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September 24, 2013

VIA EMAIL

Honorable Kevin K. Washburn
Assistant Secretary of Indian Affairs
United States Department of the Interior
1849 C Street NW
Washington D.C. 20240

RE: Suquamish Tribe's Comments on Draft Proposal to Revise 25 CFR Part 83

Dear Assistant Secretary Washburn,

The Suquamish Tribe appreciates the opportunity to submit its comments regarding the Department of the Interior's Draft proposal to revise its procedures for petitioners seeking federal acknowledgement as an Indian tribe. During the 2009 Senate Committee on Indian Affairs hearing to address complaints regarding the Department's acknowledgement process, Committee members expressed concerns about the timeliness of the Department's decisions, the costs to process an application, a perceived inconsistency in the application of existing standards and the lack of transparency of the process. Congress did not question the existing standard for obtaining federal acknowledgment. Instead of addressing the procedural deficiencies about which Congress expressed concerns, the Department's proposed revisions lower the threshold for obtaining federal recognition as a tribe in the guise of streamlining its process. Consequently, and as detailed below, the Suquamish Tribe cannot and does not support most of the proposed revisions.

Suquamish requests additional public hearings regarding these proposed revisions. The Department's scheduled hearings this summer were few, held in remote locations and at inopportune times. The proposed revisions, if adopted, seriously alter the existing standard for establishing federal recognition as a tribe. Thus, more Tribal consultation on this matter is necessary. In this letter, Suquamish limits its comments to its primary concerns with the proposed revisions.

I. Suquamish Supports the Few Proposed Revisions that Improve the Recognition Application Process and Opposes Those That Reduce Transparency

Suquamish supports a few of the Department's proposal revisions that would improve the petition process. Suquamish supports the proposed elimination of the "Letter of Intent" process in favor of an application process that begins with the filing of a "Documented Petition". In the

past, the letter of intent process served to establish an informal relationship between potential petitioners and the Department. However, the existence of informal relations resulted in a lack of clarity in establishing a clear path to the petitioning process. It is understandable when groups complain about having had a relationship with the Department for years without knowing if they were progressing towards recognition. The proposed filing of a Documented Petition would establish a date certain on which the Department would acknowledge that a group has filed a complete application and clarify the initiation of the petition review process tremendously. By having a date certain, the Department can determine the standard of proof that applies to each petition. The Department can also build on this date to establish a timeframe upon which it must review and make its determination on the petitions received.

Suquamish also supports any improvements the Department can make in providing the means for petitioners to file their Documented Petition electronically. For petitioners who do not have the financial resources or means to file a petition electronically, the Department should accept a hard copy Documented Petition and have Department staff scan and convert the petition into electronic form. Such a system will vastly improve the transparency of the petition process, clarify what evidence a petitioner has submitted in support of its petition and provide interested parties with access to the petitioners' documents. The Department does not have to re-invent the wheel here. Federal courts have used electronic filing systems for over a decade. Their filing and retention systems accommodate large filings that contain many documents, a means to provide electronic access to interested parties, and a process to protect confidential documents. Clarity and transparency of process, primary issues raised by Congress, would improve significantly if the Department adopted an electronic filing system similar to that used by the Federal Court system.

II. Suquamish Does Not Support Transferring the Assistant Secretary's Authority and Responsibilities Acknowledgement Petitions to the Office of Hearings and Appeals

Suquamish strongly believes the Assistant Secretary should retain all decision-making authority on acknowledgement petitions, including holding hearings on the matter in the event material factual issues arise with regard to a petition as currently stated in §83.10(m)-(r). The Administration appoints the Assistant Secretary based in part on the candidate's knowledge of Indian affairs. Because of this background and through day-to-day administration of Indian affairs, the Assistant Secretary has more understanding of issues that arise during the petition process. The Office of Hearings and Appeals has very little, if any, experience regarding Indian affairs. A transfer of decision-making authority to the Office of Hearings and Appeals would also likely to change the petition process more into a legal than administrative process that Suquamish does not support.

III. Suquamish Opposes Those Proposed Revisions That Lower the Petitioners' Burden of Proof Under the Guise of Streamlining the Review Process

The federal government's threshold for acknowledgment is and has been that an applicant must establish proof of a continuous political existence since at least 1900. The Department has consistently represented that the existing standards for federal recognition will not change by

adopting the proposed revisions but that the proposed revisions will simply streamline the review process. In Suquamish's view, the proposed revisions liberalize the existing standard by lowering the required proof and do nothing to streamline the application process.

1. Suquamish Opposes the Department's Proposal Revisions that Liberalize the Existing Standard for Establishing Federal Recognition as a Tribe

The fundamental principle of federal recognition is that a petitioner must establish that it politically and socially existed in aboriginal times and retained its aboriginal sovereign character through to the present. The Department proposes to delete language in §83.3(d), to delete §83.7(a) and to revise §§ 83.7(b) and 83.7(c) to accept proof of existence as a distinct community as of 1934. These proposed revisions undermine this existing standard by permitting less stringent proof of identification as an Indian political entity. §83.3(d) is necessary to set for this principle and should not be deleted. There is no need to delete §83.7(a) because if a petitioner can meet the existing criteria §§ 83.7(b) and 83.7(c), it should be able to meet §83.7(a). These proposed revisions do not streamline the process. They simply liberalize the existing standard of proof by lowering the proof by which petitioners can establish themselves as tribes. Congress is satisfied with the existing standard of proof. There is no need to change the existing standard of proof.

2. Suquamish Opposes the Department's Proposal to Permit Past Applicants to Reapply for Recognition

Suquamish opposes the Department's proposal to revise §§ 83.3(f) and 83.10(r) to permit applicants who have been previously denied acknowledgement under Part 83 to reapply for recognition under the revised regulations if adopted by the Department. If the proposed revisions do not change the standard by which applications are reviewed then there is no purpose in inviting groups who were previously denied federal recognition to reapply. This proposed revision serves only to open the door to unnecessarily revisiting final decisions made by the Department.

3. Suquamish Opposes the Department's Proposals Which Create Positive Presumptions in favor of Petitioners and Thereby Eliminate Objectivity in the Department's Review

Suquamish opposes the Department's proposal to revise its existing burden of proof standard in §83.6(d)(1) to mandate that the Department view evidence submitted with an application in a light most favorable to the applicant. This proposed standard eliminates objectivity in the Department's review of petitioners' evidence and instead skews the evidence in favor of the applicant and against anyone who may oppose the application. The only way to maintain a fair process is to withdraw this proposed revision.

4. Suquamish Opposes the Department's Proposal to Allow Petitioners to List Leaders Without Also Showing They Exercised Political Authority and Influence over Group

Suquamish opposes the Department's proposal to revise §83.7(c)(2)(5) which would permit

applicants to simply show a continuous line of leaders without also submitting supporting evidence to establish that these leaders exercised political authority and influence over the group. This proposed revision unduly liberalizes the petitioner's burden of proof by presuming that proof of a succession of leaders equals proof that those leaders exerted political authority and influence over the group on a continuous basis from aboriginal to present times.

5. Suquamish Opposes Department's Proposal to Allow Use of Historian and Anthropologist Hearsay Opinions in Place of Primary Evidence of Tribal Descent

Suquamish opposes the Department's proposal to revise §83.7(e) to permit applicants to submit opinions of historians and anthropologists in place of primary evidence of tribal descent. This proposed revision is the equivalent of permitting hearsay as proof of the truth of a proposed fact. Experts often disagree on historical facts as well as the meaning of historical facts. By allowing experts to replace primary evidence of tribal descent, the Department's proposed revision lowers the burden of proof and introduces potential bias into the Department's petition review process.

6. Suquamish Opposes the Department's Proposal to Adopt Presumptions Related to New Petitioners Claiming Identify with Prior Recognized Tribes

Suquamish opposes the Department's proposal to eliminate the requirement in §83.8 that applicants who claim previous federal recognition show 1) it is the same entity which was previously recognized; 2) its leaders exercised political authority over the group between the time it was previously acknowledged to the time of application; and 3) at least one other form of evidence that it satisfies criteria of showing the applicant exercise political influence or authority over its members. If the Department eliminates this requirement, it has no objective way to ensure that a new petitioner and the previously acknowledged tribe are the same group. The Department is essentially proposing to presume that the entities are identical. This does not streamline the process. It simply lowers the petitioner's burden of proof.

7. Suquamish Opposes the Department's Proposal to Expedite Findings of Petitioners who Submit Certain Evidence Related to Land Holdings Without Further Proof

Suquamish opposes the Department's proposal to revise the procedures in § 83.10(g) so as to expedite its findings if the applicant shows that at any time since 1934 it either maintains a reservation recognized by a state or has had United States hold title to land for the group. The likelihood of unique facts related to these criteria is very high. These facts may be factors in establishing continuous political existence but is not necessarily evidence that warrants an expedited positive decision. Historic documentation to support acknowledgement is often sparse. This reality mandates careful consideration of the documents submitted by petitioners, not expedited decision-making based on circumstances that may or may not actually support tribal aboriginal existence. This proposed revision dilutes the existing burden of proof.

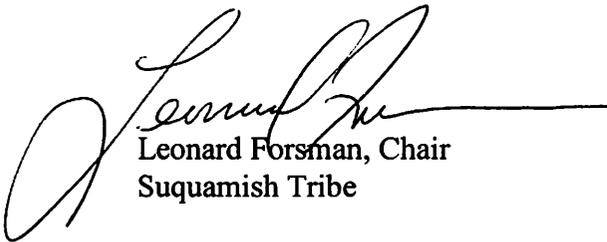
8. Suquamish Opposes the Department's Proposal to Limit Interested Parties' Access to Petitioners' Records

Suquamish opposes the Department's proposed revisions to §83.10(k) and (n)(2) which would limit interested parties' access to and participation in the petition review process. The proposed revisions would close access to petition documents and require interested parties to file Freedom of Information Act requests to obtain information. This is exactly the type of behavior Congress hoped to curb by highlighting the need for transparency in the petition review process. The Department should be finding ways to open the process by, for instance, creating an electronic filing system for petitions that is open to petitioners and interested parties alike, instead proposing revisions that limit participation by interested parties.

IV. Conclusion

The Suquamish Tribe cannot and does not support the vast majority of the Department's proposed revisions to 25 CFR Part 83 as it is currently proposed. Suquamish suggests that the Department engage in continued and substantive consultations with Suquamish and other Tribes who are very concerned with the direction the Department seems headed. There should be more, not less, clarity and transparency to the federal acknowledgment process. The Department needs to maintain the integrity of the federal recognition process by retaining the high standards that have served the nation well over the past decades. We look forward to consulting with the Department on this matter.

Sincerely,



Leonard Forsman, Chair
Suquamish Tribe