The Changing Culture of a Virginia Indian Community, 96 Proc. Am. Phil. Soc. 192 (1952). *See also*, Helen C. Rountree, Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries, Univ. of Oklahoma Press (1990) at 172. The number of non-Indians is also significant, given that around 1789, the Pamunkey tribe only included about a dozen men. *Id.*

of the same tribe by the Commonwealth and effectively occupied the same state reservation until 1894, when the Mattaponi formally separated from the Pamunkey-led Powhatan Chiefdom and the Commonwealth appointed separate trustees for the Mattaponi. PF at 60 n. 269. The PF itself admits that Pamunkey and Mattaponi lands "were both known as '[I]ndian town,'" PF at 61, the two tribes shared a school, PF at 94, the tribes sent joint delegations to the Governor, PF at 48, both tribes were referred to as "Powhatan," PF at 52 n. 252, and in addition, Appendix C demonstrates that Pamunkeys often resided on the Mattaponi reservation as well. Given this history, it is arbitrary and capricious to assume that Pamunkey Indians were the only Indians residing on the state reservation. The Island List does not establish that Matilda Brisby was a Pamunkey Indian.

Moreover, the PF misrepresents the content of evidentiary sources it relies on to demonstrate descent. The PF cites to SCC testimony as identifying Matilda Brisby as a Pamunkey Indian (the PF does not, however, quote this testimony, unlike for all other historical ancestors identified as "Pamunkey Indian" in SCC testimony). PF at 97. The testimony does **not** identify her as Pamunkey. See Attachment 1. Rather, the testimony only identifies Matilda Brisby as living on "Pamunkey Island." *Id.* at 11. Residence on the state reservation does not establish that an individual was a Pamunkey Indian, or even an Indian at all. Indeed, the SCC testimony cited does not even identify Matilda Brisby as an Indian. *See id.*

Finally, it is clear that the PF has confused more than one individual as a single "Matilda Brisby." The PF states that Matilda Brisby was born about 1790, yet claims that she remarried in 1850 and proceeded—at the age of 60, apparently—to have five more children before dying after 1860. PF at 97. The PF goes on to say that two of her daughters died before she did, but not before leaving grandchildren, which would mean that at least one of those daughters would have had to have borne children before the age of 10. *Id.* This confusion can perhaps only be explained (or compounded) by the incorporation of a *third* individual into the identity of "Matilda Brisby"—indeed, the PF concedes that "[t]his couple [the union of Matilda Brisby and her second husband] may be the same as or confused with" a Matilda "Brisley" (aka Bradbury on the 1860 census) whose marriage to a third man produced three other children of different names. *Id.*

These statements cannot be reconciled and are refuted by the record. The SCC testimony of John Langston establishes that Matilda Brisby died in 1866, and had been a widow "more than 20 years" at her death; additional testimony concurs that she died in 1866, but specifies she had been a widow "about 24 years." Att. 1 at 11, 13. She therefore had been widowed (i.e., not married) from about 1842 until her death and cannot be the "Matilda Brisby" who married Edward Brisby[15] about 1850 and had five children, nor the Matilda "Brisley" (aka Bradbury on the 1860 census) married to Edward Brisley, "possibly" with three other children. PF at 97.

Given this confusion, it cannot even be said that the Matilda Brisby identified on the Island List (whatever the probative value of that document) is the same Matilda Brisby that was the subject of the SCC testimony cited. Nor can it be said that the same Matilda Brisby is the mother of both Martha Ann (Brisby) Page Sampson and Matilda A. (Brisley) Langston -- both of

[15] An "Edward Brisbon (or Brisby)" is identified by Helen Rountree as a white man living on the reservation about 1799. Powhatan's People at 173. Other white men are also identified. *Id.*

whom are essential to Petitioner's claim of descent, as each is documented to have unique descendants among Petitioner's members, who must document descent from Matilda Brisby. PF at 98. As long as the PF relies on descent from Matilda Brisby for even one member, the Petitioner cannot establish the minimum degree of descent required to satisfy criterion 83.7(e). The Department must reconsider the evidence regarding Brisby, who the record does not establish was even an Indian, and the number of members who rely exclusively on her to establish descent to determine if the Petitioner actually satisfies the acknowledgment criteria.[16]

In short, the PF fails to document that Matilda Brisby was a Pamunkey Indian and also fails to document that she is the ancestor of Petitioner's members who are claimed to be her descendants. Each of these failures is independently fatal.

CONCLUSION

For the foregoing reasons, the PF is deficient and does not support acknowledging the Petitioner as an Indian Tribe under Federal law.

[16] The Department treats descent as a key indicator of tribal existence. 25 C.F.R. § 83.7(e). There is some question, however, regarding the legitimacy of descent in establishing tribal status, when hundreds of years have elapsed and descent is claimed from one of potentially several hundred ancestors. *See Rice v. Cayetano*, 528 U.S. 495, 527 (2000) (Breyer, J. concurring)(stating that "[t]here must, however, be some limit on what is reasonable, at least when a State (which is not itself a tribe) creates the definition"). The current rulemaking includes a proposal to quantify, for the first time, that 80% of the petitioner group must descend from a historical tribe. 79 Fed. Reg. at 30769 . This is the lowest percentage that has been determined sufficient in past acknowledgment determinations. This requirement is perhaps reasonable for historical periods up to approximately one century, but is likely not sufficient for historical periods of two centuries or longer. In this case, there is evidence of significant intermarriage with individuals outside the group who were white, African-American, or other Indian. There is therefore no way to determine, based on the PF, that the Petitioner can establish descent from the historical Pamunkey tribe by any reasonable definition.

Attachment 1

I hereby certify, that .... Esq., before whom the

Int. Rev. Stamp. 5 cents.

foregoing acknowledgment was taken, is a duly qualified .... in and for the County and State aforesaid, authorized by law to take acknowledgments, and that the above is his signature.

In Testimony Whereof, I have hereunto signed my name and affixed my official seal, this .... day of .... A. D. 187

Seal of Court.

Clerk of Court.

* The petition must state, with as much particularity and exactness as the claimant's knowledge or means of information will enable him to do the kind, quantity, quality and value of the stores or supplies taken or furnished, during the rebellion, for the use of the Army of the United States, for which payment is claimed, and if

TAKEN,

The name or names of the persons, taking the property, and whether they were officers or soldiers of the United States, and to what company or regiment they belonged, and, if officers, their rank, and where they were then stationed, and the name of the officer in command of the United States forces in the district in which the property was taken, to what place or station the property was removed, and for the use of what persons, company, regiment or military organization in the service of the United States, it was taken, and whether any voucher, receipt or other writing was given therefor by the persons taking the property. If a voucher or other writing was given, the original, or a copy of it, must be annexed to the petition, but if not within the control of the claimant, it must be averred where the original paper is, or is believed to be, and the substance of it must be set forth. The time and place of the taking, and all the material circumstances thereof, must be partic[illegible]d.

If the property wa[illegible]

FURNISHED

For the use of the army of the United States, the petition must state the name or names of the person or persons to whom furnished, and whether they were officers or soldiers of the United States, and to what company or regiment, or other military organization, they belonged, and, if officers, their rank, and where they were stationed, and the name of the officer in command of the United States forces in the district in which the property was furnished, and whether any voucher, receipt or other writings was given therefor by the person receiving the property. If a writing was given, the original or a copy of it must be annexed to the petition, but if not within the control of the claimant, it must be averred where the writing is, or is believed to be, and the substance of it must be set forth. The time and place of the furnishing, and also the material circumstances thereof, must be particularly stated.

If the claim is for the use or loss of vessels or boats while employed in the military service of the United States, the petition must describe the vessel or boat, its place of registry, name, size, kind, condition and value when first taken by the Government.

If the claim is for the use of the boat, the petition must state, with as much exactness as the knowledge or information of the claimant enables him to do, by whom the boat was first taken for the use of the Government, and when and where taken, and for what particular use in the first instance stating the name of the person taking, and whether an officer of the United States, and his rank and place in the service of the Government and how long it was used, and who had command, and what was the just value of such use, and whether there was any agreement as to the price or terms of such use, and if so, whether in writing, and if in writing, a copy of it, or substance of it, must be furnished.

If the claim is for the loss of the boat, the petition must further state when and where lost, and the value of the boat when lost.

The petition must state whether the claim has been heretofore presented to any Officer, Agent or Department of the Government, or to Congress or any Committee thereof, and whether any decision or action has been had in regard to the same, and if any, what

14979 - July 8/72

No.

PETITION

of

John C. Lumpton, adm'r.

of Mrs. Matilda Brisby, dec'd,

Fish Hall station

King Wm. C. Va.

Issue 42/100

FILED BY

CHANDLER, MORTON [redacted]

as Counsel.

Richmond, Va.

Submitted

To the Honorable Commissioners of Claims,

(Under the Act of Congress of March 3d, 1871,)

WASHINGTON, D. C.

Your Petitioner would state:

1. That he John Langston adm'r. of the Estate of Matilda Brisby citizen of King Wm. County Virginia who remained a loyal adherent to the cause and Government of the United States during the war, and was so loyal before and at the time of the taking the property for which claim is here made; that his Post Office address is Fish Hall Station King Wm. C.H. Va. and at the time this claim accrued. She & he was resident of King William County Virginia and that he prefers this claim in his own name as the administrator of the Estate of Matilda Brisby-deceased who departed this life on the 4th day of March 1866.

That he was appointed administrator of her Estate in the following October or November.

2. That she was the original owner, of the property hereinafter mentioned

3. That on or about the Middle day of March A. D. 1865, in the County of King William and State of Va one Sheridans Cavalry of Gen Sheridan in command of United States Troops did take the following property for the use of the said Cavalry of the United States, for which no voucher was given to wit:

The United States,

To John Langston admr &c.

1865

			$	cts
1	To one Horse	6 years old	150	00
2	" one Cow	3 " "	40	00
3	" 15 Bbls Corn	@5	75	00
4	" 500 lbs Bacon	20 cts	100	00
5	" 48 Fowls	@ 30 cts	14	40
6	" one Hog	200 lbs	15	00
7	" 100 Salt Shad		12	00
8	" 1600 Fence Rails used for cooking at 100 rails to the Cord - 16 Cords Wood @ $3		48	00
			$454	40

The names and residence of the witnesses who will be relied upon to prove loyalty:

Wm P. Miles King Wm Co' Va

Lambert C. Page " " "

The names and residences of those to prove the other facts alleged in the petition:

Wm P. Miles. King Wm Co' Va

Lambert C Page " " "

And Petitioner further says, That he did not voluntarily serve in the Confederate army or navy, either as an officer, soldier or sailor, or in any other capacity, at any time during the late rebellion; that he never voluntarily furnished any stores, supplies or other material aid to said Confederate army or navy, or to the Confederate Government, or to any officer, department, or other part of the same, in support thereof, and that he never voluntarily accepted or exercised the functions of any office whatsoever under, or yielded voluntary support to the said Confederate Government.

John his X Langston mark [SEAL.]
Admr &c of the Estate
of Matilda Brisby, dec'd [SEAL.]

CHANDLER & MORTON ~~& SINCLAIR~~,
Attorneys for Claimant, Richmond, Va.

State of Virginia
COUNTY OF Henrico } ss:

Personally appeared before me, a Notary Public in and for the State and County above stated, John Langston being by me duly sworn, [each for himself,] deposes and says, that he is the petitioner named in the foregoing petition, and who signed the same; that the matters therein stated are true of deponent's own knowledge, except as to those matters which are stated on information and belief, and, as to those matters, he believes them to be true.

Given under my hand and seal, this 4th day of July A. D. 1872

F. M. Conner
Notary Public

Know all Men by these Presents, That I John Langston admr. of the Estate of Matilda Bibby, decd. of King Wm County in the State of Virginia have made, constituted and appointed, and by these presents do make, constitute and appoint L. H. CHANDLER, ALFRED MORTON ~~and [illegible]~~, individually and by their firm name of Chandler & Morton of Richmond, Va my true and lawful Attorneys irrevocably, for me and in my name, place and stead, truly annulling and revoking any and all other powers of attorney of prior date hereto, of any and every nature given in and touching the premises hereinafter set forth, to wit: to act in my behalf in the matter of a certain claim hereunto attached, and to be filed by my said attorneys in the office of Commissioners of Claims, appointed under the Act of March 3, 1871; giving and granting unto my said attorneys, or either of them, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, and to receipt and sign all vouchers, drafts or other papers, hereby ratifying and confirming all that my said attorneys, or either of them, may or shall lawfully do, or cause to be done by virtue hereof.

Int. Rev. Stamp. 50 cents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 4th day of July A. D. 1872

Two witnesses:
John R. Coghill
F. M. Conner

John Langston [SEAL.]
Admr. of the Estate
of Matilda Bibby, decd [SEAL.]

State of Virginia
County of Henrico } ss:

I F. M. Conner a Notary Public duly appointed and qualified in and for said State and County, do hereby certify that on this day personally appeared before me John Langston Admr. of the Estate of Matilda Bibby, decd who is personally known to me to be the identical person described in, and who executed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto attached my hand and official seal, this Fourth day of July A. D. 1872

[L. S.]

F. M. Conner
Notary Public

No. 14,979

CLAIM OF

John Langston adm. of
Matilda Crosby dec'd

of King William County
State of Virginia

$ 454.44

TESTIMONY OF

	Page.

TAKEN BEFORE

M. P. Pleasants
Special Commissioner

Chandler & Morton
of Richmond, Va.
Attorneys

Sept 5/72

No. 14,979

CLAIM

of

John Langston Admr

of

Pitch Hall Station

$4574.00 Pittsylvania Co. Va.

Application to have Testimony Taken

BY

SPECIAL COMMISSIONER

M. D. Pleasants

Chandler & Morton

Attorney,

Richmond Va.

No. 14979 (1)

Before the Commissioners of Claims,

(Under Act of Congress of March 3d, 1871.)

Matilda Ruby, Exec'x

In the matter of the Claim of John Langston Adm'r of the Estate of
of Sick Hall Station in the County of King William
and State of Virginia

Comes now the claimant before M. D. Pleasants Esq., Special Commissioner for the State of Virginia and represents that he has heretofore filed with the above named Commissioners a petition for the allowance of a claim for property (2) taken for the use of the army of the United States, which claim, as stated below, does not exceed the sum of three thousand dollars.

That the said claim, stated by items, and excluding therefrom all such items as refer to the DAMAGE, DESTRUCTION and LOSS, and not the USE, of property; to unauthorized or unnecessary DEPREDATIONS of troops or other persons upon the property, or to RENT or compensation for the occupation of buildings, grounds or other real estate, is as follows:

No. of Item.		QUANTITIES AND ARTICLES.		Value—Dollars, Cts.
1865	1	To 1 Horse 6 years old		150 00
	2	" 1 Cow 3 " "		40 00
	3	" 15 Bbl Corn	@ $5.00	75 00
	4	" 500 lbs Bacon	@ 20 Cts	100 00
	5	" 48 Fowls	@ 30 Cts	14 40
	6	" One Hog 200 lbs		15 00
	7	" 100 Salt Shad		12 00
	8	" 1600 Fence Rails used for working at 100 Rails to the Cord = 16 Cords Wood @ $3.		48 00
				$454 40

(1)—Insert number of the claim, when known.
(2)—"Taken" or "Furnished."

That, as stated in the petition referred to the property was taken from or furnished by John Langston
Admr. of King Wm Co in the State of Va for the use
of a portion of the army of the United States, known as (3) Sheridans Cavalry
and commanded by and that the persons who took or received the
property, or who authorized or directed it to be taken or furnished, were the following:

NAME.	RANK	(4)	Regiment, Corps or Station.

That the property was removed to (4) the Camps of said Cavalry
and used for or by (5) the Officers & Soldiers Composing the same
all this on or about the Middle of March in the year 1865 as appears by the petition
presented to the Commissioners.

That the claimant is unable to produce the witnesses hereafter to be named before the Commissioners at the City of Washington, for and because of the following reasons, to wit: (6)

He is in limited circumstances and cannot
pay expenses of himself and witness to Washington

That, by the following named persons, the claimant expects to prove that from the beginning of hostilities against the United States, to the end thereof, his sympathies were constantly with the cause of the United States; that he never, of his own free will and accord, did anything, or offered, or sought, or attempted to do anything, by word or deed, to injure said cause or retard its success, and that he was at all times ready and willing, when called upon, or if called upon, to aid and assist the cause of the Union, or its supporters, so far as his means and power and circumstances of the case permitted:

Wm P. Miles	of	of King Wm Co Va
Lambert C Page	"	" " "
Wm. J Cook	"	" " "
	"	
	"	
	"	

That, by the following named persons, the claimant expects to prove the taking or furnishing of the property, for the use of the army of the United States:

Wm P. Miles	of	King Wm Co Va
Lambert C. Page	"	" " "
	"	
	"	
	"	
	"	

(3)—Describe the Military organization by name as fully and particularly as possible.

(4)—State as well as can be done, the place to which the property was conveyed for the use of the army.

(5)—State as fully and minutely as is possible, the particular persons or commands using the property, and to what particular use it was applied

(6)—Give the reasons why the witnesses cannot be brought to Washington.

The claimant now prays that the testimony of the witnesses just designated, be taken and recorded at such place and at such time as the special Commissioner may designate, at the reasonable cost of the said claimant; and that due notice of the time and place of the taking thereof, be given to the claimant, or to his counsel.

Submitted on this 6th day of July 1872

John Langston Adm'r. Claim

Chamberlain Morton Atty

P. O. Address of Attorney:

Richmond

Va

[FRONT PAGE.]

Before the Commissioners of Claims.

ACT OF CONGRESS, MARCH 3, 1871.

Case of John Langston Adams

No. 11,929

It is hereby certified, that on the 12 day of July 1872, at Jamestown Island, in the county of James City and State of Virginia, personally came before me the following persons, viz:

John Langston Claimant,

F. J. Arnold Esq. Counsel, or Attorney,

and Wm. P. Miller and Lambert A. Page

Claimant's Witnesses,

for the purpose of a hearing in the above entitled cause.

Each and every deponent, previous to his or her examination, was properly and duly sworn or affirmed by me to tell the truth, the whole truth, and nothing but the truth, concerning the matters under examination; and the testimony of each deponent was written out by me, or in my presence, and as given before me, and subsequently read over to said deponent, by whom it was also subscribed in my presence.

Witness my hand and seal this 12 day of July 1872.

SEAL

Special Commissioner of the Commissioners of Claims.

Deposition of the Claimant

In answer to the First General Interrogatory, the Deponent says:

My name is John Langston, my age 46 years, my residence Jamestown Island, in the State of Virginia, and my occupation a Farmer;

I am related to the claimant,

and have a beneficial interest in the claim, as husband of one of the daughters of Matilda Brady dec'd

[NOTE: The Claimant should always be first examined when present, in which case the words "related to" printed immediately above, should be stricken out.]

I am the cousin law of Matilda Brock, who died in 1864. She was over 70 at her death. She was a widow more than ten years. She left two daughters both married & some grand children the children of two other daughters who died before her. I was appointed administrator of her estate by the Court of Kings County. I have the certificate & my qualification will be filed with this claim. I have not fully settled up the estate. The proceeds of this claim if any, will go to the children equally, the grand children taking their mothers share.

I was living with my mother in law when her property was taken & saw it done. It was taken in March 1865 by Sheridans Cavalry. They were on the Island of Yamassee where we lived 4 or 5 days. I did not see the horse taken but I saw it next day at the Cavalry camp. It was saddled like a regular army horse. I went to one of the officers & tried to get it back, but he told me the horse was needed & some of his men were hurt & he must have it. I did not see the cow taken but I saw her head & skin at the camp. The horse never had a calf. She was 3 years old & very fat. I saw the corn taken out of the corn house & carried off to the Camp in wagons & bags. About 15 barrels were taken. Mrs Brock had 30 barrels & the left her about 5.

I saw the meat taken out of her store house

I cant tell how much but I think there was between 4 & 500 pounds. They took all she had. She had killed 6 fine hogs.

Item 5 I saw a good many of her fowls taken when all she had, but I cant tell how many, I think some 40 or 50. I saw the redhorse kill & carry off a big barrow that would weigh upwards of 150 pounds. I saw them carry off a lot of cast iron but I could not say how many. I saw a large number of her rails carried off about Sanderson's. Just nearly 2000 rails. A line of fence 350 yards long was taken. It was a good high fence of ash rails.

And further deponent saith not

Witness
M. F. Pleasants

John [illegible] X Langston
mark

1 1

Wm P. Miles having been duly sworn deposes and says I am 42 years of age, a farmer and forwarder by occupation & a resident of Rock Island - I knew Matilda Bixby she died in 1866 leaving three children all females & all of age - She was about 73 years old when she died had been a widow about 27 years - I saw some of her property taken by Sheridans Cavalry in March 1865 - I saw some of her corn carried off in bags but I cant say how much - I saw some in a bag full taken & I know there was more taken that I didn't see - I saw four pieces of cloth carried off by some soldiers & also some of her jewels taken but I could not tell how many - I saw some of her rails taken & used for fencing. I cant be precise but there were about 300 panels taken - The fence was a log one -

John Langston was appointed administrator of the estate by the County Court of Rock Island Co. He is a son-in-law of Mrs Bixby - The four children as I understand have an equal interest in this claim.

Wm P Miles

Lambert C Page having been duly sworn
deposes & says I am 31 years of age, a farmer
by occupation & resident of Kanawha
Island - I knew Mrs Brisby - She was
my grand mother & knew these Cattle -
I saw some of her property taken by
Abolitionists Cavalry in March 1865 - I
saw some of her bacon taken from her Store
House - It was a good lot but I cant say
how much - It was more than 200 pounds -
I saw her fence pulled down & burnt for fire
wood - I think they took about 200 panels -
We make our fences here 8 rails high -
I have no interest in this claim - I am the
son of Mrs Brisbys daughter by her first
husband - She got all her property from her
second husband -

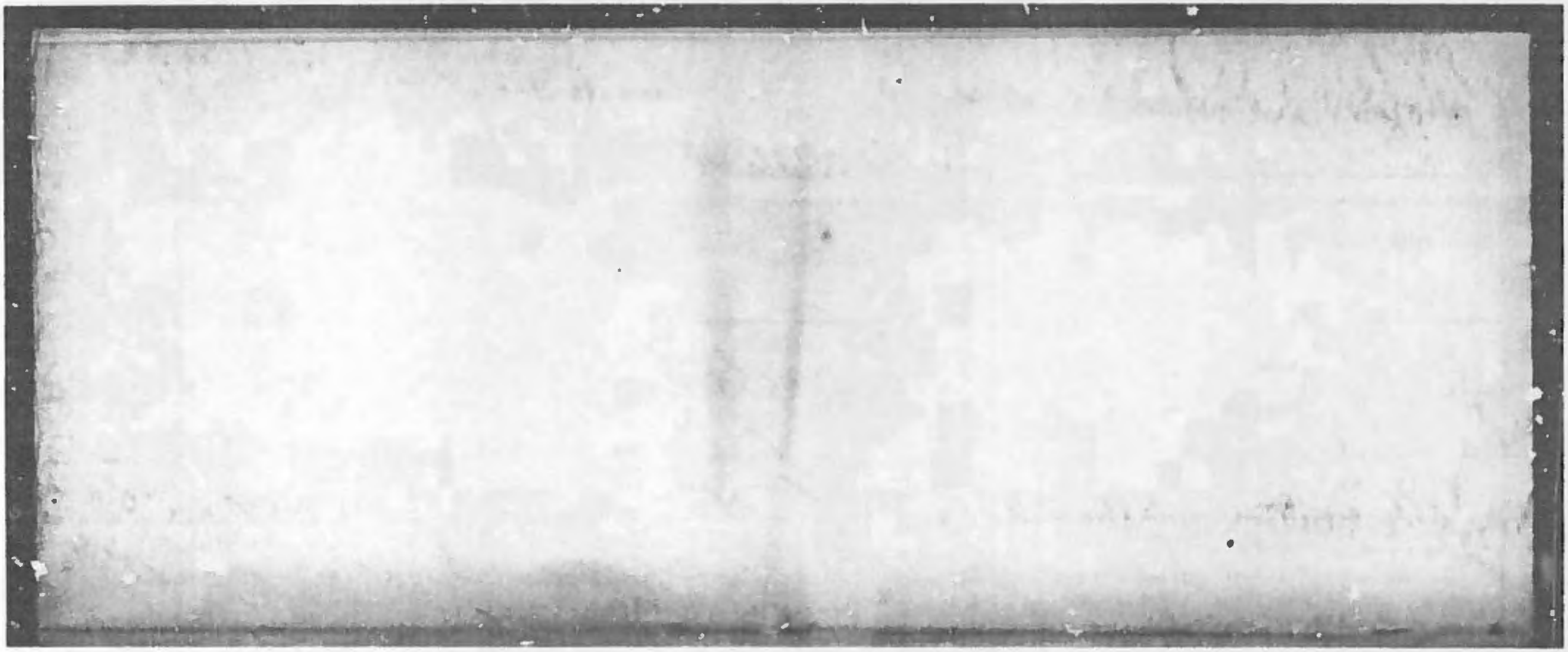
his
Lambert C x Page
mark

Witness
M. F. Pleasants

[LAST PAGE.]

REMARKS BY THE SPECIAL COMMISSIONER.

M. F. Reasons
Special Commissioner.



1143

No. 14979

CLAIM

OF

John Langstow

Adm. of Wm Busby

OF

King William

Va

SUMMARY REPORT.

Amount Allowed $

Copied

No. 14979

The Claim of John Langstone of King William Co. in the State of Virginia

Nature of [illegible]

No. of Item	Nature of Claim	Amount Claimed: Dollars	Cts.	Amount Allowed: Dollars	Cts.	Amount Disallowed: Dollars	Cts.	Remarks
	The claim consists of 8 items amounting to	457	40			457	40	The deceased died since the war and the property was [illegible] taken but there is no evidence of the loyalty of deceased or of any of the parties interested. Moreover it seems very questionable whether the property was taken as supplies for the Army, for the most part at least. We reject the claim.

Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Office of the Assistant Secretary
for Indian Affairs
Attn: R. Lee Fleming, Director
Office of Federal Acknowledgment
1951 Constitution Avenue, NW
Mail Stop 34B-SIB
Washington, D.C. 20240

TIGER

TIGER FUEL COMPANY

POST OFFICE BOX 1607 ▪ CHARLOTTESVILLE, VA 22902-1607
PHONE (434) 293-6157 ▪ FAX NO. (434) 293-3701
WEB SITE WWW.TIGERFUEL.COM

July 12, 2014

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

I am writing on behalf of the membership of Virginia Petroleum Convenience and Grocery Association, a 66 year old Virginia trade association representing approximately 400 businesses engaged in the petroleum marketing and convenience store industries. On June 25, the VPCGA board of directors voted unanimously to oppose the proposed finding for federal acknowledgement of the Pamunkey Indian Tribe as published in the January 23, 2014 Federal Register. While some may see the proposed notice as mere acknowledgement that the Pumunkey meet seven mandatory historic criteria, if sovereignty is ultimately approved, it will change Virginia forever in a very negative way.

We oppose this proposed finding because it places a small special interest ahead of more than 8.1 million other Virginians. It bypasses the US Congress, which has considered and failed to enact recognition legislation.

Our principal opposition to government sovereignty is that it will lead to the same kind of economic disruption seen in other states with sovereign tribes, disruption attributable solely to tax evasion. Has the Interior Department considered the transfer of wealth that would occur when the Pamunkey nation is able to sell gasoline without charging state gas tax of approximately 15 cents per gallon? If tribal stations manage to capture just 10 percent of the state's fuel sales, state and local governments would lose at least $75 million annually. The situation is the same for tobacco products. Each year Virginia collects more than $350 million in tobacco products excise and sales taxes. If only 10 percent shifted to an independent Pamunkey nation, the state would experience a budget shortfall of more than $35 million dollars, taking money from youth smoking prevention, compliance checks on tobacco sellers and the tobacco regions of our state.

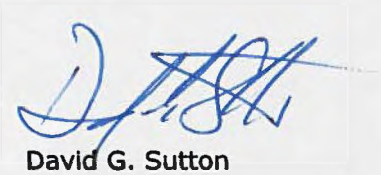
There is a solution that will not bankrupt Virginia and its citizens. Recognize the tribes, but include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by **non-tribal** members. The chief of the Chickahominy tribe testified to the US Senate that it was not their intent to engage in tax evasion and we take him at his word. It is now time for you as assistant secretary to consider the concerns of all Virginians and not a select few.

Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

EXXON CITGO Shell bp EXCEL

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,



David G. Sutton

President

Tiger Fuel Company

TIGER FUEL COMPANY ▪ P.O. BOX 1607 ▪ CHARLOTTESVILLE, VA 22902-1607

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Attention Office of Federal Acknowledgement
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20240

WORKMAN OIL COMPANY

14680 FOREST ROAD
P.O. BOX 566
FOREST, VA 24551
(434) 525-1615
FAX (434) 525-4826 or 8850

APPLE MARKET
www.applemarkets.com

936 GRAND AVENUE
P.O. BOX 166
BEATTYVILLE, KY 41311
(606) 464-3651
FAX (606) 464-3790

July 15, 2104

Mr. Kevin Washburn
Office of the Assistant Secretary- Indian Affairs
Attention Office of Federal Acknowledgement
1951 Constitution Avenue NW
Mailstop 34B-SIB
Washington, DC 20240

Dear Mr. Washburn:

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Some would have you believe that our concerns are baseless as there are a limited number of tribal members and their traditional reservation is far from a commerce center. Experience has shown that a limited number of members has not stopped tax free sales in other states. Additionally, we know that the recognition bill in Congress would have allowed them to expand into some of the most populated areas of our state. Add this to the administration's repeal of the so-called commuter standard for Indian casinos and it is clear that the present size of the tribe and location are of no comfort to this association.

We urge you to preserve the financial integrity of the Commonwealth of Virginia by rejecting this finding, or at the very least assure recognized tribes do not engage in tax evasion.

Sincerely,

G. T. Connelly, Jr.

G. T. Connelly
Controller
Workman Oil Company

Workman Oil Company
14680 Forest Road
P.O. Box 566
Forest, Virginia 24551

MR KEVIN WASHBURN
OFFICE OF THE ASSISTANT SECRETARY- INDIAN AFFAIRS
ATTENTION OFFICE OF FEDERAL ACKNOWLEDGEMENT
1951 CONSTITUTION AVE NW
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Sincerely,

Warner L. Hall
President
Workman Oil Company

Workman Oil Company
14680 Forest Road
P.O. Box 566
Forest, Virginia 24551

MR KEVIN WASHBURN
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