



North Carolina Department of Administration

Pat McCrory, Governor
Bill Daughtridge, Jr., Secretary

N.C. Commission of Indian Affairs
Gregory A. Richardson, Executive Director

September 25, 2013

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

Dear Assistant Secretary Washburn:

On behalf of eight American Indian tribes and more than 188,000 American Indians in North Carolina, I appreciate the tremendous effort the U.S. Bureau of Indian Affairs has put into developing a preliminary discussion draft of potential revisions to 25 CFR Part 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe* (commonly referred to as “the federal acknowledgment process”). Your efforts have created a wonderful opportunity for Indian tribal communities whom are currently not acknowledged as American Indian tribes by the federal government to present their issues, concerns, and experiences they’ve had while seeking federal acknowledgment.

I truly thank you and Deputy Assistant Secretary Larry Roberts for your efforts in addressing numerous concerns regarding the federal acknowledgment process. There have been several congressional oversight hearings, as well as a Government Accountability Office (GAO) report detailing problems with the federal acknowledgment process. We believe it has been the culmination of these issues that have led to the production of the Bureau’s development of a draft of potential revisions to the process and the coordination of several comment sessions around the country. We appreciate the work of the U.S. Department of the Interior, and we welcome the opportunity to provide comments on the proposed revisions.

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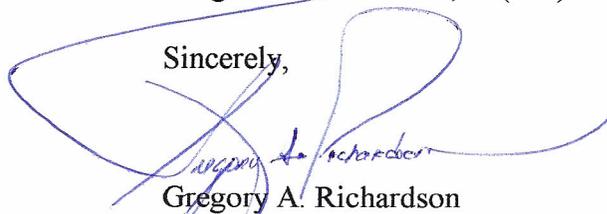
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With the state of North Carolina having the largest American Indian population east of the Mississippi River –the eighth largest in the nation—and having the second highest number of petitioners in the federal acknowledgment process, we welcome any opportunity to hold a public comments session here in North Carolina. We believe it would be highly beneficial to all parties involved, and would be most appropriate in providing our tribal communities’ presentations of highly relevant acknowledgment issues. These historic tribal communities have sought tribal acknowledgment throughout every stage of the evolution of the federal acknowledgement process, and a revised process would be of great benefit to the timely expedition of their cases.

In accordance with the Federal Register notice published June 27, 2013, and subsequent extensions to the deadline for submissions, we are hereby submitting comments regarding the preliminary discussion draft of potential revisions to improve the federal acknowledgment process. We request that these comments be considered throughout further discussions and revisions to the 25 CFR Part 83. Additionally, we cordially invite you to our state and welcome the opportunity to collaborate with your office in coordinating future public comments sessions in North Carolina. We would be happy to meet with you to further discuss issues regarding the federal acknowledgment process and potential revisions to it.

Should you have questions or need additional information regarding our interests, please feel free to contact me (Greg.Richardson@doa.nc.gov) or Elk Richardson (Elk.Richardson@doa.nc.gov), staff to N.C. Commission of Indian Affairs Recognition Committee, at (919) 807-4440.

Sincerely,



Gregory A. Richardson
Executive Director

attachment



North Carolina Department of Administration

Pat McCrory, Governor
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N.C. Commission of Indian Affairs
Gregory A. Richardson, Executive Director

September 25, 2013

Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street, NW
MS 4141
Washington, DC 20240

Dear Ms. Appel:

The North Carolina Commission of Indian Affairs was created in 1971 by the North Carolina General Assembly to study Indian needs, to deal effectively with Indian issues, and to bring local, state, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the state, and to assist in social and economic development of Native American communities (N.C. General Statutes 143B-406). Also as part of its mandated duties, the North Carolina Commission of Indian Affairs has an interest in the federal recognition of North Carolina Indian tribes and groups.

Relative to our interest in the federal acknowledgment of North Carolina's state-recognized American Indian tribes, we submit the following pages in response to the notice published in Federal Register/Vol. 78, No. 124/Thursday, June 27, 2013/Proposed Rules regarding public comments on a preliminary discussion draft of potential revisions to improve the Federal acknowledgment process. In the Federal Register notice, the Department of the Interior/Office of the Assistant Secretary - Indian Affairs (Bureau of Indian Affairs) is seeking comments regarding proposed revisions to the federal acknowledgment process, including the procedures that govern the federal acknowledgment of Indian tribes, and scheduled "tribal" and

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"public" comment sessions on the preliminary draft of revisions to the regulatory rules for federal acknowledgment. Our comments regarding both the comment sessions and the proposed revisions follow. We will first address the comment sessions.

Notice of tribal consultation and public meetings

In the June 27, 2013 Federal Register notice, the Department of the Interior announced that it would conduct public comment sessions on the preliminary discussion draft of the potential revisions to improve the federal acknowledgement process. The notice stipulates that

"We will be hosting several meetings to obtain input on the draft. Morning sessions are tribal consultation sessions reserved only for representatives of federally recognized tribes. Afternoon sessions are open to the public."

Five locations are listed, with their respective dates and times for both morning and afternoon sessions. We take exception to the fact that none of comment sessions planned are convenient to or conducive to public attendance by petitioning groups from historic tribes of the mid-Atlantic region, where in fact, a large percentage of petitioners are located. Almost one-third (111 of 352) of the current petitioners for federal acknowledgment are located in the southeastern United States. North Carolina is one of two states that have the second highest number of petitioners since the establishment of the administrative federal acknowledgment process. Forty-seven petitioners from North Carolina, South Carolina, and Virginia make up 42% of the current petitioners in the southeastern United States, and 14 percent of the total number of petitioners nationally. In order for representatives of these 47 petitioners to attend the scheduled public comment sessions as listed in the June 27th Federal Register notice of planned comments sessions, they would have to travel at least 500 miles to attend either of the closest sessions held in Petoskey, Michigan on July 29th, Indian Island, Maine on July 31st, and Marksville, Louisiana on August 6th. With such a heavy concentration of petitioners from the mid-Atlantic region, it would be more conducive to public participation by these interested parties if comment sessions

were more conveniently located. We believe that tribal and public consultation sessions are very important to revising the federal acknowledgment process. It is crucial that the setting and location of these comment sessions be conducive to receiving public input from tribes that are already acknowledged by the federal government, as well as petitioners -especially those who are already in the administrative process and are directly interested parties.

Preliminary Discussion Draft of Potential Revisions To Improve the Federal Acknowledgment Process

25 CFR Part 83.1 Definitions:

We appreciate the clarifications made in the definitions used in 25 CFR Part 83. The proposed definitions section eliminates redundancies and better describes important terms that were previously unclear.

We strongly agree with the revisions to the definition of "Continuously or continuous." This revision would greatly decrease the burden for petitioners in the federal acknowledgment process, in that the timeframe for which a petitioner must provide evidence of continuous existence as a distinct community would now begin at 1934. This revision is further reflective of the significance of the passage of the Indian Reorganization Act in 1934, which was a new era of federal Indian policy to preserve and protect the existence of t tribes and their governance systems and recognized a tribes' right to self-determination. We believe that using the year of the Indian Reorganization Act (1934) would reflect the intent of the authors of the federal acknowledgment procedures in 1978, and provide a uniform timeframe for all petitioners, as opposed to timelines established through the usage of the term "historical times until the present."

25 CFR Part 83.3 Scope (a) :

We fully agree with the deletion of language in this section which specifically required petitioners to provide external evidence identifying the petitioner as an Indian entity. The historical prejudices that have existed in states in the

southeast, and especially those in along the mid-Atlantic coast, have made it difficult for tribes to be able to provide evidence required to satisfy this criterion. This was an unfair burden on petitioners, and should have been deleted long ago.

25 CFR 83.4 Filing a letter of intent:

Elimination of the requirement of Letter of Intent: In general, we agree with the proposed elimination of the Letter of Intent. The requirement for a documented petition is sufficient, and a genuine demonstration of a petitioner's desire and intent to be acknowledged as an American Indian tribe by the federal government.

25 CFR 83.5 Duties of the Department:

We believe that the establishment of an annual date ("January 30 each year") for publishing a list of all Indian tribes entitled to receive services from the BIA [§83.5(a)] is an improvement to the information and services provided by the Department of the Interior. Publishing such listing annually will provide a much more current listing of federally-recognized American Indian tribes, which will be highly beneficial for tribes and entities providing services to persons who are members of federally acknowledged tribes. Annual publishing of the list will also facilitate the appropriate provision of such services to members of tribes recently acknowledged, and eliminate the potential for several years of delays in the provision of services to these tribes and their members/

In §83.5 (b), we concur with the language regarding the provision of guidelines regarding the "...types of evidence which may be used..." These "guidelines," as provided by the Department in the past, have often seemed to serve as "rule of law" when petition documents and information was reviewed by the Department. The concept of maintaining "guidelines for general suggestions on how and where to conduct research" implies an enhanced flexibility in the Department's reviewing and acceptance of a petitioner's explanations in addressing the criteria.

25 CFR 83.6 General provisions for the documented petition:

While we agree that a documented petition should be clear, concise, and factual, we believe that it is difficult to limit the number of pages in which may be required for petitioner to present its detailed arguments that substantiate its claim that it meets the requirements for federal acknowledgment as an American Indian tribe. To impose such limitations on all petitioners might be arbitrary, and would also have the potential to prevent a petitioner from providing all the necessary narrative, information, and documentation to substantiate its claims. We do understand the restrictions and effects of being a government agency with limited resources and continuously shrinking budgets, however, it is crucial that a petitioner be allowed to fully present its case. The Department's rules proposed at §83.10(f) ("Expedited Negative Finding") would assist in the elimination of an unnecessary review of excessive paperwork and documentation.

We believe the clarity and detail of other proposed revisions listed in §83.6 would be beneficial to current and future petitioners.

25 CFR 83.7 Mandatory criteria for Federal acknowledgment:

As stated earlier, we agree with the deletion of language in §83.7(a), which specifically required petitioners to provide external evidence identifying the petitioner as an Indian entity. The historical prejudices that have existed in states in the southeast -especially those along the mid-Atlantic coast- have made it difficult for tribes to be able to provide evidence required to satisfy this criterion for federal acknowledgment. While we strongly believe that petitioning groups must be strongly identify and evidence their American Indian identity, ancestry, community, and historic governance and structure, the weight of the evidence required for satisfying the current rule at 83.7(a) has placed an unfair, if not impossible, burden on many petitioning tribal communities in the southeastern U.S. We concur with the deletion of the language in §83.7(a) as a mandatory requirement for federal acknowledgment.

Regarding **§83.7 (b)**, in the Preliminary Discussion Draft a revision is proposed that *"At least XX percent of the petitioning group comprises a distinct community and has existed as a community from 1934 until the present."* We feel that the current language that reads *"A predominant portion..."* is sufficient and allows for the petitioner to provide evidence to satisfy "predominant portion" and does not impose an arbitrary percentage or portion of a petitioner's community which must have comprised a distinct community. Having to satisfy an arbitrarily established percentage of their community may prove difficult to impossible for various petitioners to meet in addressing "distinct community." Use of the term "predominant portion" is sufficient in this section.

Use of the term "from 1934 until the present" substantially revises the time period in which a petitioner must show the existence or continuity of its distinct community. This revision is a beneficial change in the proposed draft, and we concur with this revision and strongly endorse its approval.

We believe the criteria could be further strengthened and revised with an additional subparagraph at **§83.7 (b) (1)** to read:

"The petitioning group has been treated as an Indian tribe or band by agencies of federal and state government prior to 1978, and is legally recognized [or acknowledged] by the state government in which its community is located."

Additionally, we concur with the additional revisionary language proposed in **§83.7 (b)** that further addresses "distinct community," except in **§83.7 (b) (2)**, subparagraphs (i), (ii), and (iii) -where percentages are currently used -these percentages should not change.

Also in **§83.7 (b) (2) (iii)**, we oppose the deletion of the following language: "religious beliefs and practices;" and request that language be expressed regarding the demonstration of the petitioner's cultural practices and including "religious beliefs, practices, and ceremonies."

The expanded description of an autonomous Indian group and the meaning of "political influence or authority" provided in the draft language in §83.7(c) is a welcomed addition to the federal acknowledgment criteria.

Proposed revisionary language at §83.7(e), "At least XX percent of the," should not be included. One hundred percent (all individuals) of the petitioner's membership should be descendants of a historic Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. The current language of §83.7(e) should remain unchanged, except for the proposed language at §83.7(e)(1)(v), regarding "Historians' and anthropologists' conclusions drawn from historic records, and historical records created by historians and anthropologists." We concur with the proposed revision at §83.7(e)(1)(v).

We concur with the revised language in §83.7(f) and §83.7(g).

25 CFR 83.8 Previous Federal acknowledgment:

We concur with the importance of a petitioner having to evidence any instance of previous federal acknowledgment. However, use of the term "unambiguous" in 25 CFR 83.8 is unnecessary and should be deleted. Evidence that a petitioner may include are sufficiently described and exemplified in §83.8(c) and §83.8(d).

We believe the examples listed in §83.8(c) could be further strengthened by adding language or an additional subsection that would allow the inclusion of evidence of the petitioner's 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. As a suggestion, we propose the following as an additional subsection to §83.8(c):

"§83.8(c)(4) 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."

25 CFR 83.9 Notice of receipt of a petition:

Revisions to §83.9 are technical in nature, and we agree with all proposed revisions in this section. In addition to the current

requirement of notifying the governor and attorney general of the state in which a petitioner is located, we recommend that OFA notify any other state government entity responsible for legal acknowledgment of Indian tribes (such as a state commission of Indian affairs) by the state government within the petitioner's state(s). The exchange of information and research between state and federal agencies responsible for the conduct of administrative acknowledgment would be beneficial to the acknowledgment process and facilitate OFA in expediting its review of all available information on a petitioning group.

25 CFR 83.10 Processing of the documented petition:

We generally agree with the proposed revisions in §83.10. However, in the proposed §83.10(g)(3), we propose the addition of additional sub-criterion to this section, in addition to the criteria listed in paragraphs §83.10(g)(3)(i) and (ii):

“(iii) The petitioner has received and maintained formal and legal 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.”

In the proposed §83.10(i) the revised language proposes to arbitrarily place limits on the number of pages that OFA may publish in its proposed findings. An arbitrary limit is also proposed in the revisionary language in the proposed §83.10(j), regarding rebuttal arguments posed by the petitioner, any individual or organization challenging or supporting the proposed findings. Any page limits imposed in either of these sections, should not be arbitrary and should be based on sound rationale, perhaps such as “the number of pages shall not exceed fifty percent of the number of pages in the original petition document, but not more than ten pages.”

Also in the proposed §83.10(j), we recommend that the language be revised to require that responses be submitted to the Assistant Secretary for Indian Affairs, or “AS-IA,” regarding entities

submitting arguments rebutting or supporting the proposed finding. This same terminology should also be utilized respectively in the following proposed sections: §83.10(j)(1) and (2), §83.10(l), §83.10(m), §83.10(n), §83.10(o), §83.10(p), §83.10(q), and §83.10(r). We concur with all other proposed revisions to 25 CFR 83.10.

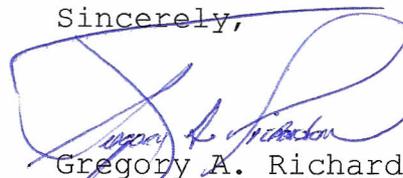
25 CFR 83.11 Independent review, reconsideration and final action:

We concur with the proposed deletion of §83.11, regarding a petitioner's request for reconsideration with the Interior Board of Indian Appeals.

With there being no proposed revisions to 25 CFR 83.12, and proposed revisions to 25 CFR 83.13 being technical in nature, this concludes our comments regarding the preliminary draft revisions.

We thank you for this opportunity to provide comments on the Department of the Interior's proposed revisions to the federal acknowledgment procedures. Should you have questions or wish to further discuss our concerns, please free to contact me (Greg.Richardson@doa.nc.gov) or Elk Richardson (Elk.Richardson@doa.nc.gov), staff to N.C. Commission of Indian Affairs Recognition Committee, at (919) 807-4440.

Sincerely,



Gregory A. Richardson
Executive Director

cc: N.C. Commission of Indian Affairs membership
Ken Washburn (Assistant Secretary - Indian Affairs)
Senator Kay Hagan
Senator Richard Burr
Senator Maria Cantwell (Chairwoman, Senate Committee on Indian Affairs)

Representative Don Young (Chairman, House Subcommittee on
Indian and Alaska Native Affairs)
National Congress of American Indians
Governor's Interstate Indian Council
Coharie Indian Tribe
Eastern Band of Cherokee Indians
Haliwa-Saponi Indian Tribe
Lumbee Tribe of North Carolina
Meherrin Indian Tribe
Occaneechi Band of the Saponi Nation
Sappony
Waccamaw Siouan Tribe