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Alfred R. Richardson
TRIBAL ADMINISTRATOR

August 15, 2013

Sent via USPS mail to:

Assistant Secretary – Indian Affairs
Office of Regulatory Affairs & Collaborative Action – Indian Affairs
1849 C Street, NW
MS 4141-MIB
Washington, DC 20240

Sent Via Email to: consultation@bia.gov

Mr. Kevin Washburn
Assistant Secretary – Indian Affairs
Bureau of Indian Affairs
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Assistant Secretary Washburn:

The Haliwa-Saponi Indian Tribe received a “Dear Tribal Leader” letter from you dated on or about June 21, 2013, stating that the United States Department of the Interior has developed a preliminary discussion draft of potential revisions to 25 C.F.R. Part 83. This letter welcomed our comments on this proposed draft by August 16, 2013. The tribal government of the Haliwa-Saponi Indian Tribe (the “Tribe”) has completed its review of the aforementioned draft and submits this letter and its attachments as the official response of the Tribe. This response provides our written comments, suggestions and other feedback.

Please allow us the opportunity to first commend you and your staff for your bold response to years of critiques of the federal acknowledgment process. Next, many of your proposed changes have been well received by the Tribe including, but not limited to: 1) The eliminating of the requirement for a letter of intent; 2) The elimination of criteria (a), which required evidence from outside observers of the petitioning community’s continuing existence; 3) The establishment of 1934 as the year from which a community must prove distinct existence; 4) The inclusion of potential “expedited positive” determinations; 5) The potential inclusion of the Office of Hearings and Appeals (OHA), or perhaps another entity in the rendering of the final determinations and/or hearing appeals... so long as that entity

possesses the requisite familiarity with Indian law, history, culture, and the history of the acknowledgment of American Indian tribes; and, 6) The ability for petitioning groups that had previously received negative findings to reapply under the new rules.

We think your first draft of revisions are well intentioned, thought out and represents an excellent starting point for revisions to the regulations. Additionally, we have submitted comments that we believe should also be considered as a part of the drafting process of revised regulations and welcome the opportunity to meet with you at any available occasion to discuss further, and otherwise participate in additional tribal consultations.

Again, thank you and we look forward to working with you to further refine and improve upon the regulations.

Sincerely,

A handwritten signature in blue ink that reads "Ronald Richardson". The signature is written in a cursive style.

Rev. Ronald Richardson
Chief

cc: Haliwa-Saponi Tribal Council
The Honorable Kay Hagan, United States Senate
The Honorable Richard Burr, United States Senate
The Honorable G.K. Butterfield, United States Congress
Native American Rights Fund
Alliance of Colonial Era Tribes
NC Commission on Indian Affairs
National Congress of American Indians
Association on American Indian Affairs

Attachments: 1. Comments from the Haliwa-Saponi Indian Tribe-31 pages

**PRELIMINARY DISCUSSION DRAFT FOR PROPOSED CHANGES TO
25 C.F.R. PART 83
COMMENTS FROM THE HALIWA-SAPONI INDIAN TRIBE**

I. PRELIMINARY DISCUSSION DRAFT-OVERALL DOCUMENT

A. Comment(s):

1. Need for Change: We agree that the regulations need to be overhauled. We therefore commend and thank the Bureau of Indian Affairs staff for following through on their commitment under Assistant Secretary Washburn to develop proposed changes to the regulations that will make the process more user friendly.

2. Assumption: All comments in this document are provided based on the assumption that the changes proposed in the preliminary discussion draft will be adopted by the BIA. In other words, all comments of the Tribe in this document are presented “as if” the preliminary discussion draft for proposed changes to 25 CFR Part 83 currently comprised the “new regulations” for 25 CFR Part 83.

3. Format of Changes: Overall, our comments on the general changes proposed by the Bureau of Indian Affairs in its preliminary discussion draft released on June 21, 2013 are as follows:

(a) In any future version of proposed changes to regulations, we would recommend adding line numbers to the pages to assist commenters in referencing the specific page, line and word to which a commenter is referencing.

(b) We agree with the BIA’s proposition of eliminating the requirement of filing a letter of intent. Thank you.

(c) We agree with the BIA’s proposition to eliminate criteria (a), which required evidence from outside observers of the petitioning community’s continuing existence. Thank you for this much needed deletion. However, it should be clearly stated throughout the new regulations that the types of evidence previously used to meet the now deleted criteria (a) may be used and shall be acceptable to the BIA, to meet any of the remaining criteria should the petitioner deem appropriate.

(d) We generally agree with the BIA’s proposition to establish the time of the Indian Reorganization Act (c.1934) as the year from which a community must prove continued distinct existence. However, we also believe that the time period from 1934-1978 is a very critical time period. In 1978, the process the federal government of the United States used to determine existence as an Indian tribe changed again. So while we believe and agree that 1934 is a good starting point, any evidence in the time period after 1934, but prior to 1978 (*identification of descent from historic Indian tribe, identification by federal agencies and others as Indian, identification by a state or local government as Indian etc.*) is important as well.

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1
2 (e) We agree with the BIA’s proposition to include the use of potential
3 “*expedited positive*” determinations. Thank you and we commend the BIA
4 for your effort to conceptualize a process for “*expedited positive*”
5 determinations.
6

7 (f) We generally agree with the BIA’s potential inclusion of the Office of
8 Hearings and Appeals (OHA) in the rendering the final determinations and/or
9 hearing appeals. However, we also believe the Assistant Secretary should
10 have greater control over the Office of Federal Acknowledgment (OFA), with
11 OFA playing more of an advisory and supportive role and not having the
12 ability to make final determinations, leaving such final decisions to the
13 Assistant Secretary. The new draft regulations appear to give too large a role
14 to OFA, whose **application** of the regulations to this point has been
15 resoundingly critiqued by tribal, academic, and governmental entities. OFA
16 should be held to an objective standard of accountability with the regulations
17 clarifying timelines in which OFA must complete its tasks and provide for
18 consequences (on OFA) and benefit (to the petitioner) when those timelines
19 are not met. OFA’s role should be merely supportive to the Assistant
20 Secretary with the preliminary final determination to be made by the Assistant
21 Secretary. OFA should provide a consistent document to the Assistant
22 Secretary, summarizing how a petitioner may have met the criteria, with a
23 “*more likely than not*” standard granting preference to the petitioner, ensuring
24 that the strengths of a petition are emphasized over any weaknesses. OFA’s
25 role should be one of technical support and assistance to the petitioner in
26 compiling the petition so that it can be presented to the Assistant Secretary to
27 render a preliminary determination. Once the Assistant Secretary provides the
28 preliminary determination, the petitioner should have the option to either 1)
29 provide a response to the Assistant Secretary; or 2) go to the OHA. Third
30 parties should be able to submit comments, however, third parties should not
31 have any right whatsoever to participate in the proceedings. It should occur
32 strictly between the federal government and the petitioner.
33

34 (g) We generally agree with the BIA’s proposition to allow groups that had
35 previously received negative findings to reapply under the new regulations.
36 Further, we recommend that the new regulations should directly overrule past
37 OFA precedents in negative findings because they will be inconsistent with
38 the new regulations.
39

40 (h) We believe that historical and genealogical gaps of 25 years or so should not
41 be negatively interpreted when the strength of the evidence prior to and after
42 such gaps demonstrate continuity. If the weight of the evidence can
43 demonstrate community continuity of “*more likely than not*” standard, the
44 petitioner should be given the benefit of the doubt. Each group or petitioner
45 must be evaluated on a case-by-case basis, without any one particular starting

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1 date for regular documentation as Indian. Every individual community or
2 group should have its own history, with mitigating circumstances and factors
3 that may be assessed and analyzed *in context* by qualified Interior staff.
4

5 (i) We believe page limit requirements for petitions should be provided and
6 maintained, excluding supportive documentation. Petitioners should also be
7 able to submit their petition in electronic formats should they so desire.
8 Should the BIA desire a recommendation on the page limitations, we would
9 recommend that a petition not exceed 300 pages, excluding supportive
10 documentation/exhibits.

11
12 (j) We believe that historic or modern third party nomenclature racially
13 misidentifying or mislabeling a petitioner, its members or its community and
14 any similar associated discriminatory acts by other parties towards a
15 petitioner, should not be weighed against a petitioner but instead should be
16 considered as evidence supporting the petitioner's claim of being a "*distinct*"
17 community.

18
19 (k) We believe that regional and local history that may impact the evidence a
20 petitioner can provide should be considered when evaluating a petition so that
21 a petitioner is not penalized by the manner in which the petitioner may have
22 been affected by such historical situations.

23
24 (l) We believe greater weight should be given to the supportive testimony of
25 federally recognized Indian tribes that have viewed the petitioner as a historic
26 tribe. However, the lack of supportive testimony or the submission of negative
27 testimony from any entity should not be weighed against the petitioner in the
28 application process, as it could be politically motivated and not reflective of
29 the history of a petitioner or worthiness of a petition.

30
31 (m) While we believe greater evidentiary weight should be given to communities
32 that have maintained their indigenous attributes (*land in common, communal*
33 *activities, languages, traditions, etc*) in a continuous fashion without
34 substantial interruption in proving Indian identity and continuous community,
35 we also believe that a petitioner's inability to maintain such attributes should
36 not be utilized conclusively to the detriment of the petitioner, as the petitioner
37 has no control over third party actions (*federal and state laws, etc.*) that
38 prevented the petitioner from maintaining such attributes.

39
40 (n) We believe that a high rate of endogamy within the petitioning group, as well
41 as with other American Indians, should be viewed as a form of political
42 control by the community upon individual members.

43
44 (o) We believe that, for criterion 83.7(e), a petitioner should be able to meet the
45 requirement if 30% of their membership as submitted in the petition consists

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1 of individuals who descend from a historical Indian tribe, meaning a distinct
2 community identified by 1934 and specifically identified as an American
3 Indian community prior to 1978 (*as this is when the federal recognition*
4 *process changed again after 1934, with creation of the administrative*
5 *regulations*) or from such historical Indian tribes which combined and
6 functioned as a single autonomous political entity or functioned as closely
7 interrelated political entities. Identifying evidence may include citation by
8 historians, anthropologists, ethnologists, citations in local, state and federal
9 government reports and correspondences of local scholars, studies by, for or
10 on behalf of any agencies such as the Smithsonian and others serving as
11 “*arms of the government*,” those receiving or determined eligible for
12 government services while also being identified as a community, and actions
13 of a colonial, state, or federal agency segregating the community from Blacks
14 and Whites (*i.e.: by designated reservations, identified geographic areas, or*
15 *segregated schools*). However, if a petitioner could not establish identity as an
16 Indian community by such evidence between 1934 and 1978, but could
17 establish identity from an earlier point in time, such petitioner should have the
18 ability under the regulations to choose to trace from the earlier date.

19
20 (p) We believe that the BIA should insure that OFA staff be trained, certified, and
21 adhere to Historical and Genealogical Proof Standards to mitigate unfair and
22 unreasonable negative findings related to an application. OFA staff should
23 operate with the understanding that the “*benefit of the doubt*” should always
24 be in favor of the petitioner in reviewing such material.

25
26 (q) We believe that an evidentiary list should be added to the regulations so
27 petitioners which can produce this evidence are presumed to have met
28 evidentiary standard to be acknowledged as an Indian tribe, including but not
29 limited to: A community of Indians with individual members having attended
30 federal, or closely related mission, Indian boarding schools; Attorney contract
31 approved by DOI; Claims; Court filings and decisions; recognition as an
32 Indian tribe by a state or subdivision of a state prior to 1978 (*again, due to the*
33 *fact that prior to 1978, there wasn't an administrative process for the*
34 *acknowledgement of an Indian tribe*); federal programs, benefits, or services
35 provided to a community of Indians as an Indian tribe by or through any
36 agency of the United States.

37
38 (r) We believe that if OFA does not review and provide its recommendations to
39 the Assistant Secretary concerning a petitioner’s final documented petition
40 within two (2) years of the final petition submission date, the Assistant
41 Secretary shall be required to accept the non-recommendation as a positive
42 recommended determination of acknowledgment.

43
44 (s) Previous acknowledgement should not require a functioning “*government-to-*
45 *government*” relationship through the establishment of services through the

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1 BIA or its predecessor entities, but mere acknowledgment of the existence of
2 an Indian community through listing as a distinct Indian community in a
3 report or study conducted by an agent or agency serving as an “arm of the
4 government” prior to 1978, or receiving services as an Indian community or
5 having individual members receiving services because of their connection
6 with the Indian community, by 1978, which is when the federal
7 acknowledgment process was established. A petitioner should not be
8 penalized for the lack of action, error, or irresponsible conduct of the federal
9 government. An Indian community should only have to establish continuance
10 from the point of that identification to meet the standard for previous
11 acknowledgment. Such proof should be sufficient to have the Assistant
12 Secretary restore recognition or correct the error of the tribe not being listed
13 by the BIA as a federally recognized tribe.

- 14
15 (t) Third parties should not be able to derail a positive final decision unless fraud
16 is being alleged against the petitioner’s claims and there is evidence to
17 substantiate the need for further investigation.
18

19 **This concludes our comments on the overall document. Page by pages specific**
20 **comments follow.**

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1 **II. PRELIMINARY DISCUSSION DRAFT-PAGE 1**

2
3 **A. Comment(s):**

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5 1. We agree with all proposed changes on this page.

6
7 **2. Location: Page 1, Title:**

8
9 **Comment:** We recommend that the Bureau of Indian Affairs change the title of
10 part 83. Specifically, we believe the BIA should delete the words “*an American*
11 *Indian Group*” and replace with “*a Petitioning Group.*” For instance, the very
12 title at Part 83 assumes that a petitioner *is* “AN AMERICAN INDIAN GROUP.”
13 While it is certainly probable that some—maybe even most—petitioners are
14 American Indian communities or groups seeking to demonstrate that they exist
15 as Indian tribes, it is also probably erroneous to describe each and every
16 petitioner as an “*American Indian Group.*” It should not be presumed that all
17 petitioning groups are, in fact, “American Indian” groups. Should the BIA
18 accept this change as recommended, the new title would read as follows:

19
20 “PART 83 PROCEDURES FOR ESTABLISHING THAT A
21 PETITIONING GROUP EXISTS AS AN AMERICAN INDIAN TRIBE.”

22
23 **3. Location: Page 1, Prior to Table of Contents:**

24
25 **Comment:** We recommend that the Bureau of Indian Affairs add a preamble to
26 the regulations, which includes an analysis explaining why the year of the Indian
27 Reorganization Act of 1934 was selected as a baseline, which marked a new
28 relationship between the Federal Government and American Indian tribes, as the
29 starting point instead of a much older date relating historic “*first contact.*” The
30 preamble should clearly state that the Department of Interior’s aim is for the
31 process to be predictable, policy-based instead of an overly rigorous scientific
32 evaluation, and less cumbersome for petitioners. A “*presumption*” statement
33 should be added, clearly indicating that it should be presumed that the burden of
34 proof is on the Department of the Interior instead of the petitioner when
35 evaluating evidence provided by the petitioner... and that it shall be presumed
36 that if a petitioner existed in 1934, that tribe descended from an historical tribe at
37 the time of contact with none Indians, shifting the meaning of “historic” in the
38 regulations to refer to distinct communities identified as such as of and after
39 1934.

40
41 **4. Location: Page 1, at §83.1 Definitions.**

42
43 **Comment:** We recommend that one additional change should be made, and that
44 change is within the paragraph defining the word “*Community*”, we believe the
45 word “*relatively*” should be added between the words “*that*” and “*consistent*” in

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1 the first line of the definition, with the standard for measuring “relatively” being
2 “*more likely than not*” or “*without substantial interruption.*” Should the BIA
3 accept this proposed change, the new definition of community would read as
4 follows:

5
6 “*Community* means any group of people which can demonstrate that
7 relatively consistent interactions and significant social relationships exist
8 within its membership and that its members are differentiated from and
9 identified as distinct from nonmembers. Community must be understood
10 in the context of the history, geography, culture and social organization of
11 the group.”

12
13 **5. Location: Page 1, at §83.1 Definitions.**

14
15 **Comment:** We recommend that in the last line of the definition of
16 “*Continuously*” or “*continuous*”, the BIA should delete the words “*substantially*
17 *without interruption*” and replace with “*without substantial interruption.*” Should
18 the BIA accept this proposed change, the new definition of community would
19 read as follows:

20
21 “*Continuously* or *continuous* means extending from 1934 to the present
22 without substantial interruption.”

23
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25 **This concludes our comments concerning Page 1 of the preliminary discussion draft.**
26 **Specific comments concerning Page 2 of the preliminary discussion draft follow.**
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**PRELIMINARY DISCUSSION DRAFT FOR PROPOSED CHANGES TO
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1 **III. PRELIMINARY DISCUSSION DRAFT-PAGE 2**
2

3 **A. Comment(s):**
4

5 1. We agree with all proposed changes on this page.
6

7 2. **Location: Page 2, at §83.1 Definitions.**
8

9 **Comment:** In the definition of “*Documented petition*” we recommend adding a
10 semicolon and the words “or” between the words “finding” and “meets.” We also
11 recommend adding a semicolon between the words “criteria” and “or.” Should
12 the BIA accept our recommendations, the revised definition would read as
13 follows:
14

15 “*Documented petition* means the detailed arguments made by a petitioner
16 to substantiate its claim that it meets the requirements for an expedited
17 favorable finding; or meets all the mandatory criteria; or has established
18 previous federal acknowledgement and meets the criteria in 83.3 together
19 with the factual exposition and all documentary evidence necessary to
20 demonstrate these arguments.”
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22 **This concludes our comments concerning Page 2 of the preliminary discussion draft.**
23 **Specific comments concerning Page 3 of the preliminary discussion draft follow.**
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1 **IV. PRELIMINARY DISCUSSION DRAFT-PAGE 3**
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3 **A. Comment(s):**
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5 1. We agree with all proposed changes on this page.
6

7 **2. Location: Page 3, at §83.1 Definitions.**
8

9 **Comment:** In the definition of “*Previous Federal acknowledgement*” we
10 recommend deleting the remainder of the sentence after the word “entity” and
11 adding a period after the word entity. Should the BIA accept our
12 recommendations, the revised definition would read as follows:
13

14 “*Previous Federal acknowledgement* means action by the Federal
15 government clearly premised on identification of a tribal political entity.”
16

17 **3. Location: Page 3, at §83.1 Definitions.**
18

19 **Comment:** We recommend adding a definition for “*substantial interruption.*”
20 This is based on the assumption that the re-draft and the starting point of 1934.
21 Should the BIA accept our recommendation, we submit that the definition should
22 read as follows:
23

24 “*Substantial interruption* means the absence of activity, presence, social
25 interaction, identity, influence or other activity associated with the group
26 or its members for more than twenty-five (25) years, however, a
27 determination of such interruption should be based upon an overall
28 evaluation of the totality of the circumstances and evidence pertaining to
29 the connection between the petitioner, the time period, the circumstance of
30 geography, local, state and federal laws, and the documentation or lack of
31 such documentation and should not be solely determined because of some
32 gaps in the record.”
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34 **This concludes our comments concerning Page 3 of the preliminary discussion draft.**
35 **Specific comments concerning Page 4 of the preliminary discussion draft follow.**
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**PRELIMINARY DISCUSSION DRAFT FOR PROPOSED CHANGES TO
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1 **V. PRELIMINARY DISCUSSION DRAFT-PAGE 4**

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3 **A. Comment(s):**

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5 1. We agree with all proposed changes on this page.
6
7 2. **Location: Page 4, at §83.3 Scope.**

8
9 **Comment:** In the second line of subsection (c), we recommend clarifying this.
10 This should be clarified to compliment the use of 1934 as the starting point for
11 other matters contained in the proposed changes to the regulations, and also to
12 have a way to compensate for the fact that some Indian tribes were not recognized
13 due to some other third-party bias not within the control of the petitioner. For
14 example, in 1950 a United States Congressman representing the district of the
15 Waccamaw-Siouan Indian Tribe (*an Indian tribe in North Carolina that is not*
16 *currently listed on the Federally Recognized Tribes List as maintained by the*
17 *Bureau of Indian Affairs, whom in 1950, were simply called the “Waccamaw*
18 *Indians”*) wrote a letter to the Department of the Interior-Bureau of Indian Affairs
19 (DOI) inquiring as to their opinion concerning his legislation to authorize the DOI
20 to take land into trust for the Waccamaw. In its response, dated August 7, 1950,
21 the DOI noted that it was aware of the Waccamaw, but that it recommended not
22 passing the bill because the DOI felt that since North Carolina recognizes them
23 and was making an effort to do something for the Waccamaw, the federal
24 government shouldn't worry about them. Such a response was not within the
25 Waccamaw's control and was actually a negligent response and disregard for the
26 federal trust obligation, and the authorizing legislation that created the Bureau of
27 Indian Affairs. There exists many Indian tribes, such as the Waccamaw, that were
28 communities identified as “distinct” in various documents by 1934, and were not
29 recognized due to racial and other non-relevant biases. No petitioner should
30 suffer from these historic tragedies by third parties which may have been
31 motivated by such influences. Should the BIA accept our recommendations, the
32 revised subsection would include an additional sentence, which would read as
33 follows:

34
35 “(c) Associations, organizations, corporations or groups of any character
36 that have been formed in recent times may not be acknowledged under
37 these regulations. Historic or modern third party nomenclature racially
38 misidentifying or mislabeling a petitioner, its members or its community
39 and any similar associated discriminatory acts by the federal, state or local
40 governments, or other third parties towards a petitioner, shall not be
41 weighed against a petitioner but instead, shall be considered as evidence
42 supporting the petitioner's claim of being a “distinct” community.”
43

44 **This concludes our comments concerning Page 4 of the preliminary discussion draft.**
45 **Specific comments concerning Page 5 of the preliminary discussion draft follow.**

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1 **VI. PRELIMINARY DISCUSSION DRAFT-PAGE 5**
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3 **A. Comment(s):**
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- 5 1. We agree with all proposed changes on this page.
6
7 2. **Location: Page 5, at §83.5 Duties of the Department.**
8

9 **Comment:** We believe that the BIA should insert a subsection (g) to the duties of
10 the Department that if OFA does not review and provide its recommendations to
11 the Assistant Secretary concerning a petitioner’s final documented petition within
12 two (2) years of the final petition submission date, the Assistant Secretary shall be
13 required to accept the non-recommendation as a de-facto positive
14 recommendation of acknowledgment. In other words, a petitioner will have been
15 recommended to the Assistant Secretary for acknowledgement by OFA, thus
16 creating a rebuttable presumption in favor of the petitioner, that the petitioner has
17 met the criteria and should be recognized as an Indian tribe. Should the BIA
18 accept our recommendations, the new subsection should read as follows:
19

20 “(g) Once a petitioner’s final petition is ready for active consideration,
21 OFA shall have not more than two (2) years from the final petition
22 submission date to review and provide its recommendations to the
23 Assistant Secretary concerning a petitioner’s final documented petition.
24 Should OFA fail to meet this deadline, such failure shall create a
25 rebuttable presumption in favor of a positive determination and explicitly
26 shifts the burden to the Assistant Secretary to overcome the presumption.”
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28 **This concludes our comments concerning Page 5 of the preliminary discussion draft.**
29 **Specific comments concerning Page 6 of the preliminary discussion draft follow.**
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VII. PRELIMINARY DISCUSSION DRAFT-PAGE 6

A. Comment(s):

1. We agree with all proposed changes on this page.

2. **Location: Page 6, at §83.6 General provisions for the documented petition.**

Comment: At subsection (a), we believe the number the BIA should insert for a page limitation (*not including exhibits, attachments and other supporting documentation*) is three hundred (300).

This concludes our comments concerning Page 6 of the preliminary discussion draft. Specific comments concerning Page 7 of the preliminary discussion draft follow.

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VIII. PRELIMINARY DISCUSSION DRAFT-PAGE 7

A. Comment(s):

1. We agree with all proposed changes on this page.
2. **Location: Page 7, at §83.7 Mandatory criteria for Federal acknowledgement.**

Comment: At subsection (b), we recommend that the number the BIA should insert for the percentage of the petitioning group that comprises a distinct community is “*thirty-percent (30%)*.” We believe this percentage should be acceptable due to the fact that this is the percentage of participation the BIA requires in tribal elections, approval of constitutions, etc. under the Indian Reorganization Act for various matters.

3. **Location: Page 7, at §83.7 Mandatory criteria for Federal acknowledgement.**

Comment: At subsection (b), we refer you to our prior comments concerning the definition of “*Community*” and recommend inserting the same changes recommended there at Section II. A.4. on page 6 of this document.

This concludes our comments concerning Page 7 of the preliminary discussion draft. Specific comments concerning Page 8 of the preliminary discussion draft follow.

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IX. PRELIMINARY DISCUSSION DRAFT-PAGE 8

A. Comment(s):

1. We agree with all proposed changes on this page, except one. See #2 below.

2. Location: Page 8, at §83.7 Mandatory criteria for federal acknowledgement.

Comment: We believe that the BIA should keep “*religious beliefs and practices*” as a part of criteria (b)(1)(vii) and do not agree with deleting it from the criteria.

3. Location: Page 8, at §83.7 Mandatory criteria for federal acknowledgement.

Comment: We believe that the BIA should add the following two sub-criterion to 83.7(b)(1) and (2):

“The group has been treated as having collective rights in tribal land or funds.”
“The group has been treated as an Indian tribe or band by agencies of the Federal, State or local governments, or other Indian tribes.”

4. Location: Page 8, at §83.7 Mandatory criteria for federal acknowledgement.

Comment: We recommend that, at subsection (b)(2), the BIA should adopt the following changes to sub-criterion (2)(i), (ii), and (iii):

For sub-criterion (2)(i), we recommend twenty percent (20%); for sub-criterion (2)(ii) we recommend thirty percent (30%) and we also recommend adding “or with individuals of other Indian tribes” as acceptable for the marriage percentage requirement; and for sub-criterion (2)(iii) we believe the percentage should be thirty percent (30%). We also believe that documentation of separate institutions (*schools, churches, and other similar organizations predominately comprised of the petitioning group*) should suffice demonstrate the efforts to maintain distinct cultural patterns because petitioning groups (*as well as federally recognized Indian tribes*) had no control over the federal and state government suppression of their cultural maintenance efforts (*boarding schools, prohibitions on language, religion, etc.*). Even today, the federal government attempts in large degree to specifically “terminate” any tribe that is not on the federally recognized tribes list. If we have no control over the eradication of culture among tribes even today, in 2013, it is not realistic to expect any non-federally recognized Indian tribe to have maintained a specific percentage of its members throughout time when the government was forcibly attempting to eradicate tribal cultures through to 1975 when the Indian Education and Self-Determination Act was passed.

This concludes our comments concerning Page 8 of the preliminary discussion draft. Specific comments concerning Page 9 of the preliminary discussion draft follow.

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1 **X. PRELIMINARY DISCUSSION DRAFT-PAGE 9**

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3 **A. Comment(s):**

- 4
5 1. We agree with all proposed changes on this page.
6
7 2. **Location: Page 9, at §83.7(c) of the Mandatory criteria for federal**
8 **acknowledgement.**
9

10 **Comment(s):** At sub-criterion 83.7(c)(2)(v), we recommend adding the word
11 “*relatively*” between the words “*a*” and “*continuous*” while the standard for
12 measuring “relatively” should be “*more likely than not*” or “*without substantial*
13 *interruption.*” In other words, the petitioner should not be penalized for certain
14 gaps in continuity of leadership of the petitioning group, especially if there is no
15 third party document available that confirms the line of leadership continuously.
16 Many Indian tribes that are on the federally-recognized Tribes list can not show a
17 continuous unbroken line of leadership, therefore petitioners should not be held to
18 a higher standard or burden of evidence. Should the BIA accept our
19 recommendation, the new statement would read as follows:
20

21 “(v) Show a relatively continuous line of group leaders and a means of
22 selection or acquiescence by a majority of the group’s members.”
23
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25 **This concludes our comments concerning Page 9 of the preliminary discussion draft.**
26 **Specific comments concerning Page 10 of the preliminary discussion draft follow.**
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XI. PRELIMINARY DISCUSSION DRAFT-PAGE 10

A. Comment(s):

1. We agree with all proposed changes on this page.

2. Location: Page 10, at §83.7 Mandatory criteria for federal acknowledgement.

Comment: We believe that at 83.7(e), the percentage the BIA should use relative to this criterion is thirty percent (30%). We believe this would coincide with the marriage rate recommendation from page 8, sub-criterion (2)(ii). See our comment #4 two pages prior to this one.

3. Location: Page 10, at §83.7 Mandatory criteria for federal acknowledgement.

Comment: We believe that at 83.7(e), any evidence that has in the past, been used and acceptable in the list of the proposed deleted criteria 83.7(a), should be added as acceptable kinds of evidence to meet the criteria at 83.7(e).

This concludes our comments concerning Page 10 of the preliminary discussion draft. Specific comments concerning Page 11 of the preliminary discussion draft follow.

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XII. PRELIMINARY DISCUSSION DRAFT-PAGE 11

A. Comment(s):

1. We agree with all proposed changes on this page.

2. Location: Page 11, at §83.7(f)(1).

Comment: We recommend deleting the word “*functioned*” that is between the words “*has*” and “*from*” in the first line of this sub-criterion, and replacing with the words “*attempted to function.*” We recommend this change because while many petitioning groups may have attempted to function as a separate and autonomous Indian entity, we believe that to require that they have is an overly burdensome hurdle. Petitioning groups have no control over the external (*local, state, federal, and other tribal government*) efforts that have ensued over the years to deny the existence, and the very right to exist, of Indian tribes that are not listed on the BIA’s federally recognized tribes list. Should the BIA accept our recommendation, the revised sub-criterion would read as follows:

“(1) It has attempted to function from 1934 until the present as a separate and autonomous Indian tribal entity;”

3. Location: Page 11, at §83.8 Previous federal acknowledgement.

Comment: We recommend that the BIA should delete the words “*substantial*” and “*unambiguous*” from line three of subsection 83.8(a)

4. Location: Page 11, at §83.8 Previous federal acknowledgement.

Comment: We recommend that the BIA should add the following to subsections to 83.8(c):

(4) Identification as an Indian tribe in correspondence, reports, studies or other documents of any agency of the federal government; or relationships with State governments, or dealings with a county, parish or other local government, or with other Indian tribes based on the identification of the group as Indian prior to 1978.

(5) Participation in any federal Indian set-aside program of any agency of the federal government as an Indian tribe or based on the identification of the group as Indian.

(6) Identification as an Indian tribe in reports, studies or other documents of any historian, anthropologist or other scholarly researcher

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1 conducted for, by, under contract with or on behalf of any agency of the federal
2 government.
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5 **This concludes our comments concerning Page 11 of the preliminary discussion**
6 **draft. Specific comments concerning Page 12 of the preliminary discussion draft**
7 **follow.**
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XIII. PRELIMINARY DISCUSSION DRAFT-PAGE 12

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 12 of the preliminary discussion draft. Specific comments concerning Page 13 of the preliminary discussion draft follow.

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XIV. PRELIMINARY DISCUSSION DRAFT-PAGE 13

A. Comment(s):

1. We agree with all proposed changes on this page.
2. **Location: Page 13, at §83.10(b)(3) Processing of the documented petition.**

Comment(s): We recommend that at line three, the BIA delete the word “*determine*” between the words “*to*” and “*whether*” and replace with the words “*advise the petitioner.*” We recommend these changes because we do not believe that OFA’s role should be one of a decision maker, but of an advisor and technical assistance provider only.

This concludes our comments concerning Page 13 of the preliminary discussion draft. Specific comments concerning Page 14 of the preliminary discussion draft follow.

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XV. PRELIMINARY DISCUSSION DRAFT-PAGE 14

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 14 of the preliminary discussion draft. Specific comments concerning Page 15 of the preliminary discussion draft follow.

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XVI. PRELIMINARY DISCUSSION DRAFT-PAGE 15

A. Comment(s):

1. We agree with all proposed changes on this page.
2. **Location: Page 15, at §83.10 Processing of the documented petition.**

Comment: We believe that the BIA should delete the word “*and*” in the second line of (g) that is between “(f),” and “(g)” in the beginning of the second line and replace the “and” with the word “or” to make it consistent with the similar statements under the prior paragraph (f).

This concludes our comments concerning Page 15 of the preliminary discussion draft. Specific comments concerning Page 16 of the preliminary discussion draft follow.

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XVII. PRELIMINARY DISCUSSION DRAFT-PAGE 16

A. Comment(s):

1. We agree with all proposed changes on this page.

2. Location: Page 16, at §83.10(g)(3) Processing of the documented petition.

Comment(s): We recommend adding the following sub-criterion at 83.10(g)(3) after (i) and (ii):

“(iii) The petitioner has received and maintained formal recognition by a State prior to 1978; or

(iv) The petitioner has participated in any federal Indian set-aside program of any agency of the federal government as an Indian tribe or based on the identification of the group as Indian.”

3. Location: Page 16, at §83.10(i) Processing of the documented petition.

Comment(s): At this regulation wherein the BIA has requested recommendations for number of pages, we recommend that the number of pages not exceed ten (10).

4. Location: Page 16, at §83.10(j) Processing of the documented petition.

Comment(s): At this regulation wherein the BIA has requested recommendations for number of pages, we recommend that the number of pages not exceed ten (10). Where the BIA suggests OHA or AS-IA, we recommend “AS-IA.”

This concludes our comments concerning Page 16 of the preliminary discussion draft. Specific comments concerning Page 17 of the preliminary discussion draft follow.

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XVIII. PRELIMINARY DISCUSSION DRAFT-PAGE 17

A. Comment(s):

1. We agree with all proposed changes on this page.
2. **Location: Page 17, at §83.10(k) Processing of the documented petition.**

Comment(s): At this regulation wherein the BIA has requested recommendations for number of pages, we recommend that the number of pages not exceed one hundred (100).

This concludes our comments concerning Page 17 of the preliminary discussion draft. Specific comments concerning Page 18 of the preliminary discussion draft follow.

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IXX. PRELIMINARY DISCUSSION DRAFT-PAGE 18

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 18 of the preliminary discussion draft. Specific comments concerning Page 19 of the preliminary discussion draft follow.

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XX. PRELIMINARY DISCUSSION DRAFT-PAGE 19

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 19 of the preliminary discussion draft. Specific comments concerning Page 20 of the preliminary discussion draft follow.

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XXI. PRELIMINARY DISCUSSION DRAFT-PAGE 20

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 20 of the preliminary discussion draft. Specific comments concerning Page 21 of the preliminary discussion draft follow.

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XXII. PRELIMINARY DISCUSSION DRAFT-PAGE 21

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 21 of the preliminary discussion draft. Specific comments concerning Page 22 of the preliminary discussion draft follow.

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XXIII. PRELIMINARY DISCUSSION DRAFT-PAGE 22

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 22 of the preliminary discussion draft. Specific comments concerning Page 23 of the preliminary discussion draft follow.

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XXIV. PRELIMINARY DISCUSSION DRAFT-PAGE 23

A. Comment(s):

1. We agree with all proposed changes on this page.

This concludes our comments concerning Page 23 of the preliminary discussion draft. Specific conclusions of the preliminary discussion draft follow.

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1 **XXV. PRELIMINARY DISCUSSION DRAFT-CONCLUSIONS**

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3 **A. Comment(s):**

4
5 Finally, a few additional thoughts to recommend:

6
7 (1) We recommend that the Bureau of Indian Affairs draft a regulation that
8 requires that, in their technical assistance capacity, OFA be required to research and find,
9 within any and all records of the Bureau of Indian Affairs, any records it has pertaining to the
10 petitioning group, make copies of such records, and provide to the petitioning group as a part
11 of the process for the technical assistance review. Such documents shall be made available to
12 the petitioner within ninety (90) days of the petitioner's request for technical assistance.

13
14 (2) We recommend that the Bureau of Indian Affairs try not to limit its ideas
15 about "what comprises" an Indian tribe to attributes related to most tribes west of the
16 Mississippi. While sometimes some eastern Indian tribes and communities may have similar
17 communal attributes as Indian tribes in the west, many will not, as there was a different
18 relationship within the colonies and with the United States for these Indian tribes than those
19 of the federal government and its predecessors with Indian tribes located west of the
20 Mississippi. Some eastern tribes may not have communal interest in lands, due to land being
21 taken away through force, taxation, or due to becoming Christianized (*non-natives viewed*
22 *American Indians differently once Christianized. After becoming Christian, some anglo*
23 *societies in America viewed Christian Indians as titheables, and therefore, also taxable*).

24
25 (3) Greater weight needs to be given when an Indian tribe has maintained a long
26 standing relationship with a state such as state-recognition. In the east, this is significant in
27 an evolving relationship from one with a colony, to then the state as successor in interest
28 (*with the state of course, being a sub-entity of the federal government*).

29
30 (4) Separate schools and churches should have a significant weight in
31 demonstrating that a distinct community exists as an Indian tribe. For example, the
32 Nanticokes and Lenapes in Delaware and New Jersey (*Nanticoke Indian Tribe, Lenape*
33 *Indian Tribe of Delaware and the Nanticoke Lenni-Lenape in New Jersey*), and the Haliwas
34 (*Haliwa-Saponi Indian Tribe*), Sapponys, Waccamaws (*Waccamaw-Siouan Indian Tribe*),
35 and others in North Carolina, the Indian tribes in Virginia and in other southeastern areas had
36 separate schools specifically set aside for their communities. This was a common practice in
37 the east relative to Indians. It is in fact how some of the most prestigious colleges and
38 universities in the east began, as "Indian-only" schools. These Tribes are just a few among
39 many that should already be listed on the BIA list of federally recognized Indian tribes.

40
41 (5) Finally, please keep in mind that even today, the federal government, and its
42 states, are making it more and more difficult for Indian tribes that are not on the federally
43 recognized tribes list maintained by the BIA to live, exist and maintain themselves as "Indian
44 tribes." Such things should not be held against the petitioner.

45
46 **This concludes our comments concerning the preliminary discussion draft at this time**