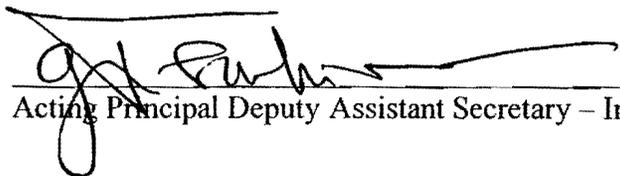


Summary under the Criteria and Evidence  
for the Proposed Finding  
for Acknowledgment of the  
Shinnecock Indian Nation (Petitioner #4)

Prepared in response to a petition  
submitted to the Secretary of the  
Interior of Federal Acknowledgment that  
this group exists as an Indian tribe.

Approved on: December 14, 2009

  
Acting Principal Deputy Assistant Secretary – Indian Affairs

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## ABBREVIATIONS AND/OR ACRONYMS USED IN THIS REPORT

ADS	Associate Deputy Secretary of the Department of the Interior
ANA	Administration for Native Americans
APA	Administrative Procedures Act
ASIA	Assistant Secretary – Indian Affairs
BIA	Bureau of Indian Affairs
CFR	<i>Code of Federal Regulations</i>
DOI	The Department of the Interior
Ex.	Documentary exhibit
FD	Final Determination
FR	<i>Federal Register</i>
FTM	Family Tree Maker™ genealogical database program
IBIA	Interior Board of Indian Appeals
IRA	Indian Reorganization Act
the List	The Recognized Tribes List
NARF	Native American Rights Fund
NY	The State of New York
OFA	Office of Federal Acknowledgment
PDAS-IA	Principal Deputy Assistant Secretary – Indian Affairs
PF	Proposed Finding
RG	Record Group
SHN	Shinnecock Indian Nation; also “the petitioner,” “the Shinnecock petitioner”
TA	Technical Assistance, as in “TA review letter,” or “TA review meeting”
U.S.	United States

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Summary under the Criteria and Evidence  
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Figure 1: Map of Suffolk County, New York

Note: Map features and labels are approximate.



Source: This map was modified by the Office of Federal Acknowledgment from a Suffolk County Government map which, in turn, was created from a USGS national elevation dataset.

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## INTRODUCTION

### Processing the Petition under the Acknowledgment Regulations and the Stipulation and Order for Settlement of May 26, 2009

The Acting Principal Deputy Assistant Secretary – Indian Affairs (PDAS-IA) prepares this proposed finding (PF) in response to the petition received from the Shinnecock Indian Nation (“the Shinnecock petitioner” or “the petitioner”), located on Long Island in Suffolk County, New York. The Shinnecock petitioner seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), as “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.”

Through the acknowledgment regulations at 25 CFR Part 83, a non-federally recognized group may seek Federal acknowledgment of a government-to-government relationship with the United States as an Indian tribe. To establish this political relationship, the petitioner must submit evidence that it meets the seven mandatory criteria set forth in §83.7 of the regulations, demonstrating that it has existed socially and politically from historical times to the present and descends from a historical Indian tribe. Failure to meet any one of these criteria will result in a determination that the group is not an Indian tribe within the meaning of Federal law.

This PF meets the December 15, 2009, deadline the petitioner and U.S. negotiated in a settlement agreement that the Court approved by order on May 26, 2009, in *Shinnecock v. Salazar*, No. CV-06-5013, 1 (E.D.N.Y.). See Appendix B for a copy of the Stipulation and Order for Settlement (Agreement). In *Shinnecock v. Salazar*, the Shinnecock petitioner alleged, among other things, that the Department of the Interior (Department) unreasonably delayed deciding its acknowledgment petition. The schedule for processing the Shinnecock petition under the Agreement is summarized below and differences between this schedule and the regulatory time-lines are discussed.

After the Department issues a PF, the acknowledgment regulations at §83.10(i) provide a 180-day “comment period” for petitioners, interested and informed parties, and the public to submit comments on the PF. While it did not change the standards for evaluating the acknowledgment criteria, the Agreement shortens this and some of the other procedural time-lines of the regulations. For the Shinnecock petition, publication of the PF in the *Federal Register* initiates a 90-day comment period. The petitioner, any interested or informed parties, and the public may submit arguments and evidence to support or rebut the evidence relied on in the PF during this 90-day period. However, if the Shinnecock petitioner or an interested party requests additional time in writing, the comment period will be extended to the full 180-days that would otherwise be available under the regulations. Comments on the PF should be submitted in writing to the Office of the Assistant Secretary – Indian Affairs, 1951 Constitution Ave., N.W., Washington, D.C. 20240, Attention: Office of Federal Acknowledgment, Mail Stop 34B-SIB. Interested or informed parties must provide a copy of their comments to the petitioner.

During the comment period, the Shinnecock petitioner and the interested parties may request the AS-IA hold a formal, on-the-record technical assistance (TA) meeting to discuss the PF. The acknowledgment regulations provide for such meetings at §83.10(j)(2). To accommodate the shortened comment period, requests for a formal TA meeting on the Shinnecock PF must be received within 30 days of the published PF *Federal Register* notice. A request for a formal TA meeting under the regulations must be made in writing and be consistent with the guidelines issued for such meetings. 25 CFR §83.10(j)(2).

The acknowledgment regulations at §83.10(k) provide petitioners 60 days to respond to comments on the PF submitted by interested or informed parties, but the Agreement shortens this period to 30 days. This reduced “response period” starts automatically at the close of the comment period. The petitioner may request to restore the full 60-day response period, although it must notify the Department in writing prior to the close of the 30-day response period. If interested or informed parties do not provide submissions during the comment period or if Shinnecock submits a written waiver to the interested and informed party submissions, the response period will not apply.

Within two weeks of the close of the response period (or the close of the comment period if neither the petitioner nor parties submit comments or Shinnecock waives its response period to submissions), DOI will consult with parties to determine an equitable timeframe for consideration of all written arguments and evidence received during the comment and response periods. The Acting PDAS-IA will make a final determination (FD) regarding the petitioner’s status within 60 days of the date it begins active consideration for the Shinnecock FD.

The acknowledgment regulations provide that petitioners or any interested party may file a written request for reconsideration with the Interior Board of Indian Appeals (IBIA) within 90 days of publication of the FD in the *Federal Register* (§83.11). According to the Agreement, however, the Shinnecock FD will become effective only 30 days from its date of publication in the *Federal Register*. Therefore, the Shinnecock petitioner or any interested party intending to request IBIA reconsideration under §83.11 must file a request for reconsideration with IBIA within 30 days of the FD’s *Federal Register* notice. If the IBIA receives no request for reconsideration during that 30-day period, the FD will become final and effective agency action at the close of the 30-day period.

If the IBIA receives a reconsideration request within the 30-day period, the Shinnecock or requesting party will have an additional 30 days to file a detailed statement in support of its request with the IBIA. After that submission, the Shinnecock petitioner or any party claiming to be an interested party opposed to the requested reconsideration will have 30 additional days to file an answer opposing the reconsideration request.

The Shinnecock petitioner reserved its position in the Agreement to address further the timeframe or the applicability of the §83.11 reconsideration process. Despite adjusting the timeline for filing an IBIA reconsideration request, the question of whether the Shinnecock petitioner would participate in or challenge such an appeal remains unresolved at this point in the petition process.

### Administrative History

On February 8, 1978, Secretary of the Interior Cecil D. Andrus and Solicitor Leo M. Krulitz received a litigation request for the U.S. to bring suit under the Trade and Intercourse Act, also known as the Indian Non-Intercourse Act, (25 U.S.C. §177) on behalf of the “Shinnecock Tribe of Long Island.” Lawrence A. Aschenbrenner, Attorney for the Native American Rights Fund (NARF), submitted this request (Aschenbrenner 1978). Attached to Mr. Aschenbrenner’s letter was a “Litigation Request and Statement in Compliance with [proposed] 25 CFR §54.6 by the Shinnecock Indian Tribe,” signed by Mr. Aschenbrenner, Arlinda F. Locklear, also of NARF, and Marguerite Smith, a Shinnecock member and attorney (Aschenbrenner et al. 1978). The memorandum identified the three lawyers as “Attorneys for the Shinnecock Tribe of Indians.” Their 1978 submission advocated either of two paths to recognition. It presented a litigation request under the Trade and Intercourse Act and a report on how the Shinnecock met the proposed acknowledgment regulations, which had been distributed for public comment in June 1977.<sup>1</sup>

On January 9, 1979, the Department returned to the Shinnecock its February 8, 1978, litigation request and other materials and informed the group that these submissions would be treated as a “letter of intent to petition” under the final acknowledgment rule published September 5, 1978.<sup>2</sup> The Department also returned similar materials to 39 other groups that raised tribal status related claims.<sup>3</sup> All of these requests pre-dated acknowledgment regulations. The Department asked these “grandfathered-in” petitioners “to review, revise, or supplement” the returned materials. (OFA 1978–1989).

Pursuant to the acknowledgment regulations, the Department published a notice of receipt of the Shinnecock’s letter of intent in the *Federal Register* on January 2, 1979, and four days later, notified the Governor and Attorney General of New York of the Shinnecock petition (2/6/1979). Public notice appeared in a Southampton newspaper on February 15, 1979 (*Southampton Press* 2/15/1979; OFA 1978 – 1989). Later in 1979, the Department declined to participate in the Shinnecock group’s land claim litigation request (Krulitz 9/4/1979).

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<sup>1</sup> The Department distributed proposed regulations for public review in June 1977 and again in June 1978. They were published in final form on September 5, 1978. The regulations became final and effective 30 days later on October 2, 1978 (Keep 10/19/1978).

<sup>2</sup> The acknowledgment regulations were originally designated as Part 54 of Title 25 of the *Code of Federal Regulations*, but, in 1982, they were officially re-designated as Part 83 of Title 25. The Branch of Acknowledgment and Research (BAR) within the Bureau of Indian Affairs (BIA) was tasked with administering the acknowledgment process. On July 28, 2003, the Federal Acknowledgment process was administratively moved to the AS-IA’s Office and re-designated as the Office of Federal Acknowledgment (OFA). References to OFA for events prior to 2003 should be read to mean “BAR.”

<sup>3</sup> Solicitor Krulitz’s September 4, 1979, letter to Aschenbrenner, Locklear, and Smith, gave the reasons he decided “not to refer this claim to the Department of Justice.” First, he said that, until an acknowledgment decision was made under the regulations, “this Department is in no position to acknowledge a trust relationship under the Non-Intercourse Act with the Shinnecock Indians” (Krulitz 9/4/1979).

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After a TA meeting in 1979, OFA received no official communications from the petitioner for ten years. To track petitioners that had not pursued their petitions, the BIA periodically contacted the groups' representatives, members, or other knowledgeable persons. When contacted in the early 1980s, the individuals with knowledge about the Shinnecock petition process indicated that the Shinnecock group was not interested in pursuing its petition for Federal acknowledgment.<sup>4</sup> The Shinnecock group's interest in the acknowledgment process picked up again in the late 1980s. Ten years after the initial petition, NARF notified the Department by letter dated February 29, 1988, that the Shinnecock Trustees issued a resolution requesting NARF to develop the group's acknowledgment petition (Sockbeson 1988; Smith, Smith, & Williams, Sr. 1988). On April 6, 1988, the BIA notified the petitioner that it received the resolution and provided information about the TA and evaluation phases that would begin when "supplemental [petition] materials [were] provided." (BIA 4/6/1988; Little 1989). The Shinnecock group then took steps to develop its petition, hiring researchers and obtaining Federal grants to proceed in the acknowledgment process. In the summer of 1988, Shinnecock employed researchers to document its history. In 1991, the Administration for Native Americans (ANA)<sup>5</sup> awarded a \$145,000 tribal "status clarification" grant to Shinnecock; in 1992, the ANA awarded a \$155,000 grant for the same purpose; and in 1993, ANA awarded it another such grant for \$255,000 (ANA 10/1991; ANA 10/1993; ANA 10/1992).

The petitioner, however, expressed questions about the merits of Federal acknowledgment. A letter from Shinnecock member Eugene E. Cuffee II, in 1993, articulated Shinnecock concerns about changing its status from a state to a federally recognized Indian tribe, noting "to what effect [Federal] acknowledgment might have on the title to tribal land now held by the Shinnecock Nation" (Moran 5/11/1993).<sup>6</sup> In 1995, the Shinnecock Trustees hand-delivered a document to the AS-IA, which stated, "We are doing the work needed for a petition (research, tribal roll; we are not prepared to announce a timetable on submitting it)." While discussing Shinnecock's intentions to proceed with the acknowledgment process, this document also raised fears that tribal recognition might invade the group's privacy and bring "Federal regulation of our internal affairs and compromise our sovereignty and the self-governance we have maintained" (P.E. Smith, Sr. 1995).

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<sup>4</sup> Shinnecock individuals and people familiar with the Shinnecock petitioner told OFA in November 1981 that the Shinnecock were "no longer interested" in pursuing the acknowledgment process (OFA 1978 – 1989). In June 1983, April 1986, and September 1986 individuals who OFA contacted (including James Eleazer during a telephone call 6/22/1983 and Winona Warren during telephone calls 4/1986 and 9/9/1986) said the group was "satisfied with relations with New York, and did not want the Federal Government in their affairs" (OFA card file 1978 – 1989). In 1984, the Executive Director of the Indian Rights Association in Philadelphia, Pennsylvania, wrote, "I don't think the Shinnecoaks are much interested in petitioning ... The impression I got was that they really don't see a lot of advantage in doing so, and it's kind of a refreshing attitude ... I think they believe they've managed alright so far, and they're not anxious to diddle around with a system that is working" (Cadwalader 2/13/1984).

<sup>5</sup> ANA is an Agency in the Health and Human Services Department, which deals with groups of urban Indians, unacknowledged groups, and other Indian populations.

<sup>6</sup> The incoming correspondence from Mr. Cuffee is not in OFA's files, although a copy of the BIA officer's outgoing letter is, and it describes Mr. Cuffee's concerns (Moran 1993).

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On September 25, 1998, OFA received partial petition documentation and a resolution certifying it was on behalf of the “Shinnecock Tribe of New York” (K. Eleazer, B.N. Smith, & P.E. Smith 9/24/1998). The group’s lawyer in a letter of September 24, 1998, requested that OFA “conduct a preliminary review of the petition under 83.10(b) to determine if it contains any obvious deficiency or significant omission” (Tilden 9/25/1998).

On November 15, 1998, OFA held a meeting in its offices attended by Shinnecock trustees Kevin C. Eleazer, Peter Smith, and Brad[den] Smith; two attorney-members, Roberta O. Hunter and Marguerite A. Smith; N. Coverdale;<sup>7</sup> and NARF attorney, Mark Tilden. OFA researchers described the elements of a petition required by the regulations that were missing from the Shinnecock petition. OFA told them that the regulations required petitioners to submit a membership list, preferably in electronic format, certified by the governing body. The Department received a hard copy of the membership list (Tilden 11/23/1998). In December 1998, OFA wrote a TA review letter as the acknowledgment regulations require (§83.10(c)). The TA review letter found “significant omissions in the petition in criteria (b), (c), (d), and (e).” It advised the petitioner that it could either direct the BIA to proceed with the evaluation based on the materials the petitioner had submitted or respond to suggestions in the TA review letter (BIA 12/22/1998).<sup>8</sup>

Between March 2003 and May 2003, Shinnecock sent OFA several petition submissions. OFA researchers found the submitted materials were not fully responsive to the 1998 TA review. For example, there was no discussion tracing the community over time under §83.7(b), nor trustees’

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<sup>7</sup> No N. Coverdale could be identified on the membership list or in the petitioner’s genealogy database, although other Coverdales are members.

<sup>8</sup> The TA review letter found:

First, for criterion (b), the TA review found the petition depended entirely on cross-over evidence of political activities described under §83.7(c)(2) to meet §83.7(b). The TA review also noted that the petitioner failed to submit “information defining the membership of the Shinnecock community through time” and to show that the documented political activities dealt with this specific membership (Jaeger 12/22/1998).

Second, for criterion (c), the TA review further responded to the petitioner’s claim that the actions of its leaders when assigning reservation land were “sanctioned and complied with by the tribe’s membership.” The petitioner stated, “The allotment, lease, or rental of tribal lands [was] the principal means by which bilateral political activity and leadership [were] demonstrated.” The review affirmed that such activities, if demonstrated, would provide “high evidence of the exercise of political authority by the tribe’s membership” (Jaeger 12/22/1998). However, OFA noted that the claimed activities appeared to rest on sporadic, secondary sources and likely would need additional supporting evidence.

Third, for criterion (d), the TA review stated that “no copies of current or prior governing documents, enrollment ordinances, articles of incorporation, or other documentation” were in the petition materials. It stated that in the absence of official governing documents, the regulations at §83.7(d) allowed petitioners to “provide a statement describing in full its membership criteria and current governing procedures” (Jaeger 12/22/1998).

Finally, for criterion (e), the TA review noted that the Shinnecock petitioner’s attorney informed OFA that the group maintained electronic membership lists. Although OFA requested the genealogical material, both in a meeting and by telephone, later letters and submissions did not include these lists (Jaeger 12/22/1998). The TA review also stated that the group had not submitted any previous membership lists nor described how the current list had been produced, as required (§83.7(e)(2)). It cautioned the petitioner that the submissions under criterion (e) were so deficient, the petitioner was in danger of receiving an expedited negative determination under §83.10(b). The letter encouraged the group to supplement the petition materials.

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records from 1792 to 1938, nor any of the other material on 19th century political leadership the TA review requested under §83.7(c). Also missing were a certified copy of the current governing document and any prior governing documents or a narrative describing the group's governance. The petitioner did not submit Shinnecock ancestry charts and individual history forms. Following its responses in June and September 2003, OFA informed the group on September 15, 2003, that its petition was ready for evaluation.

Following the Shinnecock petitioner's independent attempt to build a casino on Long Island, the State of New York and Town of Southampton sued to stop construction (*New York v. Shinnecock Indian Nation*, 400 F. Supp.2d 486 [E.D.N.Y. 2005]). The Court granted the State and Town's motion for an injunction and stayed the action for 18 months to "defer initially to the expertise of the [Department] in determining the tribal status of the Shinnecock Nation" (U.S. District Court Judge Platt 8/29/2003). Although, the United States was not a party to this case, the Department informed the Court by letter that it would not make a decision on the Shinnecock petition within 18 months due to competing priorities and finite resources (Platt 8/29/2003).<sup>9</sup> The Court joined the Department involuntarily as a party on December 22, 2003. The Department objected and the Court granted its request for a dismissal.

On November 7, 2005, the court ruled that, among other things, Shinnecock has a form of tribal status for the limited purpose of deciding its immunity from the suit brought by New York and the Town (*New York v. Shinnecock*, 400 F. Supp.2d 486 [E.D.N.Y. 2005]). The court did not specifically decide that Shinnecock constituted a federally recognized Indian tribe, nor did it order the Department to place Shinnecock on the recognized tribes list (List). Following the 2005 decision, the Shinnecock petitioner then asked the Department to put it immediately on the List.

In December 2005, the Department informed Shinnecock that it would not be placed on the List based on the *New York v. Shinnecock* decision alone. The Department noted in its response that the Court's decision was not binding on it because the U.S. had not been a party in the case (Cason 12/14/2005). The Department's Associate Deputy Secretary (ADS) James Cason, however, agreed to review the Shinnecock group's claims concerning the court's tribal status decision in *New York v. Shinnecock* and its relationship with the acknowledgment regulations after meetings with Shinnecock representatives in January and February 2006.<sup>10</sup> The

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<sup>9</sup> OFA placed the Shinnecock petition on the "Ready List" on September 9, 2003, the date OFA received the group's last submission, but it was behind other petitions that were already in line for evaluation. While Shinnecock was inactive or preparing its petition and TA responses between 1978 and 2003, other petitioning groups submitted petition materials and advanced through the process. By late 2005, when the *New York v. Shinnecock* case was decided, there were 17 petitioning groups ahead of the Shinnecock petitioner in the acknowledgment process. Ten petitions were on active consideration and seven were on the waiting list, immediately ahead of the Shinnecock, because they had been completed before the Shinnecock submitted its documented petition. These seven had not been placed under active consideration because OFA research teams were working on other petitions and were unavailable.

<sup>10</sup> In a letter to Governor George E. Pataki of New York, the ADS described the representations. He stated, "At a January 19, 2006, meeting with the Shinnecock and its legal representatives, I agreed to review their arguments pertaining to the court decision and to the Congressional finding in the Tribal List Act that Indians tribes may be recognized ... by a decision of the United States court." At a follow-up meeting on February 21, the petitioner claimed that New York State conceded the petitioner met five of the seven mandatory criteria for establishing tribal existence under the Department's acknowledgment regulations. Shinnecock also claimed the court had before it

Department examined whether the documents before the Court in *New York v. Shinnecock* were “the same type of analyses that the Department’s acknowledgment process would use prior to rendering a decision on tribal existence” (Cason 5/16/2006). In May 2006, the ADS informed the New York Governor and other elected officials about the January and February 2006 meetings and the Department’s decision to review the Shinnecock group’s request. He invited the State to submit “a copy of the reports or analyses that [it] had submitted to the Court concerning the tribal status of the Shinnecock and the evaluation regarding the seven acknowledgment criteria” for this review (Cason 5/16/2006).

On August 24, 2006, the Department notified Shinnecock that the agency disagreed with the petitioner’s claims and would not immediately place it on the List (Jensen 8/24/2006). The Department reviewed the documents before the *New York v. Shinnecock* court and determined it did not “have before it the kind of analysis and evaluation of evidence that the Office of Federal Acknowledgment prepares” to make tribal acknowledgment recommendations for the Department (Jensen 8/24/2006).

In 2007, the Shinnecock petitioner sued the Department pursuant to the Administrative Procedure Act (APA), (5 U.S.C. § 551). Among other things, Shinnecock alleged that the Department violated the APA by refusing to acknowledge its Federal Indian tribal status. On September 30, 2008, the court issued an order granting in part and denying in part the U.S. motion to dismiss the Shinnecock plaintiff’s complaint (*Shinnecock v. Kempthorne*, No 06-CV-5013 [E.D.N.Y.]). The court declined to address the merits of Shinnecock’s tribal recognition claims, finding that it could not act until the Department decided the matter through its acknowledgment process. The court also denied both parties’ cross-motions for summary judgment on plaintiff’s claim that the Department unreasonably delayed processing the Shinnecock acknowledgment petition. The court found that it could not decide the unreasonable delay claim without a full factual record.

During the subsequent discussions to settle the remaining unreasonable delay claim, the Department agreed to determine whether Shinnecock qualified for “expedited processing” by passing an initial genealogical review. A “Guidance and Direction Regarding Internal Procedures” for 25 CFR §83 published in the *Federal Register* on May 23, 2008, described how groups could qualify for expedited processing. This “Direction,” provided that “any group that can show residence and association on a state Indian reservation continuously for the past 100 years” may move to the top of the “Ready” list. The AS-IA directed OFA to investigate whether the Shinnecock met this provision. If it did, the petitioner would move ahead of other groups waiting for OFA to place them on active consideration. The Department conducted the evaluation and found that 61 percent of the current membership descended from an individual living on the New York State reservation in 1910, which qualified the petitioner for expedited processing (see Appendix C). OFA placed the Shinnecock petition on active consideration on November 10, 2008, ahead of six other petitions that were submitted and completed prior to the completion of Shinnecock’s documented petition.

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“briefs and supporting materials that effectively duplicated the type of analysis the Department would undertake pursuant to the acknowledgment regulations” (Cason to Pataki 5/16/2006).

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The petitioner and Department continued settlement discussions and reached a negotiated framework for resolving Shinnecock's unreasonable delay claim. On May 26, 2009, the court approved the Agreement establishing a time-line for the Department to complete the Shinnecock petition. Pursuant to this Agreement, the Department also held a public meeting with Shinnecock on June 3, 2009. The Town attended the meeting as an interested party, but New York did not.

Historical Overview and Historical Indian Tribe

*March 4, 1789, as the Date of First Sustained Contact*

In order for the Department to acknowledge a petitioner as an Indian tribe, the 25 CFR Part 83 acknowledgment regulations require a petitioner to demonstrate that it has existed as an Indian tribe—as a distinct social and political community of Indians—continuously “from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption” (25 CFR 83.1).

On May 23, 2008, the Assistant Secretary – Indian Affairs issued a notice of guidance and direction regarding OFA's internal procedures that was published in the *Federal Register* (73 FR 30146). This notice did not change the acknowledgment regulations; instead, it sought to make the Federal acknowledgment process more streamlined and efficient, and improve the timeliness and transparency of the process.

Included in this notice was a provision for “reducing the time period for which petitioners must submit evidence.” The notice explained that “[t]he purpose of the evaluation under the regulations is to establish that an Indian tribe has existed continuously and is entitled to a government-to-government relationship with the United States.” The AS-IA explained that “it is reasonable to interpret the regulations as requiring the petitioner to document its claim of continuous tribal existence only since the formation of the United States, the sovereign with which it wishes to establish a government-to-government relationship.” The AS-IA further explained that March 4, 1789—the date on which the United States formally ratified its constitution, which included the power of Congress to regulate commerce with the Indian tribes in Article I, section 8, clause 3—would suffice as the new date of the “the period of earliest sustained non-Indian settlement and/or governmental presence in the local area.” Under this guidance notice, a petitioner must demonstrate that it has existed as an Indian tribe on a continuous basis from March 4, 1789, to the present or from “the period of earliest sustained non-Indian contact”—whichever date comes later. The guidance directive specifically states that a petitioner's “prior colonial history need not be reviewed.”

*The Existence of a Shinnecock Indian Tribe in 1789*

Non-Indians first encountered the Shinnecock Indians during the 17th century. The PF briefly reviews the history of the Shinnecock Indians prior to 1789 to provide some added context, particularly concerning the creation of the Shinnecock leasehold, and assist in determining if a Shinnecock Indian tribe existed on March 4, 1789. Based on the evidence in the record, the PF finds it reasonable to hold that there was an Indian tribe on the Shinnecock leasehold on

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March 4, 1789. Furthermore, the Department reasonably believes the available evidence also would demonstrate that this Indian tribe had existed on a continuous basis since the 17th century.

The evidence in the record indicates that there was a Shinnecock Indian tribe on the eastern end of Long Island in the early colonial period. In 1628, Dutch trading agent Isaak de Rasieres described a “Sinnecox” Indian “tribe” that lived on Long Island, cultivated maize, elected political leaders, and paid tribute to the Pequot Indians of New England (De Rasieres 1628, in J. Franklin Jameson 1909, 103-107; see also Sydney V. James 1997, 63). From 1640 through the end of the 18th century, the Town of Southampton engaged the Shinnecock Indians in several important land transactions, as well as issues relating to boundaries, fencing, crops, livestock, liquor, the whaling industry, and intergroup conflict (*Southampton Indian Papers 1640-1806, passim*; Pelletreau 1874, books 1-2, *passim*; Strong in Stone 1983, 53-88).

In 1703, the Town of Southampton and the Shinnecock Indians signed documents in which the Shinnecock signers agreed to relinquish their claims to the land in exchange for a 1,000-year lease to a specific section of land (*Southampton Indian Papers 1640-1806, passim*; Pelletreau 1874, books 1-2, *passim*; Strong in Stone, 88-103). The creation of this parcel of land defined a geographic territory that was distinct from the town of Southampton.<sup>11</sup>

Throughout the mid-1700s, there is evidence that there were Indians living at the Shinnecock leasehold. In the 1740s, Azariah Horton served as a missionary to the Long Island Indians. In 1742 and 1743, Horton spent several weeks among the Indians at Shinnecock, preaching to them, performing baptisms, giving reading lessons, and tending to the sick. Horton’s journals provide evidence that there were Indians at Shinnecock, as well as at neighboring locations (Horton 1743-1744, *passim*). In 1764, 38 Indians—“some particular Indians and Squaws of the Tribes belonging to Shinnecock,” as the document says—signed an agreement designed to regulate and protect Shinnecock lands. The agreement states that “Indians and Squaws belonging to Shinnecock do mutually agree that for the future no Indian or Squaw shall hire out any land to plant or sow upon in any case whatsoever without the Consent of the whole or the major part” (*Southampton Indian Papers 1640-1806, Tittum et al. 6/12/1764*). This agreement indicates that there was a group of Indians on Shinnecock lands that took political action to defend its collective interests.

In the 1780s, records for the Town of Southampton indicate that the Shinnecock Indians and Town officials tried to control the leasing of Shinnecock lands and timber resources to non-Indians and that Southampton assisted in constructing gates and fences to control access to Shinnecock lands by livestock belonging to non-Indians (Southampton Trustees 4/20/1780; 4/26/1781; 3/5/1782; 4/30/1782; 10/1/1782; 4/29/1785; 7/22/1785; 10/7/1785; 4/4/1786; 4/13/1786; 2/13/1787; 1/29/1788; 4/1/1788). Town record books also report that disease—probably smallpox—had come among the Indians (Southampton Trustees 4/13/1789). In 1787 or 1788, the Indian missionary Samson Occom wrote a petition on behalf of the “Shennecock

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<sup>11</sup> The area of this leased parcel of land was reduced in 1859, and the representatives of the Shinnecoeks agreed to hold the land in fee simple rather than by the terms of the 1,000 year lease (Strong in Stone 1983, 104-117).

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Tribe” to the State of New York.<sup>12</sup> This petition does not describe any specific Shinnecock group living on the leasehold, nor does it contain the names of any co-authors or signatories of the petition. (The 1764 agreement, in contrast, had 38 named signers, including a “Samuel Wakus.”) Nonetheless, the petition itself indicates that Occom, who had first-hand knowledge of the Shinnecock Indians in the late 1780s, believed that there were Shinnecock Indians living on the Shinnecock leasehold at that time and that he believed those Indians were in need of protection and assistance by the State of New York (Occom 1787-8).

In 1792, Indians from the Shinnecock leasehold petitioned the New York legislature, asking for assistance in protecting Shinnecock common lands. A Mr. L’Hommedieu delivered the petition on behalf of “Samuel Wakas, and other Indians of the Shinnecock Tribe” (State of New York 1792).<sup>13</sup> It appears that the “Samuel Wakas” who petitioned the New York legislature is the same “Brother Waucus” to whom Samson Occom referred in his 1787 journal entry and the same “Samuel Wakus” who signed the 1764 Shinnecock agreement.<sup>14</sup> That a group of Indians from the Shinnecock leasehold took collective political action in 1792 to protect land held in common indicates that there was a political Indian entity residing on—or associated with—the Shinnecock Indian leasehold.

The May 23, 2008, guidance notice states that “the purpose of the evaluation under the regulations is to establish that an Indian tribe has existed continuously” and that “if the petitioner was an Indian tribe at that time the Constitution was ratified, its prior colonial history need not be reviewed.” There is ample evidence in the petition record, submitted prior to the issuance of the guidance notice, indicating that, before and after 1789, there was a historical Shinnecock Indian tribe in Southampton, NY.

This PF treats the Indian population on or associated with the Shinnecock leasehold in the late 18th century as the “historical Indian tribe.” No evidence in the record denies that there was an Indian tribe living on the Shinnecock leasehold in 1789. The PF finds that an Indian tribal entity existed at the Shinnecock leasehold when the United States ratified the Constitution. The PF will examine whether the petitioner evolved as a continuously existing Indian tribe from the Indian tribe that existed on the Shinnecock leasehold in 1789.

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<sup>12</sup> Occom was a Mohegan Indian who served as a missionary to the Long Island Indians. He spent considerable time among the Montauk Indians and married a Montauk woman. He also visited Shinnecock in the late 1750s or early 1760s. Occom established a school at Montauk in 1749 that accepted Shinnecock students. He also preached to the Shinnecocks. Occom’s diary states that in April of 1787, on a visit to Southampton, he breakfasted with “Brother Peter” and “Brother S. Waucus,” visited “old Widow Waucus,” and in the evening preached to the Indians (Occom 1754-1786; see also Occom in Brooks 2006, 361-362). Occom’s petition requests that the governor of New York and all the “Chief Rulers” of the State protect the “Umshennuckoouk or Shenecuck Indians” from the general difficulties facing them as they attempted to coexist with their non-Indian neighbors (Occom 1787-1788).

<sup>13</sup> The original petition is not in the record, and OFA researchers were not able to locate the original.

<sup>14</sup> That Wakus and Occom evidently knew each other raises the question of whether the petition Occom wrote in 1787 or 1788—and is currently found in the Samson Occom papers at the Connecticut Historical Society—prompted Wakus’s 1791 petition. The extent of the relationship between the two petitions is not clear from the available evidence.

*Outline for Evaluating the Petitioner under 25 CFR Part 83*

Three of the seven 25 CFR §83.7 mandatory criteria involve the term “historical,” which, for the purpose of this evaluation, is 1789. Criteria 83.7(b) and 83.7(c) involve the term “historical times,” and criterion 83.7(e) involves the term “historical Indian tribe.”

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The Shinnecock leasehold, defined by the 1703 lease, was in existence in 1789 and distinct from neighboring towns. A group of Indians resident on—or associated with—the Shinnecock Indian leasehold in 1789 serves as the historical Indian tribe. The land base for the Shinnecoeks, established by the 1703 lease and reduced in size in 1859, continues to exist today. The land base itself is a resource shared by the group. The PF will evaluate the petitioner under criterion 83.7(b) using the provision described in §83.7(b)(2)(v), which states that the petitioner can meet criterion 83.7(b) by demonstrating that it has met the criterion 83.7(c) using evidence described in §83.7(c)(2)(i)-(iv). The form of evidence described in §83.7(c)(2)(i) is evidence that a petitioner “allocates group resources such as land, residence rights and the like on a consistent basis.” Thus, for criterion 83.7(b), the PF will rely on evidence that the petitioner has allocated group resources such as land, residence rights, and the like on a consistent basis.

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The New York legislature passed an act in 1792 that effectively reorganized the Shinnecoeks with respect to political leadership. In response to the 1792 petition by “Samuel Wakas, and other Indians of the Shinnecock Tribe,” the New York legislature passed “An Act for the Benefit of the Shinnecock Tribe of Indians, Residing in Suffolk County” (the 1792 Act). This Act implemented a system in which “the male Indians of twenty-one years of age and upwards, belonging to the Shinnecock tribe” would meet on the first Tuesday of April in 1792—and every year thereafter—to “choose three persons belonging to the said tribe as trustees.” These trustees, together with three justices of the peace from the neighboring Town of Southampton, would be “impowered from time to time to lease out so much of the said lands as they shall judge proper for the use of the said tribe” and to “lay out and appropriate such quantity to the said land to each family or individual, as shall be judged necessary for this or their improvements.” The Act declared it to be the duty of the clerk of the Town of Southampton to record the results of the meetings at which occurred the election of the Indian trustees, and that a penalty would be levied on anyone who ploughed or improved Shinnecock lands without the consent of the Indian trustees and the justices of the peace (New York Laws 2/24/1792).

The 1792 Act created a political system of Indian trustees that has continued to the present—albeit with brief periods of apparent interruption and or limited documented activity. This trustee system is not the only type of political influence that the petitioner exercised since 1792, but it is an important system of political influence and it is relatively well documented. This trustee system serves as one basis for analyzing the petitioner under criterion 83.7(c). Because the trustee system has exercised authority over Shinnecock lands since 1792, there is a meaningful correlation between the Shinnecock group associated with that land and the trustee system that managed affairs relating to that land. The PF will evaluate the petitioner under criterion 83.7(c) using the form of evidence described in §83.7(c)(2)(i), which is evidence that a

petitioner “allocates group resources such as land, residence rights and the like on a consistent basis.”

Criterion 83.7(e) requires that a petitioner document that its members descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Applying the May 23, 2008, guidance notice, the PF evaluates whether the petitioner descends from the historical Shinnecock Indian tribe as it existed in 1789.

The existence of historical lists of the Indians resident on—or associated with—the Shinnecock Indian leasehold in 1789 would facilitate the petitioner’s ability to demonstrate descent under criterion 83.7(e). However, such lists do not exist in the available petition record, nor did OFA researchers locate any during their evaluation. There is no census or other list of Indians resident on—or associated with—the Shinnecock Indian leasehold in 1789. The 1790 Federal census does not enumerate and name the leasehold population. In April 1792, just after the election of the first three Indian trustees, the *Indian Records Book*—a book in which the Town of Southampton recorded many Indian-related activities—states that the three trustees would form “a Committee to Layout said land & Portion it out to each Family \_\_ Individual” (*Indian Records Book* 4/7/1792). The names of the people receiving these allotments do not appear in the record.<sup>15</sup> Thus, an obvious source for documenting members of the historical Shinnecock Indian tribe in the 1789 period is not available. Furthermore, the 1800 Federal census does not appear to enumerate and name the individuals residing on the leasehold.

Because there are no lists in the record that explicitly enumerate the members of the historical Shinnecock Indian tribe in or around 1789, it is appropriate for the PF to attempt to use various pieces of evidence from the late 18th century to compile a list of individuals who were members of the historical Shinnecock Indian tribe at that time. The PF could then use the list to evaluate whether the petitioner descends from these individuals who belonged to the historical Indian tribe.

There is evidence in the record that allows for the compilation of such a list. However, the available records do not necessarily record all members of the historical Shinnecock Indian tribe at that time. There are 38 signatories to the 1764 Shinnecock agreement. The original 1792 petition to the New York legislature is not in the available record, nor were OFA researchers able to locate it, but the discussion of the petition in the *Journal of the Senate of the State of New York* names “Samuel Wakas” as a Shinnecock Indian from the leasehold (NY Laws 1/24/1792). During the years from 1793 to 1799, the *Indian Records Book* and the book of *Indian Lands Recorded* contain the names of 113 adult individuals associated with the Shinnecock Indian leasehold as individuals who were elected as Indian trustees, who leased out their land allotments, or who served as witnesses to other Shinnecock residents leasing out their lands. Some of these individuals are named in more than one document. Accounting for names that appear more than once, the PF finds that these documents record 146 unique individuals as belonging to or associated with the historical Shinnecock Indian tribe in the late 18th century.

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<sup>15</sup> It appears that the first allotment did occur because in 1792 the *Indian Records Book* references a “forst and Second Draught” of land (*Indian Records Book* 5/3/1793)—the first draft being in the spring of 1792 and the second in the spring of 1793 (*Indian Records Book* 5/3/1793).

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These 146 individuals probably do not constitute the full membership of the historical Shinnecock Indian tribe during that period. Nevertheless, it would be helpful if the petitioner were able to document descent from these individuals or show that their demonstrated ancestors contemporary to that period interacted with them as part of the historical Shinnecock Indian tribe. The evidence does not show that the petitioner descends from any of the individuals recorded in the *Indian Records Book* or the book of *Indian Lands Recorded* before 1799.<sup>16</sup>

The PF will use an 1865 New York State census to calculate descent from the historical Shinnecock Indian tribe because it is the earliest document found which enumerates all residents of the Shinnecock reservation. It is not a membership list, but it is reasonable to treat this list of residents as a list of members because the PF finds that an Indian tribe existed continuously on that land base from 1789 to 1865, when New York created the list. It is not necessary to require generation-by-generation descent from individuals in the *Indian Records Books* and the book of *Indian Lands Recorded* in the 1790s. Those volumes were not intended to record all members of the historical Shinnecock Indian tribe before 1799. Furthermore, in its comments on the changes to the Federal acknowledgment regulations in 1994, the Department stated that the regulations “have not been interpreted to require tracing ancestry to the earliest history of a group,” and that “for most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe” (59 FR 9288). Additionally, the State of New York began relatively late—in 1880—to systematically record births, marriages, and deaths. Therefore, it is possible that the petitioner has undocumented genealogical connections to members of the historical Shinnecock Indian tribe in 1789. The acknowledgment regulations in 25 CFR §83.6(e) allow the Department to take into account the historical situations and time periods for which evidence is demonstrably limited or not available. Moreover, as the PF discusses under criterion 83.7(c), there is evidence that individuals who were not recorded in the *Indian Records Book* and book of *Indian Lands Recorded* prior to 1800 married Shinnecock women and claimed rights to Shinnecock land. Men who married into the Shinnecock Indian tribe may have carried surnames not present in the *Indian Records Book* and book of *Indian Lands Recorded* prior to 1800. Descendants of these marriages would have carried surnames of the men who married into the group, rather than the names of the women who were previously part of it. For these reasons, the Department will use an 1865 New York State census of reservation residents tribe for purposes of calculating descent from the historical Shinnecock Indian tribe for criterion 83.7(e).

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<sup>16</sup> The petitioner has 572 members who have documented descent from Paul Cuffee, and Paul Cuffee’s brother asserted that they were grandsons of Peter John, a signatory to the 1764 treaty. However, it is unclear to what extent Paul Cuffee was associated with the historical Shinnecock Indian tribe in the late 18th century, especially since his right to have land on the Shinnecock leasehold was challenged—possibly posthumously—in 1815. See Appendix D for a further discussion of Paul Cuffee and Peter John.

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## **Unambiguous Previous Federal Acknowledgment (25 CFR §83.8)**

### Introduction

If a petitioner demonstrates unambiguous previous Federal acknowledgment as an Indian tribe, then the requirements of the acknowledgment criteria in section 83.7 are modified by the provisions of section 83.8(d), which reduces the evidence required to demonstrate its continuous existence as an Indian tribe.

A finding that the petitioner received unambiguous previous Federal acknowledgment is provisional and may change before the Department's decision is final if there is new argument or evidence submitted during the comment periods.

The *definitions* section of the acknowledgment regulations, 25 CFR §83.1, states:

*Previous Federal acknowledgment* means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

A petitioner is eligible to be evaluated under 25 CFR §83.8 if it provides substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner as an Indian tribe. The explanatory comments in the preamble to the 1994 acknowledgment regulations state, “the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States” (59 FR 9283; emphasis added). If there is substantial evidence that the Federal Government established such a relationship, the Department must then determine whether the petitioner is able to advance a claim that it is the same tribal entity that was previously acknowledged or is a portion that has evolved as a group from the previously acknowledged Indian tribe (see §§83.8(a), 83.8(d)(1)). Because the PF finds that the Federal government did not previously acknowledge a Shinnecock Indian tribe, the PF need not evaluate whether the petitioner is the same group or a group that evolved from a previously acknowledged Indian tribe.

Previously, the Department concluded that determining that a petitioner was previously acknowledged “requires a more rigorous standard of evidence than that used for determining whether a group meets the criteria 83.7(a)-(g) because previous recognition is meant to set a high preliminary threshold, which allows a reduced overall evidentiary burden on petitioners for subsequent periods” (Cowlitz RFD 2001, 20; see also Chinook RFD 2002, 30). The essential requirement for Federal acknowledgment is that a petitioner must be tribal in character and demonstrate continuity of tribal existence (59 FR 9282). Evaluating a petitioner under §83.8 still maintains the same requirements regarding the character of the petitioner.

In 25 CFR §83.6, the “General provisions for the documented petition” section, the acknowledgment regulations state that:

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A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

Evaluating a petitioner under the 25 CFR §83.7 criteria uses the “reasonable likelihood” standard. Previous Federal acknowledgment is not a criterion. The evidence that the Federal Government previously established a relationship with a tribal political entity must be *unambiguous* and documented by substantial evidence for a petitioner to be evaluated under 25 CFR §83.8 (see §83.8(a)).

### The Petitioner’s Argument

On August 5, 2008, the Department received a set of documents from the petitioner entitled “Shinnecock Indian Nation: Federal Acknowledgment Petition Supplement on Unambiguous Previous Acknowledgment.” This “Petition Supplement” consists of a report, approximately 100 pages in length, and a collection of supporting documents, approximately 800 pages in length. The petitioner did not request in its earlier submissions to be evaluated under 25 CFR §83.8. The Petition Supplement claims to document previous unambiguous Federal acknowledgment of “the Shinnecock Indian Nation at various points in time since 1915 by all three branches of the Federal Government.” The Petition Supplement also claims that “the federally acknowledged status of the Shinnecock Indian Nation has never been terminated and continues to this day” (SHN 8/5/2008, 1).

### The Department’s General Analysis

This PF finds that the petitioner is not a federally recognized Indian tribe at present and that the Federal Government never entered into or maintained a political relationship with the petitioner in the past.

At present, the petitioner is not on the Department’s list of federally recognized Indian tribes that is published in the *Federal Register* (“Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,” 73 FR 18553, April 4, 2008). This list is a comprehensive list of all the Indian tribes in the United States with which the Federal Government maintains a government-to-government relationship. Indian entities not on this list are not recognized as Indian tribes within the meaning of Federal law.

The petitioner requested that the Department “consider five alternative years as the date of the [petitioner’s] most recent ‘unambiguous previous Federal acknowledgement’”—specifically, 1941, 1948, 1950, 2005, and 2008 (SHN 8/5/2008, 1). The Petition Supplement for unambiguous previous Federal acknowledgment, however, posits that the Federal Government recognized the petitioner at several other points in time, dating back not only to 1941 (mentioned above), but back to the late 19th century. Consequently, the PF determines whether the petitioner is eligible to be evaluated according to 25 CFR §83.8 during the entire period for

which the petitioner made arguments—from the late 19th century to 2008—rather than strictly in those “five alternative years” beginning with 1941. The PF briefly reviews the petitioner’s claims for the years 1941, 1948, 1950, 2005, and 2008 in this section of the PF. Appendix A includes a more detailed discussion of the petitioner’s claims for these years as well as an evaluation of the petitioner’s additional claims.

The PF finds that the petitioner did not provide substantial evidence of unambiguous Federal acknowledgment and is not eligible to be evaluated under 25 CFR §83.8. The evidence in the record does not show that the Federal Government took an action clearly premised on identification of the Shinnecock petitioner as a tribal political entity that clearly indicated the recognition of a relationship between the United States and the Shinnecock petitioner. Instead, the evidence suggests that the Federal Government was *aware* of the existence of a Shinnecock entity but repeatedly chose not to establish a relationship with it. The Department held internal discussions about the Shinnecock, but no Departmental action established a relationship. Congress investigated the status of Indian affairs in the State of New York, but Congress never passed legislation establishing a relationship with the petitioner as an Indian tribe. On several occasions, the Federal Government explicitly rejected the opportunity to establish a relationship with the petitioner, sometimes stating that the petitioner was the State of New York’s responsibility. This pattern recurred repeatedly since the late 19th century.<sup>17</sup> One example of this occurred in 1936 when John Collier, the Commissioner of Indian Affairs for President Franklin D. Roosevelt, considered whether the Wheeler-Howard Act (Indian Reorganization Act, or IRA) applied to the Shinnecock. The Commissioner concluded that the Act did not apply to the Shinnecock, a conclusion concurred in by Department Solicitor Nathan Margold (Interior 5/18/1936). The Commissioner’s letter, approved by Secretary of the Interior Ickes, provides that there “is no legal basis for holding a referendum under” the Act, and the “so-called reservations . . . have never been under Federal supervision” (Interior 5/18/1936, approved by Ickes, 5/21/36).

*Petitioner’s Claims for Unambiguous Previous Federal Acknowledgment in 1941*

The petitioner claims that documentation from 1941 demonstrates that the Department of the Interior was treating the petitioner as a tribal political entity that had collective rights to the tribal lands of the Shinnecock Reservation. This argument, however, does not cite specific actions of the Federal Government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States. To support its argument, the petitioner notes that Felix S. Cohen, an Assistant Solicitor for the Department, described the Shinnecock Reservation in a special subsection of his *Handbook of Federal Indian Law* that the Department issued in 1941. Also in 1941, the Indian Affairs Office identified “Shinnecock” as under the OIA’s New York Agency.

Cohen’s *Handbook* did not describe any ongoing political relationship between the United States and the petitioner as a tribal entity. The book did not—and could not—initiate such a relationship, nor did Cohen have the authority as a Departmental attorney to establish such a relationship. Consequently, Cohen’s *Handbook*—alone or together with the other contemporary

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<sup>17</sup> For its part, the Department created numerous documents that explicitly denied that the Department had a relationship with the petitioner (see, for example, ARCIA 1893, 223; ARCIA 1894, 214; ARCIA 1899, 262; 1901, 289; Interior 4/30/1934; Interior 5/15/1936b; Interior, 5/18/1936; Interior 11/3/1939).

documents—is not substantial evidence of unambiguous Federal acknowledgment and does not make the petitioner eligible to be evaluated under 25 CFR §83.8. Instead, these documents created by the Department provide evidence only that the Federal Government was aware of the Shinnecock population on Long Island.

The Office of Indian Affairs included the petitioner on an April 1, 1941, list entitled “Tribes by State and Agency.” The “Shinnecock” were one of the eight groups listed in New York. However, there is nothing in the document that describes the nature of an existing Federal relationship with a tribal political Shinnecock entity, nor was the document designed to list Indian tribes with which the Federal Government had a political relationship. Nothing in the document unambiguously establishes such a political relationship, either. The creation of this list did not constitute an action by which the Federal Government established a political relationship between the United States and a Shinnecock Indian tribe. Although this list indicates that the Federal Government was *aware* that there was a Shinnecock entity, it is not substantial evidence of unambiguous previous Federal acknowledgment. Furthermore, a list of the same date created by the Office of Indian Affairs, “Agencies under the jurisdiction of the Office of Indian Affairs by Reservation and County,” does not list the Shinnecock reservation—although it lists Iroquois reservations (Interior 4/1/1941). This list suggests that the Shinnecock were not in a political relationship with the Federal Government in 1941.

*The Petitioner’s Claims for  
Acknowledgment by the Criminal Jurisdiction Acts of 1948 and 1950*

The petitioner claims that two acts by Congress, the Criminal Jurisdiction Act of 1948 and the Civil Jurisdiction Act of 1950, effectively constituted Congressional recognition of the petitioner as an Indian tribe. The purpose of the 1948 Act was to establish New York State’s jurisdiction over crimes committed on Indian reservations. The purpose of the 1950 Act was to establish New York State’s jurisdiction over civil actions between Indians or to which Indians are parties. In discussing the 1948 and 1950 acts, the petitioner analyzed the legislative histories of the acts and how much or how little various Federal or State officials knew about the petitioner. Neither Act mentioned the petitioner by name, and nothing in the Acts indicate any intent to establish a political relationship between the United States and the petitioner as a tribal political entity.

Language in a statute must be evaluated in the context of its specific effect and function, and understood in light of what Congress sought to accomplish in the legislation (Chinook RFD 2002, 30). What the acknowledgment regulations require is Federal action “clearly premised” on identification of a “tribal political entity,” and “indicating clearly” the recognition of a government-to-government relationship with the United States. In this respect, the 1948 and 1950 Acts both fall short, lacking any clear premise to establish a relationship with the Shinnecock. Therefore, the Acts and the related evidence and arguments are not substantial evidence of unambiguous Federal acknowledgment.

*The Petitioner’s Claim for Acknowledgment by a U.S. Court in 2005*

The petitioner proposes that the Department view the determination by a U.S. Court in 2005 as an instance of unambiguous previous Federal acknowledgment. The petitioner claims that, in *New York v. Shinnecock*, the U.S. District Court for the Eastern District of New York determined

that the petitioner “met the Federal common law standard for existence as a tribal entity and expressly recognized the Nation as having that status” (SHN 8/5/2008, 5).

In *New York v. Shinnecock*, the Court concluded that Shinnecock “met the standard for determining tribal existence under *Montoya v. United States*” (*New York v. Shinnecock*, 400 F. Supp.2d 486 (E.D.N.Y. 2005); *New York v. Shinnecock* in SHN 8/5/2008, Exhibit 103, 1). The Court ruled that, among other things, Shinnecock has a form of tribal status for the limited purpose of deciding its immunity from the casino-related lawsuit brought against it by New York and the Town of Southampton. The Court, however, did not specifically decide that Shinnecock constituted a federally recognized Indian tribe, nor did it order the Department to place the Shinnecock on the list of federally recognized Indian tribes or order the agency to establish a political relationship with the petitioner. Moreover, the Shinnecock tribal status decision was not binding on the Department because the agency was not a party to the litigation. The Department did not, in response to the decision, begin dealing with the Shinnecock via a government-to-government relationship or put the petitioner on its list of federally recognized Indian tribes. Additionally, the Department issued multiple documents contemporaneous to the *New York v. Shinnecock* decision stating that the Department did not view the petitioner as a federally recognized Indian tribe.<sup>18</sup> Furthermore, Federal courts have ruled that under the “political question” doctrine the judicial branch should not make the decision as to whether a group should be recognized as an Indian tribe by the United States in the first instance.

On September 30, 2008, the Court issued an order granting in part and denying in part the U.S. motion to dismiss the Shinnecock plaintiff’s complaint (*Shinnecock v. Kempthorne*, No 06-CV-5013 (E.D.N.Y.)). The Court determined the 2005 *New York v. Shinnecock* tribal status decision was a finding that Shinnecock was a tribe under Federal common law only for purposes of deciding the limited issue before it, which could not be used to bypass the Department’s acknowledgment regulations. The court, therefore, declined to address the merits of Shinnecock’s tribal recognition claims, finding that it could not act until the Department decided the matter through its acknowledgment process.

Therefore, the PF finds that the 2005 *New York v. Shinnecock* decision did not constitute the unambiguous Federal acknowledgment of the petitioner as an Indian tribe. Consequently, the PF determines that this court decision does not make the petitioner eligible for evaluation under 25 CFR §83.8.

#### *The Petitioner’s Claim for “Acknowledgment at Present”*

The petitioner requests that the Department consider “the present day” as the date of the petitioner’s most recent unambiguous Federal acknowledgment. The petitioner bases this request on three principal considerations.

First, it claims that several Federal statutes—the Criminal Jurisdiction Act of 1948, the Civil Jurisdiction Act of 1950, and the Major Crimes Act of 1885—apply to the petitioner and are still in effect today. Second, the petitioner claims that the District Court’s 2005 determination in *New*

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<sup>18</sup> See, for example, the letter from the Associate Deputy Secretary of the Interior to the petitioner stating, “Presently, there is not established trust obligation between the United States and the Shinnecock petitioner because the Department does not consider the Shinnecock petitioner to be an Indian tribe” (Interior 2/13/2006).

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*York v. Shinnecock* (that the Shinnecock petitioner met a “common law standard” for existence as an Indian tribe) was “contemporary and currently effective.” Third, the petitioner claims that, because the District Court ruled in 2006 in *Bess v. Spitzer* that the 1948 Criminal Jurisdiction Act applied to the Shinnecock petitioner, this would imply that the Shinnecock were still subject to Federal criminal jurisdiction under the Major Crimes Act of 1885.

The PF finds that these claims are not substantial evidence of unambiguous previous Federal acknowledgment, and therefore they do not make the petitioner eligible for evaluation under 25 CFR §83.8. The PF finds that neither the Criminal Jurisdiction Act of 1948, nor the Civil Jurisdiction Act of 1950, nor the Major Crimes Act of 1885 established a relationship between the Federal Government and the petitioner as an Indian political entity, nor do these acts provide evidence of an ongoing Federal government-to-government relationship. The PF discussed above that the Court’s 2005 determination in *New York v. Shinnecock* did not constitute unambiguous previous Federal acknowledgment. Furthermore, the Court’s 2008 *Shinnecock v. Kempthorne* decision repudiated the argument that the Court’s 2005 decision constituted Federal acknowledgment of the Shinnecock petitioner. The Court’s 2008 decision held that the judicial branch lacked the authority to recognize or acknowledge Indian tribes (*Shinnecock v. Kempthorne* 2008, 2-3, 22-23). The actions cited in petitioner’s three claims are not Federal actions “clearly premised” on identification of a “tribal political entity,” and “indicating clearly” the recognition of a government-to-government relationship with the U.S.

A more detailed explanation of why the PF does not find that the petitioner is eligible to be evaluated under 25 CFR §83.8 can be found in Appendix A.

*Conclusion for the Petitioner’s Eligibility to be Evaluated under 25 CFR §83.8:*

The evidence in the record suggests that the Federal Government was aware of the Shinnecock reservation and a Shinnecock population but that the Federal Government did not establish a relationship with the reservation population, even when presented with opportunities to do so. To be evaluated under 25 CFR §83.8 there must be substantial evidence that the Federal Government, by its actions, unambiguously established a political relationship with the petitioner as an Indian tribe—not that the Federal Government was merely aware of the petitioner’s existence or that it contemplated establishing a relationship with the petitioner.

The petition record does not contain substantial evidence demonstrating that the Federal Government previously acknowledged the petitioner or entered into a relationship with it as a political entity at any point in time. Therefore, the petitioner is not eligible to be evaluated under 25 CFR §83.8.

### **Conclusions Under the Criteria**

The petitioner meets criterion 83.7(a) because the evidence in the record demonstrates that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. The record contains acceptable identifications of the petitioner nearly every year since 1900; this is sufficient to satisfy the criterion. Evidence that identifies the petitioner as an American Indian entity appears in the records of the Town of Southampton, the State of New York, and the Federal Government. Furthermore, scholarly writings identify the petitioner as an American Indian entity, as do writings from newspapers and magazines. Although some documents in the record express doubt that the petitioner is an American Indian entity, the criterion allows for occasional questioning of the petitioner's Indian character, holding that such evidence "shall not be considered to be conclusive evidence that this criterion has not been met." Therefore, the petitioner satisfies criterion 83.7(a).

The PF finds that the Shinnecock petitioner meets criterion 83.7(b) because the "crossover" provision in the acknowledgment regulations at 83.7(b)(2)(v) allows evaluators to treat evidence described at §83.7(c)(2) as evidence that is sufficient in itself to demonstrate criterion (b) for the same period. Therefore, based on the evidence provided by the petitioner and interested parties or located by OFA researchers under criterion (c), dealing with political authority, the petitioner can demonstrate that it comprises a distinct community and has existed continuously as a community from 1789 to the present.

The PF finds that the Shinnecock petitioner meets the requirements of criterion 83.7(c). The petitioner and interested parties have submitted, and OFA researchers have located evidence to demonstrate that the Shinnecock petitioner meets criterion (c) based on evidence showing they "allocate group resources such as land, residence rights and the like on a consistent basis" from 1789 to the present. This kind of evidence is described at 83.7(c)(2)(i) and is sufficient in itself to demonstrate political authority under criterion (c); therefore the Shinnecock petitioner meets criterion (c).

The PF finds that the Shinnecock petitioner meets the requirements of criterion 83.7(d). In the absence of a governing document, the petitioner submitted written statements describing its membership criteria and current governing procedures.

The PF finds that the Shinnecock petitioner meets the requirements of criterion 83.7(e). The petitioner's membership list of January 8, 2009, includes 1,066 members. The Department accepts that a demonstration of descent from an Indian individual enumerated on the 1865 New York State census of the Shinnecock Reservation is a demonstration of descent from the historical Shinnecock tribe for purposes of criterion 83.7(e). The Department finds continuity between the 1789 Shinnecock population and the 1865 Shinnecock population because some of the pre-1800 individuals continued to serve as trustees and petition signers with the likely intermarried post-1800 individuals into the 1820s, and descendants of some of the 1800-1820s reservation residents resided on the reservation in 1865. New evidence may change this finding.

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The petitioner demonstrated descent from the list of members of the historical Indian tribe in 1865 at an acceptable level whether the analysis considered the current members only (1,022 of 1,066, or 96 percent), the current and disenrolled members (1,030 of 1,267, or 81 percent), or the current, disenrolled, and potential members (1,178 of 1,436, or 82 percent).

The PF finds that the Shinnecock petitioner meets the requirements of criterion 83.7(f). Since the petition contained scant evidence of members enrolled in federally recognized tribes, OFA did not examine any tribal rolls for the presence of the petitioner's members. Evidence in the record indicates that the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribes. Therefore, the petitioner meets the requirements of Criterion 83.7(f).

The PF finds that the Shinnecock petitioner meets the requirements of criterion 83.7(g). There is no evidence in the record that indicates the petitioner, its members, or their ancestors have been the subject of congressional legislation that has expressly terminated or forbidden a relationship with the Federal Government as Indians or as an Indian tribe.

**Criterion 83.7(a)**

**83.7(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group’s character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group’s Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.**

**83.1 . . . *continuous* means extending . . . throughout the group’s history to the present substantially without interruption.**

External observers have identified the Shinnecock as an American Indian entity on a substantially continuous basis since 1900.

For this criterion, an acceptable identification must be of the petitioner (or a group from which the petitioner evolved); it must be of an entity; and the entity must be described as American Indian. It is also required that the person who made the identification not be a member of the group because self-identifications do not satisfy the criterion. Such acceptable identifications must occur on a substantially continuous basis.

There is an abundance of evidence in the record that identifies the petitioner as an American Indian entity, and this evidence is substantially continuous, occurring even when the petitioner’s Indian identity was questioned by other sources. The evidence includes, but is not limited to, documents created by Federal authorities; documents created by State or local governments; documents created by anthropologists, historians, or other scholars; newspaper articles; magazine articles; and books. There is also evidence in the record that some observers after 1900 questioned whether the petitioner was an Indian entity. However, criterion 83.7(a) states that “evidence that the group’s character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met.” Therefore, the PF holds that the evidence in the record demonstrates the petitioner meets criterion 83.7(a).

The *Indian Records Book* from the Town of Southampton

The multiple volumes of the *Indian Records Book* from the Town of Southampton, New York, document some of the activities of the Shinnecock people and the Shinnecock trustees. Officials from the Town of Southampton first recorded Shinnecock-related entries in the *Indian Records Book* in 1792 and have continued to record entries in the volumes to the present. These volumes contain acceptable identifications of the Shinnecock petitioner as an American Indian entity from 1900 to 2008.

In most years since 1793, the town clerk of Southampton recorded in the *Indian Records Book* the annual election of three Shinnecock trustees as required by the 1792 law of the State of New York entitled, “An Act for the benefit of the Shinnecock Tribe of Indians, residing in Suffolk County.” The Act, in part, states “the male Indians, of twenty-one years of age and upwards, belonging to the Shinnecock Tribe in Suffolk County,” shall meet together on the first Tuesday of every April to choose “three persons belonging to the said Tribe as trustees” (NY Laws 2/24/1792).

Between 1900 and 2008, there are only six years for which the *Indian Records Book* does not provide an acceptable identification for criterion 83.7(a).<sup>19</sup> That means that during that period, there are 103 years for which there are acceptable identifications in the *Indian Records Book*. A typical entry in the *Indian Records Book* recording the annual election of Shinnecock trustees reflects the text of the 1792 Act and is similar to this entry:

The annual meeting of the adult male members of the Shinnecock Tribe of Indians was held at the Town Hall Southampton, NY on April 4, 1950 at 5 P.M. for the purpose of electing three Trustees for the ensuing year . . . . (*Indian Records Book* 4/4/1950)

This identification and similar identifications from other accounts of the annual trustee elections, along with other scattered passages in the *Indian Records Book*, are acceptable as identifications for criterion 83.7(a). The writer identified the petitioner (the “Shinnecock” of Southampton, New York).<sup>20</sup> The writer identified an entity (usually calling it a “tribe” but also using other terms, such as “community”). The writer described the entity as American Indian (usually calling it a “Tribe of Shinnecock Indians” or a “Shinnecock Tribe of Indians”). The person who wrote these identifications was not a member of the group; the writer was the Town Clerk of Southampton, New York, and therefore these identifications are not self-identifications. These identifications occur on a substantially continuous basis, occurring almost every year between 1900 and the present.

### Other Acceptable Identifications

In addition to the evidence found in the multiple volumes of the *Indian Records Book*, the record contains a substantial quantity of other identifications that satisfy criterion 83.7(a). A brief selection of these identifications demonstrate that, in addition to the identifications discussed above, the petitioner was identified on a substantially continuous basis as an American Indian entity.

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<sup>19</sup> In 1903, 1904, and 1907 the entries in the *Indian Records Book* did not identify an *entity*. In 1912, 1913, and 1928 there were no entries in the *Indian Records Book*. Thus, there was no interruption of acceptable identifications in *Indian Records Book* for more than three consecutive years.

<sup>20</sup> The evidence indicates that the entity identified in these passages can be confused with no other entity than the petitioner.

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A 1900 newspaper article mentions “Indian” youths “from the neighboring Shinnecock reservation” (*Brooklyn Daily Eagle* 9/22/1900). The 1900 *Annual Report of the Commissioner of Indian Affairs* (ARCIA) describes the petitioner, “[t]here are residing upon Long Island a remnant of the Shinnecock tribe, numbering about 150” (ARCIA 1900, 298).

New York State appropriations acts in 1900, 1901, 1904, 1905, 1906, 1907, 1908, 1909, 1911, 1912, and 1913 appropriated money for schoolhouses and school supplies for the Indian schools on several New York Indian reservations, including the “Shinnecock and Poospatuck Indian reservations” (NY Laws, years as specified). Because these appropriations are for schools serving a population on the Shinnecock reservation, they are identifications under § 83.7(a).

Two Federal censuses identify the petitioner as an American Indian entity. The 1910 Indian Population Census enumerates the petitioner’s ancestors living together on an “Indian Reservation” named “Shinnecock.” The 1920 population census of the United States lists the petitioner’s ancestors living together on the “Shinnecock Indian Reservation.” The 1910 census document is a special “Indian Population” census that specifically enumerates the residents of an Indian reservation, whereas the 1920 census document is not structured specifically for Indians or Indian reservations. However, the census enumerator wrote “Shinnecock Indian Reservation” in the margin of the 1920 census document, thereby identifying an American Indian entity.

In 1918, a book, *History of Long Island from Its Discovery and Settlement to the Present Time*, notes that about 200 descendants of the “once numerous Shinnecock Tribe” live on one of the two Long Island “Indian reservations” (Thompson 1918, 132). A 1928 article by a historian published in the *Long Island Railroad Information Bulletin* refers to “the Shinnecock Indians,” the “Shinnecock tribe,” and the “reservation” on which they live (Sleight 7/1928, 12-13).

A 1933 newspaper article states that the population of the “Shinnecock Reservation” is increasing. The newspaper indicated that the inhabitants of the reservation were Indians, declaring that “198 descendants of the original Shinnecock tribe claimed residence on their 750 acre estate in Southampton.” The article identifies the petitioner as an entity, claiming that “the tribe is socially divided within itself” due to differences in levels of education and socio-economic status (unknown newspaper, possibly the *New York Times* 2/9/1933). A 1938 article on the Shinnecock powwow celebration in Southampton, NY, notes that “the Shinnecock tribe has long since given up its tribal dances and arts” (*New York Herald Tribune* 8/13/1938). In 1938, an Office of Indian Affairs document, a list of “Tribes by State and Agency,” lists “Shinnecock”—and Cayuga, Mohawk, Montauk, Oneida, Onondaga, Seneca, and Tuscarora—living in New York (Interior 1/8/1938, 3).

A 1941 list of “Tribes by State and Agency” lists “Shinnecock”—along with the Cayuga, Mohawk, Montauk, Oneida, Onondaga, Seneca, and Tuscarora—living in New York (Interior 1941). In 1944 and 1946, New York’s “Report of Joint Legislative Committee on Indian Affairs” identified the petitioner as an American Indian entity. In 1944, the report discussed the “Shinnecock Reservation” and the “Trustees of the Shinnecock Tribe.” In 1946, the State report noted that “the two Long Island tribes” were “being treated as non-Indians by the Federal Indian office.” From the context of the reports, it is clear that these two “Long Island tribes” were the Poospatuck and the Shinnecock (NY 2/25/1944; 3/15/1946).

In 1950, the *Manual for the Use of the Legislature of the State of New York* lists population figures for New York's "Indian Reservations," including a "Shinnecock" reservation near Southampton on Long Island (Curran 1950). In 1952, New York's "Report of Joint Legislative Committee on Indian Affairs" referred to the petitioner as an American Indian entity when it discussed the Shinnecock Indians and their "Shinnecock Reservation" (NY 2/26/1952). A 1956 contract to provide transportation for school children on the "Shinnecock Indian Reservation" also identifies the petitioner as an American Indian entity (NY State Indian School 10/29/1956). A 1959 article states that "the tribe's members" are the "joint owners of the 1,000 acres of land" on the "Shinnecock Indian reservation" and are "wards of the state [of New York]" (*Long Island Press* 10/4/1959).

In 1960, the *Manual for the Use of the Legislature of the State of New York* lists population figures for New York's "Indian Reservations," including a "Shinnecock" reservation near Southampton on Long Island (Simon 1960). In 1960, New York State passed a law entitled, "An Act to enable Douglas King or his successors in interest to maintain action against the Shinnecock Tribe of Indians and to enable the Shinnecock Tribe of Indians to defend such actions . . . [regarding certain property] at Hampton Bays, town of Southampton, Suffolk County, New York" (NY Laws 4/7/1960). A 1966 article, "L. I. Tribe Is Host to Indian Powwow," discusses the "Indians" of the "Shinnecock reservation" (*New York Times* 9/6/1966). In 1969, New York State passed a law entitled, "An act making an appropriation to the State Bureau of Indian Affairs for the construction of fire wells on the Shinnecock Indian Reservation in Suffolk County" (NY Laws 5/22/1969). New York State intended this appropriation to serve the population on the Shinnecock Indian Reservation, and it is an acceptable identification for criterion 83.7(a).

In 1970, the *Manual for the Use of the Legislature of the State of New York* lists population figures for New York's "Indian Reservations," including a "Shinnecock" reservation near Southampton on Long Island (Lomenzo 1970). A 1971 article, "Shinnecock Indians Resist Tempting Bids for Land," notes that "the trustees represent the tribe in legal matters" (*New York Times* 3/14/1971). A 1973 doctoral dissertation examines culture change in the "Shinnecock Indian Tribe" (Laudin 1974, 4). In 1974, a newspaper discussing Long Island Indians and Thanksgiving notes that "Charles Smith, 56, has been one of the Shinnecock tribe's three ruling trustees for 25 years as Chief Red Fox" (*Newsday* 11/24/1974). A 1977 report from the U.S. Department of Commerce, "Aquaculture, Fisheries, and Food Processing as a Combined Economic Development Option for Indian Communities," has a chapter entitled, "Designing a Food Processing Industry for the Shinnecock Tribe." The chapter states that the "Shinnecock Indian Tribe . . . is presently engaged in the production of shellfish" (U.S. Dept of Commerce, 40; see also 41-65). A 1979 article, "Shinnecock Indians Aiming for First Industry," notes a "400-acre Shinnecock Indian Reservation" and that the "Shinnecock Indians" are a "tribe that is little known to the surrounding area" (*New York Times* 11/11/1979).

In 1980, the *Manual for the Use of the Legislature of the State of New York* lists population figures for New York's "Indian Reservations," including a "Shinnecock" reservation near Southampton on Long Island (Paterson 1980). A 1984 article, "Indian's Case Due in Court," mentions that there is a "particular issue of who does have authority on the reservation," and that

there have been “numerous scuffles between Southampton Town Police and members of the Shinnecock Tribe” (*Southampton Press* 12/6/1984a). In 1986 the *Manual for the Use of the Legislature of the State of New York* lists population figures for New York’s “Indian Reservations,” including a “Shinnecock” reservation near Southampton on Long Island (Shaffer 1986). A 1989 article, “Shinnecock Tribe Asks Approval of Plans for Proposed New Church,” discusses plans for building a new church “for the Shinnecock Tribe of Indians on the reservation” (*Brooklyn Daily Eagle* 3/1989).

The 1991 *Report of the New York State Judicial Commission on Minorities* identifies the petitioner, noting that the “Shinnecock and Poospatuck nations are located in Suffolk County” and that approximately 350 Shinnecock lived “on the nation’s Long Island reservation” (NY Judicial Commission on Minorities 1991, 256; *ibid.*, 263-264). A 1998 book by a local historian, *We Are Still Here! The Algonquian Peoples of Long Island Today*, notes that in the 1990s, the State of New York “placed the Shinnecock community in a very difficult position” regarding the Shinnecock’s “annual tribal elections” (Strong 1998, 85).

A 2001 newspaper article about the Shinnecock Nation Cultural Center and Museum, “Museum Celebrates Shinnecock History,” says that the Shinnecock are “an Algonquin tribe that has lived on the East End for thousands of years but whose members have suffered from something of an identity crisis in modern times” (*New York Times* 5/20/2001). A 2004 article, “Shinnecock Casino Trial Begins in Spring,” refers to the petitioner as “the Shinnecock Indian Nation” and states that “attorneys for New York State, Southampton Town, the federal government, and the Shinnecock tribe” met for discussions on the matter (*The Independent* 1/28/2004). In 2005, the United States District Court for the Eastern District of New York issued a ruling in *New York v. Shinnecock* stating that the Court held “a firm conviction that the Defendants are correct in their position that they remain an Indian Tribe today” (*New York v. Shinnecock* 2005, 10). An on-line newspaper article from 2008, “Task Force Sought to Expedite Shinnecock Casino Effort,” states that the “Shinnecoeks, a tribe now recognized only by the state, are currently seeking federal recognition” (*Newsday.com* 12/10/2008).

#### Identifications Expressing Doubt about the Petitioner’s Indian Character

There are, however, several documents in the record that express doubts that the petitioner is an American Indian entity.<sup>21</sup> A 1916 “Special Report” by Samuel Eliot to the Board of Indian Commissioners entitled, “The Shinnecock Indians, Southampton, Long Island,” identifies the petitioner. Eliot himself says that he “visited the Reservation of the Shinnecock Indians at Southampton, Long Island” and estimated that thirty to forty families lived there (Eliot 1916, 1). With this, he identified the petitioner as an American Indian entity. However, he also stated that “[t]he people give little or no indication of Indian descent,” that “the majority of the people look

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<sup>21</sup> The Department has held in previous cases that identifications of the petitioner as a mixed-race American Indian entity are acceptable. In the Department’s final determination on the Ramapough Mountain Indian petition, the Department stated, “Criterion 83.7(a) does not address race or ancestry per se . . . we state once more that the presence of non-Indian ancestry in a petitioning group does not negate its Indian identity if it has a specific Indian identity” (Ramapough Mountain Indians, Inc. 1996, 14).

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like negroes,” and that it could be assumed “that the tribe is more negro than Indian” (Eliot 1916, 2). In his recommendations he suggested that “[t]he Shinnecock Reservation ought to cease to exist, the tribal organization ought to be dissolved,” and that the “so-called Indian people” should be “absorbed into the body politic” (Eliot 1916, 4). Although the report also provides evidence that Eliot had doubts about the petitioner’s character as an Indian entity, the report also contains identifications acceptable for criterion 83.7(a).

In January 1936, Allen Harper, an official of the Department, visited the Shinnecock reservation with W. K. Harrison, Special New York State Indian Agent. Harper produced a report entitled, “Report on the Shinnecock and Poospatuck Indian Reservations, in Relation to the Indian Reorganization Act.” Harper describes the reservation itself, but states that the “first fact which forcibly strikes the visitor is that these people are not Indians at all; nor are they Whites . . . . [t]hey are Negroes.” He continues that, “[t]oday, the ‘Shinnecock Indians’ present, in their appearance, such marked negroid physical characteristics that it is difficult for me to speak of them as Indians.” A physical anthropologist, Harper wrote, “could ascertain what general residuum of Indian blood remains in these people.” The Harper report, like the Eliot report, contains identifications of the petitioner as an American Indian entity though it also provides evidence that Harper had doubts about the petitioner’s character as an Indian entity (Harper 1/-/1936, 1-2).

Criterion 83.7(a) states that “evidence that the group’s character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met.” The record has an abundance of acceptable identifications of the petitioner as an American Indian entity, and these acceptable identifications occur on a substantially continuous basis. Therefore, the PF holds that the petitioner meets criterion 83.7(a) despite the presence of some evidence in the record from the 20th century—including the Eliot report and the Harper Report—in which the writer expresses doubts about the petitioner’s American Indian character.

### Conclusion

The petitioner meets criterion 83.7(a) because the evidence in the record demonstrates that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. The record contains acceptable identifications of the petitioner nearly every year since 1900; this is sufficient to satisfy the criterion. Evidence that identifies the petitioner as an American Indian entity appears in the records of the Town of Southampton, the State of New York, and the Federal Government. Furthermore, scholarly writings identify the petitioner as an American Indian entity, as do writings from newspapers and magazines. Although some documents in the record express doubt that the petitioner is an American Indian entity, the criterion allows for occasional questioning of the petitioner’s Indian character, holding that such evidence “shall not be considered to be conclusive evidence that this criterion has not been met.” Therefore, the petitioner satisfies criterion 83.7(a).

**Criterion (b)**

**83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.**

...

**(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:**

...

**(v) The group has met the criterion in 83.7(c) using evidence described in 83.7(c)(2).**

Overview of Criterion (b)

The Department's evaluation of evidence submitted by the petitioner and other evidence submitted by interested parties or located by OFA researchers demonstrates that the petitioner meets criterion (b) for community using the cross-over provision provided in the regulations at §83.7(b)(2)(v). This finding means that the petitioner meets criterion (c) from historical times to the present using evidence under 83.7(c)(2), evidence that is sufficient in itself to demonstrate political influence or authority. The specific kind of evidence used is described at §83.7(c)(2)(i), which allows groups that can demonstrate that leaders or other mechanisms "allocate group resources such as land, residence rights and the like on a consistent basis" to meet criterion §83.7(c). The evidence shows that three trustees elected under the authority of the State reorganization of 1792 by the people residing on Shinnecock Neck have allocated rights to lands, resources, use, and residence on commonly held lands for the benefit of the group from at least 1789 to the present. This evidence provides "cross-over" evidence from §83.7(c) to meet §83.7(b) from 1789 to the present.

Although a separate evaluation of evidence under criterion §83.7(b) is not necessary for this PF, the following short discussion is to provide additional context and to trace generally the evolution of the Shinnecock community. Historically, a group lived in a distinct settlement at Shinnecock Neck. The Indian records books from 1792 to 1835 and 1880 to the present, Federal censuses in 1840, 1850, 1900 through 1930, a State census of 1865, and numerous school censuses after 1950 name the residents of this settlement. Other documents demonstrate that its residents have informally governed and determined residency and land use under rules established in 1792 by the State of New York and have continued to manage their group's affairs

to the present, essentially without breaks. This community has benefitted from the political activities described in the section of this PF dealing with criterion (c).

The Shinnecock have maintained a geographical settlement located at Shinnecock Neck since at least 1792 to the present. Because of high participation in labor migration, it would be difficult to determine if most of the Shinnecock lived in this settlement in any period after 1789 and before 1998, when the group produced its first membership list, which included off-reservation members. However, the existence of a distinct Indian settlement, populated by Shinnecock between 1789 and the present, can be traced in a variety of documents, official reports, records, censuses, leases, litigation materials, local histories, newspaper articles, and other materials.

The record contains evidence showing that the petitioner has continuously lived on the land base it currently owns at Shinnecock Neck, near Southampton, Long Island, since before 1789 to the present. OFA has assessed evidence concerning the community at Shinnecock Neck. Such evidence is outlined briefly below.

Observers have noted that the Shinnecock have participated in labor migration throughout their history. Before 1860, migrants went whaling and fishing, or lived in others' houses or on others' lands as servants and employees. After 1860 to 1940, they fought in the nation's wars, and worked as laborers and fishermen. Many continued to go into service as maids, cooks, and drivers. Throughout, some people also remained on the reservation or closely connected to it. They farmed, worked as grounds men at the local golf course, and fished. In the twentieth century, reservation residents married, raised children, farmed, guided sportsmen, sold crafts, and operated businesses on the reservation. These activities had demographic consequences. Over time, some members left permanently through migration and out marriage. Their descendants are not in the petitioner's current membership. Since 1940, people raised on the reservation have sometimes left to become educated professionals in health, law, science, the arts, the ministry, education, and some became skilled tradesmen. Many commuted or moved to jobs in the greater New York area, but visited the reservation often, maintained contact with the people who live there, and are part of the group's membership today.

The Shinnecock members have often married within their group or to members of other Long Island petitioners. There are significant numbers of marriages among the group's members from 1830 to the present, and these couples were and are very likely to live on the reservation and have descendants in the current membership. Because of these marriages, multiple ties of kinship exist among the group's members, especially those born and raised on the reservation. After 1880, out-marriage predominated; however, the descendants of many of these out-marriages before 1940 are not in the current membership.

People interviewed in 2009 described on-going interactions on and off the reservation from 1930 to the present. Migrants who have returned to the reservation depicted their life in neighborhoods of New York City and its suburbs during and after WWII. Urban Shinnecock in the 1950s, 1960s, and 1970s often attended the same churches, met at each other's homes, shared rides to the reservation for holidays and weekends, and socialized in many contexts (P. L. Bess 9/12/2009; M. Smith 9/12/2009; E. Smith 9/9/2009). A woman who lived in Brooklyn as a child listed the many Shinnecock families her family socialized with "every weekend." She described

the on-going back-and-forth communications between residents in Brooklyn and on the reservation: “If something happened on this reservation, we knew probably before some of the people on the reservation knew it, because we had telephones ... and some of the people on the reservation didn’t have telephones ... Once it hit Brooklyn, to whoever they called first, then that phone chain started” (P.L. Bess 9/12/2009). Beginning in 1947, pow wow programs document social events involving people on and off the reservation year after year to the present (Shinnecock Petitioner 1946-2007). People living near Philadelphia also visited often and were notified of deaths and other activities on the reservation during frequent phone calls (S. Coverdale Curry 9/8/2009; S. Hutchings in S. Coverdale Curry 9/8/2009). Typically, a woman who grew up near Philadelphia in the 1970s said, “we talk to our cousins two or three times a week, on the phone, call them up, say what are you doing?” (S. Coverdale Curry 9/8/2009). Currently, internet communications supplement telephone calls (S. Coverdale Curry 9/8/2009).

The reservation residents have always formed a tightly knit social core. Large numbers of off-reservation relatives are linked to close kin in this core. Seasonal residency during summer has been common (Dyson Butler 8/16/1988; L. Carroll 10/17/2006; V. Johnson 11/1/2006; S. Coverdale Curry 9/8/2009). Growing up, visiting, or summering on the reservation reinforced kinship, peer, and other relationships. In every generation after 1900, there were individuals, usually reservation household heads, often women, who maintained and encouraged social contacts with near and distant Shinnecock relatives.

There have been significant rates of informal social interaction existing broadly among members. Observers describe an exclusive Indian church, school, and other social institutions where informal social interaction occurred and shaped reservation life from 1830 to 1870 (Prime 1845; Hough 1864; Fithian 1/28/1864). A writer in 1864 noted that returning whalers shared money widely so that the entire Shinnecock community benefitted (Fithian 1864). Interviews with people born before 1920 described sharing the harvest and helping each other in gathering firewood, in cleaning a large catch of fish, and in putting in water wells (Dyson Butler 8/16/1988; A Crippen 8/17/88). The record after 1920 contains direct evidence describing actual events and interactions, such as suppers, tea parties, July 4th celebrations, a pageant, and other activities in the community. A June meeting, when Indians who lived away from the reservation returned to the Indian church for an annual homecoming, has drawn both on- and off-reservation Shinnecock continuously for more than 150 years. Interview transcripts, newsletters, photographs, and other sources contain numerous statements about informal gathering, playing, and working together, as well as visiting one another. Photographs document weddings, get-togethers, birthdays, funerals, and other events that bring together both close relatives and other Shinnecock.

The Shinnecock have maintained a collective Indian identity continuously over a period of more than 350 years, including the period from 1789 to the present. The Indians claiming this identity have consistently referred to their group since the early 1600s as the Shinnecock, the Shinnecock Indian tribe, the Shinnecock Indians, and similar names incorporating various spellings of “Shinnecock.” From 1640 to 1792, these Indians, using their Shinnecock identity, signed petitions and made agreements with colonial governments and the Town of Southampton. The State of New York reorganized the “Shincock Tribe of Indians, Suffolk County” in 1792. In documents since then, the reservation residents continuously asserted a Shinnecock identity.

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Between 1800 and 1900, they wrote petitions, sought legislation and school funding from the State, and litigated trespass cases using this identity. The Shinnecock Indian Church has operated more or less continuously since around 1830 on the reservation. The people at Shinnecock Neck advertized and sold craft items labeled “Shinnecock scrubs” or “Shinnecock decoys.” They claimed this identity when being interviewed by anthropologists, newspaper reporters, and other researchers. They used this name when writing contracts and “indentures” from 1880 to 1988. Throughout their post-1792 history, the Shinnecock Trustees have signed official agreements, court papers, and petitions asserting a “Shinnecock” identity. From 1792 to 1835 and from 1880 to the present, the *Indian Records Books* maintained by Southampton have documented elections for the Shinnecock Indians in which the reservation residents voted and were elected to the office of Trustee. Since 1947, they have presented a “Shinnecock” powwow to raise money for the Shinnecock Church and other activities. These various phrases incorporating “Shinnecock” apply to the entity documented and claimed by the group living at Shinnecock Neck continuously from 1789 times to the present. No other identity has ever been claimed by them, except in the 1920s when some individuals participated in “Montauk” land claims. However, at the same time those individuals joined Montauk claims, the same individuals continued to assert their Shinnecock identity in other situations.

Although the membership lists submitted between 1998 and 2009 vary in size (see discussion under criterion 83.7(e) of this PF), the social characteristics of the groups defined by the different lists are not significantly different. The petitioner has, since 1998, removed individuals from earlier lists for administrative reasons, generally a lack of documentation. It produced an official list of 1,066 persons in January 2009. The trustees did not remove people based on a belief that they were not members of the group (Trustees 2009; S. Hutchings [personal communication with OFA researchers] 2009). It does not appear that the group’s officials systematically informed those removed of their removal. In fact, several of the individuals removed from the earlier lists live on the reservation, participate in political activities, and vote. Virtually all of them are closely related to people (as siblings or children) who do participate. The removed people continue to act as if they are enrolled members, and there is no change in their treatment by the group’s members and its governing body. Shinnecock voters elected at least two of the removed people to office. OFA analysis revealed that the removed people, as a group, do not represent a special faction, political dissidents, or other interest group. Rather, those removed from the list usually are close relatives (primarily siblings) to many others who remain on the membership list and whose enrollment files are complete. The addition or subtraction of the removed persons from the analyses on criterion (c) does not significantly change the outcomes of analyses determining whether the petitioner meets that criterion, nor does it affect the group’s meeting criterion (b).

An estimated one-quarter to one-third of the group’s members, using the membership lists submitted between 1998 and 2009, live on the reservation today. Many others visit seasonally or grew up on the reservation but have left in search of work or education. Increasingly, members retire to the reservation after a career away from the Southampton area. Yet, those who reside away from the geographical settlement at Shinnecock, visit often, have close relatives residing there, and take a keen interest in the group’s activities.

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*Conclusion*

Since 1789, the community located at Shinnecock Neck and associated with the petitioner is the same group discussed in section (c) of this PF. This community has elected trustees and maintained a mechanism for allocating land, residence rights, and other resources and can demonstrate the type of evidence described at §83.7(c)(2)(i). Therefore, the evidence for political influence and authority to meet criterion §83.7(c)(2) provides sufficient cross-over evidence to demonstrate the Shinnecock petitioner meets criterion 83.7(b) for community from 1789 to the present as provided at §83.7(b)(2)(v). Therefore, the petitioner meets the requirements of §83.7(b).

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**Criterion (c)**

**83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**

**(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist, or existed, which:**

**i) Allocate group resources such as land, residence rights and the like on a consistent basis.**

Background and Overview

*Evidence sufficient in itself to meet criterion 83.7(c)*

Criterion §83.7(c)(2)(i) indicates that a petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority by demonstrating that mechanisms exist which allocate group resources such as land, residence rights, and the like on a consistent basis. This PF finds that evidence demonstrates that, from 1789 to the present, the Indian group living at and near Shinnecock Neck in Suffolk County, Long Island, has exerted authority over the use of its land and resources, and that an on-going system of Indian Trustees has regulated reservation land use. Elected Trustees allocated residential sites, fields for cultivation and grazing, wood, seafood, and other resources connected to the land and tidal areas under the group's control. These leaders consistently controlled access to resources not only to group members but also to non-Indian short-term leaseholders. Leases of common lands to outsiders produced income, which the group used for their common benefit.

In addition, through consensual decision-making and joint actions, the group has protected the land and resource base from trespass by non-Indians or encroachments by unauthorized persons building on its lands or taking wood, seaweed, and other resources without permission. They have regulated hunting and fishing there. Since at least 1850, the group has maintained a cemetery for the exclusive use of its members and their spouses. Finally, the group has significantly influenced economic activities by its members by controlling access to agricultural fields, woodlots, seafood collection areas, allotments with access from Montauk Highway, where individual Shinnecock operate businesses, and other resources. Aspects of these economic activities have sometimes involved cooperative labor such as field burning, laying out and fencing common fields, excavating wells, and hauling lumber and firewood.

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The 1994 amendments to the acknowledgment regulations at §83.7(c)(2) clarify and describe, “specific kinds of evidence considered sufficient in themselves to demonstrate that the criterion has been met” (59 FR 9281). The regulations give such evidence special significance and weight under “cross-over provisions” in the regulations, §83.7(b)(2)(v). This cross-over provision allows petitioners demonstrating evidence described at §83.7(c)(2)(i) through (iv) for a specific period to meet not only criterion 83.7(c) for political authority but also criterion 83.7(b) for community during the same period. Thus, a petitioner may demonstrate that it meets §83.7(c) and §83.7(b) utilizing only one of the types of evidence from the four listed at §83.7(c)(2)(i) through (iv).<sup>22</sup>

This petitioner’s narratives, submitted between 1998 and 2009, present several lines of reasoning for meeting criteria 83.7(b) and 83.7(c). The petitioner lays out the primary justification in its 1998 submission. Shinnecock reasons that its group has allocated, since at least 1793, “group resources such as land, residence rights and the like on a consistent basis” at levels described in §83.7(c)(2)(i) and therefore, has provided evidence sufficient in itself to demonstrate political authority. Thus, the petitioner proposes that it also meet[s] the criterion in 25 C.F.R. §83.7(b) community, under 25 C.F.R. §83(b)(2)(v), by using ‘cross-over’ evidence described in 25 C.F.R. §83.7(c)(2), political authority.

*The Shinnecock Trusteeship*

This PF finds that a system of trusteeship, described in a New York Act of 1792 and refined by subsequent amendments to the original act and through practice, provided the group the mechanism to make land allocations, to control residence rights, and to manage their resources. New York State reorganized the Shinnecock Indians’ existing, poorly documented, political organization by establishing the Trustee system this 1792 legislation. Since then, Indian Trustees elected by reservation residents have allocated, managed, and protected the lands and resources of the Shinnecock group to the present. The petitioner, thus, meets criterion 83.7(c) using evidence that is sufficient in itself. Because the petitioner meets this criterion using this type of “high” evidence described at §83.7(c)(2) from just after 1789 to the present, it also meets criterion 83.7(b) for the same period under the “cross-over” provision in the regulations at §83.7(b)(2)(v). This provision states that a petitioner “shall be considered to have provided sufficient evidence of community at a given point in time if “[t]he group has met the criterion in §83.7(c) using evidence described in §83.7(c)(2).” Thus, the petitioner also meets criterion 83.7(b) from 1789 to the present.

The petitioner’s primary evidence to demonstrate it has political influence and authority is contained in the *Indian Records Books* maintained by the Town of Southampton beginning in 1792. These records alone, however, fail to demonstrate that the group allocated land and resources for all periods. *Indian Records Book 3* covering the years 1835 to 1879 is missing from the Town Clerk’s office. Even during periods when the records books documented annual elections between 1816 and 1835, they failed to document specific land and resource allocations. Overall, for six decades between 1816 and 1880 and for five decades from 1959 to the present,

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<sup>22</sup> The Mashpee FD provides an example of how evidence under §83.7(c)(2) is weighed: The consistent allocation of group resources and control of individual behavior were sufficient evidence in themselves, under §83.7(c)(2)(i) and (iii), of political influence (Mashpee FD 2007, 19.) The Huron Patawatomí decision also determined that the petitioner meets criterion (c) using evidence described at 83.7(b)(2)(i).

the *Indian Records Books* were either silent on land and resource allocations or unavailable. To cure this absence of evidence, OFA evaluated other records submitted by the petitioner and parties or located by OFA researchers. These records included evidence of court actions involving the group or individuals in the group and commonly held land and resources, local histories, government reports, newspaper articles, and official censuses. Since 1958, oral interviews, corroborated by council and Trustee meeting minutes and other documents, have also provided information about land allocation and other management activities of the Trustees. The combined evidence provides continuous coverage to show the group's consistent allocation and management of its resources, economic cooperation, and control of behavior from 1789 to the present.

The evidence demonstrates that, before 1816, in a regulated process, individuals sometimes leased out to non-Indians some of the lands assigned to them by the Indian Trustees during an annual "draw," or lottery. The Town Clerk collected the lease payments on their behalf. The Trustees also reassigned houses and out buildings, drew boundaries between residents, and controlled land use in general on the reservation. They regulated fencing, roads, and the annual burning of the fields. Between 1800 and 1822, they persisted in defining their membership to include people they believed had rights to use Indian lands or participate in the annual "draw" for lands to lease out, despite apparent pressure from Town officials not to include them. Evidence from news stories and litigation documents indicates that the residents argued often with non-Indian neighbors over grazing leases on the Indian leasehold between 1838 and 1860 (*Long Islander* 1845; New York Court of Appeals 3/-/1860). From 1880 to 1900, they continued to lease lands to non-Indians. On occasion, they rented piers to non-Indian summer residents and leased rights to harvest oysters and seaweed. Repeatedly, they objected to attempts by non-Indians to whittle away acreage from the reservation in the 20th century. They hired attorneys to represent them in these suits, to advise them on other matters, and to write leases at their instructions.

The group maintained leases with no more than 10 or 15 outsiders per year between 1792 and 1815 and after 1880 until the mid-20th century. The proceeds from individual "draws," which were then leased benefitted individuals. The group used the proceeds from leases of the common lands and resources for the benefit of the group. These proceeds improved the reservation, built fences, maintained the church or churches, and, on occasion, supported the elderly and poor. Little evidence revealed how the Shinnecock group actually managed the money, but, before 1830, the Town Clerk handled it. Sometime between 1834 and 1880, probably around 1859, the Town Clerk stopped managing lease payments. The *Indian Records Books* became available again in 1880. These records indicated that the group encountered some problems, especially when Trustees acted without authorization of all the Trustees or the group's voters. The group punished those who had acted without authority. From 1880 to 1980, the *Indian Records Books* indicate that the group discussed how to spend the money in meetings of the group's men.

In general descriptions published in 1845, 1864, and 1865 local historians discussed what they had witnessed on the reservation from 1818 to 1865 (Fithian 1864; Hough 1865; Prime 1845). They indicated that the Trustee system continued to provide a mechanism to manage and guard the communal land base and resources during the mid-1800s. They described a group living in a distinct Indian settlement called "Shinnecock Neck," where residents farmed, raised livestock,

fished, and governed themselves by the trusteeship set up by State law. Two of these writers implied that local non-Indians sued to harass the group and force them from the leasehold (Fithain 1864; Prime 1845). They noted that the group responded by litigating in return to protect the land from trespassers and encroachment. Federal censuses in 1840 and 1850 named some of the persons who most likely lived in the group's settlement. A State census in 1865 specifically named the residents of the settlement. The people involved in litigating disputes were on these enumerations (New York Court of Appeals 3-/1860). In 1859, the same people worked with Southampton to make an agreement to amend the original provisions of the 1703 "1,000-year" lease, so that the Shinnecock would own in fee and in common roughly 650 of the 3,500 acres in the original lease (New York Court of Appeals 3-/1860). Although the agreement provided that the group would own Shinnecock Neck, it abrogated the Indians' lease of the Shinnecock Hills. In 1859, the group petitioned the State to pass a law recognizing this agreement. The land in the 1859 agreement that remained with the Shinnecock and not in the 1869 sale to the railroad is the current reservation.<sup>23</sup> They also organized the sale of some of their property to the Long Island Railroad in 1869.

Between 1880 and 1959, the *Indian Records Books* showed that the Trustees sometimes cancelled land assignments and reassigned them to new people. Such action usually involved abandoned allotments. Even though Trustees stopped notating land allocations in the *Indian Records Books* after 1959, meeting minutes and interviews after that date indicated that the Trustees continued to assign land to the present-day (Trustees 9/8/2009; P. L. Bess 9/12/2009; S. Coverdale Curry 9/8/2009; W. Warren 9/9/2009).

#### *Evidence After 1959*

Interviews demonstrate a high degree of agreement on how the Trustees have allocated lands during the last three decades. A good deal of controversy has arisen over specific decisions. There is a general perception that land is becoming scarce. In the last ten years, the Trustees, after consulting with residents, have divided and reassigned long-held several-acre properties to provide smaller house sites (125' x 125') to young people or retirees. The current Trustees say that they talk to the neighboring residents "so they know what's going on," but they clearly have the authority to reassign parts of properties (Warren 2009; Trustees 9/8/2008; P. L. Bess 9/12/2009; L. Gumbs 9/10/2009). Even if a family with a large 2 or 3 acre inherited lot wants to divide their total acreage among several heirs, they must obtain permission from the Trustees (Trustees 9/8/2009).

A 1983 ethnography claimed Trustees sometimes became involved in inheritance disputes, but preferred to let each family deal with inheritance on their own. Even though the Trustees have authority to distribute land regardless of the wishes of others, the Trustees, at least in recent decades, appear to try to accommodate families' wishes. They do not have authority over moveable property, including homes and other structures. Individuals create wills to stipulate inheritance of moveable property and state their wishes about the land (Hayes 1983; Trustees

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<sup>23</sup> This PF makes no findings about the ownership of, or the legality of sales involving, property currently owned or claimed by the petitioner.

9/8/2009).<sup>24</sup> Shinnecock individuals sometimes contest parts of a will that pass on moveable property, including structures, before local courts, not Indian Trustees.

One person interviewed in 2009 described a specific situation, which passed a house and land from one generation to the next in the early 1970s. She described how her relative had dealt with the split jurisdiction. Her uncle, who had decided to leave his house on the reservation to his niece, called together his children for a meeting with the Trustees. The family members signed a document in the presence of the Trustees. The document willed his house to his niece, a Shinnecock member, and secured the Trustees' agreement that they would also allocate his land allotment to her (P. L. Bess 9/12/2009). The man arranged this formal meeting to ensure that his wishes would be clear to his heirs and the Trustees. The story illustrates that practices have evolved in dealing with the inheritance of structures, which fall under the jurisdiction of local courts, when these structures are located on reservation lands, which fall under the jurisdiction of the Trustees.

Another person, interviewed in 2009, described her own experience in the late 1980s. After growing up in Philadelphia, she approached the Trustees and told them she wanted land on the reservation for a house. They asked her when she would come and did she want "the allotment because [she was] coming home." She explained that even though she was raised in Pennsylvania, "This is what we call home, it's our home." She told the Trustees that she was "moving home." She talked personally to two Trustees, and they "said that someone had an allotment ... for years, but they never did anything with" it (S. Coverdale Curry 9/8/2009). The Trustees allocated her that property, and she lives there today.

Suits that forced non-Indians to leave the reservation were sometimes brought before local courts. These disputes involved non-Indian spouses or their non-Indian descendants. Divorces mediated in the local jurisdictions have recognized that the Indian Trustees control land allocations and who may reside on the reservation. Such divorce mediations have dealt only with settling questions about moveable property, including houses and everything in them, and not land or residence rights on the reservation. Interviews in 2009 indicated that in divorces where both spouses were Shinnecock, Trustees allocated a new lot to one of the spouses, so that both individuals had allotments on the reservation. Trustees and group members expected that divorced non-Shinnecock spouses would leave the reservation.

The Trustees ask the help of local authorities to remove individuals from the reservation who have no rights there. Letters from Southampton officials show that they cooperated with the Trustees by notifying, removing, and arresting people whom the Trustees want removed, or who are involved in criminal behavior. Since at least 1980, Trustees have sought removal of people by the Suffolk County District Attorney based on marital status (non-Indians living with a Shinnecock member outside marriage) or involvement in illegal activities (E. Cuffee 9/9/2009). Meeting minutes and interviews indicated that Trustees removed individuals involved in anti-social behavior (S. Hutchings in P. L. Bess 9/12/2009). They and the membership also hold relatives responsible for the behavior of family members staying in their homes. In this way, the Trustees and the general population of the reservation exert control over some behavior.

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<sup>24</sup> OFA researchers could not find an example of Trustees' involvement in an inheritance dispute during interviews in 2009.

*Other Evidence of Political Authority*

In addition to allocating lands and resources, the group has managed the land base for community purposes. Since 1850, the group has maintained an exclusive cemetery on the reservation (Hutchings 2009; Squires 1935; M. Smith 9/8/2009).<sup>25</sup> Between 1900 and 1960, reservation residents cooperatively burned fields to improve pastures (L. Hunter 2009; J. Eleazer, Jr. 10/16/2002; H. K. Williams 9/11/2009). Historically, the group has maintained its roads, signage, and fences, and it has dealt with Southampton for some support in these areas (E. Cuffee 2009). At present, rules prohibit residential trailers and require assignees to build within three years of receiving an assignment or risk losing it (Hutchings 2009; Trustees 2009; J. Eleazer 10/16/2002). Although leasing for agricultural purposes stopped after WWII, the group has sporadically leased land for parking and “hospitality” tents during golf events at the local golf course in recent years (L. Gumbs 9/12/2009).

Since 1947, an annual powwow has raised substantial amounts of money to fund the Indian church on the reservation and other group activities (Powwow Programs 1947-2009).<sup>26</sup> The powwow is more than a symbolic statement that the Shinnecock are “still here,” because it provides significant funding for the group’s activities. Powwow earnings support, in part, jobs on the reservation, facilities maintenance, and security.

Current Shinnecock members interviewed by OFA researchers in 2009 believe that the modern Trustees’ authority extends broadly to any activity on reservation lands because they control access. Members organizing events as large as the annual powwow and as small as a weekly softball game obtain permission to use reservation land and facilities. The Shinnecock Health Center, Oyster Hatchery, and Cultural Center and Museum depend on the Trustee’s sponsorship to use reservation land, even though their funding comes from outside granting agencies, or they are organized with non-profit boards of directors separate from the Trustees (L. Gumbs 9/10/2009; D. Martine 9/9/2009). Private businesses, including smoke shops, located on a strip of reservation land fronting a busy highway, depend on Trustee approval. The Trustees have limited the number of smoke shops to four. When the women’s committee wanted to upgrade playground equipment or paint a mural on the community center façade around 1990, they obtained permission from the Trustees (R. Hunter 2009). The Trustee’s influence has extended beyond residence rights and resource allocation to have a direct impact on programs that operated on the reservation. Members discussed land allocations in meetings. Meeting minutes in the last ten years contained heated discussions on how smoke shops were allocated and managed. Minutes revealed that some Shinnecock believed the proceeds from cigarette sales did not benefit the group as much as they should (S. Coverdale 9/8/2009).

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<sup>25</sup> In 1935, a list of graves located in the Shinnecock Reservation cemetery was made. It noted that, in February 1935, there were 42 marked graves and probably 50 graves without markers. The notes give the names and death dates of 43 persons and dates of death. The oldest graves were women who died in 1852 and 1853. Although an earlier marker for 1838 apparently stood in 1935, it read “In memory of Laura Ann, wife of Thomas Beaman who died March 15, 1838,” and may have been erected after her death because no other stone near that age survives.

<sup>26</sup> Although there is also evidence that a pageant took place in the 1930s, and even earlier, these events tended to be for Shinnecock and did not raise operating funds (Dyson Butler 8/16/1988).

Several people interviewed indicated that the Trustees controlled recent meeting agenda. They could easily block consideration of a proposal if they believed the make-up of the voters in attendance would go against their own positions on an issue. In the 1980s and early 1990s, Trustees ended their meetings when women insisted on talking and staging political protests about the lack of women's suffrage and participation in the group's governance. The rules of the group before 1993 prohibited women to talk in Trustee meetings and to vote. A woman who witnessed these events stated,

I've seen [Trustees] close meetings down because women have talked, or they just adjourn it. 'Alright, meeting adjourned!' That's it, and they would disband the meeting. (P. L. Bess 9/12/2009)

At present, Trustees still control Trustee meeting agenda. If a person or organization becomes outspoken or highly critical of the Trustees, embarrasses the group, or fails to mobilize support from others, they may find their favorite project has low priority on the Trustees' agenda or the meeting has ended before there is time to consider it. Some people believe that Trustees and others had called for votes or held meetings on divisive issues, including use of a particular highway frontage property for commercial use, when certain voters are absent from the community, such as during school breaks or when national Indian meetings were held (L. Gumbs 9/10/2009; Collins 2009).

Informal influence also influences decision-making. For example, even before women had the vote, they talked directly to male decision-makers. In 1988, a woman, who lived off the reservation but visited often, said that she had personally talked to the Trustees about closing the dump because she had observed that non-Indians were using it. She believed that the Trustees reacted positively to her concerns by dealing with the problem (Dyson Butler 8/16/1988). A past Trustee maintained he had supported women's suffrage on the reservation. He said that the issue had been controversial in 1993. Primarily older men and women who have lived on the reservation their whole lives did not believe women should vote or needed to vote. They believed that women had many opportunities to influence male decision-makers, especially their husbands. By the 1990s, however, many women were heads of households, and they wanted to play a part in decision-making that affected them without having to depend on male relatives, who may or may not attend meetings and listen to their concerns. One woman who was involved in the women's committee that pushed for women's suffrage stated,

Let's say [the group] had a big meeting about land allotments and boundaries and stuff like that. Women who ... were head of their own households didn't have a say in what was being done with land boundaries ... even though they had allotments. (P. L. Bess 9/12/2009)

The Trustees' concerns about protecting and controlling their communal land base has slowed decision-making in recent years as the group has deliberated difficult issues, including Federal acknowledgment, a written constitution and enrollment ordinance, casino gaming and related litigation, and access to public utilities (Moran 1993; R. Hunter 2009; E. Cuffee 2009; Dyson Butler 8/16/1988). In the 1980s, the Trustees wrote to the BIA asking how recognition would change the status of their lands. They feared that the Federal Government would automatically

take their reservation into trust. Some members viewed this possibility as giving to the United States what they rightfully owned in fee. It took another ten years for members and Trustees to agree to submit to the Department a documented petition, even though it appears it was completed earlier.

New York laws gave the Trustees power to control the land and resources of the reservation, which the group appears to have owned in fee since 1859. Trustees' power has been checked annually when they ask reservation residents to re-elect them in the first week of April, as these same laws require. Non-resident members may not vote in elections, a fact that adds weight to the concerns of reservation residents who may vote. The Trustees must respond to the reservation members because they form the electorate. Campaigning for office is not done publically, but "there's a kitchen campaign that goes on" informally (W. Warren 9/9/2009).

Several residents said that there is a growing concern about crowding on the reservation and "quality of life" issues. Meeting minutes have reflected these concerns since at least 1990, and probably earlier. The Trustees hear their fears, and purportedly slow the pace of land assignments. The current Trustees maintain that they support the system that limits voting to resident members because it protects the resource. They apparently believe that off-reservation members advocate development and increased population density on the reservation.

The Trustees' decisions concerning land allocation indirectly shape the electorate, by determining who lives on the reservation, the principal requirement to vote in Trustee elections. Trustees require applicants to demonstrate they can afford to build a house and intend to do so. Moreover, they also investigate and consider how well the applicant "is known in the community" and decide "what is best for the community" (Trustees 9/8/2009). Off-reservation Shinnecock members ask relatives, peers, and friends to support their requests to Trustees for allotments. Even residents concerned about maintaining rural character will advocate for close, non-resident relatives, who want to retire or move back to the reservation. However, residents may not support requests from distant relatives whom they barely know. A past Trustee said, in 2009, that families that have not lived on the reservation in two generations should not receive land and not even be members of the group (E. Cuffee 9/9/2009). Thus, Trustees' decisions concerning land allocations shape the electorate.

Through 220 years, a group of people related through kinship and historical association has continuously occupied this land base on Shinnecock Neck. Many who grew up on the leasehold or reservation, since it was first established in 1792, left it. Their descendants no longer associate with it or identify as Shinnecock. Presently, a core group consisting of between 300 and 500 individuals lives on the reservation full or part time. The remainder of the membership, as defined by any of the membership lists submitted between 1998 and 2008, remains in close contact, visits often, and takes an interest in Shinnecock politics, even though, as non-residents, they may not vote. Large numbers of non-resident members grew up on the reservation and almost every adult has a close relative (grandparent, parent, child, or sibling) living there. Virtually the entire membership—resident and non-resident members—can trace to someone, usually a number of persons, living on the reservation in 1865. In most cases, their ancestors linking them generation by generation to the 1865 Shinnecock community also lived on the reservation. This means that adults who do not have grandparents who lived on the reservation

in their lifetimes generally do not appear on the membership list. Although only residents vote for and act as Trustees, the majority of members take an interest in political events, based on their concerns for their relatives, their own eligibility to live there, and their claimed rights to use the common land base and resources of the group (L. Carroll 10/17/2006; Dyson Butler 8/16/1988).

### *Conclusion*

In conclusion, the petitioner has demonstrated for every period that it meets criterion §83.7(c) using either evidence from the *Indian Records Books* that they allocate land and resources, or other evidence that indicates that the group and its leaders have allocated and protected their communal lands and resources. They kept non-Indians and others from living there and using it. They undertook economic activities for the benefit of the group and controlled the behavior of members. They have repeatedly sued and been sued concerning their rights to determine how and by whom reservation lands. The Shinnecock petitioner has continuously exerted strong and significant political influence and authority on its members since 1789 to the present.

### The Evidence Demonstrating SHN Meets Criterion 83.7(c)

#### *Political Organization of the Historical Shinnecock Tribe*

New York law reorganized the Indian group living on the Shinnecock leasehold in Southampton, Long Island, under a three-man trusteeship by passing the Shinnecock Act of February 24, 1792. They did so in response to a petition submitted by the Shinnecock to New York State requesting protection of their lands. The submission of this petition came at the end of three decades of Shinnecock activity aimed at protecting their leasehold from non-Indian encroachments and unauthorized use. Colonial agreements in 1640 and 1703 had both reserved these lands for the Shinnecock, but given non-Indians grazing rights on most of it for seven months each year. Some evidence implies that Indians historically associated with Shinnecock continued to use neighboring areas of Long Island not specifically part of their leasehold in the 18th century for subsistence as they had always done (Occom 1754-1786). After 1763 and following the American Revolution, non-Indians were surveying, selling, and settling new divisions of land in this part of Long Island (Sleight 1931). One local historian wrote that during the last part of the 18th century, increasing population density forced Indians to move to Shinnecock permanently, and stop seasonal and permanent use of other areas (Pelletreau 1905, 317).

Documents predating the 1792 Act provide background for describing the historical tribe's composition and organization in 1789. These pre-1789 materials indicate that non-Indian neighbors repeatedly encroached on the Shinnecock land base, which technically was part of a "1,000-year lease." Between 1759 and 1763, Southampton tried to stop non-Indians from growing corn and oats at Shinnecock. The Town sued Jonas Foster in 1759 and threatened to fine any "white people" who planted corn on "any part of the Indian land" (Sleight 1931). On June 12, 1764, 38 "Indians and Squaws belonging to Shinnecock" signed a document agreeing not to "let out any land to plant" on an individual basis and setting fines for those who did. It also required the group to share lease proceeds among the "generality of the Indians." "Simeon Tittum" (Titum) made his mark on the document, as did "Peter John." A Samuel Waukus made

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his mark on the bottom of the agreement's first page.<sup>27</sup> Some of the last names found on documents after 1789, including Waukus, Toney, Hugh, and Jacob, also appear on this document, but only the names of Simeon Tittum, Samuel Waukus, and three women signers<sup>28</sup> matched full names to individuals named in later documents (Tittum *et al.* 6/12/1764).

In May 1782, Town records relate that, while the Indians had “come into an agreement with each other not to Sell any Wood, or hire out any land to the white People,” they sometimes broke these rules. Again, the Indians made a written agreement “not to hire out any of their land or sell any Wood to the White people” (Sleight 1931). On the same day, non-Indian Town Trustees ordered that non-Indians could not plant corn or take wood off “any part of the Indian land” and set specific monetary penalties (Sleight 1931). These mirrored actions in 1782 show the Shinnecock exerting authority over Indians, and the Town maintaining authority over non-Indians.

Thus, the record shows that Southampton dealt directly with the Shinnecock during the 1780s. The 1703 agreement between the Town and the Shinnecock allowed the Indians to live, garden, and have a few animals for personal use on land the Town leased to them for 1,000 years. This “1,000-year lease” allowed non-Indians to graze their cattle and sheep on the shared lands after the Indians harvested their corn. Both groups worked to protect their own interests in their dealings. Indians focused on non-Indian encroachment on their wood supplies and the destruction of their gardens by livestock. Non-Indians attended to maintaining fences and gates, and enclosing gardens and home sites, to keep the herds safe. Back-and-forth actions show Southampton and Shinnecock dealing with conflicts over sharing the leasehold. In the 1780s, almost nine decades after the 1703 agreement, a Shinnecock entity was still dealing with the Town of Southampton about its land base. OFA is treating this entity as the historical tribe in 1789.<sup>29</sup>

The Shinnecock were not happy with the status quo in 1789. Evidence indicates that in the latter half of the 18th century, some Shinnecock individuals were in contact with literate Indian religious leaders whose stature extended beyond a single tribal group. They, with other Shinnecock men and women, signed and sent petitions to the State and local governments. Between April 6, 1787, and July 4, 1787, Rev. Samson Occom, a famous Indian preacher and the leader of the Brothertown removal to western New York, visited Shinnecock and drafted a petition of the group's grievances to the Governor of New York. The unsigned copy states that

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<sup>27</sup> The record bears the marks of several females named Waukus, and two males, Samuel Waukus and Samuel Waukus, Jr.

<sup>28</sup> Hannah Solomon, Phebe Peter, and Anne Waukus.

<sup>29</sup> The Guidance and Direction Regarding Internal Procedures in the Office of Federal Acknowledgment of May 23, 2008, directed OFA to reduce the “Time Periods for Which Petitioners Must Submit Evidence.” This Guidance provides, based on the purpose of the evaluation under the regulations, that the “date of ‘the period of earliest sustained non-Indian settlement and/or governmental presence in the local area,’ ... should be on or after March 4, 1789, reducing the time period for which petitioners should submit evidence” (73 FR 30147). This petitioner benefits greatly from this Guidance. First sustained contact occurred around 1640, and the Guidance shortens the period of review by 150 years. To describe the group, its leadership, membership, and government in 1789, OFA reviewed evidence from three decades before 1789 but did not evaluate it under the criteria.

the Indians have “a little bit of Land” ... “but the English have got all the profit of it, they claim all of grass and the feed,” while the Indians can keep no grazing animals on it. The Indians “can only Plant a little corn, beans, and Pumpkins” (Brooks 2006). Whether the Shinnecock sent this specific document to the Governor is not known.

Nevertheless, other documents show that, by 1791, the New York Senate had received a petition signed by “Samuel Waukus and other Indians of the Shinecoke Tribe.” (The name Samuel Waukus had appeared in a document in the Southampton Town records in 1763, around the time Samson Occom reported meeting with a “Samuel Waukus” and “brother Peter”). The petition referred to in 1791 is not in the petition evidence so its relationship with Occom’s 1787 draft document is not known. The Index to New York’s Senate Journals relates that “the petition of Samuel Wakas (Waukus), and other Indians of the Shinecoke Tribe, residing in Suffolk county” was referred to a committee. Mr. L’Hommedieu, of Sag Harbor, was one of the committee’s members. According to his report to the Senate, the Shinnecock had asked the legislature to regulate “the tillage of their common lands.” On January 24, 1792, the committee recommended that the State Senate pass a bill, which it did a month later (New York 2/24/1792).

The petitioner claims that the 1792 Act put in place a form of governance that “shifted” its government “from a system ... where authority was exercised by headmen and sachems, to one whose leadership was in the hands of Trustees elected by the tribe’s membership” (SHN [criterion §83.7(c)] 9/25/1998, 26). Documents in the record, however, contained no references to “sachems” for at least three decades before 1792. In addition, 35 men and women signed the 1764 petition, unlike the 17th century colonial agreements that only Sachems, Sunk Squas,<sup>30</sup> or important headmen signed. That many men and women signed the 1764 document makes it appear to represent the consensus of members of a Shinnecock group, rather than the actions of an authoritative leader or small group of leaders.

#### *Re-organization of the Shinnecock under the Shinnecock Act of February 24, 1792*

The New York Act of 1792 gave the Indians a loose framework of self-governance that still applies (Trustees 2009; Tilden 8/27/2003, 2). It provided for adult “male Indians ... belonging to the Shinecok tribe in Suffolk county” to elect Trustees on the first Tuesday of April in the place where Southampton non-Indian freeholders held town meetings. The original 1792 Act did not specifically require electors or Trustees to reside on the reservation. It merely described them as “persons belonging to said tribe” (New York 2/24/1792). It also provided that the Indian Trustees could lease the “lands of the ... Shinecok tribe” for three years or less to non-members and allocate land to each Indian family or individual. The non-Indian clerk of Southampton would attend the Indians’ meetings and enter the Trustees’ names into an *Indian Records Book*. Non-Indian Justices of the peace who lived closest to the leasehold would witness the leases. The law set fines for anyone who used Shinnecock lands without the Indian Trustees’ recorded permission. The non-Indian Justices would use the income from leases and fines to benefit the group (New York 2/24/1792).

The first election under the new Act took place on April 2, 1792, when the Town began to maintain *Indian Records Books* separate from its own records. The notes of these elections in

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<sup>30</sup> These terms were used for leaders of New England and Long Island Indian tribes in the early contact period. Sachems were male leaders, and Sunk Squas were female leaders, and sometimes the wife or daughter of a Sachem.

most years merely listed the names of newly elected Trustees and, in some years, sometimes gave vote tabulations or the names of losing candidates. They rarely described issues candidates raised during the election. The *Indian Records Books* showed that these elections, monitored by the Town Clerk, took place in most years from 1792 to 1834 and from 1880 until 2006. The Town Trustees' records cover some missing years and other documents, such as litigation and news articles, seem to name the group's leaders, most likely Trustees. The petitioner compiled a year-by-year listing of "Tribal Trustees 1792-1983" (SHN). The listing, however, did not show the election of Trustees during the years 1808-1812, 1817-1822, 1836-1861, 1863-1870, and 1874. In April 2007, 233 voters elected Trustees in an election held on the reservation rather than the place where the town meetings were held, as the Act of 1792 required. The Town Clerk refused to preside at an election outside the Town Hall, but entered the results in the *Indian Records Books* (*New York Times* 4/15/2007; *Indian Country Today* 4/16/2007).

At the April 3, 1792, meeting, the "Shinnecock Tribe Indians" elected David Jacob, Samuel "Wakus," and Abraham Jacob to be Trustees (Papageorge 1983, 142).<sup>31</sup> On the following Sunday, these men met with three non-Indian Justices residing "nearest Shinnecock Field" (as the State Act required). They made decisions concerning land use, allowable crops, fencing, and boundaries on the reservation. They extended the tenure of the previous year's non-Indian leaseholders, which implies the Act regulated a system that was at least partially in place when the Act passed. The Trustees allotted land to Shinnecock members. In addition to each Indian's original draw assignments, where they built their permanent homes, maintained fenced subsistence gardens and orchards, and built barns, Indian Trustees awarded to Shinnecock individuals farming acreage from extra lands during the annual "draw." Individual Indian assignees could lease out these additional lands to non-Indians. The elected Trustees also leased out common lands, for the "benefit of the tribe." Lessees paid the Town Clerk (Papageorge 1983, 155).

Throughout the next decade, the *Indian Records Books* show individually named Indians, described as "true and lawful heirs to said lands," allocating and being allocated acreage, home sites, gardens, and cornfields. These records name at least 113 different individuals receiving land, leasing out lands, or witnessing other transactions. At the same time, the Southampton Town Trustees discussed their rights to the Shinnecock Hills at Town meetings. For example, the Town's records in April 1793 show that they decided to turn the cattle onto Shinnecock Neck as usual, "provided the Indians [would] not come to any agreement about said Neck with the Trustees" (Sleight 1931).

The minutes of an April 14, 1794, meeting referred to "great inconvenience & disputes ... from the present mode of hiring out [leasing] acres of Indian Land." The Justices and Indian Trustees voted that the person "whose acre or acres so hired shall be Recorded first ... Shall hold the land & draw accordingly," thereby relying on written agreements, rather than verbal agreements (Papageorge 1983, 149).<sup>32</sup> The Trustees held a second draw to accommodate Indians who

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<sup>31</sup> Toby T. Papageorge was the archivist of the Town of Southampton when she transcribed and published these records in 1983.

<sup>32</sup> The record is ambiguous as to whether Indians were leasing the same property multiple times or non-Indians were claiming properties they had not leased. Both actions may have come into play.

missed the first draw.<sup>33</sup> At the same meeting Trustees decided that Indian whalers and fishermen, who were absent from the settlement on voyages and had missed the general “draft,” would receive land at the Trustees’ discretion from lands not already taken (Papageorge 1983, 149). The minutes indicate that the Trustees had hired out lands on behalf of absentees and for the benefit of the tribe. At the same meeting, action by the “Majority of the [non-Indian] Justices and a Majority of the [Indian] Trustees ... allowed a Garden to every House or Wigwam that [was] inhabited for the summer not exceeding half an Acre.”<sup>34</sup> The non-Indian Justices would prosecute people breaking these rules (Papageorge 1983, 149). Thus, Indian Trustees and non-Indian Justices developed practices when applying the Act that lessened conflicts, clearly defined how much land to allocate, and included people who were temporarily absent from the leasehold.

*The Composition of the Shinnecock As Reorganized in 1792*

Demographic trends on Long Island before, during, and after the American Revolution shaped the composition of the group that the State reorganized on the Shinnecock land base in 1792. Town records from Long Island towns other than Southampton indicated that their Indian populations were declining, while the Shinnecock population appeared to have been growing. Indians seemed to be moving away from the territory lying between Southampton and Brookhaven.<sup>35</sup> This inland territory remained unsettled by non-Indians through the 1780s. Sources implied that Indians continued their customary use of this territory, but there was only circumstantial evidence of such use (Pelletreau 1906). Before 1800, the Indian preacher Paul Cuffee served five churches in this general area, including Wading River where he was born. By the beginning of the 1800s, “the Indians lived entirely in wig-wams, most of them at Shinnecock, but several were at Canoe Place and at the outlet of Cold Spring Bay.” They still “moved their fragile dwellings whenever they thought best, but generally located where fish and clams were plentiful,” according to one local historian (Pelletreau 1906). The Indian churches at Segatague (Islip?) and Wading River had closed by 1820, and at Wading River, “not a single individual of aboriginal descent [was] to be found.” By then, a non-Indian minister served Canoe Place part time (Prime 1845, 118).

In 1787, thirteen families from the neighboring Long Island tribe at Montauk joined Samson Occom’s Brothertown colony in western New York, and the population at Montauk declined. There is no evidence that a group of Shinnecock emigrated to New York or Wisconsin. A local historian, H. B. Squires, in the late 1780s described an oral tradition that some Shinnecock went west. He related, “About 1787 many Shinnecock Indians, went to Brothertown ... and joined remnants of various New England tribes and possibly some Montauks. In 1833, they moved

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<sup>33</sup> Simeon Tittum, Abraham Cuffee, Solomon Tokhous, William Ocus, Gilbert Williams, Joshua Hugh, Mary Tutt, Mary Jacob, Nat Solomon, Peg Ruckets, Mary Joe, Hannah Thene, Elizabeth Duree, Eunice Pattaguam, Prudence Cuffee and Abraham Cuffee.

<sup>34</sup> It is unclear whether this provision meant to take into account some sort of seasonal movement of families that the record does not otherwise disclose.

<sup>35</sup> For example, the Town records of Southold, due north of Shinnecock, included testimony of a slave in 1763 stating that the Indians living at Indian Neck near Southold “kept disappearing, till she remembered none left.” A non-Indian clearly stated that he had worked for the Indians at Indian Neck until about 1750, where the Indians “planted a nursery and an orchard and buried their dead” (Case 1884 [Southold Town Records]).

with them to Wisconsin where their descendants may still be found” (Squires n.d.). Contemporary correspondence about Brothertown did not name Shinnecock among tribes removing to Brothertown. For example, a 1773 letter from Joseph Johnson of the Farmington Indians encouraged “Indian Brethren, at Mohegan, Nihantuck, Pequutt, Stonington, Narraganset, and Montauk,” to move west (Johnson 10/13/1773). A year later, a letter by the movement’s leader listed leaders who went from “Mohegan, Groton and Montauk, Narraganset, and Farmington” (Oecom 1/6/1774). Montauk was the only Long Island tribe named in either document.

The numbers of Shinnecock documented at Shinnecock was three times larger in the 1790s, after the Shinnecock Act and after the rumored migration to western New York, than in 1764. The *Indian Records Books* between 1792 and 1800 documented more than 100 individuals involved in land transactions. Thirty years earlier, only 38 individuals, describing themselves as “individual Indians and Squaws belonging to Shinnecock,” had made their marks on the 1764 agreement (Simeon Tittum *et al.* 6/12/1764). By 1799, new family names appeared in the Shinnecock records, including Cato, Cuffee, Dyer, Hanibel, Kellis, Ocus,<sup>36</sup> Tohhouse, and others. While individuals who had no surnames on earlier documents may have taken these names, other new names may have represented surnames introduced through marriage or names of individuals moving to Shinnecock before 1789 from declining Indian settlements.

Nevertheless, a comparison of lists in 1764 and the 1790s showed some continuity at Shinnecock. OFA compared the 1764 list and the compilation of 113 names documented in the *Indian Records Books* in the 1790s. Only five full names<sup>37</sup> appear on both of the 1764 and 1790s sets of names. However, when OFA compared only surnames on both lists, 12 of these “family names” appeared on both lists, including Gonnuch, Hugh, Jacob, Lot, Peter, Ralph, Ruckets, Solomon, Titum, Tony, Tutt, and Waukus. Half of the names appearing on both lists (Gonnuch, Hugh, Peter, Ralph, Ruckets, and Tutt) also appeared on a list of Montauk in 1761. At least 21 people, 55 percent of the 38 individuals on the 1764 list, had these 12 surnames, and of the 113 individuals named in records between 1792 and 1799, about a third, or 36, had one of the 12 surnames. Thus, the analysis implied that, while marriage or movement among settlements probably occurred, it was likely that a core group of families continued living at Shinnecock.<sup>38</sup>

#### *Political Disagreements at Shinnecock 1799 to 1828*

The composition of the community after 1799 is uncertain because more than 80 percent of the people named on records between 1792 and 1799 never appeared on a Shinnecock document after 1800. There are many theoretical possibilities that could explain these findings, but the

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<sup>36</sup> This name may be a variation of Waukus.

<sup>37</sup> Simeon Titum, Sam Waukus, Anne Waukus, Phebe Peter, and Hannah Solomon.

<sup>38</sup> Genealogical analyses made by OFA do not rely on family names to verify a parent-child link; rather, such analyses require vital information in addition to full names. Genealogy links parents to children, generation-to-generation of a single line of descent. However, this analysis for the purposes of examining community and political authority concerns a small group, not an individual. There is a reasonable likelihood that a set of 12 specific surnames appearing on two lists made 30 years apart of the same small geographical settlement indicates a continuous presence of at least some families with these surnames in the settlement.

available information does not allow a determination with reasonable confidence of what actually happened. It does not show whether specific persons, named in early land allocations but not subsequently mentioned, still resided on the land base after 1800. It seems that allottees might not have appeared in the Indian records after their initial allotment if there were no reason to document a transaction involving them. If persons did not serve as Trustees, did not lease lands or witness such transactions, did not become embroiled in controversies, or did not break rules and pay fines, there would be no reason to write their names in the Indian records, even though they remained living on the leasehold. Since the Trustees included in the first and second draws those individuals they said were on fishing and whaling voyages, names of persons, and perhaps their families, who never returned to live permanently in the settlement after 1800 may have appeared in the pre-1800 records.

The nature of the available record also complicates the evaluation of the Shinnecock group's composition after 1799. The Indian records almost stopped naming women after 1799, even though before that year, records named them in equal numbers to men. Women drew land, received lands for lease, and witnessed land transactions. After 1799, women's names did not appear in the Indian records for long periods. In many years, the only Shinnecock named in the *Indian Records Books* are the three male Trustees. Only men signed petitions in 1800 and 1822. Federal censuses before 1840 named Indian women only as heads of a household, meaning their husband or father was deceased or absent, and they lived off the leasehold or were not considered to be Indians (Indians were often not enumerated before 1840). Several reasons make it difficult to identify women living on Shinnecock, to determine whether they were native to the community, and to identify Shinnecock women married to non-Indians and their descendants.<sup>39</sup>

Non-Indians sometimes objected to non-local Indian men establishing land rights through marriage at their wives' birthplaces. Events at neighboring Montauk illustrate this tension. Because of specific agreements and oversight from East Hampton, residency rules blocked any Montauk woman married to a non-Montauk Indian from living in that group's community. As early as 1719, East Hampton Trustees and 14 Montauks signed an agreement barring "strange Indians" from Montauk lands. Marriages between Shinnecock and Montauk, which were historically common for marriages among their elite, almost stopped according to one writer: "The Indians in the various sections of Long Island were isolated from each other and shriveling up like puddles in a dry stream" (Ales 1993, 52). The East Hampton Trustees extended their ban to descendants of Montauk women and non-Indians in mid-century. In 1756, seven Montauks and the Trustees of East Hampton agreed that all "Mustees or Molattoes that have Indian Squas to their mothers Natives of Montock" were debarred from rights to land on that leasehold (Ales 1993, 52).<sup>40</sup> Shinnecock colonial agreements in the record for the Shinnecock evaluation did not

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<sup>39</sup> The regulations at 83.6(e) require that petition evaluations "shall take into account historical situations and time periods for which evidence is demonstrably limited or not available." The lack of women's names in the Indian records is compounded by the lack of vital records of Indians' births, deaths, and marriages on Long Island for the same period. This evaluation, therefore, finds that these historical circumstances are demonstrated that explain the lack of women's names in the available evidence between 1800 and 1840 and takes this fact into account when interpreting the facts and weighing the evidence.

<sup>40</sup> Apparently, no restrictions applied to Montauk men married to African American women.

contain similar exclusory language, and the historical group may have accepted mixed couples or their descendants during the same period.<sup>41</sup> The situation documented at this neighboring tribe provides background for interpreting Shinnecock petitions and other documents between 1799 and 1822 that reveal a dispute over who had rights on the reservation. Some Shinnecock and Town Justices questioned the rights to draw land of a specific family named “Cuffee” and others who were long-time Shinnecock residents.

In 1799, the *Indian Records Books* document new restrictions on the land rights of non-resident Shinnecock and non-Shinnecock husbands, either Indians from other Long Island groups or non-Indians. On April 19, 1799, the record showed that Indian Trustees (Samuel Budd, Abraham Jacob, and David Waukus) voted that non-resident Indians could not take part in the yearly draw for lease lands, but could be assigned half the land as residents for their own use. This new rule could explain the absence after 1800 of some names in earlier transactions. The Trustees also voted that “No person not being an original proprietor shall draw any land by virtue of marrying” a Shinnecock woman even though his wife could still draw the same as any other female proprietor (Papageorge 1983, 157). However, a women “who is not a native” shall draw equally “with any other [Indian woman] who is a native & have equal privileges” if she marries “an Indian” (Papageorge 1983, 157). Thus, the Shinnecock Trustees restricted the rights of non-residents and of non-Shinnecock husbands. There is no evidence that non-Indian Justices participated in formulating this rule.

The intent of the 1799 rule is directly related to a petition to the State dated January 17, 1800, signed by “a number of the principal Indians belonging to the Shinnecocks Tribe, residing within the County of Suffolk” (Waukus *et al.* 1/17/1800). This petition indicates that some non-Indian men marrying Shinnecock women<sup>42</sup> had not left with their wives as the 1799 rule had ordered. These petitioners noted there were “daily encroachments” and “wanton destruction” of timber and firewood on their “common” lands. They described the trespassers as “strangers who marry in among us and by virtue of such connections, claim a right.” They asked the State “to compel such strangers so marrying to go ... with their wives to retire off our lands.”

Men who were clearly Shinnecock leaders, most of whom had served as Trustees several times, signed the petition. Five names, Samuel Waukus, David Jacob, Samuel Budd, Joseph Peter, and Abraham Jacob are legible. These five men appear on Shinnecock land records before 1800<sup>43</sup>

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<sup>41</sup> Controversy also arose in many New England and Long Island groups about the affiliation of Indian descendants with persons of African ancestry, and some New England and Long Island groups excluded the descendants of African-Native unions (Brooks 2006, 139).

<sup>42</sup> Peletreau writes, “The last Indian of pure blood was known as “Joe Tony,” and he died in 1850 ...The present tribe are entirely derived from Negroes, most of whom came from other places and married Indian women, thus securing a right to live on the Indian land” (Peletreau 1905, 313-314). A Joseph Tony appears on the 1840 Federal census of Southampton, apparently on the reservation. Other Tonys appear on Shinnecock documents produced between 1764 and 1815, when a Jonathon Toney was chosen Trustee. No descendants are known among the current petitioner.

<sup>43</sup> None appears to have descendants in the current petitioner according to the petitioner’s FTM as enhanced by OFA research. Men with the surnames Walker and Killis appear on later documents and they have descendants in the current petitioner. The petitioner should research and provide documentation of the relationship between these

and in the 1790s minutes of meetings in the Indian Records books.<sup>44</sup> Budd, Jacob, and David Waukus had passed the 1799 regulation restricting land rights of non-Shinnecock husbands. The group re-elected Jacob a week before the date of this petition, implying that the larger group supported this action. The Shinnecock leaders between 1792 and 1799 overlap with the petition signers, who claim they are the “principle Indians belonging to the Shinnecoaks Tribe” in 1800. Moreover, four of the petition signers, including Abraham Jacob, Samuel Waukus, Joseph Killis, and Samuel Budd, appear on later documents and remain on the reservation after 1800. (See Appendix E, *Shinnecock Leadership Continuity 1792 to 1840*.)

The State’s response to the petition of 1800 is not in the record, but events during the following two decades imply that some Shinnecock leaders and non-Indians would later question whether members of a specific family named Cuffee were entitled to live on the leasehold. The Southampton Town Trustee Records describe meetings in 1806. On April 1, 1806, the non-Indian Town Trustees

Voted, That Ebenezer Howel be appointed to notify Absalon Cuffee, Bun, and the several branches of that family, to meet the Trustees on Tuesday next at H. Rogers and give them satisfaction respecting their title to the Indian Land, or otherwise they shall be debarred drawing any land this season. (Sleight 1931, 138)<sup>45</sup>

A week later on April 8, the Town records specifically named individuals in the “several branches,” including “Absalom Cuffee, Abraham Cuffee, Noah Cuffee, James Bun, Simeon Fithen, Tom Jock, Jason Cuffee, Meshec Cuffee with their respective families” (Sleight 1931, 141). The Town again ordered this group would “be debarred from drawing a land among the Indians this season, unless they first satisfy the [Town] Trustees with respect to their title in the said lands.” The addition of the names Aaron Cuffee and James Cuffee at the end of the entry may mean to include them in the list of the debarred.

The next year, however, the Shinnecock Trustees refused to go along with the Town’s attempt to block these families from drawing land. The *Indian Records Book* indicates that in 1807, the non-Indian Justices and the Shinnecock Trustees disagreed on the question of whether “Absalom Cuffee, Bun & others” should be “debarred” (Papageorge 1983, 157-158). Non-Indian Justices and Indian Trustees met on April 22, 1807. The Indian Trustees were Samuel Waucus, Abraham Jacob, and James Bunn. Bunn had been debarred in 1806. The non-Indian Justices voted that

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Walkers and Killises, and determine the spouses of these men to clarify the connection of the current petitioner’s members to the membership of the Shinnecock before 1800, specifically in 1789.

<sup>44</sup> Samuel Waukus not only was on the 1764 Shinnecock agreement, but also was a lot holder in 1797 and 1798, as was David Jacob and Joseph Peter. David Jacob and Samuel Budd were elected Trustees, the former in 1793 and 1794 and the latter in 1796, 1798, and 1799. Abraham Jacob was elected Trustee at least 15 times between 1892 and 1816. The names of Samuel Waukus and David Jacob also appeared in the “Trustee records: Southampton,” receiving 1 pound 12 Shillings York money from the town “by order of the Indian Committee,” in the fall of 1792. In addition all the surnames of these five men, except Samuel Budd, and three other documented Trustees before 1800 (Samuel Ruckets, Silas Toney, and David Waukus) appear on the 1764 Shinnecock agreement.

<sup>45</sup> Ebenezer Howell and H. Rogers are non-Indians.

“Absalom Cuffee, Bun & others debarred by the Trustees” should not draw land the next year. The Indian Trustees voted that they should draw land. Among the men whom the non-Indian Justices wanted debarred were Shinnecock Trustees. The Shinnecock had elected Absalom Cuffee in the 1790s and 1805, Aaron Cuffee in 1803 and 1806, and James Bunn in every year from 1801 to 1807. From 1808 to 1812, the Indian records, which the Town Clerk recorded, documented no elections and named no Trustee. It appears that either the Shinnecock refused to elect Trustees, or the Town Clerk refused to record the names of the men they elected. Between 1813 and 1816, the group again elected Trustees including previously debarred Noah Cuffee in 1813 and Aaron Cuffee in 1814. Also elected between 1813 and 1816 were three men who were never debarred, including Abraham Jacob, David Waukus, and Jonathan Tony.

At an April 4, 1815, Town meeting, “the Magistrates of the Town of Southampton & the Indian Trustees ... voted that Hannah Cuff, Paul Cuff, Vincent Cuff<sup>46</sup>, Polly Dyer, Polly Dick, Sukey Dyer shall be debarred from having any land.” Polly Dyer, Polly Dick and Sukey Dyer are not identified.<sup>47</sup> Hannah Cuffee, however, was a non-Indian married to Rev. Paul Cuffee, who had died in 1812. Vincent Cuffee was their son. OFA researchers located notes from someone who may have acted as an attorney, judge, or clerk preparing for litigation involving Poll[y] Dick and Hannah Cuffee. The notes cover testimony from Shinnecock Trustees, who indicated the two debarred women had lived at Shinnecock for many years. The question recorded in the notes was, “If we can prove that these Indians are of Shinicock tribe, they are entitled to recover.”

Testifying in “*Poll Dick v. Trustees of Southinicock*” were James Bunn, described in the notes as a Trustee for 7 or 8 years, a man identified only as “Meshach” [Cuffee?], Sam Walker, and Sam Budd. The last two men were Trustees in the 1790s. Their combined testimony indicates that Poll Dick was from Southold. Her Indian mother died when she was three and the Overseer of the Poor “bound her to” Samuel Budd, who brought her to Shinnecock before 1790. She continued to live there. Two men stated that for 25 years she always drew land. James Bunn explained why a woman from Southold would receive land at Shinnecock: “It was agreed some years ago among the Indians that the then occupants should have their shares.” Because Poll Dick was an occupant at that time, “she would have had one acre at 5 dollars” (Anonymous ca. 1815).

In the Hannah Cuffee<sup>48</sup> notes from the same year, (Anonymous ca. 1815), the man named “Meshach,” and James Bunn testified. Bunn stated that Hannah Cuffee had lived at Shinnecock about 18 years and before that had lived at Wading River. Her mother was a “molatto ... her husband was a black man.” A later local historian described her deceased husband, Rev. Paul Cuffee, as having Montauk Indian and Black ancestry. He had purportedly moved to Shinnecock in about 1794 (Prime 1845). To explain why this couple of mixed ancestry from Wading River settled at Shinnecock, Bunn stated, “Indians & Molattos agreed that all be.”<sup>49</sup> This notation, in

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<sup>46</sup> A Vincent Cuffee was elected April 7, 1830, to the board of Trustees. He served to 1833. Paul Cuffee also served for several years as a Trustee in the 1820s.

<sup>47</sup> The Dyer name did not appear on either Shinnecock or Montauk lists until after 1792. The Dick name was associated with a Montauk family that emigrated with Samson Occom to Western New York.

<sup>48</sup> Hannah Cuffee was the Rev. Paul Cuffee’s wife.

all likelihood, indicates that Indians and mixed-bloods, and perhaps others closely associated with them and residing on the land, had jointly decided (possibly in 1806) that if a person resided at Shinnecock at that time, then he or she could remain there (Anonymous ca. 1815). The testimony seems to oppose the debarments of Hannah and Poll and claim that a group decision had incorporated them into the group by giving them land rights based on their or their spouses' residence on Shinnecock in the early 1790s. The notes show that the residents of Shinnecock jointly determined that certain long-term residents and their spouses could stay there and draw land.

On April 15, 1816, New York passed an *Act relating to the Shinnecock tribe of Indians*. This Act repeated much of the 1792 Act. It set a *proviso* that the combined lands “laid out and appropriated” to individuals and families of the “tribe ... shall not exceed one hundred and twenty-five acres” in total (New York 4/15/1816). The earlier 1792 Act provided that the Trustees could lease out such lands at their discretion. Thus, the later Act limited the total land the tribe could cultivate, which in effect discouraged the Shinnecock from taking in people and ensured the remainder of the leasehold would provide pasturage for the Townsmen. The Act also set fines for infractions by individuals who were “not of the said tribe,” and not approved by the three Trustees and the Justices. The language of the Act reiterated that both the Shinnecock Trustees and the non-Indian Justices had to approve land transactions and elections. It also required the Town Clerk to record election results and land transactions (New York 4/15/1816).

When the Act of 1816 limited the amount of land the Shinnecock could cultivate, it seems to have benefitted the Town of Southampton in two ways. First, it discouraged the Shinnecock from taking in people, for whom Southampton did not feel responsible, and encouraged the group to limit its population. Second, it changed the competitive dynamics between the non-Indians, who desired pasturage and leases, and the Shinnecock, who wanted to use the lands on the leasehold for their own benefit. It is possible that the Townsmen's motives for seeking to debar some individuals from Shinnecock land draws was to whittle away at the group's membership to decrease the need for land by Indians and increase available pasturage for non-Indians. Placing a total limit on the land the group could set aside for their own use, would remove at least some of the Justices' motive for questioning the qualifications of either voters or Trustees at Shinnecock. The Clerk still did not record elections between 1817 and 1822.

The 1820 Federal census enumerated Polly Dick and Vincent Cuffee, the son of Hannah Cuffee. The latter may have died by this date. (Vincent is said to have married James Bunn's daughter before 1818. He would be identified as a Shinnecock leader in the 1840s.) The 1820 Federal census enumerated them and other Cuffees living in close proximity to one another in 1820. The enumeration did not indicate whether they were living on the leasehold and whether they were considered Indians. This census did not enumerate most Indians.

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<sup>49</sup> Samson Occom used the term “mollattoe” to refer to people with both African- and Native-American ancestors. In a letter to Robert Keen concerning Wheelock's Indian Academia written September 27, 1768, he defined the word in clear terms: “Since we got home, that money never Educated but one Indian and once Mollatoe, that is, part Negro and part Indian...” (Brooks 2006, 119). [Spelling as in original.] The term Mulatto, therefore, when applied to people voting on who could draw land on Shinnecock, did not rule out the possibility that people called Mullato had Indian ancestry. This term was used differently in different parts of the New World, and local usages often differed from one region to another even during the same periods.

The record contains no further election results until April 1823. A year earlier, on January 28, 1822, the Shinnecock petitioned the New York legislature to direct Town officials to stop interfering in the elections of their Trustees. The petition stated that the law “provided that the Indians may appoint Trustees to manage their business.” It also complained that “the white people will not allow any of us to vote for such Trustees but such persons as they say belongs to the tribe which debar almost the whole of us from the privilege we believe belongs to us” (Wicks Cuffee *et al.* 1/28/1822). Twelve men signed this petition.<sup>50</sup> In March of that year, 13 men signed a petition entitled, *Petition of the Shinnecock Tribe of Indian in this County of Suffolk, Praying for Legislative Aid*, and sent it to the State. It explained, “The clerk of the Town of Southampton will not allow any of the tribe to vote for their Trustees but such as he calls full Blooded Indians.” It continued that the Town Clerk’s actions “excludes almost the whole of us from the privileges of appointing our Trustees[. W]e therefore pray that the law may be so amended as to allow us to choose a Clerk out of our tribe” (Russell Cuffee, *et al.* 3/11/1822).<sup>51</sup>

The issue, as portrayed in this petition, appears to be blood degree, rather than Indian ancestry *per se*. Requiring Shinnecock members to be “full bloods” or to have Shinnecock ancestry exclusively, would put the group in a difficult position. Its members had traditionally married among the various groups on Long Island and had married non-Indians. As the testimony in the Hannah Cuffee and Poll Dick cases illustrated, they also, on occasion, had incorporated into their membership a non-Shinnecock widow and a non-Shinnecock adoptee, who had resided with the group for a long time. If the group’s members had to marry only “full-blood” Shinnecock, then they could marry only within a small group of people, which was not viable over time. Such a requirement would destroy the Shinnecock in one or two generations by making the membership standard so high, no member of the Shinnecock group could meet it.

In April 1823, the Indian records noted that Noah Cuffee, David Walkus, and James Bun [sic] were elected the Shinnecock Trustees (Papageorge 1983, 160). Noah Cuffee and James Bunn had been debarred in 1806/7. That the Shinnecock voters repeatedly elected individuals whom the non-Indian Justices rejected shows the Shinnecock ultimately prevailed and kept the membership open to mixed-blood Indians and others whom they considered their members. After the March 1822 petition went forward, this impasse concerning who could vote or be Trustees was broken, allowing Cuffees and others earlier debarred to be Trustees.

The petition reveals that, at the same time, the Town was suing Indians on the leasehold. The petition signers complained that “white people” were enclosing Indian lands and claiming it as “theirs by possession.” When the Indians planted corn there, they were sued in the Court of Common Pleas.<sup>52</sup> The petition asked the State to help them by passing a law recognizing their ownership of the leasehold (Abrom Jacobs *et al.* 1/28/1822). Between 1819 and 1822, the Town records refer to two suits against James Bunn. In 1819 and 1822, the Town prosecuted him “for trespassing on Shinnecock Neck.”<sup>53</sup> It also fined him twice, apparently because his horse was

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<sup>50</sup> They named Noah Cuffee “one of our tribe as our agent.”

<sup>51</sup> Signers include: Russell Cuffee, Ages Cuffee, Wicks Cuffee, Luther Bunn, Annaniaz Cuffee, William Richard, Noah Cuffee, James Bunn, Meshach Cuffee, David Walker, Aaron Cuffee, Abram Jacob, Vesent Cuffee.

<sup>52</sup> Records concerning the suit are not in the petitioner’s submissions.

loose (Sleight 1931, 280, 284). Yet the voters at Shinnecock would repeatedly elect James Bunn a Trustee. He served from 1801 to 1807, from 1823 to 1827, and from 1839 to 1833. These facts suggest that the Town may have aimed their suits at Bunn because he had stature as a leader in the Shinnecock community.

The Superintendent of the Shinnecock Indian School in 1864 first observed the Shinnecock group in 1818. He later wrote about his experiences with the group between 1818 and 1864, noting changes in their condition during that period. In the first years he worked among them, he found a demoralized population living at Shinnecock Neck and selling baskets in the Town store. It was then the “the custom” to bind out their children in non-Indian homes until adulthood. Life on Shinnecock changed in the 1820s and 1830s, as the Indians built frame homes, sought education for their children, whom they stopped binding out, reconnected with Protestantism, signed a temperance pledge, and attended to farming and livestock (Fithian 1864, 101-103). If any older Indians spoke an Algonquian language, the children did not learn it because there were no Native speakers by 1865 (Hough 1865). In 1831, the Shinnecock petitioned the State legislature seeking educational funding (New York Senate 1/4/1831). On receiving their petition, New York passed legislation on April 19, 1831, for the Indian school on the leasehold. It provided \$80 to Southampton, in addition to what Suffolk County already received to hire a teacher for the Shinnecock children (New York 4/19/1831). The Act was “revived” for three years in 1841 and for four years in 1845 (New York, 4/28/1841 & 3/2/2845).

*Political Authority on Shinnecock: 1828 to 1880*

Evidence of Trustee elections continued until the end of *Indian Records Book 2* in 1835. The Indian records are not available until 1880, when *Indian Records Book 4* begins documenting elections and land allocations again. The last land allocation before 1880 was written in the *Indian Records Book 2* in 1814. Even though the elections continued to 1835, direct evidence of specific land allocation stopped in 1815. Other evidence primarily from on-going litigation around 1815 or 1816 through 1860, however, demonstrates that the group continued to exert authority over the Shinnecock land base and their commonly held resources. The superintendent of the Shinnecock Indian School said that in 1818, “They occupied a neck of land on the south side of Long Island, near the ocean, bounded on the east, west, and south by Shinnecock bay, and on the north by the main county road.” He estimated the tract to be 500 acres. He noted, they also “claimed some right of occupancy of an adjoining barren tract of about 3,000 acres” (Fithian 1864). A series of suits had begun with the 1815 or 1816 Poll Dick and Hannah Cuffee cases<sup>54</sup> and would continue through 1860. Suits against James Bunn followed in 1819 and 1822, and other suits continued unabated from 1838 through 1860. One local historian blamed the continuing litigation on an attempt by some to extinguish the Shinnecock rights to their lease. He claimed in 1845 that because of their mixed heritage, “For many years past, there has been a growing jealousy, of [the Shinnecock] claim to the lands reserved by their ancestors; and an evident desire to see it extinguished” (Prime 1845, 119). This local writer claimed that he commonly heard “the assertion ‘these ... people have no more rights to these lands than the

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<sup>53</sup> “Shinnecock Neck” is the local term for the area where the Indians lived, which was covered by the Agreement of 1703, and where the current state reservation is located. It probably refers to the isthmus of land connecting the land masses to the east and west of Peconic Bay and a peninsula that juts out from it.

<sup>54</sup> There is not other evidence that the Dick and Cuffee cases actually went before a court.

natives” of other continents that have come to America (Prime 1848, 120). Between 1838 and 1860, the Shinnecock dealt with these litigations concerning rights to the Shinnecock Hills, and at one point, a group of Shinnecock men and women mounted a non-violent demonstration by seizing a large herd of sheep (*New York Daily News*, 12/15/1853).

Southampton sued Vincent Cuffee, identified as “one of the Shinnecock tribe of Indians,” for grazing animals on the Shinnecock Hills in 1838, three years after *Indian Records Book 2* documented the last Trustee election (New York Court of Appeals 3-/1860). In March 1850, the Town Trustees sued Vincent Cuffee again for overgrazing part of the Shinnecock lease. In 1845, Vincent Cuffee, a Shinnecock resident, was a Deacon at the annual June Meeting, attended by Indians from several communities (*Indian Assemblage of 1845* 1845). He had also served as Shinnecock Trustee from 1830 to 1834 and would serve again in 1862. It is likely that the suit named him because of his stature as a leader. In two other actions before 1853, Luther Bunn and Oliver Kellis, leasehold residents, sued non-Indians for “taking and carrying away sea weed” from the “shores of Shinnecock Bay” (New York Court of Appeals 3-/1860). The seaweed suits did not involve individual home allotments, barns, or gardens. No one had individual claims to the seaweed, nor did Cuffee have an individual claim to pastures. These cases concerned the resources held in common by the Shinnecock group. Two men named in the titles acted as Shinnecock Trustees during periods when the *Indian Records Books 2* and 4 documented elections. Luther Bunn, like Vincent Cuffee, served as Trustee in 1834.

In 1853, a local sheep owner sued two brothers, Luther and James Bunn, and Francis Willis, a non-Indian married to Acenthia Cuffee. The suit continued through the final appeal in 1859. The dispute began when sheep damaged the Indians’ corn on the Shinnecock Hills, and a group of at least 16 Indians seized 320 of the sheep in retaliation. In addition to the Bunn brothers and Francis Willis, the Shinnecock answer brief listed 13 other people,<sup>55</sup> who represented households enumerated on the 1850 Federal census, most likely on the leasehold in the settlement at Shinnecock Neck. Court documents indicate that they had not planted corn on the Shinnecock Hills for several years before 1853, but in that year they planted 19 separate parcels, which they did not fence (New York Court of Appeals 3-/1860). The Indians argued before the court that they wanted the animals as compensation for their losses, even though Suffolk County had already returned the sheep to their owners (New York Court of Appeals 3-/1860). The Shinnecock acted together to protest what they viewed as encroachments on their fields by non-Indians’ livestock. Newspaper coverage described the case as an action against “the Indians” and as a test of the 1703 “1,000-year” lease. The question before the court was “whether the Indians, when they plow and plant any portion of Shinnecock Hills, are obliged to surround each plowed land with fences, in order to protect their crops from the cattle of the leasors” (*New York Daily Times* 12/15/1853). The Indians lost when the Court found the 1703 lease required Indians to fence their crops for 7 months in the winter. Wicks Cuffee, one of the 13 named on the answer brief, filed a countersuit. He had been Trustee in 1835, the last year *Indian Records Book*

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<sup>55</sup> Named in addition to Bunn, Bunn, and Willis are Stephen Walker, David Bunn, Paul Cuffee, Wicks Cuffee, Oliver Killis, Ann [Walker] Williams, Darius Jackson, Thomas Beman, Minerva [Walker] Green, Age[e] Cuffee, Charles Killis, James Lee and Charles Smith.” All of these people lived on the reservation according to their statements. Although at least three non-Indians and a Montauk man are listed; all of them are married to Shinnecock women, according to the petitioner’s genealogical database. The 1850 Federal census recorded these individuals consecutively, thus indicating that it was the reservation being enumerated on those schedules. The schedule document did not specifically name the reservation.

2 documented elections. They lost the appeal (*Wicks Cuffee agn' st Austin Rose*, 7/23/1853). The titles of these suits list people like the Bunns, Vincent Cuffee, and Wicks Cuffee who were Trustees in years when records were available. Men of stature in the Shinnecock community, probably Trustees, most likely filed or were named in these suits.

The Town of Southampton and the Shinnecock agreed to support a legislative solution by the State to end the on-going disputes. The State Assembly introduced Legislation in 1859. The Act stated that the Town and “the tribe of Indians” had been in conflict. It traced the dispute’s source to the original 1703 agreement, which required the Indians not to fence any part of the land from the last of October to the first of April. Referring to a “verbal agreement and arrangement” to divide the land along a “well defined line,” the Act gave full control of the Shinnecock Hills to the Town and full control of the Shinnecock Neck to the Shinnecock but did not change the trusteeship established in 1792 (Laws of New York 3/16/1858). The legislature passed the Act on March 16, 1859, but only after Town supporters presented a petition supporting it signed by Shinnecock. After the Act passed, the Shinnecock owned the Neck in fee. It was no longer a leasehold. On February 19, 1861, the “the Hills” was sold to a company of local residents, who said they would use it as pasturage (Hough 1865).

The petitioner claims that the Shinnecock produced within days a second petition claiming the first petition contained forged signatures. A September 8, 2008, article in *Newsday*, repeated their claims that “within days, a second petition was written, this one signed by 12 Shinnecoeks, including James L. Cuffee” (*Newsday* 9/8/2008). Claims that the signatures on the first petition were counterfeit were first made during testimony at a U.S. Senate Subcommittee hearing held in New York City in 1900 (U.S. Senate Subcommittee of the Committee on Indian Affairs 9/22/1900). This interpretation is problematical. The 1859 petition appears as part of the record of the hearing before a U.S. Senate Subcommittee in 1900, but evidence from 1859 corroborates the petition’s authenticity. The deed of April 21, 1859, recorded in the Suffolk County Clerk’s Office on April 22, 1859, contains much of the language in the 1859 Act allowing the sale of the described lands to “the Trustees ... in the Town of Southampton, in Suffolk County.” Three men described as Shinnecock Trustees, Stephen H. Walker, David S. Bunn, and Wickham Cuffee, signed the deed.<sup>56</sup> The court witnessed the signatures. The names on the 1859 petition represent the adult male household heads living on or near Shinnecock Reservation six years after 1859 in 1865, when the State enumerated the reservation residents.<sup>57</sup> There is no indication, as claimed by testimony in the 1900 hearing, that some of the individuals named in the 1859 petition were already deceased or were children in 1859, and therefore could not have knowingly signed such a document in 1859. In addition, the Shinnecock witnesses argued that the date of another undated petition, was produced soon after the 1859 petition and deed. However, it probably dates to after 1885, the year the youngest signer turned 21 years old.<sup>58</sup> The names of three men who testified

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<sup>56</sup> Stephen H. Walker and David S. Bunn were among the 13 signers of the answer brief in the 1853 litigation involving trespass on the Hills. Wickham Cuffee is Vincent Cuffee’s son.

<sup>57</sup> More than 80 percent of the signers (19 of 22 signers) are on the 1865 State census of the Shinnecock Reservation, including one who died in the census year. Most appear as household heads, and a few are adult sons. Two other signers lived in Southampton Town. A wife of another signer headed one of four female-headed households in 1865. Most non-signer male heads of household on the 1865 New York Census belonged to a single family, the Walkers.

in the 1900 hearing appear on the undated petition, including James L. Cuffee, who resided with his parents at East Hampton in 1850 and described himself as “of the Montauk council” in his testimony (*Brooklyn Eagle* 9/23/1900; unknown newspaper 9/23/1900).<sup>59</sup>

These facts lead to the conclusion that two separate groups may have produced the different petitions. The earlier petition represents people most likely residing on the Shinnecock leasehold in 1859, based on official censuses. The later undated petition includes names of people who lived in the 1860s in East Hampton and Sag Harbor. Some of their ancestors had left Shinnecock—if they were ever there—even before 1810 to marry at Montauk. No evidence indicates they resided in the settlement at Shinnecock Neck during their lifetimes, although they may have socialized with Shinnecock residents and attended the June meeting each year (unknown newspaper 6/5/1871). They have few known descendants in the current petitioner. Whether the testimony at the Senate Hearings actually represented the official position of the group living at Shinnecock Neck seems doubtful and whether some of those who testified were part of that group seems unlikely. The testimony advocated U.S. citizenship and a lifting of sanctions against selling Shinnecock lands. Those individuals who had only a distant connection to Shinnecock, but little if any connection to the reservation in 1900 would be more likely to support selling the reservation than its residents would be (U.S. Senate Committee on Indian Affairs 9/22/1900). The 1859 petition appears genuine, although this PF makes no factual finding concerning the legality of transaction. The 1859 petition provides evidence that the residents of the Shinnecock settlement acted together to end their disputes with Southampton sheep and cattle herders and gain ownership in fee of Shinnecock Neck, the location of the current reservation.

Between 1859 and 1869, the record is quiet except for the State census of 1865, and two official reports. The Superintendent of the Shinnecock School described the reservation in 1864 and a report by the New York Superintendent of the Census described it in 1865. He used the term “Shinnecock Reservation” which was common in State documents as early as 1831. Although there is no specific record of Trustee elections in the 1860s, the Superintendent of the State Census wrote in a report that “The domestic affairs of these Indians are managed by Trustees, elected annually” (Hough 1865). The Shinnecock could not vote in local, state, and national elections and were exempt from all taxes (Hough 1865).<sup>60</sup> In 1869, names of 27 men, “all of the Shinnecock tribe of Indians” appear on a deed of sale of property to the Long Island Railroad for a right of way. The names are not signatures because they all appear in the same hand, perhaps because the document in the record is a copy of the original deed. It did not designate specific persons as the Shinnecock Trustees (Eleazer *et al.* 1/10/1869). It is not known that all 27 men signed it, although at least 12 made their marks. In 1873, a deed shows the “duly elected Trustees of the Shinnecock Tribe of Indians” conveying land to Elisha King (Suffolk County Records 1/21/1873). It names David W. Bunn, Oliver Kellis, and John Walker as Trustees.

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<sup>58</sup> This petition contains 12 names of men and women. All appear to be alive in 1900 at the time of the hearing, according to the petitioner’s genealogical database.

<sup>59</sup> Even the grandparents claimed by James L. Cuffee lived in East Hampton as early as the 1810 Federal census. This indicates that if Cuffee actually had Shinnecock ancestry it was from individuals who lived there before 1810.

<sup>60</sup> No documents confirm that they either did or did not vote in any election.

These men, identified in Town records and deeds (but not the missing Indian records) as Trustees in 1876, all died with ten others on December 30, 1776, in the wreck of the *Circassian*.<sup>61</sup>

Other evidence corroborates the finding that these litigations and agreements demonstrate actions by a group to defend, control, and share their common lands and resources. The 1840 and 1850 Federal censuses and the 1865 State census document the families and individuals living in the exclusive geographical settlement on Shinnecock Neck.<sup>62</sup> Only the Shinnecock and their spouse lived in these exclusive settlements. The enumerations demonstrate that non-Indians who were not spouses, widows, or widowers of Shinnecock did not live there. People named in the 1840, 1850, and 1865 censuses are the same people acting together in litigation, seizing sheep during a demonstration, signing petitions, and purportedly witnessing the 1859 agreement. Generally, they are related through multiple ties of kinship and marriage. A local historian counted 140 individuals living in 30 families in 1845 (Prime 1845, 118), which is slightly larger than the 1840 Federal enumeration and slightly smaller than the 1850 Federal enumeration of a group listed sequentially on the census sheets. The Superintendent of the Shinnecock Indian School described the Shinnecock reservation in 1865. The 1875 State census counted 185 persons at Shinnecock living in 31 families in 29 dwellings (Seaton 1875). They raised corn, oats, potatoes and kept cattle, swine, horses, and maintained wagons and “other appliances of husbandry.” Their principal means of support came from whaling. Returning from voyages, whalers shared their earnings widely within the group, and, as the *Circassian* tragedy showed, they worked together in crews on occasion (Fithian 1864, 103). The existence of a distinct geographical Indian settlement, an exclusive Indian church and school, cooperative agricultural activities, and widespread sharing supports a conclusion that the persons named in litigation, petitions, and other documents between 1835 and 1880 were working together and representing the group living at Shinnecock Neck.

The *Indian Records Books* covering the years after 1880 are in the record, documenting again specific land allocations and Trustee elections for the first time since 1835. These records demonstrate that the elected Trustees allocated land to members and defined leases to outsiders from 1880 through 1959, when the *Indian Records Book* last documented an allotment. The *Indian Records Book 4* shows that for 28 years between April 1880 and May 1908, three Trustees elected at annual meetings made allocations of land to individual Shinnecock and married couples (*Indian Records Book 4*, 1880 – 1908). This record demonstrates that the Shinnecock and the local town officials continued to follow the 1792 State law concerning the assignment and use of the Shinnecock lands on Shinnecock Neck, which the Indians now owned in fee. Indian Trustees still assigned allotments and Justices witnessed these transactions. In addition, a Clerk, often the non-Indian Southampton Town Clerk, also signed.

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<sup>61</sup> A work crew of 13 men had gone together to unload a ship docked on Long Island Sound. They decided to spend the night aboard ship before returning to Shinnecock, but in the night a fierce gale broke apart the vessel and all the men died. Only one man, who went ashore with the non-Indian supervisors and sailors, survived. The event was an enormous tragedy for the Shinnecock group, and many newspapers covered it. Articles stated that such crews were often recruited from the reservation to work together on similar jobs.

<sup>62</sup> The 1840 and 1850 Federal censuses do not name a Shinnecock settlement, but that the individuals lived sequentially indicates they formed a residential area specific to the Indians. The 1865 State census, however, names the Shinnecock Reservation.

The *Indian Records Books* describe the allocation of lands after 1880 using physical features of roads, streams, and fields. The names of people allotted on neighboring lands, apparently between 1835 and 1880, appear in land descriptions made after 1880. These names provide circumstantial evidence that lands were allocated and inherited during the period covered by the missing *Indian Records Book 3*. For example, Indian records show that the Trustees leased out two acres of land to non-Indian Peter H. Howell in 1896. The land description states the boundaries of Howell's new allotment. To the north is a road leading to John Thompson. Andrew Cuffee occupies land to the west and Nettie Eleazer land to the south. To the west is land occupied by F. H. Williams. Andrew Cuffee, named in this 1896 land description, was born in 1830, came of age in 1851, and was married in 1858. By 1865 he, his wife, and two children lived in their own home, where the 1865 State census of the reservation enumerated them. Their parents were still alive, so it is unlikely that they inherited their property. That the Andrew Cuffee has a home on the reservation implies that land was allocated to him, his wife, or the couple sometime between 1851 and 1865. A similar example involves Mrs. Emma J. (Cuffee) Lee, the widow of Ferdinand Lee. The 1865 State census shows the couple living in the home of her father Vincent Cuffee on the reservation. Sometime between 1865 and 1880, however, she received land on her own or as part of a married couple, or inherited it as a spouse. *Indian Records Book 4* contains numerous similar examples of people, who most likely received or inherited land between 1834 and 1880, named in boundary descriptions.

The Trustees generally did not interfere in inheritance of family properties. An 1889 State report described "their law of intestate succession." It stated, "Upon the death of her husband, the wife usually takes all of his estate; if the wife be dead, all things being equal, the eldest daughter inherits, but if there be any child apparently in great need of the property than any other, that one receives the estate" (New York General Assembly 2/1/1889, 55). Most of the time in more recent times, inheritance ran according to a family's wishes. According to interviews in 2009 and an ethnography in 1983, the Trustees became involved only if irreconcilable differences arose among family members. Interviews in 2009 indicated that people often wrote wills leaving their homes and allotments to specific family members.

#### *Political Authority on Shinnecock Reservation: 1880 to 1940*

After 1880, Trustees faced annual elections held in the school on the reservation (*Indian Records Book 4/6/1880; 5/11/1880*) or in the Presbyterian Church in Southampton, where the New England-style Town meeting met each year on the first Tuesday in April. The Trustees also met in the Town Clerk's home or other places (*Indian Records book 10/4/1880*). The Trustees gave permission for non-Indians to lease or rent lands. For example, in the 1880s and 1890s, the painter William Merritt Chase and the Shinnecock Trustees signed annual agreements, which allowed the celebrated artist and his students in the "Shinnecock School of painting" to paint on the reservation for educational purposes and to use reservation boating facilities. Trustees more commonly leased pasturage or farmland to non-Indians. The Trustees also auctioned seaweed privileges "for the good of the tribe," and "the pasture field" (*Indian Records book 5/11/1880; 4/11/1881*). Trustees made administrative decisions involving fences and gates. The Shinnecock electorate voted on matters, such as the number of seaweed lots to rent to outsiders. They voted not to lease out quail rights (*Indian Records book 4/13/1883*). They voted to pay to clean the schoolhouse (*Indian Records Book 4/11/1881; 4/13/1883; 5/2/1883; 4/8/1884*). They leased land

to a man to construct a private golf course under an agreement providing Shinnecock members use of it.

The 1880-1908 *Indian Records Book* documents decisions made at meetings attended by Shinnecock men to undertake political action. They voted in April 1884 to pay the fines of members who took wood in acts of civil disobedience from the Shinnecock Hills to demonstrate their claims to it (*Indian Records Book* 4/8/1884). In a December 1884 meeting, those present voted to reclaim the “Hills,” the same area that had been the subject of the 1859 New York Act ending the joint usage of these lands. They also voted that the group would pay the court costs if protestors were arrested (*Indian Records book* 12/29/1884). The Indian records indicate the group submitted petitions to the New York state legislature concerning the operation of the school (*Indian Records book* 12/18/1883). The petitioner, however, did not submit these petitions for the record.

During this period, the members questioned actions of some of the elected Trustees, and even sued one of them. First in February 1880, the members in a meeting accused onetime Trustee Ferdinand Lee of selling seaweed from the beach to non-Indians for commercial purposes. This angered the sitting Trustees and other members because seaweed was viewed as a group resource and rights to collect it were leased for the benefit the group. Lee was not reelected after his 1879 term, and Trustees notified him in 1883 that he owed the group \$56.65 (*Indian Records book* 4/13/1883). To protect the groups’ money, the voters decided in April 1883 to deposit their money with the Town Clerk, a non-Indian. Eventually, the Indian Trustees took Lee before a non-Indian justice of the peace, who fined him \$5.00 and court costs. This case illustrates how the group worked to sanction a member. Generally, the first attempts at conflict resolution were internal, when members raised their concerns before the Trustees in a meeting. If the issue could not be resolved, appeals were made in non-Indian courts. As in this case, the process can take several years, during which Trustees changed and the facts were researched.

Ferdinand Lee’s brother, William Lee also became the subject of Trustee action against him in 1883 (*Indian Records Book* 4/13/1883). The record is not complete, but he may have sold rights to 50 acres of communally owned woodland to non-Indian Benjamin Carpenter. He did not turn the proceeds over to the group (New York General Assembly 2/1/1889, 54). Group members did not immediately agree on what should be done. Some wanted the ex-Trustee to turn over the money, while others wanted the sale reversed based on Lee’s lack of authority to make the deal (*New York General Assembly* 2/1/1889, 54). Members discussed this ex-Trustee in three meetings in 1883 and 1884, and motions concerning what the group should do were made and voted upon. They first moved to demand a report from him, then asked him to turn over money to them, and finally decided to proceed with litigation against him.

In what may have been a related action, the tribe sued James Cassidy in 1889 for taking \$25 worth of wood from lands at Canoe Place, which the group claimed was Shinnecock land. Cassidy had taken the wood as a servant of Miles B. Carpenter,<sup>63</sup> “who had a written contract signed by a majority of the” Shinnecock Trustees “for the sale to him.” He had paid \$150 for the wood lot (Suffolk County Supreme Court 5/6/1890). The Judge’s July 21, 1890, decision noted that the Shinnecock had failed to show actual title of the tract. The woodland appeared to have

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<sup>63</sup> Carpenter appears to have been a wealthy paper manufacturer with another home in New York City.

been in their possession for “upward of sixty years,” but only through use, as “that of a wood-lot belonging to an improved farm.” He voided the agreement made by “two Trustees with ... Carpenter.” The decision required the defendant to pay costs of the action plus 6 cents damages. The total came to \$95.28 (Suffolk County Supreme Court 8/28/1891).

In an action on September 18, 1884, “the Trustees of Shinnecock tribe” passed a motion “leasing Mr. Corwin [Corbin] 20 acres of land for 20 years at \$10 per acre, the rent to be paid annually” for a total of \$4,000 over the term (*Indian Records Book* 9/18/1884). Later events seem to indicate that the 20 acres is in the Shinnecock Hills. The *Indian Records Book* presented the transaction as a lease, not a sale. The “Trustees of the Shinnecock tribe” called a meeting on December 29, 1884, to decide “if the tribe was willing to try to get the [Shinnecock] Hills back” (*Indian Records Book* 12/29/1884). “A motion was carried that the Trustees should consult an attorney about the lawsuit that [was] pending [a]bout the Hills” (*Indian Records Book* 12/29/1884). The book states that, a “Motion was made that the tribe shall precede with the law suit” and agreed that “all that was in favor[,] to go on the Hills to cut wood.” They amended this motion so that “if any person or persons are sued ... the tribe shall pay the costs of court” (*Indian Records Book* 12/29/1884). As in the sheep seizure of 1853, the group planned a demonstration to exert their control over a resource they believed was theirs.

Although the connection between the Corbin transaction<sup>64</sup> and the desire of the Shinnecock to reclaim “the Hills,” is not established by documents in the record, a *New York Times* article does link Corbin and the Shinnecock Hills. Only a few weeks after the Shinnecock discussed the suit to reclaim the “Hills” in a meeting, the news article stated:

The tribe of Shinnecock Indians on Long Island are considerably agitated over the alleged disappearance of one of their chiefs or Trustees. A majority of the tribe opposed the sale of the Shinnecock Hills to Mr. Corbin and his syndicate, but the Trustees paid no attention to their objections. It is said that the chief who has left for parts unknown pocketed most of the money paid for the hills – about \$20,000. The members of the tribe question the validity of the sale and will probably bring suit against Mr. Corbin for the recovery of their property. It is said that the missing chief is in Canada.” (*New York Times* 1/24/1885)

These events seem to indicate that the group was questioning the abrogation of the Shinnecock Hills lease in the 1859 agreement. Apparently, historians and others were questioning the legality of the 1859 agreement in the early 1880s. An 1882 article by New York historian George Rogers Howell argued that the 1859 agreement was void because the “Trustees of the Proprietors” signed it, not the “representatives of the commonality of the Town of Southampton,” the original party to the 1703 lease (Strong 1983).

On April 7, 1885, Everett Lee (Capt. Ferdinand Lee’s son), Emmerson Cuffee (1859 Trustee Wickham Cuffee’s son), and Jesse Ryer, were elected Trustees, although their election was memorialized in the *Indian Record Book* on April 21, 1885. At that meeting, they came to agreement on the usual “housekeeping” matters, such as denying Mrs. Adeline Davis help fixing her fence, and deciding not to let outside cattle onto the neck for the year. Significantly, “the

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<sup>64</sup> Corbin may have sought to buy or lease the same land from all parties who claimed it.

meeting” also voted that the “Present Board of Trustees take legal steps to investigate the business done by last year’s Trustees” but the records do not elaborate on the specific business they would investigate (*Indian Records Book* 4/7/1885). A month later the three non-Indian Justices wrote in the book that they “freely approve of the renting for the year 1885 by the Trustees of the tribe of Shinnecock Indians of their lands and of their seaweed strand according to the resolutions adopted by them and recorded in this book” (5/5/1885). The Justices did not want undone the actions of the 1884-85 Trustees.

The threatened suits against the Lees in 1884 demonstrated that the Trustees and the members acted together to sanction members’ bad behavior. Following the Corbin experience in 1884 and 1885, the Trustees stated clearly the terms of agreements and leases in the *Indian Records Books*. The group, after consulting an attorney, became more explicit in their contracts to outsiders. For example, the *Indian Records Book* contains a lengthy 1891 contract (or “Indenture”), leasing property to a man from Southampton for three years. The document clearly describes the boundary and includes language that “at the expiration of the said above mentioned time or term” the man “agrees to give the said Trustees of Shinnecock Neck peaceable possession of the above described lands or meadow.” The Trustees signed it, as did the lessor and Town Clerk. In 1892, the New York “Senate and Assembly” passed an amendment to the 1792 Shinnecock Act to deal with problems like those involving Cassidy, the Lees, and Corbin. Paragraphs of the 1892 Act covered the election of Trustees, the powers of Trustees, and the unlawful use of lands. Language also provided that any person who hired or used the lands without the “consent of a majority of the Trustees and of at least two of such Justices, obtained and entered into” the *Indian Records Book* would be penalized \$25 “for every acre hired, used or occupied” (Laws of New York, Chap 679, 115<sup>th</sup> Session 1573). For the first time, Shinnecock members would be charged \$10 for such infractions, thus, implying a censure of certain Trustees’ past actions.

Subsequent elections indicate that Shinnecock voters established the Hills and Progressive “parties,” presumably with different philosophies and viewpoints on land issues. These two parties ran three-man slates<sup>65</sup> for Trustees in one unidentified year in the 1890s (unidentified newspaper article “Shinnecock Indians Election”). Even though voters could not know how the Trustees would act on specific issues, they would have some idea of each slate’s general position on the Shinnecock Hills. Some members and Trustees seemed to support selling Indian lands while others wanted to push through litigation to reclaim it. A Brooklyn newspaper had reported that nearby lands were worth \$2,500 per acre in 1886 (*Brooklyn Eagle* 8/3/1886). A 1903 newspaper article describes the voting, which differed little from descriptions of elections in the 1990s. In that year, two tickets of three men ran for office. One man declined to serve and another man’s name was substituted at the last minute. The vote was by raised hand. According to the reporter, “It frequently happens, when the vote is close that some good lively electioneering is done while the vote is being taken.” Also, “Challenging votes is an invariable accompaniment of the Indian elections, as there is a very dimly defined standard of membership

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<sup>65</sup> Of these six men, only Progressive Party members have descendants in the group: John H. Thompson has many descendants, Milton Beaman has 87 descendants in the group’s membership and Charles S. Bunn has a single descendant who is a member. (These three men lived in dwellings 4, 6, and 8 on the Indian Population Schedule of the 1900 Federal census). The other three men – Hill Party members Allen Bunn (Luther Bunn’s son), Joshua Kellis, and Fred Bunn have no descendants who are current members based on the petitioner’s genealogical database. (Joshua Kellis and Fred Bunn lived in the same household and Allen Bunn lived a few households away from them on the 1900 census.

in the tribe and it is always a knotty problem for the Town Clerk to decide exactly who is entitled to vote any how” (*Brooklyn Eagle* 4/8/1903).

The *Indian Records Book* after 1900 continues to memorialize the elections of Trustees, their allocations of land, and their activities particularly in controlling activities on the reservation involving leases to outsiders for farming, camping, and other uses. From 1900 to 1958, Trustees repeatedly allocated lands to members to live on and rented lands to outsiders for income. For example, they leased property to the Town Clerk to build a small golf course on the condition that the reservation residents could use it. They let the baseball club build a field. They graded the roads on the reservation (*Brooklyn Eagle* 4/8/1903). Many kinds of activities are not in the book. For example, it is not written in the books how the money obtained in these leases was spent. There is also no record of the Trustees turning down a request for an allotment. There is no information about land passing from one generation to the next within families without dispute. For example, it appears that Harry B. Thompson inherited land from his father John H. Thompson at his death on July 9, 1918. No record of Harry Thompson’s being allotted land appears in the Indian books between his birth in 1884 and his father’s death, but he is referenced in describing the bounds for another property being allotted on August 30, 1918 (M. W. Lee and Seymour Eleazer Allotments in *Indian Records book* August 30, 1918)<sup>66</sup> and in a land description made for an allotment on April 2, 1951<sup>67</sup> (Ralph Cogsbill Allotment in *Indian Records Book* 4/12/1951). In 1952, the Trustees are still referring to the “Fred Arch house (deceased)” in a lease, even though Fred Arch had died in 1945 without direct descendants. They also refer to land “located by Emmerson Cuffee (deceased)” who died in 1933 (*Indian Records Book* 4/23/1952). The lack of documentation in the Indian Records books is in keeping with the group’s traditions, which are often unwritten, defined through practice, and maintained orally. Rights of inheritors to land appear to be established through use, and if family members do not use a piece of property that has been allotted to them or that they have inherited, the Trustees allot it to someone else. For example, on March 3, 1915, the Indian records state, “William Coverdale, having abandoned premises allotted to him (on pages 12-19-20) said allotments are hereby reverted to the tribe and premises declared to be common land” (*Indian Records Book* 3/3/1915).

School records, Federal censuses, and photographs show the same group of families residing on the reservation from 1900 to 1930 who were there in the 1850s, 1860s and later. The current distribution of families on the reservation is often an artifact of earlier allotments and inheritance processes made based on informal understandings within the small kin-based group. Intact 3 to 5 acre lots were divided and allotted to one’s children and near relatives without controversy in many instances. For example, living in close proximity to Eugene Cuffee II are his mother’s sisters on the same land that was allotted to his mother’s father on March 31, 1918. His mother’s father lived there until his death on October 18, 1950 (E. Cuffee 9/9/2009). Because of the high number of marriages within the group in past generations, however, neighborhoods generally have residents from many Shinnecock families, and are not distinct family compounds. If there

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<sup>66</sup> The context of this allotment to Laura Adair on August 30, 1918, less than two months following John H. Thompson’s death, is “Land on the west side of Shinnecock Bounded on the west by west main Road, on North by land of Harry Thompson, on East by land of Henry Cuffee. South by vacant lot.”

<sup>67</sup> Harry Thompson died May 24, 1950.

is not enough room for all of the descendants who want property and want to build near family members, the Trustees may assign an allotment in a less densely populated area.

In 1922, a New York Supreme Court decision was made in the *Shinnecock Tribe of Indians v. William W. Hubbard* case. It found that “the defendant wrongfully and unlawfully entered upon” Shinnecock land and “removed 1290 cubic yards of loam” (Suffolk County Supreme Court 12/27/1922). The Shinnecock received \$685 dollars in costs and damages. The Findings of Fact for the case explained, “

Early in 1917 the defendant asked Charles Bunn who was then a Trustee of plaintiff if plaintiff would sell loam from said tract for road purposes; that a tribe meeting was called about that time which voted not to sell any soil and no subsequent meeting has voted to sell any. The Trustees before taking any action seek authority from the Tribe at a Tribe Meeting. (Suffolk County Supreme Court 12/27/1922)

This description of Shinnecock decision- making provides a rare description of the workings of the group’s governing practices before a final decision is written in the *Indian Records Book*.

*1940 to 1950: Activities Leading to Increased Activism after 1950*

The Trustees continued to meet at least once a year during the 1940s, despite WWII, and sometimes more often. Contracts with outsiders have become complex, describing the lands more precisely and utilizing legal language. The minutes of meetings are as cryptic as in the past. Notes sometimes reveal disagreements or underlying issues. For example, in 1942, the males of the group voted down (by 11 to 5) a motion to allow women to vote, and then, apparently in reaction to something that was said, by an even larger margin, they voted not to allow women to speak at all during meetings. Interviews and her statements before a State committee visiting the reservation in 1973 indicate that Lois Hunter was a strong presence with aspirations for leadership between 1940 and her death in 1975. She agitated for change, including enfranchisement of women. She came to most meetings, and persisted in speaking. According to one man who witnessed her activities, “The men had to make an exception every so often and let her voice be heard” (H. K. Williams 9/11/2009). A group of politicized Indians in New England influenced Lois Hunter and some of her cohorts, like Harry Williams and Henry Bess, after 1950. Differences of opinion over women’s roles, the form the presentation of Indian identity should take, and the political positions the group took on many issues caused some internal discord between 1940 and 1975. Throughout this period, however, the Trustees continued to allocate land and resources, including the use of what are currently called the powwow grounds by advocates of Pan-Indianism on the reservation. Powwow advocates used powwow proceeds to fund other reservation activities such as the Presbyterian Church.

The role of off-reservation Indians on the political activities in the 1950s depended on communications between Shinnecock living on the reservation and those living off it. A woman raised in Brooklyn in the 1950s described how off-reservation residents made their opinions felt on land issues:

I was raised with kind of a notion that the people living here are holding the land for all of us. [I]f we've got some comment we need to make, we have telephones, and if we don't have telephones ... if we don't have cars ... we've got ... somebody [who can] bring the message ... whether it's calling up a Trustee and saying, "I don't like what I just heard you guys are doing," or, "Is it true this is what you guys are doing?" (M. Smith 9/12/2009).

Throughout the 1940s and 1950s, the Trustees rented out land for farming purposes. They chose to include many more acres than in the past to a single lease. From the descriptions of the lands leased (61½ acres in 1950 and 1951, for example) it appears that the open lands that were suitable for farming were leased out. The group raised several thousand dollars this way but there are no documents in the record showing how this money was spent. The residents of the reservation sometimes used the record books to indicate how their own lands would be used. For example, Thomas Smith wrote on March 11, 1946, "I do hereby sublet to my daughter, a portion of my land." That he does not name his daughter is indicative of the informal nature of many of the group's internal dealings. The Trustees also continued to allocate land for residences. The last such allocation memorialized in the *Indian Records Book* is that of Paula Bess Collins on November 17, 1959, even though the *Indian Records Book* continues through the present to document every Trustee election.

#### *Mid-Century Litigation*

During the 1950s the Shinnecock became involved in several lawsuits involving their lands. There is some indication that Lois Hunter and others were influential in crafting the Shinnecock's position in litigation. In one of these lawsuits argued before the Supreme Court of New York, *King v. Warner, et al.*,<sup>68</sup> a plaintiff named Douglas King sought to dismiss an "alleged cloud on title" on a one-mile strip of land, where he had built a house in 1934 (Suffolk County Supreme Court 6/22/1953). He claimed the nine acres were his through his great grandmother Margaret Booker.<sup>69</sup> King argued that his non-Indian great-grandmother inherited the land from her Indian husband and passed it to her heirs by her second husband, non-Indian Daniel King. The Shinnecock had not objected officially to this construction during the 16 years leading up to King's suit, even though they claimed in 1951 that the house was on reservation property (*Long Island Press* 12/8/1951).

The local court found that "the Shinnecock Indians had never parted with their right" to the property, but the Suffolk County Supreme Court dismissed the appeal on June 22, 1953. It cited lack of jurisdiction because "of Indian tribes' disability to sue or be sued" (Suffolk County Supreme Court, 6/22/1953). King's agents in Albany tried to introduce legislation that would allow him to retry the case. According to New York's Attorney General, the legislation "was

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<sup>68</sup> Defendants were three non-Indians: Daniel A. Warner and Mabel G. Warner, who settled, Dorothy Francis, who never appeared, and three Indians: Trustees Fred Carle, Charles Smith and Everett Hunter, and the People of the State of New York.

<sup>69</sup> She was a non-Indian married to Abraham Cuffee. Because Margaret had married a non-Indian, Daniel King, after Abraham's death, it appears that his descendants, including Douglas King, the plaintiff, could claim no Shinnecock ancestry at all. Additionally, because Abraham and Margaret never had children, King had no step collateral relatives who were of his generation, and really no kin connection to the Shinnecock other than as a distant step-in-law.

violently opposed by the Shinnecock Indians and by various persons in the locality who were sympathetic with them and it never was reported in either House” (Javits 3/29/1955). A compromise bill was fashioned that “was satisfactory to the Indians,” but King’s agents had not responded positively and the bill lapsed, until 1960 when Douglas King sued under a 1960 law specially enacted to authorize the litigation (Suffolk County Supreme Court 11/3/1961). The Suffolk County court reversed its earlier decision based on lack of jurisdiction. The court found that, based on the evidence in the county court case only, King’s family had established title by adverse possession. The court noted that the Trustees who knew that King’s relatives lived on and used the lands, had never previously complained or attempted in any way to remove them.

“The Great Cove Realty Case” involved a similar title question. Suffolk County court tried it in May 1954. This dispute began when a developer told Helen Bunn Hendricks to move her fruit stand, because he was developing the property. The case dealt with a nine-acre triangle of land, which lay between a ditch and the Montauk Highway. The Shinnecock believed that the reservation boundary was another ditch that ran alongside the highway (*Long Island Daily Press* 3/6/1959). Tribal Trustee Charles Smith stated in court that he had verbally “warned a representative of the Realty Company that the land was part of the Shinnecock Reservation.” Suffolk County represented the Shinnecock (Suffolk County Court 1/17/1955). The judge ordered the County Sherriff to remove the defendant from the lands. He found that the land had been part of “a trade” in 1859, memorialized in state law. He provided

a rule which would authorize individual citizens to obtain possession of Indian lands under any claim or pretense whatever, without sanction of government, and put them to slow and tedious process of action at law to recover such land, would be destructive of their rights and subversive of duties and obligations which government owes them. (Suffolk County Court 1/17/1955)

In 1959, yet another legal case, *Smith v. Anderson*, came before the Suffolk County Supreme Court, but this case involved only Shinnecock litigants. Sonora Cuffee Smith sued Mary Crippen Anderson and Edward Crippen, all Shinnecock, over property where Edward Crippen resided. Smith claimed that in 1954 she inherited the property from her great uncle (mother’s father’s brother Samuel Harvey), and the Trustees had noted the transaction in the *Indian Records Book*, making it legal. The defendant, Mary Crippen, claimed that Samuel Harvey conveyed the land to her and memorialized the transfer November 30, 1953, before a Notary Public. This transaction appears in the *Indian Records Books* as an allotment of land signed by Samuel Harvey and notarized by a notary, but without any indication that Indian Trustees had been involved. Below the notarization is written, “This is declared not official,” which Avery Dennis and Harry Williams signed on July 29, 1954, as did Isabelle S. Coard (Indian Records book 11/30/1953).<sup>70</sup> Dennis and Williams were Trustees in 1953 and 1954. Samuel Harvey was not.

The court’s decision supported the right of the Trustees, alone, to grant assignments of “ribal lands.” It said,

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<sup>70</sup> Although Coard is a name in the group in recent years, this woman could not be identified as a member.

It is, of course, immediately apparent under the Indian Law as it applies to the Shinnecock tribe that no one has the power to grant assignments of tribal lands except the Trustees of the tribe ... This power in the Trustees to assign continues until the members of the tribe decide that their reservation land, which they hold as tenants in common, shall be partitioned among them as provided in Section 7 of the Indian Law ... An assignment by the Trustees conveys no title to the assignee. It simply grants the right to occupy and use the land assigned. (Suffolk County Supreme Court 6/1/1959)

The decision, however, held that the personal property of Samuel Harvey should convey to Mary Crippen.<sup>71</sup> The result of this last point is that entire houses have been moved from reservation property during divorces or after the owner dies and the heir wants it located on his or her own allotment or off the reservation. Subsequent cases also supported the independence of the reservation. In 1964, for example, a conviction for driving on the reservation without an operator's license was set aside and the fine returned after a Suffolk Co Supreme Court judge turned around a lower court finding because as a member of the Shinnecock petitioner, the driver was one of the owners in common of the road on which she was arrested. This road was not a public highway (Suffolk County Court 7/27/1964).

*The Trustees' Role Expands: 1960 to 1990*

A man who grew up on the reservation in the 1920s and 1930s contrasted the role played by the "old Trustees," and the modern Trustees. He said that the job of the "old Trustees" was

to allot the land, look out for outside intruders, or squatters found on the land, and that was about it. Their function was simple and direct, just to allot the land and make sure that the land was taken care of. But now, it's a different concept. The Trustees are making laws that don't exist or all kind of things, and ... since they've had this concept of Federal recognition, it's an altogether different setup. (L. Hunter 9/12/2009)

After 1959, there is no written evidence in the Indian Records Book that the Trustees continue to allot land on the reservation. A 1997 letter from the Trustees to an allottee shows such an allocation (Eleazer *et al.* 9/22/1997). After 1997, no other actual allotment documents were in the records, although council minutes from the early 1990s to the present and interviews discuss allotments throughout the 1959 to 2009 period.<sup>72</sup> A current Trustee Frederick Bess stated that the family's wishes on the inheritance of allotments are respected:

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<sup>71</sup> It appears that Sonora Smith moved to Brooklyn, where he children were born, but returned in the mid-1970s, as she and her children appear on censuses at that time.

<sup>72</sup> Several people interview referred to files in the Trustees' offices on the reservation containing land allocation documents and applications. No documents which fit those described in interviews appear to have been submitted by the petitioner to demonstrate that allocation of lands continued after 1959. One person said that "people take their allotments to the Town, Town Hall," where they are filed there (W. Warren 9/9/2009). It does not appear that these documents, except for the *Indian Records Books*, if that was what was referred to, were submitted.

If it's in the family circle, the Trustees ... stay on the outside unless there's a real conflict, we don't really like to get in between brothers and sisters. They can work it out themselves and that's fine. (Trustees 9/8/2009)

Other evidence refers generally to such allocations. Anthropologist Rose Hayes in 1983 described the continuing role of the Trustees in allocating land. She wrote, "their main role had been to regulate tribal affairs concerning land affairs and monies arising from land leases" (Hayes 1983). These leases she noted continued in 1983: "They continue to lease their land to local white farmers, even though that mode of use seriously attenuates the tribe's economic return from the land" (Hayes 1983). Various news articles referred to the allocation of land and the management of common funds by the Trustees (*Newsday* 11/15/1960; *New York Times* 3/14/1971; *Hampton Bays News* 8/10/72). In interviews and informal discussions with OFA researchers on a site visit in 2009, people discussed how they or their close relatives had obtained their rights to live on property on the reservation. Several had received lands or had their lands reduced for other allotments between 1959 and the present (L. Gumbs 9/10/2009; P. L. Bess 9/12/2009; Warren 9/9/2009). The Trustees said that as recently as June 2009, they had reassigned property of a man who had died in May according to the family's wishes. They allotted the lot to his third daughter, after determining that his two older daughters already had land allocations (Trustees 9/8/2009).

The 1981 Powwow Program noted,

Tribal Trustees of forty years ago would be amazed at the duties and responsibilities of Trustees in the last twenty five years to the present – work programs, school programs, oyster project, cultural program, Indian conferences, water pollution, traveling all over the country on Indian affairs, land assignment, trespassers – and still must find time for the immediate needs of their people on a day to day basis. (Shinnecock Petitioner [Powwow Program] 1981)

The transformation of the role of Trustee flows from their official status controlling land and resource allocation. Increasingly since 1990, they have felt pressure from both reservation residents and from non-resident members concerning land allocations. Outsiders who have not received action on their application sometimes visit a Trustee to ask why they have not received land, even though they have substantial funds and plan to build and live on the reservation. They are told they have to be placed on a list, but that "it's a very tenuous situation," because they "have the right," but the trustees are placing priority on those who already reside on the reservation. At the same time, if the Trustees award an allotment to someone off-reservation, then the residents ask, "Why are you giving an allotment to so and so when they haven't lived here? Where are our children going to go?" (Trustees 9/8/2009). If someone who is a member but not known to the community requests land, his or her application "just sits idle" (P. L. Bess 9/12/2009). The land allocation question impinges on many other decisions that Trustees and the group must make. There is substantial evidence in the record showing general political authority of the group concerning issues of health, culture, and social order. Virtually every discussion documented in meeting minutes and interviews with Shinnecock members, whether concerning drug abuse, unwed fathers, or emergency vehicles access, ultimately becomes the Trustees'

responsibility because they have the authority over residency on the reservation, land allocation, and preservation and maintenance of the land base and its resources.

As members of the group, particularly women, agitated in the 1970s and 1980s for more attention being paid to the quality of life on the reservation, members increasingly called upon the Trustees to deal with issues only coincidentally related to land and resources. Events, issues, and problems that happened on the reservation became the concern of the Trustees because they occur on reservation lands. This means that an issue as small as a burned out street light to issues as important as the availability of health care on the reservation ultimately become their concern. After 1980, increasing numbers of programs called for the Trustees' attention, including programs funded by the Federal Office of Economic Opportunity, Indian Education, and the Economic Development Administration's oyster project (M. Smith 9/12/2009).

There is evidence that by 1980, safety and security issues on the reservation were alarming some residents. In the February 1980 newsletter, there were references to a theft and robbery and to a dangerous situation in the community center where children were present, possibly involving drinking and gunplay near children. The Trustees sent a message by way of the newsletter warning people about trespassers—defined as anyone not a blood Shinnecock or their spouse—and handling fire arms and hunting and fishing rules. A 1982 notice, stamped "Official" at the bottom, laid out three "laws ... effective immediately." The law limited the amount of time non-blood member guests may stay on the reservation to a "total of two weeks yearly." It also prohibited non-members who have trespassed or committed other offences "against the tribe" from ever living on the reservation, even "upon marriage to a tribal member," and required documentation of marriage and birth certificates before being assigned land (J. Eleazer et al. 7/26/1982 [3?]). According to a man who was Trustee during these events, the residents voted to have these "trespassers" removed from the reservation.

Most of the eleven trespassers left on their own volition; however, four stayed. The Trustees sent out four letters on July 27, 1983, to three women and one man asking them to document that they were married to demonstrate that a "non-Shinnecock guest" in their home was their legally married spouse (J. Eleazer, et al. 7/27/1983). At least two of the recipients were close relatives of a Trustee. Evidence indicates that these actions continued, and, if the recipient did not respond appropriately, the Trustees asked Suffolk County to evict them. For example, in May 1988, the Suffolk County District Attorney's office notified a member that the Trustees had lodged a "formal complaint ... that a young female, identity unknown, who is not a member of the Shinnecock Tribe, presently lives in your residence on the Shinnecock Reservation" (Hovani 5/2/1988). The letter stated that under "Indian Law of the State of New York, the District Attorney is obliged to institute a proceeding in County Court for her removal from the Reservation" (Hovani 5/2/1988). Also in 1988, the Trustees asked the District Attorney of Suffolk County to remove the stepdaughter of a Shinnecock member from the reservation residence.<sup>73</sup>

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<sup>73</sup> Marriage does not necessarily guarantee a non-Shinnecock may reside with his or her spouse on the reservation. The Trustees have also denied residence to spouses of Shinnecock members who "were not welcome in [the] community," based on his or her behavior and social problems (M. Smith 9/8/2009). Another man who sued the Shinnecock after he was stabbed in an altercation during the powwow, was asked to leave the reservation. He was invited to return only after a 22-year absence (M. Smith 9/8/2009).

The Shinnecock entered a dispute with Southampton over Southampton's attempt to include the reservation in their zoning plan in 1987. Trustee Michael Smith requested clarification from the State on the legality of the Town's actions. On April 8, 1987, the New York Secretary of State's office wrote to Trustee Michael Smith:

To the extent that the Town of Southampton zoning ordinance purports to regulate land use on the Shinnecock Reservation, it is of no force and effect whatsoever. The Trustees of the Shinnecock Tribe are in no way limited in governing the Shinnecock Reservation by any action of the Town of Southampton. (Batson 4/8/1987)

Southampton responded to the Batson letter, saying that the Town had never enforced zoning on the reservation, although since 1972 it has given "federal, state, county, town and the Indian Reservation lands" a zoning classification so that the town may apply exemptions to them and avoid legal problems. However, the letter revealed that the recent "dispute has arisen" because developers approached Town officials concerning their plans to build a "high density hotel and convention center" on a long-term lease on the reservation. The Shinnecock Trustees, however, denied there were such plans. The Town's attorney states, "The Town's position has been that the zoning exemption no longer attaches if the Tribe relinquishes a substantial degree of control of Reservation land to private interests by means of a long term lease or obviously by a sale" (Thiele 5/20/1987).

*Increased Democratization Challenges the Trustees: 1987 to the present*

In 1987, a new committee arose called the Shinnecock Women's Group. The group was "by young women of the Reservation who wanted to study the history of Shinnecock and the family histories of ourselves, the women of the tribe" (SHN [Powwow Program] 1996). The 20 to 30 women supported a variety of causes including summer camp, "Rainbow Connection" in 1990, and they publicized their activities by controlling the production of the Powwow Program in various years. They established Girl Scouting services, and the Girl Scouts of America and the Women's Group sponsored the program. They built a children's playground replacing equipment that was dangerous (E. Haile 10/18/2002). They successfully advocated for Indian programs in the public schools, and created a mural on the community center highlighting Shinnecock History. These activities and actions resulted from a 1990 "A Call to Consciousness," which listed issues and motivated the women to deal with issues of special importance to their group. Often those issues involved children.

While the women's group clearly focused on children and families, it also took a political stance on other issues. It gave a voice to criticism of the Trustee system and other leadership and organizational structures on the reservation, especially the lack of women's suffrage and their inability to speak in meetings (P. L. Bess 9/12/2009; R. Hunter 9/11/2009). They clearly wanted more for their families and the group than the male-controlled organizations had provided. For this reason, their activities were sometimes controversial and according to one man interviewed in 2002, some men "ostracized" women involved in the effort to gain women the vote (K. Phillips 11/17/2002). For example, the women's group wrote letters to the local newspaper about a court battle over land where ancestors were buried. The women's group undertook "fact-

finding” about Federal acknowledgment. They also encouraged “voting members of the Shinnecock Tribe” (at this time men residing on the reservation) to vote in the Tribal elections for Trustees because “To criticize our Tribal Trustees without accepting the responsibility of participating in the process of electing our leadership is both defeatist and unproductive” (*Shinnecock Women’s Group Newsletter* 4/1/1989). They advocated for committees to deal with a “constitution and Tribal Structure Development,” genealogy, Legislative Observation, Alcohol and Drug Problems and Solutions, and Neighborhood Watch (*Shinnecock Women’s Group Newsletter* 3/1989). They included men on these committees, thereby expanding their reach throughout the group (E. Haile 10/18/2002). Their motto, “Building a Brighter Future Together,” implicitly carried with it the underlying stress on “together” and their desire that women be included in the governing of the Shinnecock. The entry into politics alienated at least one original member of the group and older men and women in particular did not support the young women’s political activities (E. Cuffee 9/8/2009; P. L. Bess 9/12/2009).

The women’s group also had to convince the male electorate to support women’s suffrage. As one woman said, they took the campaign home, “Basically,” she said, women said to men in their families, “either we get voting power, or you don’t get dinner, you don’t get your house cleaned ... that’s basically how we did it. Because we actually had to get the men to support the decision (S. Coverdale Curry 9/8/2009). Although women had exerted informal influence at home (and still do), they wanted the right to vote and to speak in meetings. “You could not talk in the meeting, so you had to whisper to your husband—make comments to him—and he would say something.” Since voting in meetings was done by raising the hand, women knew how their relatives voted.

The question of women’s suffrage had been raised as early as 1941. Interviews related that the women’s group led non-violent demonstrations to force this change. For a few years before the enfranchising of women, at each election, they would attend en masse and witness in silence the election in the basement of the Town Hall (R. Hunter 9/11/2009). The women escalated their protests. One participant in the women’s group described the situation, “I never tried to talk, but I saw women that tried to talk, and I saw women that tried to talk be carried out of the meeting. It was that intense” (P. L. Bess 9/12/2009). Yet, it was soon after the group became active and its contributions were made real in the community that women gained the right to speak in tribal meetings in September 1993, and on December 21, 1993, they won the right to vote in Tribal elections, thus “creating equal rights for Shinnecock women” (SHN [Powwow Program] 1996).

Only a few months earlier, the 1993 powwow program mentioned for the first time a council, with 13 representatives on it. It says that these men and women were elected to office in January 1992 and the purpose of the council is “in service and support of the Shinnecock Tribal Trustees” (SHN [Powwow Program] 1993). The council’s purpose to support the Trustees recognizes that their role has clearly grown beyond land management to program management, which is overwhelming the three-person team of trustees. They needed help in doing this expanded role (M. Smith 9/12/2009). A 1999 document stated, “The Shinnecock Tribal Council came into formation in 1992, in part, in response to a mandate from the members of the tribe to seek improved avenues of communication amongst the people and the Tribal Trustees” (SHN [Powwow Program] 1999). The article states that the council “committed itself to create a more inclusive leadership forum” and thus “13 men AND women” were elected, and the Council

Chairperson would rotate monthly. The tribal council meets twice monthly and is viewed as representative of “all families” (CF Bess 10/17/2002). The voters consistently elect women to the council, and in 2009 almost all of the council members were women. This fact stands in contrast to the Trustees. No women has ever been elected to be Trustee. Paula Bess, who has served repeatedly on the council and who was elected with wide margins of voters decided to run for Trustee, thinking that the people who voted for her to be on the council would also vote for her to be Trustee. She ran for Trustee, thinking she would be a “shoe-in” (P. L. Bess 9/12/2009). She received only 20 votes. “The women aren’t even voting for me,” she said in 2009, “and that was the biggest heartbreaker of it all for me, that the women didn’t vote for me” (P. L. Bess 9/12/2009). She interpreted the group’s behavior, “They don’t want to sway from the formula that they were given” and a message to her personally that “you’ve gone far enough, you’ve done enough, that’s the men’s department. Now you’re overstepping your boundaries (P. L. Bess 9/12/2009).

The role of the three Trustees remained paramount, even after the council was established. In various Powwow Programs and on the Council’s letterhead, the writers include the statement that the council exists to support the Trustees. The 2001 Program states that the Shinnecock Indian Nation is “an Indian Tribe governed by a Board of Trustees composed of three Tribe members ... who serve in a voluntary capacity, [and] have the ultimate responsibility of managing all the affairs of the Nation” (SHN [Powwow Program] 2001, 12). The continuing role of the Trustees may be at issue, since a minority of the adult members living on the reservation, rather than the tribal membership at large, elects them. In December 2003, “A Message from the Trustees” is included in the Shinnecock Indian Gaming Authority News, a newsletter published by an organization dealing with gaming. The article simply asks the question, “Gaming: Why the Trustees?” so that “Tribal Members understand why the Trustees continue to be involved in the gaming issue.” The article points out that the Trustees are named individually as co-defendants in the law suits, gaming is an initiative of the Nation, a site other than Westwoods may be required, and land obtained for gaming purposes will be “owned by the Shinnecock Indian Nation, not the Authority” (*Shinnecock Indian Gaming Authority News* 12/5/2003).

In the 1990s, evidence shows that there are several co-existing structures that have overlapping functions. The role of the Ceremonial Chief is not clear, perhaps because outside writers assume the powwow chief has more authority in the reservation’s business and politics than he actually has. However, the role is not purely symbolic. The powwow is always a source of income for the group. It also brings in income to individual members, who are vendors at the event, selling everything from CDs to soda pop and from traditional duck decoys to jewelry and art. The gate benefits the group. The 2001 Powwow Program stated, “The proceeds from this event are divided equally between the tribe and church. Thanks to the growth of the powwow and the generosity of its patrons the church has been able to become a self sufficient Native American Presbyterian congregation” (SHN [Powwow Program] 2001). A 2003 newspaper article indicated that the group lost money in 2002 when they revamped the powwow to include a rodeo and then torrential rains kept visitors away, and “left the tribe not only without its main source of annual revenue, but in debt (*South Hampton Press* 7/24/2003). A few months later, Lance Gumbs defended the powwow at a public meeting by saying the funds are “what we survive on for the entire year. It’s almost a business” (*The Independent*, 10/29/2003).

Some committees introduced by the formation of the Council deal with the Trustees' land management functions. The Land Defense Committee, for example, monitors land development projects in the reservation's neighborhood. It reviews every application for land development in Southampton and informs the Trustees how such a development would affect the reservation and its boundaries (R. King, 10/17/2002). Members of the committee attend the Southampton Town Planning Board meetings. In 2002, this committee supported preservation for environmental and historical reasons (R. King, 10/17/2002). The same committee updated the maps used by the Southampton emergency vehicles and fire trucks responding to calls from the reservation.

In early June 2003, controversy was brewing in Southampton over the possibility that the Shinnecock would build a casino. In late June 2003, the Shinnecock announced publicly that they intended to develop a part of what they believed was their land near the highway called the Westwoods Parcel. They would start with the initial site survey, clearing, and grading/preparation for a casino and office complex (US District Court, Eastern District of New York 9/23/2004). Trustee Charles K. Smith II responded to press inquiries, "When People find out that Indian gaming benefits our own tribe and not the investors, we expect support to grow" (*The Independent*, 6/4/2003). Smith referred to the Shinnecock's being "good neighbors to the people around us for over 400 years" (*The Independent*, 6/4/2003). Less than a month later, the three Trustees, Charles Smith, Lance Gumbs, and James Eleazer, broke ground before 200 spectators at a Hampton Bays location called Westwoods (west of the Reservation) for a casino (*Suffolk Life* 7/2/2003). Both New York Attorney General Elliot Spitzer and local State Assemblyman Fred Thiele opposed the casino building, and the State almost immediately filed a restraining order (*Suffolk Life* 7/2/2003). Senator Hillary Clinton also expressed her opposition with others from both parties (*East Hampton Star* 6/18/03). The Tribal Trustees claimed that the economic development was needed by the Shinnecock and that a casino would create year-round jobs and lower property taxes for everyone (*Suffolk Life* 7/2/2003 and *Dan's Papers* 6/6/2003). The Town sued. The Town's position in this case was that the Shinnecock had not obtained "all necessary municipal permits, permissions, and/or approvals" (US District Court, Eastern District of New York 9/23/2004). In 2005, the State continued to maintain it had a legal right to place "a zoning classification on the Shinnecoeks' reservation at Shinnecock Neck" (*New York v. Shinnecock* 2/18/2005).

Trustee Lance Gumbs was the major spokesman during a dispute concerning access to the "Westwoods" property, where they planned to build their casino, on the July 4th weekend in 2004. During the July 4th weekend, 2003, there had been several "confrontations throughout the weekend between members of the tribe and residents, and State Police were called to the scene daily" (*Southampton Press* 7/-/2004). Residents of houses bordering the beach complained that a dangerous situation had been created by Shinnecock driving on the beach. They "complained that the vehicles were dangerous to children and sunbathers, and charged that the Shinnecoeks were behaving recklessly" (*Southampton Press* 7/-/2004). Gumbs stated that "we're going to have access to our property for the Fourth of July weekend," and described the event as "an annual celebration of historic tribal lands and culture" (*Southampton Press* 7//2004).

Lance Gumbs had become the primary spokesman for the casino, relations with Shinnecock Hills Golf Course, and other issues, including Federal acknowledgment. In March 2004, he testified on behalf of the Shinnecock concerning their experiences with seeking Federal acknowledgment,

only “the second time the Shinnecock have testified before Congress” (*The Southampton Independent* 3/31/2004). A month later at the annual Trustee election, Gumbs was made chairman, replacing Charles Smith, who declined to run.

Tribal leaders denounced the town’s expenditures on litigation to block the casino development at a Board meeting on July 29, 2004. Trustees Randy King and Lance Gumbs, Tribal Council Member Donna Collins, and three others, who were not named, spoke on behalf of the Shinnecock, and they reportedly recalled the “exploitation of the tribe which they say has gone on for centuries, by denying it the right to use its own property” (*Newsday* 7/29/2004). Claiming that a ‘majority of the tribe’ supported “economic development,” which people interviewed in 2009 also supported, Gumbs focused on the economic disparity between the reservation and Southampton (*The Suffolk Times* 5/29/2003; *The East Hampton Star* 6/5/2003).

The high public profile of Lance Gumbs during the first years of the Shinnecock’s fight to build a casino in Westwoods may have exposed him to internal criticism because, in April 2005, he lost his Trustee position to Charles K. Smith, who had served previously as a Trustee from 2001 to 2003. Charles Smith’s larger family, which had been connected to the local golf course in earlier generations, was tied to the Presbyterian Church, which sponsored social programs. For those on the reservation most concerned about quality of life, social and cultural programs may have been jeopardized by Gumbs’ statements. Coming on the tail of reports of large earnings from Indian smoke shops, one of which Lance Gumbs operated, the traditional non-Indian support of some of the tribal projects may have been jeopardized. An August 2006 *New York Times* article attributed low turnout at a free summer festival by the Shinnecock Nation Cultural Center and Museum either to a morning drizzle or “another sign of how brittle the Shinnecock’s relations with the surrounding community have become” (*New York Times* 8/13/2006).

Members tend to keep internal decision-making processes close to their vests, and newspaper coverage of Gumbs’ loss tended to quote all involved as stating that Gumbs had not necessarily been replaced for cause or lack of support (*The Southampton Press* 4/21/2005). In fact, one reporter for the local newspaper quoted the Trustees downplaying the election results because of the low turnout. “The Tribal Trustees, all of whom have served on the tribe’s governing board in the past, said that they aren’t reading much into the results of the tribal vote that removed Mr. Gumbs from power” (*The Southampton Press* 4/21/2005). Yet, Gumbs, himself, interpreted the vote as “driven by disagreements over tribal gaming issues” (*The Southampton Press* 4/7/2005). According to local press accounts, “Mr. Gumbs said he was not bitter about his ouster but said that he thinks it was driven by a group of tribal members who have been unhappy with his handling of the tribe’s efforts to secure federal recognition and rights to a gaming casino” (*The Southampton Press* 4/7/2005).

Smith and others were soon quoted in the newspapers discussing alcoholism and drug abuse on the reservation, and the need for social programs, economic support for those trying to improve their homes on the reservation, and the establishment of a halfway treatment center. Such programs were dependent on donations and grants (*The New York Times* 3/13/2005). In late April 2005, the Trustees “say their daily priorities are dominated by the struggle to manage the many services provided to tribe members and the day-to-day issues of life on the reservation, rather than by the tribe’s very public effort to secure permission to build a casino” (*The*

*Southampton Press* 4/21/2005). The meeting minutes from the Council and the Tribal meetings confirm the Trustees' statement. Not only were the Trustees quoted supporting alcoholism programs, but also Indian board members of SAMP, or Substance Abuse Motivation Project," were quoted. Rev. Michael Smith, Presbyterian minister and Shinnecock member, founded SAMP. Rev. Smith linked the need for alcohol programs with the possibility of a casino, which he characterized "as much a threat as an opportunity." His ideas challenge casino supporters, who are simultaneously trying to convince the neighbors that an Indian casino will not bring crime and social problems.

These concerns about the social welfare of the reservation had been expressed even before the election in March when Rev. Smith told the *New York Times* that he wanted "to tackle the tribe's problems with drug and alcohol abuse" (*The New York Times* 3/13/2005). Trustee Randall King "endorsed" Rev. Smith's plan of establishing SAMP. State Assemblyman Fred Thiele, who opposed the casino, had obtained a \$5,000 grant for the program (*The New York Time* 3/13/2005), and Rep. Timothy Bishop was seeking \$60,000 for it. Bishop linked his support of SAMP to his opposition to casino development. According to the *New York Times*, Bishop's "opposition to the casino led him to encourage the tribe to pursue other forms of development." Rev. Smith connected his efforts to the possibility that the casino plans established a deadline to act. Rev. Smith sought "support from donors on and off the reservation" (*The New York Times* 3/13/2005). According to the *New York Times*, Smith worried about "casino money overrunning real issues of recognition rights and long-term economic development, and blinding the tribe with the shine of short-term cash" (*The New York Times* 6/24/2005).

In August, the SAMP supporters met outside the Presbyterian Church for a press conference opened by a traditional prayer and ceremony, and Trustee Chairman Randy King talked about drug abuse (*Southampton Press* 8/25/2005). Trustee James Eleazer and former Trustee Lance Gumbs were also there. These events show that pressure from members on the issue of addiction has influenced the Trustees to take a public position on alcohol and drugs. "The community wanted the Trustees to do something about the drugs. The Trustees have no authority, technically, to do anything unless the community wants them to do it. The community had been making a cry that we need to stop the drugs on our reservation" (S. Coverdale Curry 9/8/2009). Although the electorate did not vote for the Trustees to take a specific action, they did tell them "you have to address these drug issues," by raising the problem for discussion "in every other public meeting" (S. Coverdale Curry 9/8/2009).

Not everyone in the group was happy with the publicity about addiction on the reservation. Winonah Warren, President of the Museum Board, wrote a letter to the editor of *The Independent* questioning comments made by Rev. Smith (*The Independent*, 8/31/2005). She seemed to make oblique reference to forced religious conversions of Indians by Christian missionaries:

Our challenges are compounded by the fact that we were forced to alter our culture, speak another language, change the way we went to the creator, cut our hair, and lose our healthy life styles ... having to adapt to the values of the dominant society. (*The Independent* 8/31/2005)

She encouraged the people to walk the “Red Road in balance” (*The Independent* 8/31/2005). These words would seem aimed at those who represent the religion she believes non-Indians forced on the people, although Rev. Smith said he did not interpret these statements that way.

National newspapers like the *New York Times* and *Washington Post* mined these differences of opinion within the group. A *Washington Post* article described Rev. Smith as “one of several Shinnecoeks who view the tribe’s land-claims lawsuit against Southampton as ill-advised. It has inflamed local sentiment, he said, and guaranteed the tribe will face a rough fight for federal recognition. And he is suspicious of the motives of millionaire investors who are underwriting the lawsuits” (*The Washington Post* 6/25/ 2005). The *New York Times* quoted Shinnecock member Roberta Hunter, an attorney, on the group’s internal discussions about the casino: “Those dinner table discussions you have when you’re all family, you have that magnified.” It said that Hunter had accused the leadership of “not be[ing] honest with its members in presenting the issue of the Southampton land claim suit, which is being financed by a casino developer based in Detroit.” According to the *New York Times*, “She said the decision to pursue the claim—the how, why, when and whether—was never put to a fair vote in a general tribal meeting.” She objected to combining repatriation of land with the casino issue. She worried that such legal actions financed by outside casino interests could “breed cynicism and burn bridges with the larger community” (*The New York Times* 6/26/2005).

Hunter’s allegations were disputed by Paula Bess Collins, Chairwoman of the Tribal Council, and Gordon Smith, Sr. who said that 100 people had voted on the issue in December 2004 (*The New York Times* 6/24/2005). The vote to give the Trustees the authority to act on several topical issues, including Federal recognition, land and natural resources legal claims, on-going litigation over the Westwoods lands, economic development, including but not limited to gaming, and other issues, was made at a meeting attended by 104 “voting members” and 6 “non-voting members” (SHN 12/18/ 2004). The motion passed. The authority was already in place as early as November 19, 2004, when “Authority Officers, Fred Bess, Joan Williams, Barre Hamp, Karen Hunter, Phillip Brown; Commission members, Paula Bess, Mercedes Williams and Tribal Trustee, Lance Gumbs attended a Tribal Wealth Conference, in Tampa, Florida” (*Authority Notes* 11/19/2004). The vote to authorize the Trustees to act on the group’s behalf on the listed items took place a month later, perhaps resulting from education gained at this and other conferences, or perhaps given by legal consultants.

Roberta Hunter spoke at the December 18, 2004, meeting. She objected to the way the decision was made, saying, “It is critical that we be deliberate in our decision-making. What we decide is as important as how we decide.” She advocated a 60-day period to educate and talk about what was going on. She said she supported a resolution allowing “us to negotiate,” but that she wanted more “community dialogue” and “relevant information” (SHN [Tribe]12/18/2004). She also seemed to want more checks on what those given this new authority (the Trustees) were doing and the representations they were making (SHN [Tribe]12/18/2004). The petitioner’s narrative states that holding “meetings of the membership with the tribally elected Trustees” provides “evidence of the bi-lateral political relationship that exists between the elected officials and the electorate” (SHN Petition Supplement 1/ 9/2009, 77). This statement melds the terms

“membership” with “electorate,” and “tribal” with “reservation.” In fact the electorate differs from the membership, whether the membership dates to 1998, 2003, or includes pending or removed members. This discrepancy results from the fact that a large number of members do not vote because they do not reside on the reservation.

OFA’s field visit to Shinnecock in September 2009 revealed that members residing off the reservation are informally connected to the group and highly informed about political issues in it. They tend to influence peers, friends, and relatives informally. At least two of the people elected to serve on the Casino authority either do not live on the reservation or are not members, but “pending members.” In addition, the petitioner listed subjects discussed at meetings between 4/22/1991 and 11/6/2008. OFA made an analysis of the topics according to whether each one concerned the reservation and its resources (reservation playground, pet clinic, and smoke shop leases) or topics that extended beyond the reservation (economic development and tribal museum). It appears in the meetings analyzed that roughly half of the topics concerned the reservation and the others concerned topics that could be viewed as pertaining to the entire membership. As gaming and economic development took center stage, increasing numbers of persons attended meetings. Although people interviewed in 2009 disagreed as to whether non-residents could speak in council or Trustee-run meetings, it appears that non-residents attend meetings and may talk on occasion (L. Gumbs 9/10/2009; W. Warren 9/9/2009)

Lance Gumbs himself pointed to “a group of tribal members who have been unhappy with his handling of the tribe’s efforts to secure federal recognition and rights to a gaming casino” (*Southampton Press* 4/7/05). In the end, the pro-casino forces prevailed and the Shinnecock continued efforts to establish a casino. In June 2005, the Shinnecock filed suit in Federal Court seeking to reclaim 3,600 acres in Southampton that included Southampton College, Shinnecock Hills Golf Club, and the wealthy resort community of Shinnecock Hills (*The New York Times* 6/12/2005; *Newsday* 6/12/ 2005). Lance Gumbs continued to speak out in the press, that the Shinnecock were forced to seek redress for wrongs (*Southampton Press* 6/16/2005).

On December 18, 2005, the State moved against the untaxed sale of cigarettes on the State Reservations of Poospatuck and Shinnecock, by arresting at least six individuals near Poospatuck. A State official stated, “Thousands of cartons of cigarettes were being sold to non-Indians on both reservations and resold on the black market ... at much higher prices” (*The New York Times* 12/18/2005). Shinnecock Trustee Randall King said the group was “reviewing the legalities” (*The New York Times* 12/18/2005). The selling of cigarettes on the reservation without taxes to non-Indians came after a Shinnecock man was arrested, along with two dozen others. The man arrested was the 30-year-old son of a prominent pow wow leader, who is active in reservation government, and president of the Shinnecock gaming authority. His defense was that the State could not prosecute him for activities on the reservation because Shinnecock is a “sovereign Indian Nation.”

It is not known the extent to which the Shinnecock as an organization actually benefited from sales of cigarettes by any of the smoke shop owners, except that, of the four smoke shops, only two are supposed to pay the Shinnecock rent or a fee, and two others do not. The issue was raised in council meetings, and many people on the reservation believe that the group should benefit more from the cigarette businesses. The issue reportedly played a role in a recent

election because “There are members that strongly feel that the cigarettes should be run by the tribe.” One shop owner revealed the week of the Trustee elections that, although she paid her “fee” for running a cigarette enterprise to the group, one of the other owners did not pay, and she asked, “Why should mine be always up to date, and I’m paying it, if nobody else is paying it?”

In March a supermarket sued to stop the cigarette sales on Long Island State Indian reservations (*The New York Times* 3/26/2006). This suit aimed at the Shinnecock and Poospatuck State reservations. Because Lance Gumbs is one of the smoke shop owners named in the supermarket suit and a re-elected Trustee, he may have been speaking for himself or for the Shinnecock. Gumbs continued to speak out on the cigarette issue through 2006 as a tribal leader, not merely as a business owner. He said “You cut off the cigarette revenue, and you cut off the livelihood of the tribe ... This would annihilate us” (*New York Times* 11/6/2006). Gumbs claimed that 70 heads of households on the reservation were employed in the smoke shops (*The New York Times* 11/6/2006). OFA researchers did not attempt to verify this claim.

In May 2006, “Suffolk District Attorney Thomas Spota’s office received a letter from the Shinnecock Trustees requesting [a] drug probe” on the reservation (*CBS/AP* 4/21/2007). “A task force from the State police, the District Attorney’s office, the Suffolk police and Sheriff’s departments, the Federal Drug Enforcement Administration and the Secret Service commenced” a series of drug raids early in the morning of April 19, 2007. The raids were extensive and netted 13 people – Indians and non-Indians – over several days, including a son and other relatives of the group’s Trustees and other leaders. Individuals arrested came from a number of families and age groups. Many on the reservation were directly touched by these events, including the owners of a smoke shop where some of the sales occurred and church leaders. Beverly Crippen Jensen, who wrote the Agawam Notes column about Shinnecock news in the local newspaper, spoke on behalf of the Shinnecock (*CBS/AP* 4/21/2007). The Trustees publicly spoke on events on May 7, when several of the groups present and past Trustees met the press<sup>74</sup> (*Newsday* 5/7/2007)/

Two days after the raid, the Trustees called a meeting. Trustee Randall King, spoke to the press ten days later describing the meeting: “The tribal members had a chance to express their thoughts and there was an overwhelming sense of ‘thank goodness’” (*Indian Country Today* 4/30/2007). “There was a lot of anguish because our families are torn apart, but overall everyone thinks it’s good to get rid of drugs on the reservation, and there was an incredible feeling to togetherness and a new day” (*Indian Country Today* 4/30/2007). King said that the Trustees learned that they have “to provide safety and security for” young people, even though three or four of those arrested were age-peers of King, himself. Charles Smith II defended the reservation: “It’s not fair for the [Shinnecock] Nation to be depicted as a drug haven. It isn’t ... A handful of kids did the wrong thing and they got caught” (*Newsday* 5/7/2007). Importantly, the Trustees, at the behest of the membership, requested help from the Suffolk District Attorney to deal with the problem. They have the authority to bring law enforcement to the reservation.

The April 2007 Trustee election took place on the reservation following an election reform ordinance prepared by the Tribal Council Election Reform Committee and adopted by membership in January 2007 (*Indian Country Today* 4/16/2007). The Town refused to send the

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<sup>74</sup> The “elders” were Randall King, Lance Gumbs, Fred Bess, James Eleazer Jr., and Charles Smith II.

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Town Clerk to the reservation to record the vote, even though the group had requested the Town to do so. News outlets reported that 223 persons voted, “the highest turnout ever” (*Indian Country Today* 4/16/2007).

For more than 200 years, the Shinnecock Trustees made significant decisions concerning land and resource use on the reservation and many of these decisions protected the reservation lands from alienation. Other types of decisions involving contracts, development, and even acknowledgment are hampered by certain inherent characteristics of the Trustee system as it has been applied on the reservation. As one older man said, “in the older set up, we didn’t need a constitution; because it was word of mouth and people honored the word and the handshake. In today’s market, if you don’t have things written down” then people say “that’s not true, we didn’t say that ... and nothing gets done, and it ends deplorably” (L. Hunter 9/12/2009). The group has been having on-going difficulties producing a written constitution, a written enrollment ordinance, and a complete membership list, even though they have been working on these issues since at least 1981. This apparent inaction on these issues is not a result of lack of activity or involvement of group members and leaders. In fact, reaching agreement on these issues is blocked because most Shinnecock have strong opinions about them, which they express, and reaching consensus has proven extremely difficult.

The Trustee system has allowed some large families to dominate the political decision-making year after year because they are able to turn out relatively large numbers of voters each year. A woman who lost her election for Trustee, when asked who benefitted from reelecting Trustees repeatedly from a small group of men, said “the families of the people that stay in power, that stay in the leadership positions, of course, that’s a no-brainer” (P. L. Bess 9/12/2009). She continued, “The people that win the elections have the biggest families” (P. L. Bess 9/12/2009). OFA researchers could not confirm her analysis of the situation.

Past and present Trustees did not feel that family connections informed elections as much as the perception a voter had that the candidate would be even-handed and fair. The voter expected that Trustees “would look out for everybody ... not just certain ones,” even if that means calling in the District Attorney and police officials about illegal activities of one’s own relatives (Trustees 9/8/2009; E. Cuffee 9/9/2009). Fred Bess advocated a “return to the old way. We had sagamores and sachems, and I really think we need to get back to a more traditional structure that also fits the modern-day needs of a democratic community.” Other Trustees, including Lance Gumbs, predicted that reforms would include changes to the one-year terms and annual elections, election procedures, and the term “Trustee” (*Indian Country Today* 4/16/2007). The ultimate issues of what structures should be established, who should vote, the future role of the Trustees, if they continue to be part of a future Shinnecock government, and how current governing structures relate to each other are often avoided in discussions. According to one observer, these underlying questions, rather than the issues discussed publically such as unwed fathers and staggered terms, may be slowing passage of a constitution and enrollment ordinance (M. Smith 9/12/2009).

Since 1990, the group has established institutions to democratize its governance, communications, and decision-making. They founded a Shinnecock council, monthly council and trustee-led meetings open to members, a newsletter, museum, health center, and numerous

committees, which aim to enhance the quality of life for reservation residents and the larger group. Women residents of the reservation gained a vote in 1993. The 13-person council's primary duty is to generate issues from the membership, research them, write resolutions, and put them forward for community meetings held monthly. The council holds monthly public meetings and creates committees that deal with important issues. After a resolution passes in council, the council refers it to a Trustee meeting. Voting members vote during Trustee-led public meetings on important issues.

Information gathered during a site visit by OFA researchers in September 2009 indicated that there is significant agreement among people when they describe meetings led by Trustees, how Trustees control meeting agenda, and how the group determines who is qualified to vote. The rules are informal and passed down verbally. For example, individual members have been involved in producing the numerous drafts of the Constitution. The process is cumbersome. A woman sitting in on an OFA interview in 2009 explained, "It's always the wording that's tripping everybody up, so then they stop, and then they find something else to go to ... 10 people don't like this wording, five people don't like that, so they're always going back to rewording it" (Staysea Hutchings in E. Cuffee 9/9/2009).

Trustees have substantial control in determining which issues are on their meeting agenda and reach the membership for discussion or vote (P. L. Bess 9/12/2009). Trustees exert power in not taking action (or making a decision) as often as in taking action. They can exert power by not assigning land, by not approving membership applications, by not approving a Montuak Highway business venture, or by ending a meeting before the assemblage can discuss a resolution passed by the council. Thus, important issues, including the constitution and enrollment ordinance, appear to be advancing through a slow deliberative and consensus-building process (D. Martine 9/9/2009).

There was a general feeling that older people, often women, on the reservation exerted political influence beyond their numbers, especially on their family members, which one woman referred to as a "clan," in the most generic meaning of that term. She meant that people with large bilateral families exert more influence on decision-making. A person observed, "When you go to a tribe meeting, you would see that ... whatever the issue may be, people will ... take a position one way or another, and then you might see people of one clan vote one way, and another clan, or another group, vote another way" (W. Warren 9/9/2009). Whether such family-influenced voting actually occurred is not analyzed based on a lack of specific voting data in the record, but it seems likely. People who were interviewed said that they approached relatives when seeking an allotment or other help on reservation business. Showing disrespect of an older person was given as a reason that a Trustee lost a recent election, among other reasons (S. Coverdale Curry 9/8/2009).

The Trustees in 2009 told OFA researchers that they tried to strike a balance and be impartial and fair to all the members, while recognizing that reservation residents deserve special consideration. As an example, two Trustees discussed how they treat requests for land allotments from people living off-reservation and people living on the reservation. People who work and live in New York City, for example, often have more resources, which allows them to build large homes, which they may only visit on weekends and in the summer. Year-round

reservation residents often find it difficult to arrange mortgages and may not have incomes that allow them to save the money necessary for building a home. Their decisions are guided generally by allotting lands to people who can demonstrate that they intend to “live here full-time” (Trustees 9/8/2009; L. Gumbs 9/10/2009).<sup>75</sup> Complaints in council meetings concerning individuals who have not received decisions from the Trustees concerning allotments are in “files of applications sitting in a folder, with people that have put in applications through the years” (Trustees 9/8/2009). If they cannot show that they will build within three years and live year round in the home, then the Trustees generally let the application sit in this file until the applicant can show they intend to build and to live in the home. The petitioner did not submit any of the records referred to in this file. A woman claimed that a Trustee lost reelection because he was not viewed as even handed, primarily because he did not follow rules he enforced on others (S. Coverdale Curry 9/8/2009).

Relatives who reside on the reservation may sometimes raise an allotment or land use question in an open meeting. If this person has discussed his or her concerns with other residents and convinced them to attend a meeting, they may be able to have the question of a specific allotment put before the voters. The Trustees may put the question up for vote in a following meeting. One woman felt that members on occasion may also act to remove the issue from an agenda. She said,

I’ve seen them come in and just start an argument, you know, and a disruption, and then ... maybe a little scuffle might take place, and then ... that will turn half the audience away to get up and walk out...So their deed is done ... But that’s what happens when you have the type of open forum and democratic system that we go by. (P. L. Bess 9/12/2009)

In the past, Trustee-led public meetings were held only three or four times a year, but since about 2001, Trustees hold public meetings monthly. It has become more difficult to put off discussion about controversial topics for a long period (L. Gumbs 9/10/2009). The minutes of council and tribal meetings clearly show that any change is often linked to the issue of land allocation and protection of the reservation and this fact makes many residents and seasonal users of the reservation apprehensive of changes. Although it appears that allocations have continued since 1958, because meeting minutes and interviews refer to the awarding of such allocations, only one document provides evidence of a specific allotment after 1958. The Trustees sent a letter to a member on September 22, 1997, awarding a 150’ x 150’ allotment on Arabash Road on the reservation (Eleazer 9/22/1997). By 2002, the size of an allotment had fallen to 125’ x 125,’ and at least 20 people were on a waiting list for lots with 6 ready to build (J Eleazer 10/16/2002).

During a 2004 Shinnecock meeting the topic of opening membership to the children of “unwed fathers” (men who had children by non-Indian women to whom they were not married) was on the agenda for discussion. One man was concerned about the welfare of children of unwed fathers because some of these children live on the reservation and receive no benefits even though they live in the settlement. He advocated giving them an intermediary status so they could receive health and other benefits but not access to an allotment. His position implies that the problem with including these children in the membership is that it would increase demands

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<sup>75</sup> Several persons interviewed referred to a recent influx of applications for membership (L. Gumbs 9/10/2009).

for land allocations. A woman called the unwed fathers issue a “hot button.” She said, “because we don’t have a lot, because we’re struggling from day to day, people see these children as coming in and taking away from them or their children” including from their allotments (P. L. Bess 9/12/2009). Another man supported these comments by saying that people raised off-reservation are living on the “four corners” near him, while children of unwed fathers raised on the reservation have no rights. The reason that many issues are controversial are because the group’s members believe the decision may impact the allotment system and increase competition for land that already exists, add to crowding, or bring unwanted elements “who don’t respect our rules” to the reservation. This last issue traces to the perception that “99.9 percent of the time the [non-Shinnecock] mother is the caretaker of the child,” and would therefore raise the child in a non-Shinnecock environment or even expect to live on the reservation with the child member. (P. L. Bess 9/12/2009).

Members raised land allotment and resource use for discussion between 2000 and 2008, although these topics came up in discussions on other issues, like “unwed fathers,” or “security lighting.” At the Tribal Council meeting in February 2004, attendees discussed “Land allotment, are there rules and what are they?” (SHN [Tribal Council] 2/16/1004). A month later, this topic reached the Trustees, when allotments were discussed at a public Trustee meeting they ran. Especially controversial is how Trustees award lots or business rights on the Montauk Highway, which have commercial value, and how these businesses are regulated. The Trustees pulled down an unauthorized structure at one point in the 1990s. Members, who were allotted or inherited these locations in the past, must ask the Trustees for permission to use them commercially. A Trustee, who owns a smoke shop, responded to questions about how the commercial strip is allocated,

That’s a good question. There is no policy on that ... but a policy should be developed. If we’re going to develop the front of the highway, we need to have a development policy that would have criteria on how it’s going to look out there so that we don’t just have a bunch of ragtag sheds out there making the highway in front of the Reservation look horrible. (SHN [Tribal Council] 2/16/1004)

Another man stated that the businesses should “be tribal, not personal” (SHN [Tribal Council] 2/16/1004). Interviews in 2009 indicated that the situation had changed little since 2004. There are still people who believe it is “not beneficial” for individuals to run businesses, and that the group should do it, especially “when they saw how much money was being made” (P. L. Bess 9/12/2009). Only two of four smoke shops paid rent, as was the situation in 2004. The Trustees did not authorize the one business established in the interim, and its owner believed she has been treated unfairly. As in other areas, changing the status quo often takes years as the group works through an extremely slow deliberative process.

### *Conclusion*

The petitioner meets criterion §83.7(c) utilizing evidence in the record that demonstrates §83.7(c)(2)(i) for all periods from 1789 to the present. The evidence in the record demonstrates that for more than 200 years, the group at Shinnecock Neck, in Southampton, Long Island, operated a mechanism for allotting land and resources to its members. This mechanism was a trusteeship established under New York law in 1792. Under that law, the residents of the group elected Trustees who, with substantial influence from other residents, allocated home, garden,

and grazing lands to people from related families. They also oversaw the leasing of common lands and resources for the benefit of the group's members. Between 1800 and 1823, they persisted in defining their own membership to include long-term residents and mixed-bloods against pressure from non-Indian authorities to restrict membership to full-bloods. On occasion between 1838 and 2007, they sued in local courts to defend their rights to the land by ejecting trespassers, by defending their use of resources, or claiming lands were improperly taken from them. The group staged non-violent protests over its rights in 1853 and the 1880s. The income from leasing, from the powwow, rents on commercial property allocations, payments on resources collected, has benefitted the group and maintained the reservation. As early as 1850, the group controlled access to a cemetery located on the reservation (Squires 1935).<sup>76</sup> As a group, they still maintain it, and control access to it.

Although a minority of the membership resides full time on the reservation, the entire membership, as defined by any of the membership lists submitted between 1998 and 2009, is closely tied through kinship, experiences growing up or summering on the reservation, and continuous association. Off-reservation members visit often and reside seasonally in the community. The group depends on on-reservation members to communicate with their off-reservation kin, peers, and friends to inform them of political events. They take significant interest in the group's political affairs because they have rights to live on and visit the reservation and they are concerned about the welfare of their kin. Off-reservation members may attend the group's meetings, even though voting is limited to reservation residents. They make their opinions known through communications with their relatives living on the reservation.

In addition, the Trustees, with support from group members, mediated disputes, including inheritance quarrels, and enforced sanctions against rule breakers that provides evidence described at §83.7(c)(2)(ii). This authority is demonstrated from 1980 to the present. During these decades, Trustees made and enforced rules concerning non-Indians (excluding spouses) residing on the reservation longer than two weeks and people involved in criminal activity. When force was required to remove trespassers, the Trustees formally sought the help of outside authorities, including police agencies and the Suffolk County District Attorney. These authorities cooperated with the Trustees in removing unauthorized persons from the reservation. The group's members supported these actions.

Although the activities of the Trustees and the political activities of the group in general have diversified since 1940, the members believe the power of the Trustees still flows from their control of reservation land, resources, and access as provided by New York law. The Trustees' authority, however, is not autocratic. It greatly depends on the support of the members in annual elections and is responsive to their concerns. Reaching consensus on any issue is often extremely slow and may take several election cycles and even years. The establishment of a Tribal Council in 1992 created a new mechanism for pressuring the Trustees and others to be responsive to a wide variety of issues raised by the membership. The enfranchisement of women also widened the concerns taken up by the group and its leaders.

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<sup>76</sup> Squires' notes indicate that there were 42 marked graves "and probably 50 graves without markers" in 1935. The oldest deaths in the notes are in the 1850s. Interviews in 2009 indicated that the graveyard was used from around 1900. Older grave markers are no longer at the cemetery (Squires 1935).

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Therefore, the petitioner meets the requirements of criterion 83.7(c) using evidence described at 83.7(c)(2), which is sufficient in itself to demonstrate the petitioner meets the criterion. The regulations give such evidence special weight, allowing petitioners with this type of evidence to meet criterion 83.7(b) also.

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**Criterion 83.7(d)**

**83.7(d) A copy of the group’s present governing documents 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.**

The Shinnecock petitioner does not have a formal, written governing document. The petitioner’s attorney of record summarized to the Department that “the Shinnecock Indian Nation governs itself without a constitution, ordinances, articles of incorporation<sub>[,]</sub> or other documents” (Tilden 8/27/2003). However, a combination of written statements, historical state acts, and group actions define the historical governance of the group.

Governing Documents

*1978*

In 1978 the petitioner submitted to the Department a request to join it in land claim litigation, which was accompanied by a presentation showing how the petitioner thought it could meet the acknowledgment criteria then being promulgated. That presentation did not include text addressing the governing document criterion specifically, but it included text addressing political authority. The political authority text described the New York State 1792 Act, which established the election of Shinnecock Trustees and their authority to allocate land and resources for the benefit of the tribe; the frequency and nature of “tribal” and “community” meetings; and “informal governing procedures delegated by custom to the trustees” (Aschenbrenner [2/8/1978], 23-26). The informal governing procedures section described how the Trustees mediate between “reservation Shinnecoeks and outsiders,” which include local agencies and New York State agencies. The Trustees work with the church minister to coordinate the Pow Wow and Thanksgiving events. “In issuing allotments and burial plots, they effectively approve applications for Blood Shinnecock enrollment” (Aschenbrenner [2/8/1978], 25). Trustees preserve the peace on the Shinnecock Reservation and are responsible for contacting State police in emergency situations. They enforce restrictions on reservation hunting and fishing by outsiders. Trustees administer the income from leases, fund-raising events, and state agencies, and are responsible for the upkeep of the reservation.

*1998*

The group’s 1998 documented petition submission included one page addressing criterion 83.7(d). The text advised that the “report for section 83.7(c) contains the current governing procedures for the Shinnecock Indian Tribe” (SHN 9/25/1998, 81). The next paragraph described the membership process and criteria.

The Department’s December 22, 1998, TA letter to the petitioner noted that the 1998 documented petition submission “describes the current activities of the trustees, but contains no

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copies of current or prior governing documents, enrollment ordinances, articles of incorporation, or other documentation for criterion 83.7(d)” (BIA 12/22/1998, 6).

2003

After reviewing the petitioner’s 2003 response to the 1998 TA letter, the Department wrote to the petitioner, “We find that the Shinnecock petitioner has sufficiently responded to points concerning all but one of the criteria. We find that the petitioner has still not submitted documents to respond to a deficiency concerning 83.7(d), which was noted in the December 22, 1998, TA review letter under the section entitled, ‘Criterion 83.7(d): Governing Document’” (OFA 7/10/2003). The petitioner’s attorney of record responded, “As we discussed at our meeting on August 1, 2003, the Shinnecock Indian Nation governs itself without a constitution, ordinances, articles of incorporation or other documents” (Tilden 8/27/2003, 2). He further explained that the Shinnecock petition report on §83.7(c) addressed:

the current governing procedures for the Nation by the Board of Trustees. We explained the current governance activity of the Trustees throughout the report, as well as in the Response to the Technical Assistance Letter of December 22, 1998.

...

The Nation believes that its petition and response to the Bureau of Indian Affairs letter of technical assistance contains sufficient documentation under §83.7(d). Thus, the Nation respectfully requests that its petition be placed in the line waiting for active consideration. (Tilden 8/27/2003, 2).

*Historical Acts*

In 1792, New York State passed “An Act for the benefit of the Shinnecock Tribe of Indians, residing in Suffolk county” that set up an annually-elected, three-trustee form of government that remains operational in the present day. Under the terms of the 1792 Act,

it shall and may be lawful for the male Indians of twenty-one years of age and upwards, belonging to the Shinnecock tribe in Suffolk county, to meet together on the first Tuesday in April next and on the first Tuesday in April in every year thereafter, at the place for holding town meetings in the town of Southampton, and there<sub>[,]</sub> by plurality of voices, to choose three persons belonging to the said tribe as trustees, who by and with the consent of three justices of the peace residing next to the lands of the said Shinnecock tribe, are hereby authorized and impowered from time to time to lease out so much of the said lands as they shall judge proper for the use of the said tribe, and for any term not exceeding three years, and to lay out and appropriate such quantity of the said land to each family or individual, as shall be judged necessary for his or their improvements.  
[Spelling as in original] (New York 2/24/1792)

The 1792 Act was renewed and repeated when the New York State legislature passed amendments to this law in 1816, 1892, and 1896 (Cumming 1917, 3755-3756). In those years, the amendments affected the election of Shinnecock Trustees, the powers of the Trustees, and the unlawful use of lands (Cumming 1917, 3755-3756). By 1896, the law dropped the age

requirement for adult male voters and added that voters must have resided on the Shinnecock Reservation for six months before the election.

*Group Actions*

The Shinnecock have decided specific issues themselves, both within and outside the governing framework specified in the 1792 Act. One very early example and one very recent example follow. The Indian Records Book 2 contains some 1799 refinements the Shinnecock Trustees made to the descriptions of who was eligible to obtain land and how much:

At a meeting held at the House of Paul Sayre by the Indian Trustees was voted as follows, That, No person not being an original proprietor shall draw any land by virtue of marrying a Squaw. But the squaw shall draw the same as any other Squaw who is a proprietor...every Indian or squaw who belong to the Tribe if they are non-residents shall be entitled to half as much land as those who reside in the Town (according to their right) which shall be allotted them by the trustees.... (Indian Records Book 2, 4/19/1799, 33)

Nearly 200 years later, meeting minutes reflect that the group voted to allow female members to vote in the annual elections:

A request that the original motion for Shinnecock Women's right to vote be amended to read: "Shinne[c]ock Women be given equal rights". The motion was seconded. The votes were cast 13 in favor, 4 abstained[, ] 3 opposed, the motion was passed. (SHN 12/21/1993)

In 1991, the group formed a Tribal Council consisting of 13 elected members, the stated purpose of which is

to support the duly elected Shinnecock Tribal Trustees; to establish overall communications between the Tribe and the Tribal Trustees; to serve in various capacities, as a Board of Tribal members, to explore the opportunities afforded by the larger society in which our community exists for the betterment of life of our proud and progressive people. (SHN 11/4/1991 Council Articles)

To be eligible for election to the Tribal Council, one must be a "Blood-member of Shinnecock," at least age 21, male or female, and a resident of the reservation for at least six months (SHN 11/4/1991).

In 2009, the petitioner advised the Department of a "sweeping change in the manner of electing the Board of Trustees" (Campisi 1/9/2009, 104). The 1792 New York law originally defined the manner of electing the Board of Trustees, specifying that elections shall be held at the place for holding town meetings in Southampton on the first Tuesday of every April and that the Southampton Town Clerk attend and preside over the election, and record the names of the elected Shinnecock Trustees (New York 2/24/1792).

The petitioner discussed an election reform ordinance draft at meetings in 2006, and passed an election reform ordinance on January 23, 2007 (SHN 5/16/2006, 6/13/2006, 10/3/2006, 1/23/2007). This ordinance moved the election location to the Shinnecock Community Center and “the duties of the town clerk were replaced by a Tribal Election Committee, consisting of four Tribal Council members and four Tribal members selected by the Tribal Council from a pool of volunteers” (Campisi 1/9/2009, 104). The first election held under this ordinance occurred on April 3, 2007. The Southampton Town Clerk read a statement into the record that the petitioner summarized as follows:

The Town Clerk read a statement into the record that this year, April 3, 2007, the Shinnecock Indians held their annual election at a place other than Southampton Town Hall, at the Shinnecock Indian Reservation. It was then stated that the Town Clerk was not present during the election, did not preside over the annual meeting or the election and that her presence at this evening<sup>11</sup>'s meeting was not a representation or acknowledgment that the election proceedings held at the reservation were consistent or in compliance with the provisions of section 120 of the New York State Indian law. The Town Clerk also related that the members of the Tribal Election Reform Committee were present at this meeting for the purpose of reporting to her the results of their election. Notwithstanding that the 2007 tribal election was not conducted at Town Hall, the Town Clerk agreed to enter into the Shinnecock Tribal Records book, which reflects the prior Tribal elections, the results of this year's election as they have been reported/Submitted to her. (SHN 4/3/2007b)

In 2006 the petitioner held discussions of the draft election reform ordinance concurrent with discussions of a draft governing document. The June 13, 2006, meeting refers to one-hour discussions on a proposed constitution at monthly meetings from January 2003 until November 2004, and that a “Draft #7” of the document was then available (SHN 6/13/2006, 10). The 12 members attending this meeting voted unanimously for a resolution that “a final draft Constitution be presented to the Tribal Members at a duly called Tribal Meeting to vote upon Ratification of the Constitution no later than December 31, 2006” (SHN 6/13/2006, 10). No governing document was in effect during active consideration of this petition for the proposed finding.

### Membership requirements

*1978*

The petitioner's 1978 description of how its members qualify for allotments—rather than how individuals qualify for membership—nevertheless appears to reveal some aspects of its membership criteria.<sup>77</sup> Members must make application to the Shinnecock Trustees in order to demonstrate that they are “Blood Shinnecoeks,” and therefore eligible to obtain allotments on the Shinnecock Reservation:

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<sup>77</sup> The petitioner's 2009 submission also referred to this 1978 description as “criteria for membership” and “rules for determining eligibility for tribal memberships” rather than for reservation allotments (Campisi 1/9/2009, 106).

By majority vote the trustees determine if the applicant is Blood Shinnecock. To determine blood, an applicant must be a lineal descendant through the paternal and/or maternal line of one or more of the Shinnecock ancestors living in the late 18th century. Those ancestors are 1) Peter Paul Cuffee; 2) James Bunn; 3) Charles Kellis and his wife, Charity Bunn; 4) David Walker (also spelled Waukus), and their consanguineal kin. In effect, the Shinnecock “rolls” were closed subsequently, and all Blood Shinnecoeks today are descended from the children and grandchildren of Cuffee, Bunn, Kellis, and Walker. Because families’ genealogies are so well known in this small community, the trustees rarely have to seek the aid of the elderly Shinnecoeks in validating claims of descent, but elderly tribal members are the ultimate authorities and source of appeal in matters of tribal membership.

To qualify as Blood Shinnecock, the applicant must be the child of a Blood Shinnecock female, or the legitimate offspring of a Blood Shinnecock male. Adopted children are not eligible unless the biological mother of the child is Blood Shinnecock. (Aschenbrenner [2/8/1978], 19-20)<sup>78</sup>

The petitioner did not provide a list of its 1978 members, but the genealogical database it provided in 2008 and 2009 presents all of its 1998 members as descendants of Paul Cuffee (d.1812), James Bunn (d.aft.1836), a “David Kellis” (d.aft.1825?; alleged father of Charles Kellis), and David Walker/Waukus (d.aft.1829). Appendix D consists of a more detailed presentation of documentation on Paul Cuffee, James Bunn, David Kellis, and David Waukus.

The 1978 requirement that children of unwed Shinnecock fathers are not considered “Blood Shinnecock” remains in effect at present. This would explain why some of the 383 children who were listed by a Shinnecock parent on his or her “Individual History Chart” are not considered members. These children did not appear in the genealogical database provided to OFA. Another 140 children of members are not included as members although they did appear in the genealogical database. The fact that the petitioner closed its membership list in 1998 would also account for children born since that time who do not appear on the membership list.

#### *1998*

The petitioner’s 1998 petition submission included a description of its membership process and criteria that differs from the 1978 description of how a member qualifies for an allotment on the reservation:

The applicant must supply genealogical material linking him/her to an identifiable tribal ancestor listed on the 1900 or 1910 federal census. The request is directed to the Board of Trustees. The Board of Trustees will review the request. The Trustees will consult with community elders to determine if an ancestor in the applicant’s genealogy is Shinnecock and to determine if the applicant is known in

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<sup>78</sup> Neither Charles Kellis nor his wife Charity Bunn (daughter of James Bunn) were living in the late 18th century. The name “Peter Paul Cuffee” was not encountered on any 18th century document reviewed for the proposed finding, and this name appears to refer to the Rev. “Paul Cuffee,” for whom contemporaneous evidence was found.

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the contemporary community. Further, the applicant is eligible only if the mother is Shinnecock, or the father is Shinnecock and wed to the mother who is non-Shinnecock. (SHN 9/25/1998, 81)

The 1998 submission also states that “[t]he members of the Shinnecock Tribe in 1998 are all descendants of the members of the Shinnecock Tribe who appear on the 1900 and 1910 [F]ederal censuses” (SHN 9/25/1998, 84). OFA found that 73 members in 1998 did not claim descent from reservation residents recorded in either the 1900 or 1910 Federal census.<sup>79</sup> The 1998 submission specifies that the 1900 and 1910 Federal census schedules on which an applicant’s ancestor(s) must appear are the Indian Population schedules recorded for Southampton, Suffolk County, New York, in those years.<sup>80</sup>

### 2003

After reviewing the petitioner’s 2003 response to the Department’s 1998 TA review letter, OFA advised the petitioner that the submission appeared to lack a response to the noted deficiencies under criterion 83.7(d) (OFA 7/10/2003). The petitioner’s attorney of record referenced the 1998 petition narrative’s reports addressing criteria 83.7(c) and (d), and responded that the group “believes that its petition and response to the Bureau of Indian Affairs’ letter of technical assistance contains sufficient documentation under §83.7(d)” (Tilden 8/27/2003).

### 2008

In 2008, the Department prepared to review the petitioner’s genealogical materials to determine whether the group met the requirements of the “Expedited Processing” provision of a Federal acknowledgment directive published in the *Federal Register* (73 FR 30147, 5/23/2008). In response to the Department’s request for specific genealogical materials, the petitioner also included a report written by one of its researchers, entitled “Tribal Descent of the Shinnecock Indian Nation” (Grabowski 7/30/2008). This report states that the “overwhelming majority” of the group’s members descends from individuals enumerated as Indians on the Indian Population schedules of either the 1900 or 1910 Federal census of Southampton, New York, but also that “a few members trace their descent from an individual who has a collateral relative who appeared on the 1900 and/or 1910 Indian Schedules...” (Grabowski 7/30/2008, 5).

The 2008 report describes “other records that also reliably identify tribal members as Shinnecock” (Grabowski 7/30/2008, 6). Without stating that the group accepts these other records for membership determinations on individuals without direct or collateral 1900 or 1910 Indian Population schedule ancestry, the report mentions the 1865 New York State census of

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<sup>79</sup> The petitioner’s 2008 and 2009 genealogical databases (after OFA updated and annotated the data based upon its review of descent evidence) show that about 294 members in 2008 (of 1,269, or 23 percent) do not claim to have ancestors enumerated on the Indian Population schedule in 1910. A total of 191 members in 2008 (of 1,269, or 15 percent) do not claim to have ancestors enumerated on the Indian Population schedule in 1900. A total of 73 members in 2008 (of 1,269, or 6 percent), who were also members in 1998, do not claim ancestors who were recorded as reservation residents in either 1900 or 1910. This analysis could not be conducted on the petitioner’s 2008 or 2009 genealogical databases themselves, before OFA updates, because membership annotations are not readily segregable in those databases.

<sup>80</sup> The Indian Population schedule in 1910 specifically enumerates the “Shinnecock reservation” whereas the Indian Population schedule in 1900 does not specify that the individuals enumerated reside on the reservation.

Southampton, which includes schedules annotated as the “Shinneck Reservation” [spelling in the original] and identifies the “color” of 111 of its 146 residents as “Ind.” (Grabowski 2008, 6).<sup>81</sup> (The analysis of the 2008 membership list and descent from the 1910 reservation residents appears in Appendix C.)

### *2009*

The petition included a three-page report in its 2009 submission that iterated the 1978 allotment criteria, the 1998 requirement for descent from 1900 or 1910 Indian population schedules of the Federal census, and the 2008 Grabowski report that discussed members with collateral ancestors on the 1900 or 1910 Federal census. “When viewed in context, the three documents discussed above present a consistent definition of membership” (Campisi 1/9/2009, 107). No new membership criteria appear in the 2009 submission.

### *Children of Unwed Fathers*

In 1978, the petitioner defined someone who is “Blood Shinnecock” as “the child of a Blood Shinnecock female, or the legitimate offspring of a Blood Shinnecock male” (Aschenbrenner [2/8/1978], 20). Minutes of the petitioner’s present day meetings contain evidence of an on-going debate about whether to accept into membership children born to Shinnecock fathers who are not married to the children’s non-Shinnecock mothers. The enrollment office keeps membership applications from children of unwed Shinnecock fathers in a special pending category.

### *Adoption*

The petitioner’s 1978 description of the group’s membership requirements stated, “Adopted children are not eligible unless the biological mother of the child is Blood Shinnecock” (Aschenbrenner [2/8/1978], 19-20). Since the petitioner does not have a governing document, the descriptions its researchers have provided to the Department, and the membership evidence in the record, provide the only bases to determine how the group handles membership for adopted individuals.

The 2008 submission noted the removal of five members who were deemed to be non-Shinnecock, three of whom were identified in the genealogical submissions as adopted (discussed further under “Disenrollment” below). The 2008 genealogical database and membership list included a few individuals whose evidence indicated they, too, were adopted. OFA alerted the petitioner to two of these individuals for whom the submitted evidence did not document the identity of his or her natural parents. Those two members were disenrolled in January 2009. One member tagged as “adopted” in 2008, but not mentioned by the Department to the petitioner in 2008, continues to be listed as a member in 2009 despite a lack of evidence documenting his or her natural parents. Thus, the evidence suggests that the petitioner was unaware of its adopted members or that the 1978 description of adopted children is not strictly enforced.

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<sup>81</sup> OFA’s analysis, reported under criterion 83.7(e) in this proposed finding, found that each of 1,066 members of the petitioner in 2009 is linked in its genealogical database to at least one individual recorded as an “Indian” residing on the reservation in 1865. OFA’s further analysis found that 96 percent of the 2009 members (1,021 of 1,066) have satisfactorily demonstrated descent from one or more of the 1865 reservation residents. See criterion 83.7(e) for details.

*Consent to Membership and Dual Enrollment*

Since 2004, the petitioner has used variations of a single form to obtain from each member (1) consent to being listed as a member of the group and (2) confirmation of whether he or she is a member of any federally recognized Indian tribe or other non-federally recognized group. Some forms are designed for use by a single, adult member and other forms are designed for use by a parent or guardian of minors.

The membership requirement descriptions submitted by the petitioner's researchers do not describe the group's stance on members who are enrolled with federally recognized tribes (Aschenbrenner [2/8/1978]; SHN 9/25/1998; Grabowski 7/30/2008; Campisi 1/9/2009). Since becoming a petitioner for Federal acknowledgment, the group has required its members to indicate whether they are members of other non-recognized groups or federally recognized Indian tribes. Most of the pre-printed forms in the membership files state that the signers are confirming that they are not members of a federally recognized tribes or non-federally recognized groups. This implies that the petitioner does not allow dual membership. A few forms give the signer the option of checking off whether the signer is or is not a member of another group. Individuals who have indicated that they are members of either type of group continue to appear on the petitioner's membership list. Thus, the evidence indicates that such dual membership is not forbidden. The extent and type of dual membership is described further under criterion 83.7(f).

*Disenrollment*

The absence of a governing document obscures how the group handles the removal of members and how members may appeal removals. The petitioner's 2008 submission included an electronic file listing five members as "Non Shinnecock People Removed From Membership Roll" (SHN 7/30/2008). The petitioner had tagged one of these individuals as "adopted" in its genealogical database, and the "Individual History Chart" completed by the mother of two others identified them as her adopted children. The basis for the removal of the other two is not apparent in the record.

The same 2008 submission identified 275 individuals (members in 1998 and 2003) who had been moved to a "pending" file due to incomplete genealogical documentation. The Department included them in its evaluation of the group's demonstrated descent from 1910 reservation residents because they were still identified as members of the group (OFA 10/30/2008). OFA also urged the petitioner to include in the membership list it would submit for active consideration all of the individuals it considers members, regardless of their documentation status, since active consideration must evaluate the complete group (OFA 10/31/2008).

The petitioner objected to the Department's inclusion of "pending" members in its review: "The law clearly provides that a tribe has the right to say who its members are. Any attempt by OFA to force the expansion of the Nation's membership is contrary to the law" (Tilden 11/26/2008). A subsequent letter from OFA to the petitioner noted that the "pending" members had not been designated as disenrolled members (OFA 12/2/2008). OFA's letter again stressed the importance that the future evaluation include all known members of the group, and cited the problems encountered in the evaluation of two earlier acknowledgment petitions in which the

individuals on the membership list did not match the groups' demonstrated political and social communities (OFA 12/2/2008).

In its 2009 submission for active consideration, the petitioner furnished three lists identifying a total of 201 individuals (again, members in 1998, 2003, and in some cases 2008) who had been disenrolled by the Shinnecock Trustees on January 8, 2009 (SHN 1/8/2009b). This group of 201 individuals includes 2008 members as well as "pending" members whose genealogical evidence OFA had questioned. Despite removing these 201 individuals as members in January 2009, the petitioner listed residences on the Shinnecock Reservation for 14 of them. OFA inquired how these former members were notified that they were no longer considered members. The attorney of record for the petitioner advised OFA in June 2009 that the group was then "in the process of contacting all of those members to make sure that they have the opportunity to engage with the board of trustees to discuss their disenrollment, and so that process is ongoing right now" (OFA 6/3/2009, 38).

The petitioner provided photocopies of its correspondence with three of the 201 disenrolled former members (Tilden 6/9/2009 enclosures). However, the letters sent to these members are dated 2005 and 2006, and requested missing genealogical documentation or consent forms. One letter dated 2008 requested a signed consent form. Most of the letters mention that failure to submit the specified documents could lead to a restriction of services, or, in the case of the form letter hand-dated as July 12, 2006, "[s]teps will be formalized to deactivate listed persons whose data cannot be verified by August 15th" [presumably 2006] (SHN 7/12/2006). None of the provided copies of correspondence to the three former members included actual notification of their January 2009 removals from membership.

A researcher for the petitioner stated that those disenrolled in January 2009 were not being removed from the reservation, and the petitioner's attorney of record stated that he did not "think that they are participating in the meetings or that they are voting" (OFA 6/3/2009, 36, 37).<sup>82</sup> In an interview with the OFA genealogist on September 10, 2009, the petitioner's enrollment officer stated that, in the absence of instructions to the contrary from the Shinnecock Trustees, some members who had been "disenrolled" in January 2009 did, in fact, vote in the April 2009 election. She knew of one individual who was allowed to vote even though his membership application has never been accepted by the Trustees (Hutchings 9/10/2009).<sup>83</sup> The April 2009 voter sign-in sheets included seven "disenrolled" members, three "potential" members, and three individuals of unknown membership status among the 228 voters (SHN 4/7/2009).<sup>84</sup> The April

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<sup>82</sup> OFA noted 13 "disenrolled" reservation residents born before April 1988 whose age would make them eligible to vote in April 2009 if they met the six-month residency requirement. The petitioner's attorney of record stated at the public meeting that "it's only five individuals that are on the reservation that fall within that category" (OFA 6/3/2009, 37).

<sup>83</sup> This individual's membership folder is among folders of the 169 "Potential Members" submitted by the petitioner in 2009. The voter list for the April 2009 election included three such potential members (SHN 4/7/2009).

<sup>84</sup> Addresses the petitioner provided in January 2009 show three of the seven "disenrolled" members who voted in April 2009 residing off-reservation. The petitioner has not included the three unknown voters as former, current, or potential members, nor were two of them included in the group's genealogical database. However, OFA found their names listed as children on two current members' "Individual History Charts."

2009 voter sign-in sheets also included seven “absentee ballots” for the first time (SHN 4/7/2009).

### Enrollment Process

The petitioner’s enrollment officer provides an application packet to individuals inquiring about possible membership in the group. The petitioner’s attorney of record submitted a copy of the group’s four-page application for membership in 2003 (Tilden 8/27/2003, Exhibit 2). The items in the application exhibit included: (1) a form letter describing the “required supporting documents” the applicant must furnish, (2) a blank ancestry chart, (3) a blank “Individual History Chart,” and (4) a blank form letter from the Shinnecock Trustees that includes a check-off list of the types of documentation found to be missing from the applicant’s file.

The enrollment officers work with applicants to obtain satisfactory evidence of descent from an ancestor residing on the reservation in 1900 or 1910, as recorded on the Indian population schedules. Since 1998, the Trustees have not approved applications such as these or applications in any other form (Hutchings 9/10/2009). Upwards of 169 “potential members” await Trustee action on their applications.

### Summary

In order to participate in the Federal acknowledgment process, the Shinnecock petitioner’s historically unwritten governing processes had to be written down in some form, such as by drafting a governing document and membership criteria, or describing them in the form of a written narrative.

#### *Governing Document*

Efforts to draft a governing document continue. For more than 200 years, the Shinnecock Trustees have exercised political control over reservation issues without reliance on a governing document other than the 1792 Act and subsequent amendments. In the absence of a governing document, the 83.7(d) regulations require a petitioner to “submit a statement describing in full its membership criteria and current governing procedures.” The petitioner has not submitted such a statement created specifically for this criterion. However, “Part III” of its 1978 correspondence to the Department describes how the Trustees have governed the group and the reservation. The 1998 documented petition and later submissions contain narrative and evidence under criterion 83.7(c) that describe actual governance of the group.

#### *Membership Criteria*

Historically, the petitioner appears to have understood its members to be those residing on the reservation and their “blood” kin who may or may not reside on the reservation. Discussions of ancestry in the Indian Records Books over the years typically arose over land allotments rather than membership considerations. The petitioner’s 1978 correspondence to the Department did not refer to membership criteria, but rather to criteria for land allotments, the criteria being lineal descent from Paul Cuffee, James Bunn, Charles Kellis, David Waukus, or their consanguineal

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kin. “In issuing allotments and burial plots, they [the Shinnecock Trustees] effectively approve applications for Blood Shinnecock enrollment” (Aschenbrenner [2/8/1978], 25). The 1998 documented petition described an actual process for membership, in which prospective members had to demonstrate descent from “an identifiable tribal ancestor listed on the [Indian schedules of the] 1900 or 1910 [F]ederal census” of Southampton, New York (SHN 9/25/1998, 81). The 2008 report described how some members have only collateral ancestors on those census records, but added no new criteria.

Conclusion

The petitioner does not have a governing document. The petitioner has, however, provided statements and evidence describing in full its membership criteria and current governing procedures. Therefore, the evidence in the record is sufficient to demonstrate that the petitioner meets the requirements of criterion 83.7(d).

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**Criterion 83.7(e)**

**83.7(e) The petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.**

**83.7(e)(2) The petitioner must provide an official membership list, separately certified by the group’s governing body, of all known current members of the group.**

In order to meet criterion 83.7(e), a petitioner must demonstrate that its current members descend from a historical Indian tribe, or tribes that combined and functioned as an autonomous political entity. Thus, the petitioner must (1) identify its current members, (2) document the historical Indian tribe and the individuals in that historical Indian tribe from whom its current members descend, and (3) document that descent.

The Shinnecock petitioner’s most current membership list, certified as of January 8, 2009, identifies 1,066 members. This list reflects the removal of 201 individuals—listed as members in 1998 and 2003—who according to the petitioner had not provided satisfactory genealogical descent evidence (SHN 1/8/2009).

Available evidence documents 113 individuals on the Shinnecock Reservation, or leasehold, between 1792 and 1799 but the record contains limited evidence of these individuals’ presence on the reservation after 1800.<sup>85</sup> The record lacks genealogical evidence documenting any current member generation-by-generation back to any of these pre-1800 Shinnecock individuals. The significance of 1800 stems from the petition signed in that year by the Shinnecock, complaining of an unwanted change in its reservation population.<sup>86</sup> The petitioner’s current members demonstrate descent from individuals appearing on or near the reservation after 1800. The appearance of a few pre-1800 Shinnecock individuals as Shinnecock Trustees and petition signers up through the early 1820s provides some evidence of continuity from the pre-1800 period, and genealogical evidence demonstrates that descendants of some of the 1800-1820s reservation residents resided on the Shinnecock Reservation in 1865.

The Department finds that the historical Indian tribe is the Shinnecock tribe on the Shinnecock Reservation in 1789. This historical Indian tribe continued to exist and evolve up to 1865. The earliest record to plainly state that it is an enumeration of the Shinnecock Reservation is in the 1865 New York State census. For purposes of criterion 83.7(e), current members who demonstrate descent from an individual recorded as “Indian” on the 1865 State census of the

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<sup>85</sup> Although the land base was technically a leasehold until 1859, this section will refer to it as a reservation in all time periods.

<sup>86</sup> A brief description of the 1800 petition sent to the New York State legislature appears in Appendix F.

Shinnecock Reservation are deemed to demonstrate descent from the historical Indian tribe. The conclusion that the 1865 census may be used as a list of members of the historical tribe takes into account the historical situations and time periods for which evidence is demonstrably limited or not available, as permitted by §83.6(e) and as discussed in “Problems Linking 1865 Reservation Residents to Pre-1800 Reservation Residents,” below. New evidence from this early time period, submitted during the comment period, may change these conclusions. The genealogical evidence reviewed for the PF demonstrates that 96 percent of the current members (1,022 of 1,066) descend from at least one individual recorded as an Indian resident of the Shinnecock Reservation in 1865.

### Identification of Current Members

The petitioner submitted four membership lists, dated 1998, 2003, 2008, and 2009. The petitioner stated that no earlier membership lists, voter lists, or newsletter mail-out lists are known to exist. In order to give context to the current, 2009 membership list of 1,066, this section begins with the earliest list and concludes with the current list. The petitioner has not admitted any new members since 1998. The following table summarizes the original 1998 list and the changes made to the three membership lists certified subsequent to 1998.

<b>Changes in Membership Lists</b>				
<b>Year</b>	<b>1998</b>	<b>2003</b>	<b>2008</b>	<b>2009</b>
<b>Prior list total</b>		1,363	1,330	1,269
<b>Less deceased</b>		33	56	2
<b>Less removed</b>			5	201
<b>Total members</b>	1,363	1,330	1,269	1,066

#### *1998 Membership List – 1,363 members*

The first membership list submitted identified 1,363 members and was dated October 2, 1998 (SHN 10/2/1998).<sup>87</sup> This first list was presented as two lists, each of which included all 1,363 members but displayed different categories of information about them. “List 1” included first and last name, gender, address, city, state, and ZIP Code, and “List 2” included first and last name, date of birth, place of birth, father’s full name, and mother’s full name. The 1998 list gives reservation addresses for 527 members (of 1,363, or 39 percent). A later submission identifying deceased members shows that 13 of the members listed as of October 2, 1998, had died before that date (SHN 3/5/2003b).

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<sup>87</sup> The Department informed the petitioner that it could not locate the membership list or governing body’s certification as cited in a cover letter dated October 6, 1998 (Tilden 10/6/1998). A subsequent submission on November 23, 1998 (SHN 10/2/1998), appeared to be missing ten pages, replacement copies of which were provided on May 4, 2009 (SHN 5/4/2009a; SHN 5/4/2009b).

*2003 Membership List – 1,330 members*

The petitioner submitted an updated membership list dated March 5, 2003, which OFA received on March 11, 2003, in response to the Department’s technical assistance (TA) letter of December 22, 1998 (SHN 3/5/2003a). The list identified 1,330 members, and was accompanied by another list identifying 33 members who had died since the 1998 list.<sup>88</sup> The 2003 list gives reservation addresses for 538 members (of 1,330, or 40 percent), 42 of whom also appear with reservation birthplaces. A total of 12 other members appear with reservation birthplaces but were residing off-reservation in 2003. Analysis of this list shows that all of the 1998 members who survived to 2003 appeared on the 2003 membership list. The petitioner did not add any new adult members or newborns since 1998, but removed the names of 33 members deceased since 1998.

*2008 Membership List – 994 members and “275 members placed in pending file”*

The petitioner submitted its July 30, 2008, membership information in response to then AS-IA Carl Artman’s May 23, 2008, letter advising the group about the acknowledgment directive issued that same date (Artman 5/23/2008). One section of the directive specified a process by which petitioning groups with reservations might be eligible for “a waiver of the priority provisions in the regulations” and be moved “to the top of the ‘Ready’ list” (73 FR 30147). Artman advised that this process would require the petitioner’s “[g]enealogies and documentation linking present members” to a 1910 or earlier reservation population (AS-IA 5/23/2008). The Department conducted a 90-day review in part to determine whether the petitioner’s current members descend from reservation residents in 1910, as recorded on the Indian population schedule of the 1910 Federal census of Southampton, Suffolk County, New York.

At the time of this review, the petitioner claimed to have 994 current members, with an additional 275 members who were placed in a pending file due to the petitioner’s determination that they lacked ancestry evidence. The petitioner had also removed the names of 56 deceased members and 5 non-Shinnecock members since submitting its 2003 membership list. All surviving members from 1998 and 2003 appeared on the 2008 lists, either as current members or as pending members except for the five members described as “non-Shinnecock people removed from membership roll.” The petitioner did not add any new adult members or newborns since 1998 or 2003.

The petitioner submitted four Microsoft Access™ database tables depicting changes to its membership since its 2003 submission. The four tables included “Shinnecock Indian Nation Membership Roll July 2008,” “Shinnecock Members Missing Documents Placed in Pending File,” “Non-Shinnecock People Removed From Membership Roll,” and “Deceased Members Removed From The Membership Roll.”

The Department announced that the result of its review of the Shinnecock materials demonstrated that the petitioner was eligible for a waiver—as defined in the AS-IA’s directive (73 FR 30147)—of the §83.10(d) priority provision, was being moved to the top of the list of petitions considered to be ready and waiting for active consideration, and would undergo active consideration, beginning on November 10, 2008 (OFA 10/31/2008). The letter advising of this activity also

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<sup>88</sup> This list also furnished 64 name changes.

alerted the petitioner and interested parties that they had “60 days at the beginning of active consideration in which to submit additional material to be considered for the proposed finding” (OFA 10/31/2008). The Department requested that such a submission include, among other things, “a separately certified, updated membership list that accounts for all adult and minor individuals considered to be members of the group, regardless of whether their descent documentation is complete” (OFA 10/31/2008). The petitioner’s attorney of record responded that the group needed to understand why the Department sought documentation for individuals not on the membership list (Tilden 11/26/2008, 3).

The Department repeated its request in December 2008, and explained why long-standing members with minor documentation problems should be retained on the group’s membership list:

First, the group has until the close of the comment period to locate, and submit during the comment period, documentation to complete the files of these “pending” members. Second, any petitioner that excludes members from its certified membership list runs the risk of creating problems with the analysis under criteria 83.7(b) and (c). That is, the group’s demonstrated “political community” might not match its membership list. (See decision documents for #101 Burt Lake Band and #079 Schaghticoke Tribal Nation.) Third, the certified membership list for any petitioner acknowledged through this process becomes its base roll, according to § 83.12(b) of the acknowledgment regulations. (OFA 12/2/2008)

*2009 Membership List - 1,066 members*

During the 60-day period at the beginning of active consideration, the petitioner submitted updated membership data, including a membership list, certified as of January 8, 2009, listing 1,066 members. The list includes all the required categories of information, although residential addresses are missing for 23 members (listed with post office box numbers only). Separate certifications describe that the group evaluated the instances of missing or problematic descent documentation (which the Department pointed out at the conclusion of its waiver evaluation) as well as evidence for the 275 members described in 2008 as “pending.” Thus, the petitioner described the circumstances surrounding the preparation of the list. As a result, the group claimed to have corrected the descent problems for many of these, who appear on the 2009 membership list, and to have disenrolled 201 others who “do not meet the membership criteria of the Nation” (SHN 1/8/2009).

The disenrolled members are individuals the petitioner determined had missing or problematic evidence of descent. Membership folders furnished for some of these individuals (described under “Evidence of Descent” below) show that the group sent annotated form letters in 2005 and 2006 to members with missing or problematic documentation, warning that noncompliance could result in the “restriction of Tribal services” (SHN 7/29/2005, 8/22/2005, 12/9/2005, 4/17/2006). Another form letter states that “[s]teps will be formalized to deactivate listed persons whose data cannot be verified by August 15th” (SHN 7/12/2006). Evidence provided for these disenrolled members give reservation addresses for 14 of them, 12 of whom were over 21 in April 2009 (and therefore eligible to vote if they had resided on the reservation for six months prior to the election). The enrollment officer present at the April 2009 election confirmed that the

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Shinnecock Trustees had not provided her with any guidance on how to handle disenrolled members who turned out to vote, and the voter log shows that seven such disenrolled members did vote in the group's April 2009 election (SHN 4/7/2009).<sup>89</sup>

The April 2009 voter list includes three individuals identified elsewhere by the petitioner as "Potential Members," all of whom had voted in previous years (SHN 4/6/2004, 4/5/2005, 4/6/2006, 4/3/2007, 4/1/2008, 4/7/2009).<sup>90</sup> The same April 2009 voter list includes three individuals not on any list of current or potential members, two of whom are not in the petitioner's genealogical database (SHN 4/7/2009). The Individual History Charts completed by two current members list the names of those latter two voters as their adult offspring.

The petitioner submitted seven Microsoft Access™ database tables depicting changes to its membership since its 2008 submission. The seven tables included:

- "Shinnecock Indian Nation Membership Roll January 2009,"
- "94 Pending Members Added To Roll From The 275 Pending File,"
- "181 Disenrolled Individual [*sic*] Who Do Not Meet Membership Criteria,"
- "19 Disenrolled Individuals Who Do Not Meet Membership Criteria,"
- "1 Disenrolled Individual Who Does Not Meet Membership Criteria,"
- "2 Deceased Members Removed From The Membership Roll," and,
- "169 Potential Members."

The names of all 1,066 members in 2009 also appear on membership lists dated 1998, 2003, and 2008 (in 2008 as members or pending members). The petitioner has not added any new adult members or newborns since 1998, but has removed the names of members deceased since 1998, in addition to the members disenrolled in 2009.

### Historical Indian Tribe

For purposes of criterion 83.7(e), current members who have demonstrated descent from an individual recorded as "Indian" on the 1865 State census of the Shinnecock Reservation are deemed to have demonstrated descent from the historical Indian tribe, subject to reconsideration if any new evidence is submitted for the final determination.

References to a Shinnecock entity date long before the Town of Southampton entered into a 1,000-year lease establishing a Shinnecock reservation for them in 1703. However, neither the petitioner nor the Department located any census of the reservation or census of all Shinnecock members before the mid-19th century. A 1764 agreement, an 1800 petition, and an 1822 petition bear the signatures or marks of some individuals self-identifying as Shinnecock. Indian records maintained by the Southampton Town Clerk beginning in 1792 recorded the names of

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<sup>89</sup> This total includes three voters who appear with off-reservation addresses, of Central Islip, in the petitioner's 2009 submission.

<sup>90</sup> The enrollment officer described the reason that the Shinnecock Trustees allowed one of these three individuals to vote as "because he's been here—he's a part of the community" (Hutchings 9/10/2009).

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Shinnecock individuals who leased their lots to others, witnessed those transactions, or were elected as Shinnecock Trustees. However, none of these records appears to account for the entire group at those points in time. The petitioner's genealogical database did not include any of the 38 signers in 1764 and included only 11 of the 113 Shinnecock individuals identified up through 1799 in the *Indian Records Books* or *Indian Lands Recorded* book. OFA added these 135 names to the genealogical database used for this PF evaluation.<sup>91</sup>

In its comments on the changes to the Federal acknowledgment regulations in 1994, the Department stated:

The regulations have not been interpreted to require tracing ancestry to the earliest history of a group. For most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe. (59 FR 9288, 2/25/1994).

The earliest record to state plainly that it is an enumeration of all residents of the Shinnecock reservation is the 1865 New York State census of Southampton (NY Census 1865). The State census does not purport to record the members of the Shinnecock tribe but simply the residents on the Shinnecock Reservation, and it is reasonable to assume that any Indian entity represented by those residents would include immediate family members of the reservation residents who might not have resided on the reservation in 1865. However, each of the 1,066 members reviewed for this PF claimed to have a Shinnecock ancestor who resided on the reservation in 1865, and did not rely upon demonstrating descent from Shinnecock ancestors who lived off reservation in 1865 but were immediate family members of reservation residents. Therefore, current members who have demonstrated descent from an individual recorded as "Indian" on the 1865 State census of the Shinnecock Reservation are deemed to have demonstrated descent from the historical Indian tribe.

The 1865 schedule specifies the Shinnecock Reservation as the locale in which 146 individuals in 28 families were enumerated. Although the "color" column on the pre-printed schedule form offered options of White, Black, and Mulatto only, the enumerator recorded "Ind." (Indian) for individuals in every family except one (#251).<sup>92</sup> The form's 28 column headers also provided for the recording of such information as how many children were born to each woman, the number of times married, whether each adult was then married, widowed, or single, and whether the men had been or then served in the army or in the navy.

Nearly all of the 1865 reservation residents also appear on several consecutive pages of the 1850 Federal population schedule of Southampton (Census 1850a, 362B-364B). The 1850 grouping appears to represent the reservation residents, although that is not stated on the schedules or in the description of the territory to be canvassed by the enumerator (Census 1850b, 201). The Department does not presume that either the 1850 or the 1865 census captured all members of an

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<sup>91</sup> Five of the 1764 signers were also among the 113 recorded 1792-1799. Thus, 38 plus 113, minus the 5 in both records, and minus the 11 already in the petitioner's genealogical database, equals 135.

<sup>92</sup> The demonstrated father of the woman recorded as "B[lack]" appeared in this census as "Ind[ian]" (#237).

Indian entity at those times. Family members of Indian residents of the reservation may not have been living on the reservation at those two specific times.

In the most recent positive final determination for a petitioning group, the Mashpee, the evaluation under criterion 83.7(e) calculated descent from the historical Indian tribe “as defined by the 1861 Earle Report” (Mashpee FD 2007, 28). The Mashpee PF summarized earlier listings of Mashpee members to illustrate continuity between the colonial entity and the 1861 entity. A similar summary for Shinnecock is not possible, since the 1865 State census is the earliest known or available complete listing of all Shinnecock Reservation residents. OFA extracted as much detail as possible from earlier records identifying individuals as Shinnecock or as residents of the Shinnecock Reservation. Such early records often documented more about individuals whose links to Shinnecock were questioned than about those whose uneventful, long-term residence on the reservation kept them out of the records. Documents created prior to 1865 that provide identifications of some individuals as Shinnecock and others associated with the Shinnecock are briefly described in Appendix F.

#### Problems Linking 1865 Reservation Residents to Pre-1800 Reservation Residents

The major factors frustrating the efforts to genealogically link the 1865 reservation residents to pre-1800 reservation residents include (1) the late date of mandatory vital recordkeeping in New York, (2) the lack of documentation submitted for the record of all pertinent events occurring within the recordkeeping era, (3) the likelihood that pre-1850 Federal census enumerations did not include the reservation’s Indian residents, (4) the loss of the third *Indian Records Book*, for the 1835-1880 time period, (5) the limitations of *Indian Records Books* 1 and 2, which include only those reservation residents who leased their land to others, witnessed such leases, or served as Shinnecock Trustees, and (6) the possibility that there may be no genealogical continuity. Taking into account these historical situations and time periods for which evidence is demonstrably limited or not available, the Department concludes that the 1865 State census is a reliable list of members of the historical tribe for purposes of the acknowledgment process, 25 CFR §83.6(e). Each of these six problems is discussed further below.

(1) Most New York jurisdictions—including Southampton—began recording births, marriages, and deaths in 1880 (New York State Board of Health 1880, 97). Of particular interest here are death records, which provide for the recording of the decedent’s parents’ names, although the availability and accuracy of such parental identifications would depend upon the knowledge of the informants.<sup>93</sup> Some of the early vital records located and provided by the petitioner do not

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<sup>93</sup> Original records in which the information is provided by participants with primary knowledge carry greater genealogical weight than original records in which information is provided by non-participants with only secondary knowledge of the events. Death records usually fall into the latter category. However, death records may be the only type of parentage evidence available for individuals born before 1800 or born to pre-1800 parents. Therefore, OFA will carefully consider and evaluate such “secondary” records for parentage evidence.

furnish parents' names,<sup>94</sup> identify parents incompletely, or identify parents that do not match the petitioner's genealogical database.<sup>95</sup>

(2) The evidence in the record indicates that the petitioner has not pursued all vital records that are available, especially for historical individuals without descendants in the current group but who were siblings to historical individuals with descendants in the current group. These records may include ancestry information equally applicable to historical individuals with descendants in the group. OFA brought to the petitioner's attention two examples that affect a large number of members (OFA 3/16/2009).<sup>96</sup> If the petitioner locates the suggested records, and those records demonstrate that the petitioner's Walker and Kellis ancestry claims are correct, then the petitioner will have demonstrated direct generation-to-generation genealogical links between the pre-1800 reservation population and the 1865 reservation population, and thereby strengthen the reliability of using the 1865 reservation population as the basis for calculating descent from the Indian tribe in 1789 under criterion 83.7(e).

(3) Of the 132 individuals recorded in the 24 households on what is believed to be the reservation in the 1850 Federal census, 15 appeared as heads of households in 1840, 4 as heads of households in 1830, 1 as head of a household in 1820, and none appeared in the 1810, 1800, or 1790 census. Of these, only the 1840 census gives the appearance of including the reservation

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<sup>94</sup> For example, the death record for Sophia (Walker) Bunn (d.1883) does not identify her parents.

<sup>95</sup> For example, the death record for Mary (Kellis) Beaman (d.1896) does not identify her father and identifies her mother as "Dency Kellis," whereas the petitioner identified her parents as David Kellis and Phoebe Hugh.

<sup>96</sup> The petitioner's genealogical database presents the claim, but not the evidence, that "David" Kellis and Phoebe Hugh (both born ca. 1789) were the parents of five Kellis children, three of whom are claimed as ancestors of current members. Two of these five siblings died before vital records were kept, but the petitioner provided a death record for only one of the three siblings who died after 1880 (and it did not identify the parents claimed). The *Indian Records Books* include four Kellis men born by the 1770s who were on the Shinnecock Reservation before 1800, but none with the given name of "David." It may be that the three Kellis siblings who are ancestral to current members were the offspring of one of these four pre-1800 Kellis men. If the petitioner can locate recorded death certificates for the two siblings who died after 1880, those records may correctly identify their parents, and document a given name other than "David" for their father. (OFA confirmed that death records for Oliver O. Kellis (d.1881) and George H. Kellis (d.1903) are not on file with the Town or the Village of Southampton (Schermeier 8/25/2009; telephone inquiry to Southampton Village 9/15/2009).) Probate or other records may document a sibling relationship between such a decedent and the other Kellis siblings, thereby providing indirect parentage evidence for all.

In a second example, the petitioner's genealogical database presents the claim, but not the evidence, that David Waukus (Walkus, Walker) (b.bef.1773) and Mary Hugh (b.1766) were the parents of seven children, three of whom are claimed as ancestors of current members. Four of the seven siblings died before vital records were kept, but the petitioner provided the death record for only one of the three who died in or after 1880 (and that death record did not identify either parent of the decedent). At OFA's request, the Town of Southampton provided the death record for the seventh child ascribed to David Waukus—Harriet (Walker) Hudson—and her death record identified her father as David Walker, born at Shinnecock, and her mother as Mary Hugh, born at Montauk. (The Town of Southampton confirmed that the 1880 death record for the third sibling to die in the era of recordkeeping—Cynthia (Walker) Bunn (d.1880)—is not on file there (Schermeier 8/25/2009). If the petitioner can locate probate or other records documenting a sibling relationship between Harriet and her other asserted Walker siblings, then that would indirectly demonstrate parentage for all.

residents. That is, a cluster of 17 consecutively enumerated households includes 16 households composed of “free colored persons.” Ten of these households were headed by individuals with documented Shinnecock activity.<sup>97</sup> That is, an 1840 household head may have appeared before 1840 as a Shinnecock Trustee, lot holder, or petition signer, or appeared after 1840 as Shinnecock in the 1853 litigation *Rose v. Bunn et al.*, or as a signer of the 1869 Long Island Railroad deed (including as a spouse of a Shinnecock member).<sup>98</sup>

Earlier census enumerations present ambiguous data that cannot be reasonably interpreted as representing the reservation in those years. These enumerations include multiple rather than single clusters of Shinnecock households among the non-Shinnecock population, include individuals associated with Shinnecock activities but who owned land off of the reservation, and exclude Shinnecock Trustees, and thus do not appear to be an enumeration of the reservation residents. Enumerators may have ventured onto the reservation to record individuals they perceived to be the non-Indian spouses of Indian women. Thus, it is possible that the 1850 census individuals resided on the reservation in those earlier years, but that the reservation was not enumerated or not enumerated fully prior to 1850. Such ambiguity reduces the opportunities to link the later reservation residents to the earlier ones. Based on these limitations in the data, the pre-1840 Federal census records cannot be relied upon for identification of Shinnecock reservation residents.

(4) The third *Indian Records Book* is not among the original *Indian Records Books* held by the town of Southampton (Stone 1983, 141) and reportedly has been missing since the 1950s (Strong & Holmberg 1983, 226). These records would cover the time period from 1835 to 1880. The expectation is that *Indian Records Book* 3—like the extant, earlier *Indian Records Books* 1 and 2—would provide identifications of Shinnecock individuals, and thereby put names on the changing reservation population during this period. It is not expected to provide the type of evidence that solves the ultimate genealogical goal of documenting child-to-parent relationships.

(5) The *Indian Records Books* and the *Indian Lands Recorded* together document the presence of 113 historical individuals on the Shinnecock Reservation between 1792 and 1799. However, these records document only those individuals who drew land, leased land to others, witnessed the leases, and served as Shinnecock Trustees. An anonymous circa 1815 document, described in Appendix F, appears to record witness statements for two anticipated court cases against the Indian Trustees, and it provides evidence for two pre-1800 reservation residents whose names do not appear in the aforementioned records (Anonymous *ca.* 1815).

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<sup>97</sup> The cluster of 17 consecutive households were headed by the following individuals, and those with documented Shinnecock activity are denoted by italics: *Charles Kellis, James Lee, Wicks Cuffee, Luther Bun, Isaac Lezer, Mary Cuffee, David Bun, Stephen Walker, Moses Williams, Thomas Beman, James Bun, Joseph Tony, Sam Job, Jerry King, George Fordham (White), Ajah Cuffee, William Richards* (1840 Census, 143). The petitioner’s genealogical database claims that Isaac Eleazer (“Lezer”) married a daughter of James Bunn, that Moses Williams married a daughter of David Waukus, and that the sixth listed Mary Cuffee was a daughter of James Bunn, then the widow of Ira Cuffee. If “Sam Job” is identical to “Sam Jo,” who held a Shinnecock lot in 1794, then Shinnecock activity could be attributed to him as well.

<sup>98</sup> OFA Genealogist’s Workpaper 5 has notes and a FTM printout of those individuals.

As described more fully earlier, the statements made by James Bunn (b.ca.1767), Meshack Cuffee (b.ca.1770, whose surname is missing from the document), Samuel Walker (b.ca.1741), and Samuel Budd (b.poss.ca.1757) indicate that a woman named Poll Dick had been brought to Shinnecock from Southold as an orphaned Indian child sometime after 1778 by Samuel Budd, and that she had drawn land since about 1790.<sup>99</sup> James Bunn and Meshack Cuffee also stated that Paul Cuffee's wife Hannah [—? —] had lived at Wading River but went to Shinnecock to live circa 1794, and had "lived on land about 18 years," or since about 1797.<sup>100</sup> The statements, while not claiming Shinnecock ancestry for either woman, do furnish evidence for two apparently long-term residents of the Shinnecock reservation whose presence there could not be gleaned from the *Indian Records Books* or *Indian Lands Recorded*.

(6) James Bunn's two statements recorded circa 1815 assert that, at some unspecified date, the "Indians and Mulattoes" agreed that all individuals then on the reservation thenceforth would be eligible to draw land. If the non-Shinnecock men who married as yet unnamed Shinnecock women (as described in the 1800 petition) also brought their unmarried family members who, in turn, married non-Shinnecock spouses, then it is possible that the pre-1800 Shinnecock population was wholly replaced by the non-Shinnecock reservation residents. That would be possible if there were no intermarriage between the two groups. The petitioner claims that the children of at least one pre-1800 couple—David Waukus and Mary Hugh—married into the Cuffee, Bunn, and Kellis families. Therefore, this is one area where further evidence to support the petitioner's claim would establish a generation-to-generation genealogical connection between the pre- and post-1800 reservation populations.

The current record contains evidence that the surnames of the men or the known maiden names of married women in the 1865 and later census records of the reservation also appear in pre-1800 records of individuals on the Shinnecock Reservation, such as Cuffee, Kellis, and Waukus (but not Bunn).<sup>101</sup> However, for the variety of reasons discussed above, the record lacks genealogical evidence that documents, generation-by-generation, the 1865 reservation residents back to the known pre-1800 reservation residents.<sup>102</sup>

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<sup>99</sup> Three of these four witnesses (Bunn, Walker, and Budd) had served as Shinnecock Trustees by this date, and two had been debarred from drawing land in 1806 (Bunn and Cuffee).

<sup>100</sup> Wading River is located on Long Island Sound, at the western end of Riverhead where it adjoins Brookhaven, about 15 miles northwest of the Shinnecock Reservation.

<sup>101</sup> The earliest mention of James Bunn in records reviewed for the PF is on the 1800 Federal census of Southampton. He was elected a Shinnecock Trustee in 1801. The petitioner's genealogical database shows he was born in Islip (no evidence cited) and his circa 1815 statements imply he may have been in Wading River before his arrival in Southampton (James Bunn *in* Anonymous *ca.* 1815).

<sup>102</sup> No current member has demonstrated descent from any of the 113 individuals appearing in the Indian records of the Shinnecock Reservation between 1792 and 1799 (and such a demonstration is not required for 83.7(e)).

Evidence Documenting Descent from the Historical Indian Tribe

In discussions under criterion 83.7(e), distinctions are made between a petitioner’s *claimed* descent and a petitioner’s *demonstrated* descent. Claims of descent appear in members’ “Individual History Charts,” the petitioner’s genealogical database, and ancestry charts generated from that database. Demonstrated descent represents OFA’s evaluation that the evidence documents the child-to-parent relationship in each generation from the member back to his or her claimed ancestor. Such evidence appears in membership folders. The petitioner also supplied some evidence separately, chiefly after OFA audited the membership folders, and OFA also obtained additional evidence.

*Membership Folders*

Between August and October 2008, the OFA genealogist reviewed 1,002 membership files at NARF’s Washington, DC, office—legal counsel of record for the petitioner—as part of the Department’s evaluation to determine whether the Shinnecock petitioner qualified for a waiver of the priority provision of 25 CFR Part 83 regulations at §83.10(d) (see Appendix C). That study found that 61 percent of the 994 current members and the 275 members “placed in a pending file” provided evidence acceptable to demonstrate that they descend from a reservation resident as enumerated on the 1910 Indian population schedule of the Federal census, which was sufficient for meeting the waiver provision.<sup>103</sup>

At the conclusion of that review, OFA notified the petitioner of specific areas it should address before active consideration of the petition began (OFA 10/31/2008). OFA recommended that the petitioner submit an updated membership list (discussed above), and also advised the petitioner that OFA would need access to membership files for all current members. OFA also requested the evidence relied upon for all members’ residential addresses (in order to resolve address discrepancies noted between the membership list and membership folder labels), and provided the petitioner with a list of individuals with inadequate parentage evidence (OFA 10/31/2008; enclosure 3).

During the 60-day period at the beginning of active consideration, the petitioner submitted the recommended evidence with the exception of address evidence.<sup>104</sup> The petitioner’s submission grouped its files by categories: 1,062 membership files (missing four files; all without addresses on their labels), 96 files for individuals considered “pending” in 2008 (“P1” and “P2”), 163 “Ancestor” files, and 168 “Potential Members” files (missing one file).

The petitioner identified 169 “Potential Members” in a Microsoft Access™ database, although OFA found 168 membership folders (1 missing). Two of these individuals appear with “Shinnecock Reservation” as their address, and 74 have “Southampton” as their address although

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<sup>103</sup> OFA found that 78 percent of the 2009 members (836 of 1,066) demonstrated their descent from a resident of the 1910 reservation. Another 21 percent of the 2009 members (228 of 1,066) do not claim to have a 1910 reservation resident in their ancestry, one member did not have acceptable evidence demonstrating their descent, generation-by-generation, from their claimed 1910 reservation ancestor, and one adopted member did not have parentage evidence.

<sup>104</sup> The petitioner explained that address changes were typically made verbally, “in person or by phone,” rather than in writing (Tilden 5/4/2009, 2).

their street addresses place them within the reservation. OFA reviewed also these 168 folders. OFA staff noted that all but seven of these individuals have signed forms that state, “I, the undersigned, acknowledge that my name is included on the membership roll of the Shinnecock Indian Nation and I am not enrolled with any other federally or non-federally recognized Indian tribe.” It is unclear why the petitioner asked potential members to sign forms intended for members only, and this circumstance raises the question of whether these individuals understand that they are not included on the petitioner’s membership list.<sup>105</sup>

Only 20 of the 169 “potential members” identified by the petitioner would have been age 21 at the time of the last election (that is, born before 4/7/1988), according to birth dates provided in the Access table. Addresses furnished for them indicate that six of these 20 resided on the reservation in January 2009. The voter list shows that three of these six potential members age 21 or older, who reside on the reservation, voted in the group’s April 2009 election, and not for the first time (SHN 4/7/2009). The petitioner furnished a Southampton post office box address, rather than a residential address, for a seventh potential member over age 21. Since she voted in the two previous elections, it appears that her residential address may be, or may have been, on the reservation (SHN 4/3/2007, 4/1/2008).<sup>106</sup>

During OFA’s 2009 field visit to the enrollment office, the petitioner advised that there are additional potential member folders—about 100—that were not completed in time to send to OFA within the 60-day window of opportunity when active consideration began (Hutchings 9/10/2009). These potential members, like the 169 others, are being held for Trustee approval.

OFA relied upon the documentation in the petitioner’s membership files or ancestor files to verify the child-to-parent relationships for current members back to their claimed ancestors in 1865.<sup>107</sup> This documentation included vital record photocopies or certified transcripts of vital records, court records of divorce or paternity, adoption papers identifying the biological parent(s), Federal and State census records that specify relationships, and family Bible records. OFA added to the genealogical database additional post-1865 individuals and information identified in the same or other sources to enhance the Department’s understanding of the group and others with Shinnecock ancestry.

The sources identifying such additional individuals and information include Federal census records 1870-1930, Carlisle Indian Industrial School student files, Hampton Normal and Agricultural Institute student file abstracts, the National Archives’ collection of Kansas Claims of New York Indians, World War I Draft Registration cards, and Social Security Death Index

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<sup>105</sup> The petitioner may avoid this problem by creating a form for disavowal of membership in a federally recognized tribe separate from a form for consent to being listed as a member.

<sup>106</sup> Voter records 2000 through 2009 include seven voters not on any type of membership list, only three of whom could be identified as relatives of current members. See OFA Genealogist’s Workpaper 7.

<sup>107</sup> The petitioner made available membership files for 27 individuals during the 2008 waiver review who were among the 201 disenrolled in 2009. The petitioner submitted in 2009 membership files for 168 of the 169 “potential” members. OFA relied upon the documentation in these membership files to verify the child-to-parent relationships for “disenrolled” and “potential” members back to their claimed ancestors in 1865.

data. Census records established residences and family compositions for off-reservation relatives of reservation residents. Photocopies and abstracts of student files from the 1880s to the 1920s provided some age, occupation, and residence data for a limited number of Shinnecock individuals.

From the Kansas Claims of New York Indians, OFA obtained photocopies of 49 claims, rejected in 1904 (48 Brothertown claims and 1 Oneida claim), that were filed by individuals who claimed Shinnecock or Montauk ancestry, or whose surname matched that of known Shinnecock Reservation residents.<sup>108</sup> These applicants provided identifications, but not evidence, of their birth dates, spouses' and children's names, parents' names, grandparents' names and tribal ancestry, and a narrative description of their descent from a claimed Brothertown Indian with specific birth and death dates or land allotment numbers. OFA added to the genealogical database some of the individuals and information contained in these applications, but most often the narrative description of an applicant's claimed descent from his or her qualifying New York Indian involved more generations than were possible, given the birth date or allotment data associated with that Brothertown Indian. Therefore, OFA did not add these earlier claimed ancestors to the genealogical database.<sup>109</sup>

World War I Draft Registration cards provided additional evidence for full birth dates appearing in the petitioner's genealogical database, and furnished evidence of these men's permanent addresses 1917-1918, nearest relatives, race, occupation, employer, and physical characteristics. The Social Security Death Index listed dates of death, dates of birth, and last known addresses.

### Analysis

The evaluation for the PF finds that 96 percent of the current members (1,022 of 1,066) demonstrated their descent from the historical tribe which, for the purposes of this PF, is determined by verifying descent from a list of historical Indian individuals residing on the Shinnecock Reservation in 1865. There remain four living or historical individuals whose lack of adequate parentage evidence prevents the other 44 current members from documenting their claimed descent from one or more of the 1865 reservation residents.<sup>110</sup>

OFA staff also analyzed descent from the historical tribe for all current, living members who appeared on the 1998 membership list, all of whom the Shinnecock Trustees approved as

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<sup>108</sup> Three of these applicants resided on the Shinnecock Reservation in 1900, and seven applicants resided on the Shinnecock Reservation in 1910.

<sup>109</sup> The applications for descendants of one claimed Oneida woman (Mary Wampy, as the wife of Noah Cuffee) did not include birth or land allotment data for her, but her approximate age is known from her family's Federal census entries. The number of generations between the applicants and Mary Wampy is reasonable, but actual descent is not demonstrated.

<sup>110</sup> See OFA Genealogist's Workpaper 1 for identities. The four individuals are claimed as close relatives of those with documented parentage, and it is expected that documentary evidence can be obtained to demonstrate their Shinnecock ancestry.

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members. The analyzed group included the 1,066 current members and the 201 “disenrolled” members, or 1,267 total (and excluded the 91 deceased and 5 found to be non-Shinnecock since 1998). The result of this analysis finds that 1,030 of the 1,267 current and disenrolled members, or 81 percent, demonstrated descent from the historical tribe.

OFA staff conducted a third descent analysis which included “potential” members in the evaluation. The petitioner’s enrollment office has verified the ancestry of potential members, but the Shinnecock Trustees have not yet approved these individuals for membership. Research for the PF finds that some of the disenrolled and potential members (and a few individuals not on any list) reside on the reservation, participate in committees, and vote in elections. That is, the petitioner treats them as members even though their names do not appear on the membership list certified for the PF. The petitioner’s membership categories of “current,” “disenrolled,” and “potential” total 1,436 individuals. Analysis finds that 1,178 of the group’s 1,436 individuals, or 82 percent, demonstrated descent from the historical tribe.<sup>111</sup>

The evaluation for the PF did not uncover evidence that genealogically documents any 1865 reservation resident (or current member) as a descendant of historical individuals recorded before 1800 in *Indian Records Book 1*, *Indian Records Book 2*, or *Indian Lands Recorded* as drawing land, leasing land to others, witnessing leases, or serving as Indian Trustees. Records of intermarriages between pre-1800 Shinnecock Indians and non-Shinnecock individuals were not in the record and may not survive. However, evidence demonstrates such intermarriages occurred and individuals with non-Shinnecock surnames emerged as Shinnecock participants and elected leaders from 1800 to 1865. The Department concludes that, for acknowledgment purposes, descent from the 1865 reservation residents is a demonstration of descent from the historical Indian tribe.

The Department utilized the 1865 State census because it identified the Shinnecock Reservation specifically. However, evidence indicates that the 1850 Federal census of Southampton included an enumeration of the Shinnecock Reservation, but without identifying it. That is, all of the ancestral 1865 adult residents except one couple (John Thompson and Jane Cuffee) were also enumerated consecutively on several pages (362-B through 364-B) of the 1850 Federal population schedule. Therefore, this 1850 cluster of 24 consecutive dwellings appears to have been an enumeration of the reservation, although the enumerator did not identify the area specifically as the reservation. If the area enumerated on those pages constituted the reservation, then the percentage of current members demonstrating descent from the 1850 reservation is 94 percent (1,001 of 1,066).<sup>112</sup>

Criterion 83.7(e) requires a demonstration of descent from the historical Indian tribe. However, PFs also report, under criterion 83.7(d) or (e), whether a petitioner meets its own membership

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<sup>111</sup> The percentage remains 82 percent even if the analysis includes the three additional unlisted individuals allowed to vote in April 2009.

<sup>112</sup> The number of current members who satisfactorily demonstrated descent from an 1850 reservation resident drops by 21 members, whose only ancestors on the 1865 Reservation were the aforementioned John Thompson and Jane Cuffee.

requirements. The petitioner's current membership criteria require a demonstration of descent from an individual on the Indian schedules of the 1900 or 1910 Federal census of Southampton. This PF finds that 970 of the 1,066 current members, or 91 percent, documented their descent from an individual enumerated on the Indian schedules of either the 1900 Federal census or the 1910 Federal census of Southampton, NY.<sup>113</sup>

The above membership criteria were not in place in 1978. The petitioner's materials submitted in 1978 included a summary of how the group felt it met acknowledgment regulations being proposed at that time.<sup>114</sup> The summary included a standard for the granting of land allotments that required a demonstration of descent from more distant historical individuals than do the current membership criteria. The historical standard used by the Shinnecock Trustees on which to base their land allocation determinations was whether an individual descended from "Peter Paul Cuffee," James Bunn, Charles Kellis and wife Charity Bunn, David Waukus, "and their consanguineal kin" (Aschenbrenner [2/8/1978], 19). (See Appendix D for further information on these men and their families.)

These four individuals appear in the petitioner's genealogical database as claimed ancestors of current members. According to the petitioner's claims, seven of James Bunn's nine children intermarried with children or grandchildren of Paul Cuffee, "David" Kellis, and David Waukus from about 1817 through about 1835. Therefore, most current members claim descent from more than one of these historical individuals, and sometimes more than once. The record does not contain evidence demonstrating that any current member descends from "David" Kellis or David Waukus. Analysis shows that 845 of the 1,066 current members, or 79 percent, demonstrated their descent from Paul Cuffee and/or James Bunn.

Of these four historical individuals claimed as ancestors by the petitioner, only David Waukus appears on the reservation before 1800. Further, the current record does not contain evidence demonstrating some of the children ascribed to them or, in some instances, that they were in fact Shinnecock Indians. The petitioner may want to pursue documentation to demonstrate its historical ancestors as the offspring of this David Waukus and possibly of one of the Kellis men on the reservation before 1800 if it wants to further strengthen its genealogical links to the historical tribe in 1789.<sup>115</sup> These kinds of demonstrated generation-to-generation, genealogical

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<sup>113</sup> The PF finds that 90 percent of the 2009 members (958 of 1,066) demonstrated their descent from a resident listed on the 1900 Indian schedule. Another 8 percent of the 2009 members (89 of 1,066) did not claim to have a 1900 Indian schedule ancestor, 180 members did not have acceptable evidence demonstrating their descent, generation-by-generation, from their claimed 1900 reservation ancestor, and one adopted member did not have parentage evidence. OFA found that 78 percent of the 2009 members (836 of 1,066) demonstrated their descent from a resident of the 1910 reservation. Another 21 percent of the 2009 members (228 of 1,066) do not claim to have a 1910 reservation resident in their ancestry, one member did not have acceptable evidence demonstrating his descent from his claimed 1910 reservation ancestor, and one adopted member did not have parentage evidence.

<sup>114</sup> The 1978 final rule for the 25 CFR Part 54 acknowledgment regulations appeared in the *Federal Register* on September 5, 1978 (43 FR 39361). The petitioner's February 8, 1978, correspondence to the Department included a "statement in compliance with 25 CFR §54" (Aschenbrenner [2/8/1978], 14).

<sup>115</sup> Suggested approaches appear in footnote 11.

links would further justify using the 1865 State census to determine descent from the historical Indian tribe for acknowledgment purposes.

### Potential Growth

The petitioner indicated that it would resolve some of its outstanding membership issues before the FD.<sup>116</sup> That could include the possible reinstatement of the 201 members removed by the petitioner due to outstanding documentation problems; admission or rejection of the approximately 269 “potential members” (169 named; 100 unnamed) whose files have been approved by the enrollment officer (and an unknown number of children born to current members who may not be included in the “potential member” estimate); and the possible approval of 99 others born to unwed Shinnecock fathers if the group votes to overturn that longstanding proscription.

If all of those 569-plus individuals were added as members, then it would represent a 53 percent increase in the members from the petitioner’s membership list; however, only the 100 unnamed potential members and the 99 others were not evaluated for this PF. If these 199 individuals, or other presently unidentified persons, are added to the membership list, they will be evaluated under all criteria for the FD.

### Summary

Criterion 83.7(e) comprises two components. A petitioner must demonstrate that its current members descend from the historical Indian tribe. A petitioner must provide an official membership list of all known members of the group with certain categories of information. A “member of an Indian group” is defined in the regulations as an individual who is recognized by the Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

### *Membership List*

The petitioner certified 1,363 members in 1998; 1,330 in 2003; 994 in 2008; and 1,066 in 2009. No new members have been added since 1998. Evaluation for the PF described under criteria 83.7(c) and (e) finds individuals residing on the reservation and participating in meetings, committees, and elections who do not appear on the membership list. The petitioner appears to have removed persons from its membership list for purposes of the 2008 review and, a second time, for purposes of active consideration if the Department raised a question about them after its 2008 review. The petitioner removed members and designated them as “pending” for the 2008 review and as “disenrolled” for the PF review even though they had appeared on previous membership lists and, in some cases, reside on the reservation and vote in Shinnecock Trustee elections. In addition, the Shinnecock Trustees have allowed “potential” members and individuals of unknown membership status to vote in the 2009 and previous Trustee elections.

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<sup>116</sup> “The status of these individuals [the 169 potential members] will be addressed prior to the final determination on the Nation’s petition for acknowledgment” (Campisi 6/12/2009, 4).

The review and analysis of evidence appearing in any PF typically highlights problem areas so a petitioner may have the opportunity to remedy them during the comment period. Under 83.12, if a petitioner is acknowledged, the membership list becomes the complete base roll for purposes of Federal funding and other administrative purposes. Additions to the roll are limited. Therefore, it is important that the membership list include all members of the group.

#### *Historical Indian tribe*

While evidence identified 113 historical individuals residing on the Shinnecock reservation 1792-1799, no current members demonstrated generation-to-generation descent from any of them. The Department does not require the petitioner's members to demonstrate descent from pre-1800 ancestors. The Department accepts a demonstration of descent from an Indian individual enumerated on the 1865 State census of the Shinnecock Reservation as a demonstration of descent from the historical Shinnecock tribe for purposes of 83.7(e). The documentation supporting the continuity of the social and political community from 1792 to 1865 is demonstrably limited and the petitioner may want to pursue additional evidence for this period to further connect its 1865 membership to the earlier historical tribe. New evidence submitted during the comment period on the PF may alter these findings.

#### *Descent*

For purposes of criterion 83.7(e), current members who demonstrate descent from an individual recorded as "Indian" on the 1865 State census of the Shinnecock Reservation are deemed to demonstrate descent from the historical Indian tribe. Analysis concludes that 1,022 of the group's 1,066 current members, or 96 percent, demonstrate descent from an Indian resident of the 1865 Shinnecock Reservation. This percentage of descent is sufficient for purposes of meeting the requirements of criterion 83.7(e). OFA anticipates that the members in the remaining 4 percent, who are closely related to current members with demonstrated descent from the 1865 Reservation residents, should be able to locate the documentation necessary to resolve the few missing generation-to-generation connections.

Evaluating descent for two other configurations of membership produced results that are also sufficient for meeting criterion 83.7(e). Analysis of 1,267 current and disenrolled members only found that 1,030, or 81 percent, demonstrated descent from the historical tribe. Analysis of 1,436 current, disenrolled, and potential members found that 1,178, or 82 percent, demonstrated descent from the historical tribe. All of these percentages are sufficient for purposes of meeting the requirements of criterion 83.7(e).

#### Conclusion

The petitioner submitted a separately certified membership list of 1,066 individuals that furnished each member's full name (including maiden name), date of birth, and residential address (with a few omissions), as required under criterion 83.7(e). A total of 1,022 of the 1,066 individuals, or 96 percent, on the membership list demonstrate descent from the historical Indian tribe. For purposes of criterion 83.7(e), current members who demonstrate descent from an individual recorded as "Indian" on the 1865 State census of the Shinnecock Reservation are deemed to have demonstrated descent from the historical Indian tribe, subject to reconsideration

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if any new evidence is submitted for the FD. Therefore, the evidence in the record is sufficient to demonstrate that the petitioner meets the requirements of criterion 83.7(e).

**Criterion 83.7(f)**

**83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.**

Evidence in the record indicates that the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.

Analysis

The petitioner uses variations of a single form to obtain from each member (1) consent to being listed as a member of the group and (2) confirmation of whether he or she is a member of any federally or non-federally recognized Indian tribe. Such signed and dated consent forms appear in all but 10 membership folders.<sup>117</sup>

According to the information provided by the members, four members belong to federally recognized Indian tribes, six to one non-federally recognized group, and three indicated they were enrolled in a federally recognized Indian tribe or non-federally recognized group but did not specify which Indian tribes or groups. The four members enrolled with federally recognized Indian tribes belong to the Hoopa Valley Tribe in California (n=2), the Pueblo of Taos in New Mexico (n=1), and Mashantucket Pequot Tribe of Connecticut (n=1). Another member stated, in one of the petitioner's meetings but not on his consent form, that he is a member of the "Fort Sill Chiricahua Warm Springs Apache Tribe of Oklahoma" (SHN 6/13/2006, 16). The six petitioner members who are also members of one non-federally recognized group all belong to the Unkechaug or Poospatuck of Suffolk County, New York.<sup>118</sup>

In its Family Tree Maker™ genealogical database, the petitioner included ethnic identifications in the name fields for current and historical individuals who married Shinnecock spouses. According to these annotations, some of the spouses of current members are Aztec, Cherokee, Cheyenne, Coharie, Hoopa, Hopi-Winnebago, Lakota, Lenape, Mashantucket Pequot, Meherrin, Mayan, Navajo, Poospatuck, Powhatan, Seneca, and Taos Pueblo. None of the 1,363 individuals listed as members since 1998 have or had Narragansett or Mashpee spouses, according to the genealogical database. Although not included in the petitioner's genealogical database, the spouse of a current member is currently the leader of the non-federally recognized "Unkechaug Nation" (Poospatuck) which maintains a state reservation in Brookhaven, Suffolk Co., New

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<sup>117</sup> Another five folders contain signed consent forms but consent for minor children only, not the adult member.

<sup>118</sup> The potential membership folders for 169 individuals whom the petitioner has not accepted into membership include four who confirm that they belong to the federally recognized Navajo Nation, Mashantucket Pequot Tribe of Connecticut, Pueblo of Taos, and White Mountain Apache Tribe of the Fort Apache Reservation.

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Criterion 83.7(f)

York<sup>119</sup> (see Figure 1). The two groups with a historical or current reservation on Long Island other than the Shinnecock petitioner are both non-federally recognized groups: the Montauk and Poospatuck/Unkechaug. There are no federally recognized Indian tribes on Long Island.

The evidence in the record, consisting of the genealogical database and signed statements, indicates that only four current members are enrolled in federally recognized tribes. Therefore, OFA did not check for Shinnecock members in the rolls of tribes in neighboring New England, such as the Narragansett Indian Tribe of Rhode Island; the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head, both of Massachusetts; and the Mohegan Indian Tribe and Mashantucket Pequot Tribe, both of Connecticut.

Conclusion

Evidence in the record indicates that the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribes. Therefore, the petitioner meets the requirements of criterion 83.7(f).

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<sup>119</sup> “Indian Chief Leads Fight to Keep Selling Cigarettes,” New York Times, December 14, 2008, p. A47, accessed from <[www.nytimes.com](http://www.nytimes.com)> on August 14, 2009. The article mentions their two children, who do not appear in the petitioner’s genealogical database or among the 169 potential members.

**Criterion 83.7(g)**

**83.7(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.**

No evidence has been submitted or located that indicates the petitioner, its members, or their ancestors have been the subject of congressional legislation that has expressly terminated or forbidden a relationship with the Federal Government as Indians or as an Indian tribe.

Criterion 83.7(g) requires that there be no congressional legislation terminating or forbidding a Federal relationship. If such congressional legislation existed, then the Department could not issue a positive acknowledgment decision because it would be contrary to Federal law.

Because there is no evidence that Congress has either terminated or forbidden a Federal relationship with the petitioner or its members, the PF finds the petitioner meets the requirements of criterion 83.7(g).

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## Appendix A

### A Full Discussion of the Petitioner's Claim for Unambiguous Previous Federal Acknowledgment (25 CFR §83.8)

As discussed earlier in this PF, the petitioner submitted a petition supplement on August 5, 2008, entitled "Shinnecock Indian Nation: Federal Acknowledgment Petition Supplement on Unambiguous Previous Acknowledgment." It consists of a report, approximately 100 pages in length, and a collection of supporting documents, approximately 800 pages in length.

The PF does not find substantial evidence in the record to demonstrate that the Federal Government established a political relationship with the petitioner as an Indian tribe. Therefore, the petitioner is not eligible to be evaluated under 25 CFR §83.8.

This appendix is to be read in conjunction with the PF's earlier section on unambiguous previous Federal acknowledgment. This appendix provides a more detailed discussion of the evidence in the record and the claims advanced by the petitioner than the earlier section of the PF.

To determine whether a petitioner is eligible to be evaluated under 25 CFR §83.8, the Department must first find *substantial* evidence that the Federal Government acknowledged, by its *actions*, a political *relationship* between the United States and an *Indian tribe*. The explanatory comments in the preamble to the 1994 acknowledgment regulations state, "the regulations require that previous acknowledgment be *unambiguous* and clearly premised on acknowledgment of a government-to-government relationship with the United States" (59 FR 9283; emphasis added).

The PF addresses, in chronological order, the evidence in the record relating to the petitioner's claim for unambiguous previous Federal acknowledgment.

#### The Petitioner's Claims for "Unambiguous Previous Federal Acknowledgment, 1889-1899"

The petitioner claims unambiguous previous Federal acknowledgment in 1889-1899. The petitioner bases its claims on the activities of Thomas Jefferson Morgan, Commissioner of Indian Affairs in 1888; the activities of Daniel M. Browning, Commissioner of Indian Affairs in 1889; the Federal Government's position in the case of *New York Indians v. United States*, affirmed by the Supreme Court in 1898; and the petitioner's interpretation of the Non-Intercourse Act and *The Kansas Indians* Supreme Court Case. These activities and interpretations do not provide substantial evidence of unambiguous previous Federal acknowledgment.

#### *Commissioner Morgan*

The petitioner claims that in 1889, the Shinnecock "pursued land claims against trespassers on its reservation" and that Commissioner Morgan "provided assistance to two tribal members, John

Tomah and his wife, who came to Washington, D.C. to search for relevant documentation” relating to trespassers on the Shinnecock Indian Reservation.<sup>120</sup> Morgan also corresponded with a non-Indian philanthropist about placing Shinnecock individuals in boarding schools for Indians. Commissioner Morgan’s assistance on these issues, the petitioner claims, “appear[s] to demonstrate that for at least three years, from 1889 until 1892, [Morgan] understood that it was part of his duties to assist the Shinnecock Indian Nation” (SHN 8/5/2008, 10-12).

Morgan’s correspondence on the matter stated that “[c]onsiderable time and research was given to the matter, but by reason of its jurisdiction being under the State rather than Federal authority, I am unable to furnish further information” (Interior 7/13/1892; SHN 8/5/2008, 11). Thus, Morgan rejected the idea that the United States was in a relationship with the petitioner or that the U.S. had responsibility for the Shinnecock Reservation. That Morgan helped two people “search for relevant documentation” is not unambiguous previous Federal acknowledgment of an Indian tribe. His willingness to do so seemed to reflect a general concern for Indians and Indian issues, not a political relationship with a Shinnecock tribal entity.

The petitioner also claims previous Federal acknowledgment because Morgan helped to “enroll Shinnecock tribal members in federally funded Indian boarding schools” (SHN 8/5/2008, 12). In neither of these situations did Commissioner Morgan assist a tribal entity; instead, he offered limited assistance to individuals, including non-Indian Helen Shelton Smith, a private citizen and member of the New York Indian Association, who advocated on behalf of the Shinnecock students. The current record contains no evidence that the Federal Government undertook either action as part of an existing treaty obligation or other Federal relationship with a tribal political entity.<sup>121</sup> In neither situation did the Federal Government unambiguously acknowledge, by its actions, a political relationship between the United States and the petitioner as an Indian tribe.<sup>122</sup>

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<sup>120</sup> There is no evidence in the record that “John Tomah” is an ancestor of any of the petitioner’s current members. It is unclear from the evidence in the record that he or his wife were “two tribal members,” as the petitioner asserts. In his July 13, 1892, letter to Helen Sheldon Smith, the Corresponding Secretary *pro tem* for the New York City Indian Association, Commissioner Morgan states that “John Iomah [Tomah?] and his wife of Southampton, Long Island, came to this city in search of information relative to the lands of the Shinnecock, stating that they had employed one R. L. Trumbull, Esq., of Albany, N.Y., to search the archives of the State Department, but his report was neither satisfactory nor complete, as to their lands or titles thereto, and upon his advice they came to Washington, hoping to secure here what they had failed to obtain in Albany” (Interior 7/13/1892). Nothing in Morgan’s letter indicates that Tomah and his wife were members of the Shinnecock Reservation group.

<sup>121</sup> The Department’s Reconsidered Final Determination for the Chinook Indian Tribe / Chinook Nation refutes the argument that only children from federally recognized Indian tribes attended BIA schools (Chinook Indian Tribe RFD 2002, 122, 125-126).

<sup>122</sup> The *Annual Report of the Commissioner of Indian Affairs for 1900* mentions that 45 Shinnecock students (out of 60 school age individuals) were attending a school funded by the state of New York (ARCIA 1900, 302). The petitioner suggests that the appearance of this information in a report by the Office of Indian Affairs may constitute unambiguous Federal acknowledgment. The document shows the New York Agent transmitting information from the annual reports submitted by the New York superintendents of Indian schools to the New York State superintendent of public instruction. However, the mention of the state report in the Annual Report is not substantial evidence that the Federal Government, by its actions, unambiguously established a government-to-government relationship with the petitioner as an Indian tribe, nor does it reflect the existence of such a relationship. The Federal Government did not send those students there as part of a treaty obligation, nor is there any indication in the record that the Federal Government worked through a political entity which represented the students as its

The attendance of Shinnecock children at a federally funded school is not substantial evidence of unambiguous previous Federal acknowledgment.

*Commissioner Browning*

The petitioner claims that, in 1894, Morgan’s successor as Commissioner of Indian Affairs, Daniel Browning, effectively acknowledged the petitioner. After Commissioner Morgan left office, James Bunn, an individual whom the petitioner describes as a “Shinnecock tribal member,” wrote to Commissioner Browning asking for assistance with Shinnecock land “that the White folks have taken from us” (Bunn 6/20/1894). In response, Browning replied that “as the Shinnecock Indians and their lands are under the jurisdiction of the State of New York, Albany is the only place, I would think, where the title to your lands could be fully ascertained.” The petitioner contends that a key consideration regarding its case for unambiguous previous Federal acknowledgment was that Browning “did not deny that the Federal Government held the responsibility to investigate Indian land claims” (SHN 8/5/2008, 14-16).<sup>123</sup> There is no evidence in the record that Browning or the BIA undertook an investigation or took any additional action on this matter on behalf of the Shinnecock.

Browning’s correspondence with Morgan and Bunn did not unambiguously establish or reflect a political relationship between the United States and the petitioner as an Indian tribe. Browning’s statement, that “the Shinnecock Indians and their lands are under the jurisdiction of the State of New York,” denies a Federal relationship rather than establishes one. It is not substantial evidence of an action clearly premised on a political relationship. Furthermore, the petitioner’s claim that because Browning “did not deny” that the Federal Government held some sort of responsibility to the petitioner does not affirmatively demonstrate that, by its actions, the Federal Government unambiguously acknowledged a political relationship with an Indian tribe. The regulations require substantial evidence that the Federal Government, by its actions, unambiguously had a political relationship with an Indian tribe—not that the Federal Government did not explicitly deny such a relationship.

*The Non-Intercourse Act and The Kansas Indians Supreme Court Case (1867)*

The petitioner contends that laws and legal interpretations contemporary to the 1890s show that there was a “continuing Federal responsibility to protect the Shinnecock Indian Nation, both because its members were wards of the Federal Government due to their status as non-citizen Indians and because it continued to be a ‘tribe’ within the meaning of that term in the Non-Intercourse Acts” (SHN 8/5/2008, 16). More specifically, the petitioner claims that the Trade and Intercourse Acts passed between 1790 and 1834 prohibit acquisition of land from Indians without Federal approval, and that the Supreme Court’s 1867 decision in *The Kansas Indians* (72 U.S. 737, at 757) held that a tribe only could lose the protection of the Non-Intercourse Act “by

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members in order to enroll the students in the state school.

<sup>123</sup> The petitioner claims that the “real reason for his indifference to the Shinnecock” was Browning’s belief that his “office has no funds at its disposal to make such an investigation or to recover your lands” (SHN 8/5/2008, 15). The PF did not find evidence of a previously existing political relationship between the Federal Government and the petitioner as an Indian tribe, thus, it is not the case that Browning was letting an existing relationship lapse. Browning did not initiate a relationship.

treaty stipulation or a voluntary abandonment of their tribal organization.”<sup>124</sup> The petitioner also states that “[m]odern interpretations of this standard, such as in the case of *Passamaquoddy Tribe v. Morton* (528 F. 2d 370) (1st Cir. 1975) have held that Indians that have maintained their tribal status are a ‘tribe’ within the meaning of the Non-Intercourse Act, even in the absence of explicit Federal recognition by the Department of the Interior” (SHN 8/5/2008, 16). These claims regarding legal interpretations do not show any Federal action that specifically engaged the petitioner as an Indian tribe. Therefore, these claims do not demonstrate that the petitioner is eligible to be evaluated under 25 CFR §83.8.<sup>125</sup>

*New York Indians v. United States*

In 1898, the U. S. Supreme Court affirmed the settlement that the U.S. Court of Claims awarded to the New York Indians in *New York Indians v. United States*. The petitioner suggests that Federal discussions associated with this court case may provide evidence of a Federal relationship with the petitioner. This claim does not provide substantial evidence demonstrating that the Federal Government unambiguously acknowledged the petitioner as an Indian tribe.

In the context of this court case, references to “the New York Indians” generally meant the Indian tribes who moved from New York to Wisconsin in the 1830s. These Indian tribes included the Oneidas, the Stockbridge-Munsees, and the Brothertown Indian tribe. The Brothertown Indian tribe was itself composed of individuals from several New England and New York Indian tribes.

It is important to understand that the “New York Indians” in this court case are not the petitioner. The petitioner claims that the Brothertown Indians included “some members of the Shinnecock Indian Nation” (SHN 8/5/2008, 17). However, the evidence in the record does not support the claim that ancestors of the petitioner joined the Brothertown Indians (see the discussion of criterion 83.7(e) for a discussion of the petitioner’s ancestors).<sup>126</sup> Consequently, for purposes of

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<sup>124</sup> The Supreme Court’s decision provides that the State of Kansas cannot change the status of an Indian tribe, and that the Federal Government had discretion in that matter. The Supreme Court declared, “While the general government has a superintending care over their interests and continues to treat with them as a nation, the State of Kansas is estopped from denying their [the Shawnee Indians’] title to it. She [the State of Kansas] accepted this status when she accepted the act admitting her into the Union. Conferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulation or a voluntary abandonment of their tribal organization. As long as the United States recognizes their national character, they are under the protection of treaties and the laws of Congress and their property is withdrawn from the operation of state laws” (*The Kansas Indians* (72 U.S. 737, at 757)).

<sup>125</sup> Furthermore, the logic of these arguments is that all petitioners who are continuously existing Indian tribes would be determined to have unambiguous previous Federal acknowledgment. Such an argument presumes tribal status and ignores the distinction in the acknowledgment regulations between those who qualify to be evaluated under 25 CFR §83.8 and those who do not.

<sup>126</sup> The Department’s researchers did not find evidence in the record that Shinnecock Indians went to Brothertown, New York, or Brothertown, Wisconsin. The Department found no Indians listed as “Shinnecock” in the “Family History of the Brothertown Indians” appendix in *Samson Occom and the Christian Indians of New England*, by W. Deloss Love, Ph.D. (Boston: The Pilgrim Press, 1899).

25 CFR Part 83, it is important not to conflate the petitioner with the Brothertown Indians or with any Shinnecock Indians who may have joined the Brothertown Indians.<sup>127</sup>

In its Petition Supplement, the petitioner points out that, in 1899, the Acting Commissioner of Indian Affairs, A. C. Tonner, approved a contract between a private attorney, Francis Morrison from Worcester, Massachusetts, and several trustees from the Shinnecock reservation. In approving the contract, the Acting Commissioner of Indian Affairs allowed a private attorney to represent the trustees' interests regarding the claims settlement in *New York Indians v. United States*. However, in his letter approving the contract, Tonner noted that he was not "in any manner admitting or recognizing the existence or status of the Indians mentioned therein as an Indian tribe." In the same letter, Tonner further stated:

Neither the Montauks nor the Shinnecoeks appear to have ever sustained treaty relations with the Government, nor to have been recognized by the Government as Indian tribes. They are hardly to be regarded as "wards of the nation" for the reason that the United States does not exercise and seems never to have exercised guardianship or control over their affairs (Interior 6/10/1899; SHN 8/5/2008, 18-19).

Shortly thereafter, the Acting Secretary of the Interior, Thomas Ryan, responded to Tonner's letter, writing:

No treaties or agreements were ever made with them [the Mohegans, Shinnecoeks, and Narragansetts] by the general government, nor has it ever exercised any supervision or control over them. Their political status is unknown, but it is presumed that they are citizens and subject to the laws of the several States in which they reside (Interior 6/23/1899; SHN 8/5/2008, 19).

Thus, Tonner denied that the Federal Government had a relationship with the Shinnecock Indians. Ryan expressed some uncertainty over the political status of the Shinnecock, but denied that there was a Federal relationship with them. The statements from Tonner and Ryan denied that a relationship existed. Furthermore, neither man initiated any Departmental action to establish a political relationship with the petitioner as an Indian tribe. Neither Tonner nor Ryan unambiguously acknowledged, by his actions, a political relationship between the United States and the petitioner as an Indian tribe.<sup>128</sup>

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<sup>127</sup> Additionally, the petitioner is different not only from Indians who joined the Brothertown Indians, but the petitioner is also different from the Brothertown Indian tribe and the "New York Indians" referred to in this case. Thus, an instance in which the Federal Government unambiguously acknowledged either the "New York Indians" or the Brothertown Indians would not represent unambiguous Federal acknowledgment of the petitioner.

<sup>128</sup> As discussed above, the attendance of Shinnecock children at a federally funded school is not substantial evidence of unambiguous previous Federal acknowledgment. The Department's Reconsidered Final Determination for the Chinook Indian Tribe / Chinook Nation refutes the argument that only children from federally recognized Indian tribes attended BIA schools (Chinook Indian Tribe RFD 2002, 122, 125-126). The Proposed Finding for the Jena Band of Choctaw Indians (Petitioner #45) noted that the petitioner did not have a previous Federal acknowledgment because the Federal Government "dealt with the individual applicants directly, not through a political entity which represented them as its members" (Jena Choctaw PF 1994, 1).

*Special Note on the Annual Reports of the Commissioner of Indian Affairs, 1887-1901*

To help evaluate the petitioner's claims that it is eligible to be evaluated under 25 CFR §83.8, the Department reviewed the annual reports of the Commissioner of Indian Affairs to assist in understanding any relationship that may have existed between the petitioner and the Federal Government. The Department found that the annual reports mentioned the Shinnecock during the following years: 1887-1890, 1892-1901, and 1915-1924. The PF will offer a brief assessment of the reports from 1887-1901 here, and comment on the other reports later in this section.

Most of the annual reports between 1887 and 1901 describe schooling arrangements for the Shinnecock. The State of New York managed these schooling arrangements for the people from different Indian reservations in New York, including Iroquois reservations, the Poospatuck reservation, and the Shinnecock reservation. Reading the reports of the New York Agency, it was clear that the State Government—not the Federal Government—was responsible for these schools. For example, U.S. Indian Agent T. W. Jackson wrote in 1889 annual report, “The day schools in this agency are supported entirely by the State of New York and managed by seven local superintendents, residing near each reservation, who are under the control of the State superintendent of public instruction” (ARCIA 1889, 265).

On several occasions, the “Report of Superintendent of Schools” contained reports that a few Shinnecock students attended an Indian boarding school that received Federal funding. For example, in 1893, the “Report of Normal and Agricultural Institute, Hampton, Va,” noted that three Shinnecock students attended that school (ARCIA 1893, 461). In the same year, “Report of School at Carlisle, PA” noted that five Shinnecock boys and five Shinnecock girls “were new pupils received,” but did not remain at Carlisle School (ARCIA 1893, 456). However, as discussed above, the current record contains no evidence that the Federal Government enrolled these students as part of an existing treaty obligation or other Federal relationship with a tribal political entity.

The contemporaneous reports of the New York Indian agent weigh against the notion that the presence of Shinnecock children in Indian boarding schools constitutes the unambiguous Federal acknowledgment of a political tribe entity. In the same 1893 *Annual Report of the Commissioner of Indian Affairs*, the New York agent reported that the “Shinnecoeks, the Poospatucks, and Montauks” were “fragments of tribes on Long Island,” and that he understood that they were not “regarded as belonging to this agency, although in the State of New York” (ARCIA 1893, 223). Further, the annual report does not list the Shinnecock reservation as one of the six reservations “under the jurisdiction of this agency” (ARCIA 1893, 219).

These reports, in the case of the Shinnecock pupils, do not establish or document an ongoing political relationship with a Shinnecock tribal entity. These reports contain no evidence that the Federal Government sought to enroll these students because of an existing responsibility to a Shinnecock tribal entity.

In addition to noting that the State of New York funded and managed a school attended by Shinnecock, the Federal New York agent repeatedly indicated that a relationship did not exist

between the Federal New York Agency and the inhabitants of the Shinnecock Reservation. For example, in 1893, the New York agent, A. W. Ferrin, stated, “I do not understand that they are regarded as belonging to this agency, although in the State of New York” (ARCIA 1893, 223). The following year, Ferrin wrote of the Shinnecock and Poospatuck, “these Indians are not considered as coming under the jurisdiction of the New York Agency” (ARCIA 1894, 214). In 1899 and 1901, Ferrin reported, “[t]he New York agent has not exercised any jurisdiction over these people during my knowledge” (ARCIA 1899, 262; 1901, 289). It is also important to note that the New York Agency reported on relations with the Iroquois tribes with considerable detail; however, the agency provided little information regarding the Shinnecock—and that information did not describe Federal interaction with a Shinnecock Indian tribe.

Thus, the annual reports of the Commissioner of Indian affairs between 1887 and 1901 do not provide substantial evidence for unambiguous previous Federal acknowledgment of the petitioner in the late 19th century.

The Petitioner’s Claims for  
“Federal Acknowledgment of a Shinnecock Tribal Entity, 1900-1925”

The petitioner suggests that certain events between 1900 and 1925 demonstrate that the Federal Government unambiguously recognized the petitioner as an Indian tribe. None of these, evaluated separately or in combination, provide substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner an Indian tribe.

*Status as Non-Citizen Indians*

The petitioner states that its members had a “status as non-citizen Indians” prior to the passage of the Indian Citizenship Act of 1924; that the “Shinnecoeks had never been granted United States citizenship by virtue of special legislation;” and that “[p]rior to 1924, the Shinnecoeks were not legally considered to be citizens of either the United States or the State of New York.” Consequently, the petitioner asserts that “[a]s Indian non-citizens, the legal status of the Shinnecock was that of wards of the Federal Government” (SHN 8/5/2008, 22-23). This argument points to no Federal action clearly premised on identification of a Shinnecock tribal political entity and no action clearly recognizing a relationship between that entity and the United States. The petitioner’s argument is not substantial evidence of unambiguous Federal acknowledgment.<sup>129</sup> Furthermore, the petitioner’s assertion that as “Indian non-citizens” they were “wards of the Federal Government” does not make the petitioner eligible to be evaluated under 25 CFR §83.8 and is inconsistent with the Department’s position based on opinions of the Comptroller General in 1929 (Interior 10/28/1933). Finally, the “status” claim is not unambiguous, either, because—among other reasons—the Indian Citizenship Act did not

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<sup>129</sup> The logic of these claims is that all petitioners who are continuously existing Indian tribes would be determined to have unambiguous previous Federal acknowledgment. Such an argument presumes tribal status and ignores the distinction in the acknowledgment regulations between those who qualify to be evaluated under 25 CFR §83.8 and those who do not. See the PF’s discussion above regarding the petitioner’s claims under the Non-Intercourse Act.

specifically identify the petitioner as a subject of the legislation, and because the Department during this time period denied a relationship with them, as discussed above.<sup>130</sup>

*Federal Involvement with the Shinnecock Land Claims*

In 1900, a subcommittee of the Senate Committee on Indian Affairs held a hearing to investigate certain claims of the Montauk, Shinnecock, Narragansett, and Mohegan Indians. However, the act of holding a Congressional hearing regarding land claims does not, by itself, constitute the unambiguous acknowledgment of an Indian tribe. There is no evidence in the record that, as result of this hearing, the Federal Government undertook an action to formally recognize the petitioner's ancestors as an Indian tribe, nor did the hearings provide evidence of a previously existing political relationship between the petitioner and the Federal Government. Thus, the hearing—either alone or in combination with the other evidence in the record—does not provide substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner an Indian tribe.<sup>131</sup>

In 1906, the State of New York passed an act to enable the Montauks to file a land claim at the extreme eastern end of Long Island, if consent by the Commission of Indian Affairs were filed in the office of the clerk of Suffolk County, N.Y. The Commissioner of Indian Affairs granted consent for the private “counsel for the Montauk Indians” to bring an action to establish their rights to certain easements on certain lands. (ARCIA 1906, 152). The petitioner claims that state lawmakers, at least, “recognized a continuing Federal responsibility for these Indians [the Shinnecock and the Montauk]” (SHN 8/5/2008, 25). This consent by the Commissioner of Indian Affairs is not substantial evidence of unambiguous Federal acknowledgment of either the Montauks, or of the Shinnecock if they were in fact part of this claim for an easement in Suffolk County.

*Publication of and Reliance on the Handbook of North American Indians North of Mexico*

The petitioner notes that, in 1911, “the office of the Commissioner of Indian Affairs included the Shinnecock on a list ‘of tribes the Office has a record of’” in its correspondence and that the Smithsonian Institution “clearly identified the Shinnecock as a continuing tribal entity of approximately 150 members residing on a reservation” in its *Handbook of North American Indians North of Mexico* (SHN 8/5/2008, 26-27).

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<sup>130</sup> In determining whether Congressional legislation applies to a petitioner, it is helpful if the text of the legislation mentions the petitioner by name. The Indian Citizenship Act of 1924 did not identify any Indian tribe as specific beneficiaries of the act. However, there are Congressional acts that bestow U. S. citizenship on a specific Indian tribe. The Department's RFD on the Chinook Indian Tribe's petition discusses whether certain Congressional acts constitute unambiguous previous Federal acknowledgment. The RFD notes, “the language of the statute must be evaluated in the context of its specific effect and function” and that “the Act must be understood in light of what Congress sought to accomplish” with its legislation (Chinook Indian Tribe RFD 2002, 30-31). There is no indication in the Indian Citizenship Act that Congress intended to establish a political relationship with the petitioner as an Indian tribe, therefore the Act does not provide evidence of unambiguous previous Federal acknowledgment.

<sup>131</sup> Existing precedent provides that even if a statute can be read as consistent with a congressional understanding that a tribe or band existed for purposes of prosecuting an historic tribal claims, it cannot be read an action of unambiguous previous Federal acknowledgment in that respect (Chinook RFD 2002, 30). There was much less action, here, than in the Chinook precedent.

Although these documents described a Shinnecock entity, in neither case did the documents provide substantial evidence that there was a relationship between that entity and the United States. Furthermore, the creation of neither document constituted an action by which the Federal Government established a political relationship between the United States and the petitioner—as an Indian tribe. Having the Office of the Commissioner of Indian Affairs state that it “has a record of” a particular group does not establish that the Federal Government is in a *relationship* with that group clearly premised on the group’s character as a tribal political entity. The Smithsonian Institution’s description of an Indian entity does not constitute unambiguous previous Federal acknowledgment of the petitioner as an Indian tribe. Furthermore, the Smithsonian Institution is not an agency with the authority to acknowledge Indian tribes. Consequently, these two documents do not provide substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner an Indian tribe.

*The Reeves Report of 1914 and the  
Secretary of the Interior’s Representations to Congress, 1915*

The petitioner described proposed legislation (H.R. 18735, 63rd Congress, 1914) regarding the allotment of Indian lands in New York and discussed the Department’s comments on the proposed legislation. Specifically, the legislation was intended “[T]o Settle the Affairs of the Senecas and Other Indians of the Five Nations in the State of New York.” The petitioner also described the 1914 report on the New York Indians by John Reeves, a Department employee. Assistant Commissioner Meritt, wanting to better understand the “New York Indian problem,” instructed Reeves to visit “the several reservations in that State so as to present [an account] of existing conditions there” (Interior 12/26/1914). The resulting document, the “Reeves Report,” served to describe the condition of the Indians in the State of New York and how the proposed legislation might affect them. The report mentions the Shinnecock and their reservation. However, neither the Reeves report nor the Department in response to the Report established a political relationship with the petitioner as an Indian tribe. The Reeves report did not provide evidence that such a relationship was ongoing or had existed previously.

Congress did not enact the proposed legislation, and, in its proposed form, the legislation did not explicitly propose the establishment of a political relationship with a Shinnecock political entity. Thus, neither the Reeves report nor the proposed legislation—alone or in combination with the other— provide substantial evidence that the Federal Government acknowledged, by its actions, a political relationship between the United States and the petitioner an Indian tribe.

*The Commissioner’s Annual Reports*

The petitioner claims that because a Shinnecock population appeared in the Reeves report and in the 1915 *Annual Report of the Commissioner of Indian Affairs*, the Department made “a clear and unequivocal public representation to Congress that the Department had determined the Shinnecock Indian Nation to be under Federal superintendence and jurisdiction, that is, federally acknowledged by the Department, by that year” (SHN 8/5/2008, 31-32). The petitioner further notes that the annual reports of the Commissioner of Indian Affairs between 1916 and 1924 similarly listed a “Shinnecock” population in certain statistical tables. The Department’s analysis of these reports will focus specifically on the 1915 report, but the PF’s analysis and conclusions for the 1915 report can, in general, be applied to the other reports.

The 1915 report of the Commissioner of Indian Affairs includes a table, “Table 2 – Indian population of the United States . . . ,” that lists an estimated “Shinnecock” Indian population living in New York (see figure 2).

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**TABLE 2.—Indian population of the United States, exclusive of Alaska, June 30, 1915—**  
Continued.

States, superintendencies, and tribes.	Total population.	Male.	Female.	Minors.	Adults.	Full blood.	Mixed blood.	
							One-half or more.	Less than half.
[Image cropped to include only relevant information]								
New York.....	6,185	3,011	2,814	2,616	3,209	5,825		
New York Agency.....	5,825	3,011	2,814	2,616	3,209	5,825		
Cayuga.....	182	83	99	80	102	182		
Oneida.....	243	123	120	87	156	243		
Onondaga.....	549	277	272	210	330	549		
Seneca (Allegany).....	929	462	458	461	450	929		
Seneca (Cattaraugus).....	1,317	670	647	578	739	1,317		
Seneca (Tonawanda).....	500	275	225	205	295	500		
St. Regis (not a part of Six Nations).....	<sup>1</sup> 1,509	800	709	754	755	1,509		
Tuscarora.....	355	196	159	116	239	355		
Montauk.....	<sup>1</sup> 30	15	15	15	15	30		
Poospatuck.....	<sup>1</sup> 20	10	10	10	10	20		
Shinnecock.....	<sup>1</sup> 200	100	100	100	100	200		
Not under agent.....	<sup>1</sup> 360							

**Figure 2:** “Indian Population of the United States, exclusive of Alaska, June 30, 1915,” *Annual Report of the Commissioner of Indian Affairs, 1915* (Washington, D.C.: Government Printing Office, 1916), p. 66. Image cropped by Office of Federal Acknowledgment. The footnote numeral “1” next to the Shinnecock population figures indicates that the figures are estimated.

This table indicates an estimated population of 200 Shinnecock individuals living in New York. The table also states that there are 5,825 individuals (including the estimated 200 Shinnecock individuals) associated with the New York Agency, plus an additional estimated 360 Indian individuals who were not associated with the New York Agency.

Another table, “Table 3 – Indians under Federal supervision – Unallotted and holding trust and fee patents, June 30, 1915,” appears later in the same report (see figure 3):

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TABLE 3.—Indians under Federal supervision—Unallotted and holding trust and fee patents, June 30, 1915—Continued.

States and superintendencies.	Total Indians under Federal supervision.	Allotted.				Unal- lotted.
		Total allotted.	Holding trust or restricted fee patents.	Holding fee patents for—		
				Part of al- lotment.	Entire al- lotment.	
New Mexico.....	22,007	534	534			21,473
Jicarilla.....	642	534	534			108
Mescalero.....	626					626
Pueblo Bonito.....	2,715	(1)				2,715
Pueblo day school.....	8,421					8,421
San Juan.....	8,000					8,000
Zuni.....	1,603					1,603
New York: New York Agency.....	5,825					5,825
North Carolina: Cherokee.....	2,211					2,211

**Figure 3:** “Indians under Federal supervision—Unallotted and holding trust and fee patents, June 30, 1915,” *Annual Report of the Commissioner of Indian Affairs, 1915* (Washington, D.C.: Government Printing Office, 1916), p. 72.

Table 3 does not explicitly list the Shinnecock Indians, but when read in conjunction with Table 2, would appear to include them in the population figure (5,825).<sup>132</sup> Therefore, the petitioner reasons, these reports “place the Shinnecock Indian Nation squarely within the category of tribes acknowledged by the Department of the Interior and under the jurisdiction and supervision of the Federal Government” (SHN 8/5/2008, 33; for the statistical tables, see ARCIA 1915, 66-72). The annual reports do not, however, discuss any specific dealings that the New York agent conducted with the Shinnecock Indians.

The annual reports with the estimated population of Shinnecock are not substantial evidence of unambiguous previous Federal acknowledgment. The appearance of the term “Shinnecock” in Table 2 is the only time the term appears in the entire 1915 report of the Commissioner of Indian Affairs. The annual report alludes to the Reeves Report, which discusses the Shinnecock reservation and it includes the estimated Shinnecock population in its population figures for New York in several tables. However, the limited information on the Shinnecock population differs substantially from the abundance of specific information on other Indian tribes in this annual report. There is no information in this report to indicate that the New York Agency had much familiarity with the Shinnecock reservation or a political relationship with the group. Even the description of the “Shinnecock” population is noted to be “estimated.” Furthermore, the report estimates the “Shinnecock” population at 200 individuals—including 100 “male,” 100 “female,” 100 “minor,” and 100 “adult” residents. These tidy approximations contrast markedly with the

<sup>132</sup> In 1914, the annual report of the Commissioner of Indian Affairs did not list the Shinnecock separately under the New York agency. Instead, the Shinnecock population appeared to be included in the “not under agent” category. (ARCIA 1914, 80).

more precise figures for the Iroquois populations and populations of other Indian tribes, suggesting that the New York Agency and other agencies were more familiar with those populations with whom they were dealing than any agency was with the Shinnecock population.<sup>133</sup> There is no enumeration of the Shinnecock population by either the Office of Indian Affairs or the New York Agency in the record.

Instead, the annual reports of the Commissioner of Indian Affairs—both from 1887 through 1901 and from 1915 to 1924—suggest that the New York Agency possessed information about the Shinnecock reservation but was not engaged in a relationship with a Shinnecock tribal political entity. The Shinnecock Indians are not explicitly mentioned in the reports from 1902 through 1914. The annual reports that mention the Shinnecock do not provide substantial evidence that the Federal Government acknowledged, by its actions, an unambiguous political relationship between the United States and the petitioner as an Indian tribe. Therefore, these reports do not make the petitioner eligible for evaluation under 25 CFR §83.8.

The Department has held previously that the appearance of a named Indian tribe on Federal lists may be used to support a claim of unambiguous previous Federal acknowledgment. However, it is important that the lists are accompanied by evidence of Federal actions dealing with the petitioner an Indian tribe (see Snoqualmie FD 1997, 2-3). Such other evidence is lacking here.

The annual reports of the Commissioner of Indian Affairs between 1915 and 1924 do not provide substantial evidence that the Federal Government previously acknowledged the petitioner as an Indian tribe. If the petitioner wishes to strengthen its claim to unambiguous previous Federal acknowledgment during this time period, then the petitioner should present substantial evidence of actions—if they exist—by the Federal Government that were clearly premised on its identification of the petitioner as a tribal political entity and indicating clearly the recognition of a relationship between the petitioner and the United States.

#### *The Eliot Report*

In 1919, Samuel A. Eliot visited the Shinnecock reservation on behalf of the Board of Indian Commissioners, a humanitarian board established by Congress to advise the Federal Government on Indian policy.<sup>134</sup> The petitioner claimed that “Eliot acknowledged Federal jurisdiction over the Shinnecock, but in a backhanded way” (SHN 8/5/2008, 35). Eliot wrote a report to the board’s chairman:

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<sup>133</sup> The 1924 report, which was the last one that listed “Shinnecock” under the “New York Agency,” still contained the same population estimates that the 1915 report did. These unchanging estimates suggest that, in a 10-year span, the New York Agency did not enumerate the Shinnecock population. In contrast, the population for the Iroquois Indian tribes listed under the New York Agency changed during these years. Based on the evidence in the record it appears that, because the New York Agency had to estimate the Shinnecock population in 1915, the agency was not interacting with the reservation in 1915; and by 1924, there was still no evidence that the New York agency was interacting with the Shinnecock population.

<sup>134</sup> Congress established the Board of Indian Commissioners in 1869 to advise the Federal Government on matters of Indian policy and to monitor the delivery of goods and services. The board was composed of philanthropists holding what were considered in the 19th century to be humanitarian sensibilities (Prucha 1995, 501-512). In 1933, upon becoming Commissioner of Indian Affairs, John Collier abolished the board.

This reservation is included among those in New York under jurisdiction of the United States Indian Agent at Salamanca, but the Indian Office does nothing for these people and, as far as I can learn, the Federal Government pays no attention to them. (Eliot 1919, 3; SHN 8/5/2008, 35)

Eliot's report provided no evidence that the New York Agency or the Federal Government did anything "for these people." Instead, Eliot's report indicates that there was no relationship between the petitioner and the United States Government at the time of his visit.

Eliot's report—on its own or in combination with the other evidence in the record—does not provide evidence of unambiguous previous Federal acknowledgment. Instead, it provides evidence that a relationship did not exist.

*The Indian Citizenship Act of 1924 and the Status of New York Tribes*

The petitioner suggests that in his October 4, 1924, letter to Frederick E. Lawrence of New York City, C. F. Hauke, then Chief Clerk in the Office of Indian Affairs, "presumed that the Indian Citizenship Act was applicable to the Shinnecock," and "did not deny that the Federal Government also had jurisdiction over them" (SHN 8/5/2008, 37). Again, to be evaluated under 25 CFR §83.8, there must be an affirmative demonstration of unambiguous Federal acknowledgment, not an instance in which the Government "did not deny" that a relationship existed. Hauke's letter also states that "[t]he Indians of this reservation are largely governed by the laws of the State of New York and in almost every instance apply to the State courts for redress and protection, as these Indians hold fee title to their lands" (Interior 10/4/1924). Hauke's letter indicates that the Federal Government considered the Shinnecock reservation and its residents to be a responsibility of the State of New York, not the Federal Government.

The petitioner notes that on November 6, 1924, Assistant Commissioner of Indian Affairs E. B. Meritt wrote a letter to Harold Moore of Patterson, New Jersey. In the letter, Meritt wrote that "[a]t present, there are six tribes in the State of New York, namely, the Senecas, Tonawandas, Tuscaroras, Onondagas, St. Regis, and Shinnecoaks." Meritt also suggested that if Moore wanted "additional data regarding local conditions in the counties in New York, [he] could possibly obtain" some via the New York Agency (Interior 11/6/1924, 1-2).

Neither Hauke's letter nor Meritt's letter constitute or describe an action that provides substantial evidence of unambiguous Federal acknowledgment of the petitioner as an Indian tribe. The two letters neither intended to establish a political relationship with the petitioner, nor did they document an ongoing relationship between the Federal Government and the petitioner.

*The Petitioner's Claim for "Federal Participation in a Tribal Trespass Case, 1924-1925"*

The petitioner suggests that two letters (Interior 1/8/1925 and Interior 1/23/1925) from the Assistant Commissioner of Indian Affairs constitute "clear evidence that the OIA was dealing with the Shinnecock Indian Nation as a tribal entity that had collective rights in its Reservation, which the Federal Government had a statutory duty to protect" (SHN 8/5/2008, 40). The letters were a response to Elliott A. Kellis, one of the Shinnecock Trustees, who was seeking the Department's help in removing from the Shinnecock reservation the widow, who was not a Shinnecock Indian, of Oscar Bunn, whom Kellis stated was a "Shinnecock Indian." Combined,

the Department's two letters to Kellis contained three short paragraphs. These letters offered a minimal and probably *pro forma* response. The first letter advised Kellis that the Department did "not believe that an expression of an opinion on the subject is advisable at this time [because a New York state court would] no doubt render a decision in the near future." This response indicates that the Indian Affairs Office refused the opportunity to act on behalf of the Shinnecock. The second letter's comment, that "[t]he Office knows of no reason why the widow and children should not be entitled to occupy the land under the circumstances related," is a single sentence of minimal import that is not followed by Federal action. It does not demonstrate that the Federal Government took an action clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States. These two letters—alone, together, or read in combination with the evidence in the record contemporary to them—instead suggest that although the Federal Government was aware of the Shinnecock reservation, the Federal Government refused to establish a relationship with the reservation population, even when presented with opportunities to do so.

The Petitioner's Claims for  
"Federal Acknowledgment of a Shinnecock Tribal Entity, 1929-1930"

*The "Secretary of the Interior's and  
OIA Chief Counsel's Representations to Congress, 1929-1930"*

In 1929, the Secretary of the Interior Ray Lyman Wilbur provided testimony to a subcommittee of the Senate Committee on Indian Affairs. The petitioner notes that regarding the status and condition of the Indians of New York, Secretary Wilbur wrote that "[n]o substantial change had occurred in the situation with respect to any of these reservations . . ." (*Indians of New York* 1930, 189-190; SHN 8/5/2008, 41). It seems that the petitioner is contending that, if the Federal Government was engaged in a relationship with the petitioner in 1914, then the Secretary of the Interior was suggesting, at least indirectly, that the relationship continued in at the time of testimony in 1929. However, because the Federal Government was not in a relationship with the petitioner in or immediately subsequent to 1914, the Secretary's 1929 testimony does not establish—alone or with the rest of the evidence in the record—that the Federal Government was unambiguously engaged in a relationship with the petitioner in 1929. Nothing in Secretary Wilbur's remarks discussed the Shinnecock Indians or provided evidence of a Federal relationship with the Shinnecock as an Indian tribe.<sup>135</sup>

In 1930, John Reeves, author of the 1914 "Reeves Report" discussed above, testified on behalf of the Office of Indian Affairs to the House of Representatives Committee on Indian Affairs. The House held the hearing in consideration of H.R. 9720, a bill providing that certain laws of the United States would not apply to Indians and Indian Reservations within the State of New York. The petitioner notes that, regarding the Indians of New York, Reeves testified:

We have certain expenditures up there. We have a special agent in charge of these six or seven reservations scattered from the St. Lawrence River on the north

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<sup>135</sup> Instead, the Secretary discussed the Iroquois Indian tribes, noting that "the activities of the Federal Government and of this department with respect to these Indians in the State of New York have been largely passive rather than active" (*Indians of New York* 1930, 189-190).

to the Pennsylvania line on the south and from Long Island on the East to Lake Erie on the West. (SHN 8/5/2008, 42-42, U.S. Congress 1930, 121-122)

From this sentence, the petitioner concludes that “[b]y stating that the special agent was ‘in charge’ of the New York reservations, the OIA’s Chief Counsel also confirmed that the Federal Government still recognized responsibility for and jurisdiction over the Shinnecock Indian Nation . . . [and that] . . . Congress gained the understanding that there were tribal lands on Long Island over which an OIA agent held supervision” (SHN 8/5/2008, 42).

A proper reading of Reeves’s testimony, however, indicates that the Federal Government did not have dealings with the inhabitants of the Shinnecock Indian reservation. For example, Reeves also stated in his testimony that “for the past hundred years or so Congress has made no appropriations in behalf of the Indians in New York other than to carry out and fulfill some early treaty obligations” (U.S. Congress 1930, 121). Because the Shinnecock did not have a treaty with the United States, then Reeves’s statement indicates that Congress never appropriated money for the Shinnecock. Reeves stated that the Federal agent in New York “distributes these annuities” (U.S. Congress 1930, 121). However, there is no evidence in the record that the Federal Government was paying annuities to a Shinnecock tribal entity on Long Island. Reeves also stated that “New York . . . always assumed jurisdiction over these people [the Indians of New York] and exercised it to a very large extent,” and that “the Federal Government has practically exercised none except to carry out its treaty obligations in the early days.” Reeves continued, “Congress has never directed the Indian Bureau to assume jurisdiction over these people and it has never expressly appropriated funds to carry on the usual activities up there” (U.S. Congress 1930, 122). Thus, Reeves’s testimony indicates that there was no political relationship between the Federal Government and the Shinnecock as an Indian tribe.

Because these “representations to Congress” do not provide substantial evidence of unambiguous Federal acknowledgment, of a Federal action that initiated or continued a political relationship between the United States and the petitioner, this evidence does not make the petitioner eligible to be evaluated under 25 CFR §83.8. Parts of these reports can be read to deny that a relationship existed.

#### *The Federal Census of 1930*

The petitioner claims that in 1930 “enumerators” of the Federal census classified the residents of the Shinnecock Indian reservation as “Indians,” speaking languages of the “Eastern Algonquian” linguistic stock, rather than as “white” or “Negro” (SHN 8/5/2008, 43-44). The census enumerators—those officials who visited the Shinnecock reservation—did not classify anyone as “Eastern Algonquian.” Instead, the enumerators recorded the reservation residents as mixed-blood Shinnecock people. Regardless, the decision to enumerate the petitioner’s ancestors as mixed-blood Shinnecock is not evidence of the establishment or recognition of a relationship between a Shinnecock tribal political entity and the United States. Census enumerators do not have the authority to establish, on behalf of the United States, a political relationship with an Indian tribe. Their report does not provide evidence of an ongoing political relationship between the Shinnecock and the Federal Government. This evidence does not help make the petitioner eligible to be evaluated under 25 CFR §83.8.

The Petitioner's Claims for "The Issue of an IRA Referendum, 1935-1936"

The petitioner claims that in the mid-1930s, "the Department of the Interior began an internal process of attempting unilaterally to withdraw from its obligation to supervise and protect the Shinnecock Indian Nation." The Department made this decision internally, the petitioner claims, "on the basis of racial discrimination rather than on any analysis of the Tribe's Indian ancestry, its political and social cohesion as a community, or its prior Federal recognition and relationship" (SHN 8/5/2008, 44-45).

In particular, the petitioner contends that John Collier, the Commissioner of Indian Affairs during the Franklin D. Roosevelt administration (1933-1945), did not provide the Shinnecock an opportunity hold a referendum to vote on whether to reject the Wheeler-Howard Act (Indian Reorganization Act, or IRA). The petitioner's description of Collier's decision, together with the evidence in the record, provides good evidence that, in the mid-1930s, the Federal Government did not unambiguously acknowledge a political relationship with it as an Indian tribe.

The petitioner believes that the principle reason that Collier did not allow the Shinnecock to organize under the IRA is that, in making his decision, Collier was influenced most by the views of Allan G. Harper, a field administrator for the Department, who prepared a report (Harper 1/1936) on the Shinnecock after visiting the Shinnecock reservation. Harper recommended to Collier that the Shinnecock not be allowed to organize under the IRA because "[b]iologically, residents of [the Shinnecock and Poospatuck] reservations are no longer Indians," because "[c]ulturally, they are no longer Indians," and because the "essential needs of these people can be taken care of without the Act" (Interior 1/-/1936, 10; SHN 8/5/2008, 45-46).

Kenneth Meikeljohn, an attorney for the Department, believed that the IRA placed upon the Secretary of the Interior a "duty" to hold referendums for residents of all Indian reservations. Meikeljohn believed that the Shinnecock, being Indians residing on a reservation, qualified to hold a referendum on whether to reject the IRA (SHN 8/5/2008, 51-54; Interior 5/14/1936). Another official for the Department, Fred H. Daiker, suggested that Felix S. Cohen, an Assistant Solicitor for the Department, informally concurred with Meikeljohn (Interior 1/16/1936; Interior 5/15/1936).

John Reeves, at this point serving as General Counsel in the Indian Affairs office, advised against giving the Long Island reservation communities an opportunity to vote on the IRA. Reeves wrote to Daiker:

The world won't come to an end if the Secretary fails to give these people an opportunity to vote. There is a serious question in my mind whether this remnant of a small band of Indians are Indians or otherwise. The Fed Gov't has never exercised any supervision over these Indians on Long Island and it is a serious question of policy whether we should now try to bring them under in the absence of express legislation by Congress. (Interior 5/15/1936)

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix A

On May 18, 1936, John Collier signed two documents explaining his decision not to allow the Shinnecock Indians to hold an election to vote on the IRA. One was a letter to the Special Agent in Charge of the New York Agency, William K. Harrison. Collier explained to Harrison that Harper's report raised "certain fundamental questions" as to whether the inhabitants of the Long Island reservations "might be classed as Indians" and therefore fall within the scope of the IRA. Collier also noted that "these so-called reservations" were not Federal reservations and had "never been under Federal supervision." Consequently, Collier concluded, "there is no legal basis for holding a referendum under the Indian Reorganization Act among these people and, therefore, nothing further should be done on this subject" (Interior 5/18/1936). The Commissioner's letter, approved by Secretary of the Interior Ickes, provides that there "is no legal basis for holding a referendum under" the Act, and the "so-called reservations . . . have never been under Federal supervision" (Interior 5/18/1936, approved by Ickes, 5/21/36).

In the second document, an internal departmental memorandum, Collier stated that he studied Meiklejohn's memorandum but did "not find it entirely persuasive." Collier asserted that the Long Island Indians had "not been under the jurisdiction of the Federal Government; they have not got the half degree of blood required by Section 19 of the Indian Reorganization Act; and culturally viewed, they are not Indians at all." Collier opined that it would be a "tenuous argument [that] might justify including them under the Indian Reorganization Act." However, Collier reasoned that "the more obvious and numerous arguments work . . . toward excluding them" (Interior 5/18/1936).

The evidence shows that Collier, after reviewing the issue, agreed with the counsel of Reeves and Harper rather than Meikeljohn and Cohen. The petitioner expresses concern that Collier disregarded the opinions of attorneys in the Department "who were knowledgeable about Indian Affairs" (SHN 8/5/2008, 51). The petitioner believes that "scientific, legal, [and] statistical conclusions" should have inclined Collier to allow the petitioner to reorganize under the IRA (SHN 8/5/2008, 57). This argument, however, ignores the concurrence by Solicitor Margold dated May 19, 1936, that the occupants of the Shinnecock and Poosepatuck reservations "are not within the application of the Indian Reorganization Act even through that act applies to *Indians* living on reservations that are not *federal* reservations" (emphasis in original, Interior 5/19/1936).

The petitioner is not presenting the Collier decision as evidence for unambiguous previous Federal acknowledgment. Instead, the petitioner seems to be challenging the basis for the Department's historical decision. A petitioner's eligibility to be evaluated under 25 CFR §83.8 depends on actual events and facts rather than on decisions that might have been made but were not.

John Collier did nothing to establish a relationship between the United States and the petitioner. In fact, he deliberately chose not to establish a relationship. Furthermore, Collier concluded that no relationship had existed previously and that the Department should not pursue the matter further. The documents relating to the issue of the Long Island Indians and the IRA do not—either alone or in combination with other evidence—demonstrate that the Federal Government had a relationship with the petitioner as an Indian tribe. Instead, these documents indicate that there was no Federal relationship.

*Additional Statement by the Department during the 1930s  
Regarding the Status of the Shinnecock*

To help better understand the Department's position regarding the status of the Shinnecock during the 1930s, OFA researchers requested entries from the Central Classified Files of the Indian Affairs Office in the National Archives (Record Group 75) that related to the Shinnecock.<sup>136</sup> These documents do not support the claim that the Federal Government was in a relationship with the petitioner at that time.

On February 16, 1934, Helen A. Wayne, Supervisor of Indian Welfare in the State of New York's Department of Social Welfare, sent a letter to the "Indian Service" in Washington D.C. Ms. Wayne asked, "[d]o you consider that [the Shinnecoeks'] nationality as Indians has become extinct as in the case of the Poospatucks?" She also asked if the State of New York could "enforce its power on [the Shinnecoeks'] reservation the same as elsewhere?" (Wayne 2/16/1934). In reply, William Zimmerman, Jr., the Assistant Commissioner of Indian Affairs, replied, "[i]n the view of the fact that the Federal Government has never exercised any jurisdiction over these Indians, we would not be justified in expressing an opinion [on these matters]" (Interior 4/30/1934). A subsequent letter from Zimmerman to Wayne states that the "Shinnecock and Poospatuck Indians are not recognized by the Federal Government," and that "it would not be feasible to give them limited recognition" under the IRA (Interior 12/30/1938). Zimmerman wrote again to Wayne in 1939, "we have never exercised any direct supervision or control over the Shinnecock" (Interior 11/3/1939).<sup>137</sup>

Petitioner's Claims for

"Subsequent Federal Participation in a Tribal Trespass Case, 1936-1937"

The petitioner claims that the Federal Government participated in a "tribal trespass case" in 1937 and therefore "treated the Shinnecock as a tribal entity that had collective rights in tribal lands" (SHN 8/5/2008, 62-63).

The petitioner bases this claim on correspondence exchanged between the State of New York, the Department, and the United States Department of Justice (DOJ). The correspondence concerned whether the DOJ should provide assistance to the State of New York in litigating a trespass case on the Shinnecock reservation in Southampton, New York. On December 31, 1936, Homer Cummings, the U.S. Attorney General, wrote to Secretary of the Interior Harold

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<sup>136</sup> These documents were few in number and did not contain any information from the New York Agency on the Shinnecoeks.

<sup>137</sup> The Department wrote similar statements in the 1940s. A November 30, 1943, letter from W.D. Weekley, writing for the Commissioner of Indian Affairs, states that "[t]his office has no supervision or control over the Shinnecock Indians," and that the "Shinnecock Indians are not under the jurisdiction of the Federal Government, and we have no records, laws or treaties pertaining to this tribe" (Interior 11/30/1944). Another letter from W.D. Weekley, this one in 1944, states that the "Shinnecock Indians are not under the jurisdiction of the Federal Government, and we have no records, laws, treaties or membership rolls pertaining to this tribe" (Interior 12/16/1944).

Ickes regarding “the right of certain Indians to occupy a lot on the Shinnecock Reservation on Long Island,” and whether the DOJ should “lend such aid and counsel as may be acceptable to the Attorney General of the State of New York” (Cummings 12/31/1936). On February 4, 1937, Assistant Secretary of the Interior T. A. Walters replied that “[t]his Department concurs in [Special Assistant C. C.] Daniels’ suggestion that he be authorized to assist in the preparation of the brief, attend the hearings, and render such further assistance as may be acceptable to the State Attorney General” (Walters 2/4/1937). On February 8, 1937, Attorney General Cummings wrote to Secretary of the Interior Ickes that he had given Special Agent Daniels instructions to “assist in the preparation of the brief, attend hearings, and render any assistance acceptable to the State Attorney General, in the matter” (Cummings 2/8/1937).

It is difficult to interpret these documents as demonstrating unambiguous previous Federal acknowledgment. First, the evidence shows that the Federal Government expressed a willingness to assist the Attorney General of the State of New York, not the Shinnecock as an Indian tribe. There is no evidence in the record that the United States actually formed or had a political relationship with the Shinnecock petitioner or that the United States acted based on an understanding that it was obligated to assist the Shinnecock as an Indian tribe.

Second, there is no evidence in the current record that the Federal Government worked directly with the petitioner in this matter. Such evidence would be helpful, though not necessary, to establishing the petitioner’s eligibility to be evaluated under 25 CFR §83.8.<sup>138</sup> There is no evidence in the record that Federal officials met with the Shinnecock trustees on the reservation or in Washington, D.C., and there is no evidence that Federal officials represented the Shinnecock—as a tribal political entity—in court or any other related proceeding. The petitioner notes that “[t]he outcome of the appeal and the extent of the Justice Department’s participation in the Hendricks trespass case are not known” (SHN 8/5/2008, 62). Without substantial evidence of Federal dealings with the petitioner as a tribal political entity, or substantial evidence that the United States was acting on behalf of the Shinnecock as an Indian tribe, it cannot be established that the “Hendricks trespass case” reflected a relationship between the petitioner and the United States.<sup>139</sup>

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<sup>138</sup> See the Department’s evaluation of Petitioner #101, the Burt Lake Band of Ottawa and Chippewa Indians, Inc., (Burt Lake PF 2004, 19-26; Burt Lake FD 2006, 15-16).

<sup>139</sup> The Department’s acknowledgment decision on the Burt Lake Band of Ottawa and Chippewa Indians, Inc., states that the acknowledgment regulations, in determining whether a petitioner is eligible to be evaluated under 25 CFR §83.8, does not require all Federal officials to be unambiguous in their actions, but that evidence of unambiguous Federal action be substantial. The Burt Lake PF also noted that the Burt Lake claim for unambiguous previous Federal acknowledgment was not based on the isolated action of a single Federal agency, but was an action supported by the Department of the Interior, the Federal agency charged with supervision of Indian policy (Burt Lake PF 2004, 23).

Petitioner's Claims for "Subsequent Identification of the Shinnecock as a Tribal Entity Under the Jurisdiction of the OIA's New York Agency, 1938-1941"

The petitioner notes that on January 8, 1938, the Office of Indian Affairs printed a list of "Tribes by State and Agency," which included "predominating tribes (usually native) under each Agency, or under State jurisdiction where there are no Federal Agencies." This document lists the "Shinnecock" under the "New York" header, along with the Cayuga, Mohawk, Montauk, Oneida, Onondaga, Seneca, and Tuscarora (Interior, 1/8/1938; SHN 8/5/2008, 63-66). There is no "agency" listed under New York on this list, unlike for other states. In contrast, a list of "Agencies under the jurisdiction of the Office of Indian Affairs by Reservation and County" dated January 18, 1938, lists "New York" in the Agency column, and does not include Shinnecock in the "Reservation" column, where Allegany, Cattaraugus, Oneida, Onondaga, Oil Springs, St. Regis, Tonawanda, and Tuscarora are listed (Interior 1/18/1938).

On August 10, 1938, Special Agent W. K. Harrison from the New York Agency wrote a letter to George M. Weber, a statistician in the Office of Indian Affairs, to report the "Indian population of the various tribes" in New York. Harrison compiled the list from "our rolls and from estimates made from the best sources available." The letter contains figures for the Cayuga, Oneida, Onondaga, Seneca, St. Regis Mohawk, Tonawanda Seneca, Tuscarora, Shinnecock, and Poospatuck (Interior 8/10/1938). This letter, the petitioner believes, "suggests that the New York Agency possessed Shinnecock enrollment records" and that the "OIA continued to monitor the Shinnecock Indian Nation" despite Collier's statement from two years earlier that the Federal Government was not in a relationship with the petitioner (SHN 8/5/2008, 66).

This interpretation is a questionable reading of the letter. There is no evidence that New York Agency had any Shinnecock rolls or that it was actively monitoring the Shinnecock reservation. A 1944 letter from the office of the Commissioner of Indian Affairs states, that the "Shinnecock Indians are not under the jurisdiction of the Federal Government, and we have no records, laws, treaties or membership rolls pertaining to this tribe" (Interior 12/16/1944). It is more likely that the New York Agency was monitoring the Iroquois reservations in some capacity. The petitioner did not submit any federally-created Shinnecock enrollment records for evaluation. Furthermore, there is no documentation in the record from the New York Agency—or any other Federal office—indicating that it intended to override the Department's prior positions that it did not deal with the petitioner as a political tribal entity.

The Department also printed a *Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs* that contains a table (Table III) entitled, "Indian Population in the Continental United States: Under Jurisdiction of the Office of Indian Affairs by State, Jurisdiction, Reservation, Tribe, Sex, and Residence, January 1, 1939." This table states that "total Indian population" for the "Shinnecoeks," who are listed under the New York Agency, was 175—presumably based on Harrison's letter of August 10, 1938. The table did not list any figures for the New York Agency under the subheading "Population on current census rolls," which further broke down the population into 11 other categories. None of the New York groups had figures in any of these 11 other categories, despite the fact that many other tribal populations in the United States had such figures (ARCIA 1939).

The petitioner also pointed out that the Office of Indian Affairs included the petitioner on an April 1, 1941, list entitled “Tribes by State and Agency.” The “Shinnecock” were one of the eight groups listed in New York. The list includes “predominating tribes (usually native) under each Agency—or under State jurisdiction where there are no Federal Agencies.” The list also notes that “[t]hose under State are specified by an \* after the State” (Interior 4/1/1941); there is no asterisk after the Shinnecock entry. There is nothing in the document that describes the nature of an existing Federal relationship with a tribal political Shinnecock entity, and nothing in the document unambiguously establishes one. Furthermore, a list of the same date created by the Office of Indian Affairs, “Agencies under the jurisdiction of the Office of Indian Affairs by Reservation and County,” does not list the Shinnecock reservation—although it lists Iroquois reservations (Interior 4/1/1941). This list suggests that the Shinnecock were not in a political relationship with the Federal Government in 1941.

Although these documents—the “Tribes by State and Agency” lists of 1938 and 1941, the Harrison letter, and the 1939 *Annual Report*—list a Shinnecock entity, the documents do not provide substantial evidence that there was a political relationship between that entity and the United States. The creation of these documents did not constitute an action by which the Federal Government established a political relationship with the petitioner as an Indian tribe. These lists indicate that the Federal Government was *aware* of that there was a Shinnecock population. The notion that these tabular references to the Shinnecock demonstrates the existence of a political relationship between the petitioner and the United States is contradicted by earlier statements made by John Collier—who was still the Commissioner of Indian Affairs at the time when these lists were printed—denying the existence of a Federal relationship with the petitioner. The presence of other lists created by the Department—contemporaneous with the “Tribes by State and Agency” lists of 1938 and 1941—that do not include Shinnecock introduce a further level of ambiguity into the petitioner’s claims. As mentioned above, the appearance of a named Indian tribe on Federal lists may help to make a petitioner eligible to be evaluated under 25 CFR §83.8 when accompanied by evidence of Federal actions dealing with the petitioner an Indian tribe; evidence of Federal actions dealing with the petitioner is not available here.

The petitioner also suggests that the publication of Felix S. Cohen’s *Handbook of Federal Indian Law* in 1941 “supports the premise that the Shinnecock Indian Nation was federally acknowledged at the time it was written.” The petitioner points out that Cohen’s *Handbook* described the Shinnecock reservation as one of the ten reservations in New York and contends that “at no place in the *Handbook* did Cohen specify that the State of New York had exclusive jurisdiction over the Shinnecock or deny that the Shinnecoeks were under the continued jurisdiction and supervision of the Federal Government” (SHN 8/5/2008, 71). The petitioner’s claim, that because the *Handbook* did not “deny” a Federal relationship that some relationship existed, is not substantial evidence that the Federal Government, by its actions, unambiguously acknowledged a political relationship with an Indian tribe. For a petitioner to be eligible for evaluation under 25 CFR §83.8, there must be affirmative evidence that the Federal Government, by its actions, unambiguously established a political with an Indian tribe—not that the Federal Government did not explicitly deny such a relationship. Cohen’s *Handbook* did not describe the nature of any such ongoing political relationship between the United States and the petitioner. The book did not initiate such a relationship, nor was it Cohen’s prerogative as a Departmental attorney to establish such a relationship. Consequently, Cohen’s *Handbook*—alone or together

with the other contemporary documents—is not substantial evidence of unambiguous Federal acknowledgment and the petitioner is not eligible to be evaluated under 25 CFR §83.8. Instead, these documents created by the Department only provide evidence that the Federal Government was aware of the Shinnecock population on Long Island.

The Petitioner’s Claims for  
Acknowledgment by the Criminal Jurisdiction Acts of 1948 and 1950

The petitioner requests that the Department consider 1948 and 1950 as two alternative dates for unambiguous previous Federal acknowledgment. The petitioner suggests that two acts by Congress—the Criminal Jurisdiction Act of 1948 and the Civil Jurisdiction Act of 1950—effectively constituted Congressional recognition of petitioner as an Indian tribe.

The full text of the 1948 act (62 Stat. 1224, July 2, 1948) reads:

*An Act to confer jurisdiction on the State of New York with respect to offenses committed on Indian reservations with such State:* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of New York shall have jurisdiction over offenses committed by or against Indians on Indian reservations within the State of New York to the same extent as the courts of the State have jurisdiction over offenses committed elsewhere within the State as defined by the laws of the State: Provided, That nothing contained in this Act shall be construed to deprive any Indian tribe, band, or community, or members thereof, hunting and fishing rights as guaranteed them by agreement, treaty, or custom, nor require them to obtain State fish and game licenses for the exercise of such rights. (62 Stat. 1224 July 2, 1948; also in Kappler vol. 6, 427-428)

The 1948 act does not show—unambiguously or otherwise—that Congress intended to establish, or had, a political relationship with the petitioner. In fact, the act does not mention the petitioner by name. The purpose of this act is to establish New York State’s jurisdiction over crimes committed on Indian reservations. The act references treaties and agreements, but there were—and are—no agreements or treaties between the petitioner and the Federal Government.

A selection from the text of the 1950 act reads:

*An Act to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties.* Be it enacted by the Senate and House of Representatives . . . That the courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State . . . (64 Stat. 845 September 13, 1950; also in Kappler vol. 6, 518)

The 1950 act does not show—unambiguously or otherwise—that Congress intended to establish, or had, a political relationship with the petitioner. In fact, the act does not mention the petitioner by name. The purpose of this act is to establish New York State’s jurisdiction over civil actions between Indians or to which Indians are parties. The act references Federal annuities, but there is no evidence that the petitioner was receiving Federal annuities at the time, or that the petitioner received Federal annuities previously.

The act had several provisos, including one that stipulated that

the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment prior to the effective date of this Act [September 13, 1952], those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue, but nothing herein contained shall be construed to prevent such courts from recognizing and giving effect to any tribal law or custom which may be proven to the satisfaction of such courts . . . . (64 Stat. 845 September 13, 1950)

The evidence does not show that the petitioner made a declaration under the statute and that the Secretary of the Interior accepted the declaration and published it in the *Federal Register*.

In discussing the 1948 and 1950 acts, the petitioner spends much time analyzing their legislative histories—and how much or how little various Federal or State officials knew about the petitioner. Language in a statute, however, must be evaluated in the context of its specific effect and function, and understood in light of what Congress sought to accomplish in the legislation (Chinook RFD 2002, 30). What the acknowledgment regulations require is Federal action “clearly premised” on identification of a “tribal political entity,” and “indicating clearly” the recognition of a government-to-government relationship with the United States. In this respect, the 1948 and 1950 Acts both fall short, lacking any clear premise to establish a relationship with the Shinnecock. The 1948 and 1950 acts did not establish such a political relationship.<sup>140</sup> Therefore, the 1948 and 1950 acts and the related evidence and claims do not meet the requirements for unambiguous previous Federal acknowledgment.<sup>141</sup>

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<sup>140</sup> In 2008, the petitioner presented a claim before the United States District Court for the Eastern District of New York that the 1948 and 1950 Acts effectively recognized a political relationship between the Federal Government and the petitioner. The U.S. District Court did not agree, stating that “[a]lthough the Nation asserts that Congress recognized it as a Tribe and established a government-to-government relationship in legislation over fifty years ago, that [1948 and 1950] legislation did no such thing” and “any claim of federally recognized tribal status based on such statutes fails as a matter of law” (*Shinnecock v. Kempthorne*, No 06-CV-5013, 2, 12-15 (E.D.N.Y. Sep. 30, 2008)).

<sup>141</sup> The petitioner claims that in November 2006, in the case of *Bess v. Spitzer*, the U.S. District Court for the Eastern District of New York held “that the Criminal Jurisdiction Act of 1948 was applicable to the Shinnecock Indians” (SHN 8/5/2008, 93), and consequently views the *Bess v. Spitzer* case as evidence of previous Federal acknowledgment. The passage of the act in 1948 or its inclusion in Title 25, Section 232 of the United States Code, did not establish a political or government-to-government relationship with the petitioner. The Court’s reliance on

## The Petitioner's Claims for Federal Acknowledgment, 1978 to the Present

### *Leo Krulitz and the 1979 Memorandum*

On February 8, 1978, the Native American Rights Fund (NARF), serving as an attorney for the petitioner, requested the “United States to bring suit on behalf of the Shinnecock Tribe of Long Island . . . to confirm the Tribe’s 1,000-year leasehold interest in, and recover possession of, approximately 3,150 acres of land” (Aschenbrenner 2/8/1978). On September 4, 1979, Leo M. Krulitz, Solicitor for the Department of the Interior, responded, stating, “[i]t is my decision not to refer this claim to the Department of Justice.” Krulitz explained that “one of the critical elements of a claim under the Indian Nonintercourse Act . . . is that the claimant establish that it is an Indian tribe.” At that point, Krulitz said that the petitioner had not established that it was an Indian tribe within the meaning of Federal law, and he stated that the Department was “in no position to acknowledge a trust relationship under the Nonintercourse Act with the Shinnecock Indians” (Interior 9/4/1979).

The petitioner claims that an “18-page, single-spaced memorandum prepared by the attorneys in the Office of the Solicitor [that] the Department is withholding . . . under a claim of privilege” will “demonstrate that the recommendation of the legal staff of the Office of the Solicitor to provide assistance to the Nation also determined that the Shinnecock Indian Nation is a bona fide, existing Indian tribe to whom the United States owes a trust responsibility and that the Shinnecock’s land claim is meritorious” (SHN 8/5/2008, 80). Regardless of what the “18-page, single-spaced memorandum” contains, Krulitz decided not to refer the Shinnecock land claim to the DOJ. The memorandum only offered advice; it was not a statement of Departmental policy or position. It is undated and unsigned (*Shinnecock v. Kempthorne*, 9/9/2009).

Solicitor Krulitz provided guidance to the Shinnecock claimant on how to petition for Federal acknowledgment under the newly-established acknowledgment regulations, which demonstrates that Krulitz did not believe the Shinnecock claimant was an Indian tribe within the meaning of Federal law. The text of Krulitz’s letter to the petitioner demonstrates that he did not view the Shinnecock claimant as a federally recognized Indian tribe and that he did not recommend that the DOI or the DOJ assist the claimant as such. Furthermore, there is no additional evidence in the record that the Federal Government acted to establish a political relationship with the petitioner through any action contemporaneous to the Krulitz letter.

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the Act in 2006 did not establish—unambiguously or otherwise—a Federal relationship with the petitioner. Contemporaneous rulings by New York State courts that relied on the Act did not establish a political or government-to-government relationship with the petitioner—nor could they, as Federal acknowledgment decisions are not within their authority. The court in *Bess v. Spitzer* dismissed the case, noting that the alternate holding in the related state criminal proceeding precluded relitigating the issue in Federal district court. Any reading of *Bess v. Spitzer*—either alone or in the context of the 1948 Act—cannot be properly interpreted as establishing a political or government-to-government relationship between the United States and the petitioner, and therefore the litigation associated with the *Bess v. Spitzer* case does not make the petitioner eligible to be evaluated under 25 CFR §83.8. The petitioner also raised this argument in *Shinnecock v. Kempthorne*, which the court found to be “unavailing” because the *Bess* decision only addressed the enforcement of state criminal laws over Shinnecock members and did not address whether the Federal Government recognized a government-to-government relationship with the Shinnecock petitioner (*Shinnecock v. Kempthorne*, No 06-CV-5013, fn 4 (E.D.N.Y. Sep. 30, 2008)).

The Shinnecock petitioner did not appear in the Department's first listing of federally acknowledged Indian tribes, published in 1979, nor did the petitioner appear on any subsequent list.

The Petitioner's Claim for "Acknowledgment by a United States Court, 2005"

The petitioner proposes that the Department view the determination by a U. S. Court in 2005 as an instance of unambiguous previous Federal acknowledgment. The petitioner claims that in *New York v. Shinnecock* the United States District Court for the Eastern District of New York determined that the petitioner "met the Federal common law standard for existence as a tribal entity and expressly recognized the [Shinnecock] Nation as having that status" (SHN 8/5/2008, 5).

Shinnecock notes that the *New York v. Shinnecock* Court, concluded

the issue of whether the [Shinnecock] Nation was an Indian Tribe was decided by a [New York State] law enacted in 1792 that remained in effect. The Nation had been recognized as an Indian Tribe by the State of New York for more than 200 years. The fact that intervenor United States had opted out of the case, without contesting the issue, also convinced the court that the Nation was an Indian Tribe. Moreover, the Nation met the standard for determining tribal existence under *Montoya v. United States*. (SHN 8/5/2008, Exhibit 103, 1)

Shinnecock also cites to the Court's finding

that the [Shinnecock] Defendants are correct in their position that they were an Indian Tribe not only when the first white settlers arrived in the eastern end of Long Island in 1640, but were such in 1792 when New York State enacted a law confirming that fact and that they remain an Indian Tribe today. (SHN 8/5/2008, Exhibit 103, 6)

In its discussion of the *New York v. Shinnecock* decision, the petitioner does not state that this decision constituted unambiguous previous Federal acknowledgment. Indeed, the petitioner implicitly admits that there is ambiguity in this matter by observing that, despite the Platt decision, "the Department has continued, unlawfully, to refuse to admit the Federal acknowledgment" of the petitioner (SHN 8/5/2008, 102).

In the context of the Petition Supplement, the petitioner makes the claim that because a Federal Court (the United States District Court for the Eastern District of New York in *New York v. Shinnecock*) concluded that "the Shinnecock Indians are in fact an Indian Tribe" (SHN 8/5/2008, Exhibit 103, 4), the Department should consider this as evidence for unambiguous previous Federal acknowledgment.

On November 7, 2005, the *New York v. Shinnecock* Court ruled that, among other things, Shinnecock has a form of tribal status for the limited purpose of deciding its immunity from the

casino related lawsuit brought against it by New York and the Town of Southampton (*New York v. Shinnecock*, 400 F. Supp.2d 486 (E.D.N.Y. 2005)). The Court, however, did not specifically decide that Shinnecock constituted a federally recognized Indian tribe, nor did it order the Department to place the Shinnecock on the list of federally recognized Indian tribes or order the agency to establish a political relationship with the petitioner. Moreover, the Shinnecock tribal status decision was not binding on the Department because the agency was not a party to the litigation. The Court had joined the Department involuntarily as a party on December 22, 2003. The Department objected to the Court's action in a motion to dismiss and the Court granted its request for a dismissal as a party prior to issuing the 2005 decision on Shinnecock's tribal status.

Following the 2005 decision, Shinnecock then asked the Department to recognize it and place it immediately on the list of federally recognized Indian tribes. The Department discussed the matter with the petitioner, but ultimately declined to comply with Shinnecock's request.<sup>142</sup> In 2007, the Shinnecock petitioner sued the Department pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 551. Among other things, Shinnecock alleged that the Department violated the APA by refusing to acknowledge its Federal Indian tribal status as decided by the Court in *New York v. Shinnecock*. Part of the Department's defense to the Shinnecock allegation argued that the decision to federally recognize an Indian tribe and create a government-to-government relationship with the United States is a nonjusticiable political question that, in the first instance, must be left to the political branches (legislative and executive) of government and not the courts. The Department, therefore, asserted that the tribal status decision in *New York v. Shinnecock* did not require it to recognize Shinnecock as an Indian tribe and establish a government-to-government relationship with it.

On September 30, 2008, the Court issued an order granting in part and denying in part the U.S. motion to dismiss the Shinnecock plaintiff's complaint (*Shinnecock v. Kempthorne*, No 06-CV-5013 (E.D.N.Y.)). The Court determined the 2005 *New York v. Shinnecock* tribal status decision was a finding that Shinnecock was a tribe under Federal common law only for purposes of deciding the limited issue before it, Shinnecock's construction of a casino, which could not be used to bypass the Department's acknowledgment regulations. The decision noted, "it is not the role of the court to usurp the constitutionally-protected province of the politically-elected branches of government by attempting to address the merits of the recognition issue before the Secretary of the Interior has acted" (*Shinnecock v. Kempthorne* at 2). The court, therefore, declined to address the merits of Shinnecock's tribal recognition claims, finding that it could not act until the Department decided the matter through its acknowledgment process.

For a variety of reasons, the *New York v. Shinnecock* decision does not provide substantial evidence that the Federal Government unambiguously acknowledged the petitioner as an Indian tribe. First, the decision cannot be deemed unambiguous. The Department did not, in response to the decision, begin dealing with the Shinnecock via a government-to-government relationship, as the Department does with other federally recognized Indian tribes. If the Federal Government officially acknowledged the petitioner in 2005 and entered into a political relationship with it as

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<sup>142</sup> During discussions with the Shinnecock petitioner, the Department reviewed the documents before the Court in *New York v. Shinnecock* and determined it did not "have before it the kind of analysis and evaluation of evidence that the Office of Federal Acknowledgment prepares" (Interior 8/24/2006) in making tribal acknowledgment recommendations for the Department's acknowledgment decisions.

an Indian tribe, then the Department would have placed the Shinnecock on the list of federally recognized Indian tribes that the Department now publishes on an annual basis.<sup>143</sup> The Department first began publishing *Federal Register* lists in 1979 (44 FR 7235 (Feb. 6, 1979)), and the petitioner has not appeared on any of them. If the United States decided that the *New York v. Shinnecock* decision unambiguously acknowledged the Shinnecock petitioner, then the petitioner would have appeared on the lists of federally recognized Indian tribes published after this decision. Not only has the petitioner not appeared on the list of federally recognized Indian tribes, but there has been no Congressional action to formally recognize the petitioner as an Indian tribe. In other words, neither the executive nor the legislative branches of the Federal Government joined the petitioner in a government-to-government relationship. Furthermore, the Department issued multiple documents contemporaneous to the *New York v. Shinnecock* decision stating that the Department does not view the petitioner as a federally recognized Indian tribe.<sup>144</sup> Thus, there are several reasons why the petitioner's claim cannot be seen to be unambiguous.

Second, Federal courts have ruled that under the “political question” doctrine the judicial branch should not make the decision as to whether a group should be recognized as an Indian tribe by the United States in the first instance. Whether the petitioner is a federally recognized Indian within the meaning of Federal law is a “quintessentially nonjusticiable political question.”<sup>145</sup> The *New York v. Shinnecock* decision, thus, is not substantial evidence of unambiguous Federal acknowledgment.

Third, the *New York v. Shinnecock* decision, in identifying the Shinnecock defendant as an Indian tribe, did not apply the test for unambiguous previous Federal acknowledgment used by the Department in determining a petitioner's eligibility to be evaluated under 25 CFR §83.8. Instead, the court applied a test for determining tribal existence in based on the 1901 *Montoya v. United States* decision (Eastern Dist. Court of NY 11/7/2005, 4-7).<sup>146</sup> Because determining

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<sup>143</sup> This list, officially called the list of “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs,” is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

<sup>144</sup> See, for example, the letter from the Associate Deputy Secretary of the Interior to the petitioner stating, “Presently, there is not established trust obligation between the United States and the Shinnecock petitioner because the Department does not consider the Shinnecock petitioner to be an Indian tribe” (Cason to King et al. 2/13/2006).

<sup>145</sup> See Defendants' Reply Memorandum Of Law In Support Of Their Motion To Dismiss The Amended Complaint, 3/7/2008, 2-3; *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51 (2d Cir. 1994); *Shinnecock v. Kempthorne* 09/30/2008, “The issue of federal recognition of an Indian tribe is a quintessential political question that, in the first instance, must be left to the political branches of government and not the courts.” In the case of Indian tribes, the Constitution places that power with Congress, which has then delegated that responsibility, in part, to the Department of the Interior. Judicial review of the acknowledgment decision is then available (*Miami Nation of Indians of Indians, Inc. v. U.S. Department of the Interior*, 255 F.3d 342 (7<sup>th</sup> Cir. 2001)).

<sup>146</sup> *Montoya* is cited to support a broad and simple definition of “tribe,” but such a construction is misleading because it divorces the summary statement from the factual underpinnings that were gathered by the Department and the Department of War and relied upon by the Court to address a specific question concerning the Indian Depredation Act (Act of March 3, 1891, 26 Stat. 851). The underlying facts in *Montoya* establish a very strict test for what constitutes a “tribe” under the Indian Depredation Act, based on a tribe's organized, armed and continuous resistance over several years to the effort of the United States Army to control it, which resulted in the death of an

unambiguous previous Federal acknowledgment requires a different evaluation than determining the tribal existence of an Indian tribe, the two evaluations and their respective criteria cannot be conflated. Nor is it the case that a *Montoya* finding should be substituted for a finding under 25 CFR Part 83 acknowledgment regulations.<sup>147</sup>

These three considerations provide a sufficient—though not an exhaustive—rationale for concluding that the *New York v. Shinnecock* decision did not constitute the full Federal acknowledgment of the petitioner as an Indian tribe with which the United States had a government-to-government relationship. There is a lack of Federal actions contemporary with the *New York v. Shinnecock* decision that provide substantial evidence of unambiguous previous Federal acknowledgment. Indeed, contemporary evidence from the Department demonstrates that the agency did not have a relationship with the petitioner as an Indian tribe. Additionally, Federal courts and the Department have taken the position that, after the establishment of the Federal acknowledgment regulations, the judicial branch should not extend full Federal recognition in the first instance to a heretofore non-recognized group. The petitioner is not eligible to be evaluated under 25 CFR §83.8 based on the *New York v. Shinnecock* decision because the Court’s ruling does not establish a government-to-government relationship between the United States and the petitioner and because the evidence in the record renders ambiguous any claim favoring the petitioner.

#### The Petitioner’s Claim for “Acknowledgment at Present”

The petitioner requests that the Department consider “the present day” as the date of the petitioner’s most recent unambiguous Federal acknowledgment. The petitioner bases this request on three principal considerations. First, it claims that several Federal statutes—the Criminal Jurisdiction Act of 1948, the Civil Jurisdiction Act of 1950, and the Major Crimes Act of 1885—apply to the petitioner and are still in effect today. None of these acts specifically mentions the petitioner. In none of these acts did the Federal Government unambiguously acknowledge, by its

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Indian leader and most of his followers (180 U.S. at 269-70). These underlying facts establish a stricter test than the seven criteria in 25 CFR Part 83 acknowledgment regulations. Moreover, as provided in the government reports, the majority of the Indians at issue in *Montoya* were known to have recently left the reservations of Indian tribes that had political relations with the United States as established by treaties (*Montoya*, 32 Ct. Cl, 349, 354-56, 361-62 (1897)).

<sup>147</sup> It is not uncommon for the Department to determine that a petitioner has maintained continuous tribal existence but not have been previously acknowledged, unambiguously, by the Federal Government (see, for example, the Department’s finding on the Mashpee Wampanoag Indian tribe (2007)). On a related note, to explain its rationale for determining that the Shinnecock defendant was an “Indian tribe” according to the *Montoya* test, the Court primarily relied on evidence that suggested relationships between the defendant and either State of New York or the Town of Southampton. The Court’s reliance on Federal evidence was minimal, and not evaluated with respect 25 CFR §83.8.

The *Montoya* test is similar but not identical to seven mandatory criteria for determining tribal existence in 25 CFR §83.7. The Court in *Shinnecock v. Kempthorne* noted, “In *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51 (2d Cir. 1994), the Second Circuit specifically noted the following: ‘The *Montoya/Candelaria* definition and the [Bureau of Indian Affairs] criteria both have anthropological, political, geographical and cultural bases and require, at a minimum, a community with a political structure. The two standards overlap, *though their application might not always yield identical results*’” (*Shinnecock v. Kempthorne* 9/30/2008, 3; italics in original).

actions, a political relationship between the United States and the petitioner as an Indian tribe (see above). Therefore, that any or all of these acts remain in effect today do not provide substantial evidence of unambiguous previous Federal acknowledgment.

Second, the petitioner claims that because the District Court's 2005 determination that the Shinnecock petitioner met a common law test for existence as an Indian tribe, and because that court decision was "contemporary and currently effective," that the petitioner still had Federal acknowledgment at least as late as August 5, 2008—the date when the petitioner submitted its Petition Supplement for unambiguous previous Federal acknowledgment (SHN 8/5/2008, 104). However, on September 30, 2008, shortly after the petitioner submitted its supplement for unambiguous previous Federal acknowledgment, the District Court issued another decision, which repudiates the notion that the Court's 2005 decision constituted Federal acknowledgment of the Shinnecock petitioner. The Court's 2008 decision stated that, according to the political questions doctrine, the judicial branch lacked the authority to recognize or acknowledge Indian tribes.<sup>148</sup> As the PF discussed earlier, in contemporary times, the authority to recognize or acknowledge an Indian tribe is reserved to the legislative and executive branches of the Federal Government.

Third, the petitioner claims that, because the District Court ruled in 2006 in *Bess v. Spitzer* that the 1948 Criminal Jurisdiction Act applied to the Shinnecock petitioner, this would imply that the Shinnecock were still subject to Federal criminal jurisdiction under the Major Crimes Act of 1885. The court, however, did not opine on Federal jurisdiction. Rather, the Federal District Court dismissed the case, relying on the alternate holding in the related state criminal proceeding. The state court held that the State of New York had jurisdiction under 25 U.S.C. §232 to enforce New York criminal laws against Indians on Indian reservations. Neither the Court nor any other Federal entity undertook an action to establish, unambiguously, a political relationship with the petitioner as an Indian tribe. Again, in contemporary times, the authority to recognize or acknowledge an Indian tribe is reserved to the legislative and executive branches of the Federal Government.

There is not substantial evidence in the record demonstrating that, in the first decade of the 21st century, the Federal Government unambiguously acknowledged the petitioner as an Indian tribe. There are no actions cited in petitioner's three claims that are "clearly premised" on identification of a "tribal political entity," and "indicating clearly" the recognition of a government-to-government relationship between it and the United States.

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<sup>148</sup> The petitioner submitted its supplement for unambiguous previous Federal acknowledgment on August 5, 2008; on September 30, 2008, the United States District Court for the Eastern District of New York issued a ruling stating that it did not have the authority to recognize the Shinnecoaks as an Indian tribe with which the United States would have a government-to-government relationship (*Shinnecock v. Kempthorne* 9/30/2008).

Restatement of the Conclusion regarding the Petitioner's Eligibility  
to be Evaluated under 25 CFR §83.8:

The evidence in the record suggests that the Federal Government was aware of the Shinnecock reservation and a Shinnecock population but that the Federal Government did not establish a relationship with the reservation population, even when presented with opportunities to do so. To be evaluated under 25 CFR §83.8 there must be substantial evidence that the Federal Government, by its actions, unambiguously established a political relationship with the petitioner as an Indian tribe—not that the Federal Government was merely aware of the petitioner's existence or that it contemplated establishing a relationship with the petitioner.

The petition record does not contain substantial evidence demonstrating that the Federal Government previously acknowledged the petitioner or entered into a relationship with it as a political entity at any point in time. Therefore, the petitioner is not eligible to be evaluated under 25 CFR §83.8.

**Appendix B**

Stipulation and Order for Settlement of  
Plaintiff's Unreasonable Delay Claim  
May 26, 2009

Copy of court order follows.

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix B

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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THE SHINNECOCK INDIAN NATION,

Plaintiff,

- against -

Civil Action  
No. CV-06-5013

KENNETH L. SALAZAR, SECRETARY OF  
THE DEPARTMENT OF THE INTERIOR, et al.,

(Bianco, J.)  
(Lindsay, M.J.)

Defendants.

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**STIPULATION AND ORDER FOR SETTLEMENT OF  
PLAINTIFF'S UNREASONABLE DELAY CLAIM**

The following Stipulation and Order (“Agreement”) is entered to resolve all of the issues regarding liability and relief with respect to Plaintiff’s Fourth Claim for Relief (unreasonable delay claim) in the above-captioned action by establishing a time-line and framework for the review and determination by the Department of the Interior (“Interior”) on the petition for federal acknowledgment as an Indian tribe (“the Shinnecock Petition”) submitted by Plaintiff (“Plaintiff” or “the Shinnecock petitioner”). This Agreement is entered upon the request of and with the consent of all parties, and after consideration by this Court.

The Parties agree as follows:

1. Schedule for Consideration of the Shinnecock Petition

- a. The Office of Federal Acknowledgment (“OFA”), on March 16, 2009, provided a letter to the Shinnecock petitioner, identifying any incomplete records, illegible

records, or relevant records known to OFA as of March 16, 2009, that are not part of the current information provided on the Shinnecock Petition. Copies of the letter were served by Interior on all interested parties, as defined in 25 C.F.R. §83.1, that had been identified prior to March 16, 2009. Any records requested, or any responses to the questions posed, in that letter, that Plaintiff or interested parties choose to provide, shall be provided on or before June 3, 2009.

- b. Interior will conduct a public meeting in Washington, D.C. on June 3, 2009. The purpose of the meeting is (a) for Plaintiff's researchers and interested parties' researchers to present and discuss with OFA researchers any materials submitted on or before June 3, 2009; and (b) for the OFA researchers to pose any questions about the materials on the Shinnecock Petition, to describe the process and methodology that they are using to review the Shinnecock Petition in each of the disciplines, and the general status of that review. The Plaintiff and interested parties will be given prior written notice of this meeting and an opportunity to attend and to have their researchers participate in it. The written notice shall include an agenda for the meeting. Informed parties and the general public also may attend. Interior will conduct the meeting and provide a moderator. The meeting will last no more than three hours. There will be no discussion as to tentative conclusions on the Shinnecock Petition or legal issues relating to it. There will be thirty minutes for questions from Plaintiff's researchers and thirty

minutes for questions from the interested parties' researchers that the moderator will control and direct to OFA researchers. Questions will not be directed from Plaintiff's researchers to the interested parties' researchers or from the interested parties' researchers to Plaintiff's researchers. Interior will arrange for a verbatim transcript of the meeting and will provide a copy thereof upon request.

- c. Interior shall issue a proposed finding on the Shinnecock Petition on or before December 15, 2009.
- d. Nothing in this Agreement precludes Interior from issuing the proposed finding on the Shinnecock Petition prior to December 15, 2009, if work on the petition indicates that it is feasible to do so.
- e. Interior shall exercise due diligence to publish notice of the Shinnecock proposed finding in the Federal Register within five business days of it being issued.
- f. The federal acknowledgment regulations at 25 C.F.R. § 83.10(i) provide for a 180-day comment period for petitioners or any individual or organization to submit comments on the proposed finding (the "comment period"). The comment period commences upon publication of the notice of proposed finding in the Federal Register. The comment period on the proposed finding on the Shinnecock Petition shall be shortened to 90 days. If the Shinnecock petitioner or any interested party requests additional time in writing, the comment period on the proposed finding on the Shinnecock Petition shall be extended to the full 180 days

that would otherwise be available.

- g. During the comment period, the Plaintiff and interested parties may request the Assistant Secretary - Indian Affairs hold a formal, on-the-record technical assistance meeting to discuss the proposed finding. 25 C.F.R. § 83.10(j)(2). In order to accommodate the 90-day comment period, a request for a formal on-the-record technical assistance meeting pursuant to 25 C.F.R. § 83.10(j)(2) must be made in writing, consistent with the guidelines issued for such meetings, within 30 days of the publication of the notice of proposed finding on the Shinnecock Petition in the Federal Register.
- h. The acknowledgment regulations at 25 C.F.R. § 83.10(k) provide a petitioner 60 days to respond to submissions from interested or informed parties on the proposed finding (the “response period”). The response period on the Shinnecock Petition proposed finding shall be shortened to 30 days. This period starts automatically when the comment period closes. If the Shinnecock petitioner wishes to have the full 60-day response period provided by the acknowledgment regulations, it must notify Interior in writing prior to the close of the 30-day response period. If interested or informed parties provide submissions during the comment period, Plaintiff may submit a written waiver of the response period to Interior. If interested or informed parties do not provide submissions during the comment period, the response period does not apply.

- i. The period for Interior to consider comments and the response, if any, and issue a final determination on the Shinnecock Petition will commence at the close of the period established in paragraph f or h, whichever is later. Consistent with the regulations at 25 C.F.R. §83.10(l), Interior will consult with the Shinnecock petitioner within two weeks of the close of the response period to address any issues related to an equitable timeframe for consideration of the submitted written arguments and evidence. As soon as the research team is available, but not later than 15 days of this consultation, Interior will commence active consideration for the Shinnecock final determination.
- j. Interior will issue the final determination on the Shinnecock Petition within 60 days of when it commences active consideration for the Shinnecock final determination.
- k. The parties have not resolved the Plaintiff's request for waiver of possible reconsideration of the final determination as set forth in 25 C.F.R. § 83.11. Nothing set forth in this Agreement, and, without limiting this generality, nothing in paragraph 1(l) below, shall be construed to preclude Plaintiff from asserting that Interior may waive the reconsideration process set forth at 25 C.F.R. § 83.11, or that the Assistant Secretary-Indian Affairs may take jurisdiction over any such reconsideration request. Plaintiff does not waive any rights to address the timeframe or applicability of the reconsideration process set forth at 25 C.F.R. §

83.11 by entering into this Agreement, and Plaintiff anticipates that upon the lifting of the stay of Plaintiff's Fourth Claim for Relief in this action provided for in paragraph 4 below, Plaintiff will address with the Court the issue of timing for completion of any reconsideration of the Shinnecock Petition that may be filed pursuant to 25 C.F.R. § 83.11 or the waiver of such reconsideration or the taking of jurisdiction over such reconsideration by the Assistant Secretary-Indian Affairs.

1. The final determination on the Shinnecock Petition will become effective 30 days from publication of the notice in the Federal Register, which Interior will exercise due diligence to publish within five business days of it being issued, unless a notice of a request for reconsideration is filed pursuant to 25 C.F.R. § 83.11. Interior will include in the Federal Register notice for its final determination on the Shinnecock Petition a statement that the Shinnecock petitioner and any interested party intending to request Interior Board of Indian Appeals ("IBIA") reconsideration pursuant to 25 C.F.R. § 83.11 must file a notice of a reconsideration request within 30 days of the Federal Register notice publication. If no notice of a request for reconsideration is received by the IBIA during that 30 day period, the determination on the Shinnecock Petition shall be deemed a final and effective agency decision and be effective immediately. If a notice of a request for reconsideration is received by the IBIA within the 30 day period, the party requesting reconsideration shall have an additional 30 days in which to file a

detailed statement of reasons in support of its request, which detailed statement shall be the requesting party's opening brief and must be received by IBIA no later than 60 days after the Federal Register notice publication. The Shinnecock petitioner or any party claiming to be an interested party opposed to the requested reconsideration shall have 30 days in which to file an answer brief in opposition to the reconsideration request.

2. Consideration of the Shinnecock Petition

Except as otherwise provided in this Agreement, the regulations set forth in 25 C.F.R. Part 83, and the directives published in the Federal Register on March 31, 2005 (70 Fed. Reg. 16513), and May 23, 2008 (73 Fed. Reg. 30146), are applicable to Interior's consideration of the Shinnecock Petition. Interior shall review and consider the Shinnecock Petition in the same manner that it reviews all other petitions for acknowledgment, and in accordance with all current regulations, guidance, and other applicable agency procedures.

3. Enforcement and Modification

Either party may move the Court to modify the Agreement for good cause, which shall mean a cause based on developments that could not in the exercise of due diligence reasonably be avoided. The party seeking modification should seek the consent of the other party to any proposed modification of this Agreement, and should indicate in any motion to the Court seeking modification whether such consent was given.

4. Interim Stay of Unreasonable Delay Claim

Plaintiff, in consideration of the above agreements by the Defendants, agrees that upon the entry of this Agreement as an Order, Plaintiff's Fourth Claim for Relief (unreasonable delay claim) shall be stayed, except as otherwise provided herein, until January 7, 2010, when a status conference is scheduled with the Court.

5. Retention of Court Jurisdiction

This Court shall retain jurisdiction to determine, upon motion on notice by Plaintiff or the Defendants, whether any Party has materially violated terms of this Agreement, and has not cured such violation promptly after receiving notice from the moving Party pursuant to the procedures set forth in paragraph 6. Interior shall file a status report with the Court on June 15, 2009, and every 60 days thereafter, to advise the Court of whether there is any reason to believe that Interior will need to seek additional time from the Court for any of the time periods set forth herein. No such status report shall excuse Interior from following the procedures required by paragraph 3 above in seeking any modification of the time periods.

6. Informal Dispute Resolution

In the event a dispute arises during the pendency of the Court's continuing jurisdiction as provided in paragraph 5 above, the disputing party will notify the other party in writing of the nature of the dispute and, within 15 days after such notification (or additional time if the parties agree), the parties shall discuss and attempt to resolve the dispute. If the parties do not resolve the dispute within 15 days thereafter, either party may file a motion for resolution by the Court.

However, the parties shall not seek the remedy of contempt for any alleged violation of this Agreement.

7. Dismissal with Prejudice of Plaintiff's Fourth Claim for Relief

Plaintiff's Fourth Claim for Relief (unreasonable delay claim) shall be dismissed with prejudice and without costs or attorney fees, and the parties shall file a stipulation of dismissal of that claim with the Court, when there is a final and effective agency decision on the Shinnecock Petition.

8. Fees and Costs

The Parties agree that each party shall bear its costs and attorney fees incurred in prosecuting or defending Plaintiff's Fourth Claim for Relief prior to the date of this Agreement.

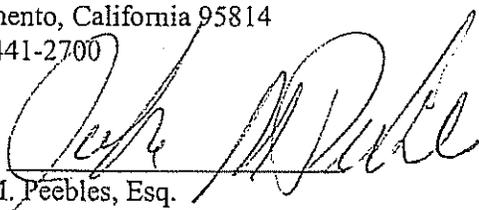
9. Challenge to the Final Determination

Plaintiff shall file any challenge to the final and effective agency decision on the Shinnecock Petition in the Eastern District of New York, as a matter related to this action.

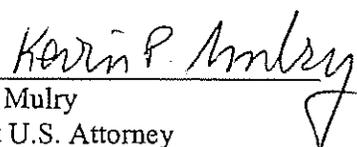
10. No Effect On Other Claims in Above-Captioned Matter

Nothing in this Agreement shall have any effect on any claim for relief by Plaintiff in the above-captioned action other than Plaintiff's Fourth Claim for Relief.

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Dated: Central Islip, New York  
, 2009

SO ORDERED:

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JOSEPH F. BIANCO  
United States District Judge

**Appendix C**

Preliminary Review of Shinnecock Petitioner for Priority Provision Waiver  
October 30, 2008

Copy of memorandum follows.

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix C

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# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



OCT 30 2008

## Memorandum

To: George T. Skibine  
Acting Deputy Assistant Secretary for Policy and Economic Development

From : R. Lee Fleming *R. Lee Fleming*  
Director, Office of Federal Acknowledgment

Subject: Preliminary Review of Shinnecock Petitioner for Priority Provision Waiver

The Assistant Secretary – Indian Affairs (AS-IA) issued a Directive, published in the Federal Register on May 23, 2008, entitled “Office of Federal Acknowledgment; Guidance and Direction Regarding Internal Procedures” (73 FR 30146). The Directive includes a provision subtitled “Expedited Processing” that outlines circumstances under which the AS-IA may waive the priority provisions of the 25 CFR Part 83 regulations at § 83.10(d) in order to move a petitioner for Federal acknowledgment to the top of the “Ready, Waiting for Active Consideration” list. In a letter dated May 23, 2008, the AS-IA advised the governing body of a petitioning group known as the Shinnecock Indian Nation (Petitioner #4) that he was instructing the Office of Federal Acknowledgment (OFA) to assign the first available genealogist to begin a “preliminary review” of Petition #4 to determine whether it qualified for expedited processing under the provisions of the Directive. Based on the preliminary review, OFA recommends that you waive the priority provisions of the regulations to move the Shinnecock petitioner to the top of the “Ready, Waiting for Active Consideration” list.

### **Background**

The introductory phrase at Section IV, “Expedited Processing,” provides that a waiver may be recommended “[i]f a preliminary review indicates that the group appears to meet criteria 83.7(e), 83.7(f), and 83.7(g), subject to a full review under the criteria” (73 FR 30147, IV). We interpret this phrase to mean that the petition is not subject to an expedited negative determination under § 83.10(e). This interpretation is consistent with the preliminary nature of the review envisioned in this section of the Directive. OFA concludes that the petition is not subject to an expedited negative determination. OFA’s review does not conclude, even preliminarily, that the petitioner meets criterion 83.7(e). Such a conclusion about criterion 83.7(e) would require a determination and definition of the group’s historical Indian tribe, which was beyond the scope of this preliminary review.

The first sentence of the Directive at Section IV also states that the AS-IA may consider this waiver for “(1) any group that can show residence and association on a State Indian reservation continuously for the past 100 years, or, (2) any group that voted in a special election called by the Secretary of the Interior under section 18 of the Indian Reorganization Act (IRA) between

1934 and 1936, provided that the voting Indian group did not organize under the IRA.” OFA evaluated Petitioner #4 under consideration (1).

The second sentence of the Directive at Section IV states that the “waiver of the priority provisions should be recommended only if a preliminary review indicates that a predominant portion of the group’s current members appears to descend from a representative portion of persons on a 1910 or earlier governmental or tribal list of the residents of the State reservation, or that a predominant portion of the group’s current members appears to descend from a representative portion of a list of voters on the IRA.” To evaluate Petitioner #4 under this provision, OFA had to identify the group’s current members, evaluate their genealogical evidence of descent, and determine whether their demonstrated ancestors on the reservation in 1910 constituted a representative portion of the Indians who resided on the Shinnecock Indian reservation in 1910. The results of these analyses, presented here in reverse order, indicate that Petitioner #4 qualifies for the waiver.

The AS-IA’s May 23, 2008, letter to Petitioner #4 specified that the preliminary review would require OFA to review the group’s genealogical documentation in order to verify members’ descent from a 1910 or earlier governmental or tribal list of the residents of the State Indian reservation. OFA and representatives of Petitioner #4 held technical assistance teleconferences on June 13, June 26, and July 11, 2008, to discuss the types of membership and genealogical documentation and databases needed for the preliminary review. On July 31, 2008, Petitioner #4 provided copies of electronic membership and genealogical databases directly to OFA, and made photocopies of member files available to OFA at the Washington, D.C., office of the Native American Rights Fund (NARF). The 90-day preliminary review began on August 1, 2008, with the target completion date of October 31, 2008.

#### **Identifying the members of Petitioner #4**

The first step in the preliminary review was to analyze the petitioner’s membership list. The most recent submission of membership materials by Petitioner #4, prior to this preliminary review, included a membership list of 1,330 members. OFA received this list on March 11, 2003. Representatives of Petitioner #4 indicated during the teleconferences that no new members had been approved since 1998 when the group closed its membership list, but that the group had made other changes. The electronic databases OFA received on July 31, 2008, reflected those changes. The July 2008 membership list submitted for the preliminary review contained the names of 994 members. Petitioner #4 had removed from its membership list: 5 individuals determined by the group to be of non-Shinnecock ancestry; 56 deceased individuals; and 275 “members missing documents placed in pending file.”<sup>1</sup>

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<sup>1</sup> Petitioner #4 did not provide a list of prospective members, including children born to current members (more than 380, according to the group’s membership files and genealogical database) as well as new applicants. Neither did the petitioner provide an estimate of the number of such individuals, whom the petitioner may add to the membership list it will submit for a full review under the seven mandatory criteria.

The preliminary review, like the acknowledgment process itself, should be based on all known, current members of a group. Therefore, the preliminary review considered the 994 current members as well as the 275 members whom the petitioner considered “pending” due only to incomplete membership files. OFA conducted its preliminary review by evaluating all 1,269 members.

#### **Selecting the 1910 or earlier governmental or tribal list of the reservation residents**

The second step in the preliminary review was to identify the list of historical residents to use. OFA selected the Indian population schedule of the 1910 Federal census of Southampton, Suffolk County, New York, as the historical residence list for the preliminary review for two reasons. First, the Directive specifically recommends using a list dated “1910 or earlier.” Second, the Southampton 1910 Indian population schedule, unlike the Southampton 1900 Indian population schedule, specifies that those enumerated resided on the Shinnecock reservation.

The pre-printed 1910 Indian population form included a blank line on which an enumerator could, when appropriate, add the “Name of Indian Reservation,” and the 9-page Indian population schedule for enumeration district 1391 of Southampton specifies the Indian reservation name as Shinnecock. On May 14, 1910, the census enumerator recorded 170 individuals (171 before deducting for one person apparently recorded twice) in 43 dwellings on the Shinnecock reservation (42 as numbered by the enumerator but two households appear to have been designated as dwelling #3).<sup>2</sup>

OFA did not research whether the State recognized this reservation in 1910, but simply relied upon its identification on a Federal census as a reservation for the purposes of this preliminary review. Thus, the 1910 Indian population schedule of the Shinnecock Indian reservation appeared to be an acceptable list, for purposes of the review for the waiver.

#### **Evaluating the genealogical evidence of descent**

The third step in this process was to review the members’ genealogical evidence of descent. Petitioner #4 made available at its attorneys’ office in Washington, D.C., a total of 1,002 membership files. These files included genealogical documentation for 988 current members, 9 “pending” members, 1 deceased member, and 2 non-members; one folder was empty and another folder duplicated documentation also found in another folder. However, Petitioner #4 did not make available membership files for most of its 275 “pending” members who were missing genealogical evidence at the time of this preliminary review. Without that documentation, OFA could not verify the claimed ancestry of the “pending” members except for the nine pending members with membership folders and several other pending members whose children’s or grandchildren’s membership folders contained evidence on them.

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<sup>2</sup> The petitioner included 167 of the 170 residents in its genealogical database (missing were William H. Martin, his [Cherokee?] wife Anna, and his son James). The petitioner’s genealogical database includes historical and living individuals whom the petitioner considers as “Shinnecock” (as well as any non-Shinnecock or non-Indian spouses), regardless of whether they have descendants now living. The preliminary review did not determine if all historical members were included in this database.

The genealogical database indicated that 77 percent of members (975 of 1,269) claim descent from at least one 1910 Indian resident. OFA's review of the genealogical evidence found that 61 percent of members (769 of 1,269) successfully demonstrated lineal descent from at least one of the Indians resident on the Shinnecock Indian reservation in 1910. A total of 500 members (39 percent) did not.

**Defining the “predominant portion” of the group’s current members**

The fourth step in this preliminary review is to determine if 61 percent is a “predominant portion” within the meaning of the Directive. OFA concludes that for purposes of implementing the waiver, 61 percent is a “predominant portion.” This recommendation sets a lesser standard than that required to meet criterion 83.7(e), where “all previous petitioners who have met criterion 83.7(e) in a final determination have demonstrated that at least 80 percent of their members descend from a historical tribe” (*Burt Lake Band* FD, 125). A lesser standard is appropriate, however, because the review for purposes of the Directive is limited to the priority provisions and the Directive itself references that the full review under 83.7(e) will occur during active consideration.

**Determining a “representative portion” of persons on the 1910 reservation list**

The fifth step in this preliminary review is to define the “representative portion” description in the Directive and apply it to the analyses of the 1910 Indian population schedule and of current members’ descent. The “representative portion” does not need to equate to a specific percentage. The objective is to show that the 1910 reservation residents from whom current members descend constitute a cross-section of families, and not simply one or two families among many non-represented families. OFA calculated the percentages but also looked at the families being represented.

OFA’s analysis showed that the 61 percent of Petitioner #4’s members who demonstrated descent from a 1910 reservation resident descend from a total of 83 (of the 170) residents on the Shinnecock reservation in 1910. The Federal census enumerator appears to have recorded a total of five resident spouses as non-Indian (although in the “special inquiries relating to Indians” section of the schedule, he recorded Shinnecock as the tribal affiliation of four of those five). Deducting for the spouses described as non-Indian leaves 80 of 165 Indian residents (48 percent) with descendants in the current group, and 85 Indian residents (52 percent) without descendants in the current group.

OFA did a cursory analysis of the 85 Indian residents on the 1910 Indian reservation who do not have descendants in the current group. That total includes 55 individuals who resided in households alongside family members who do have descendants in the current group. The other 30 individuals resided in households composed exclusively of individuals without descendants in the current group. According to the petitioner’s genealogical database, 62 of those 85 (or 73 percent) have a parent or siblings on the 1910 reservation who do have descendants in the group. That is, most of the 1910 reservation Indians without descendants in the current membership are close relatives of those reservation Indians who do have descendants in the current membership.

Viewed another way, individuals in 38 of the 43 reservation “households” either have descendants in the current group or were closely related to those who have descendants in the current group. As a result, a significant percentage of the 1910 reservation population appears to be represented directly or collaterally by the current members. Therefore, we conclude for purposes of the limited review under the Directive that Petitioner #4’s 1910 ancestors do constitute a “representative portion” of the reservation residents in 1910.

**Checking continuous residence and association on a state Indian reservation since 1910**

As the last step in this brief analysis, OFA reviewed the petitioner’s genealogical database for the Indian individuals listed on the 1910 Indian population schedule of the Federal census and their descendants to determine whether they resided on the reservation during the past 100 years. This review did not determine if the individuals associated with each other or if there was evidence of actual interaction. That evaluation would be done in a full evaluation under 25 CFR Part 83.

OFA utilized three lists of Shinnecock Indian reservation residents available in the public domain or in the petitioner’s record. The intervals between the lists are not uniform, but were adequate for the purposes of the preliminary review. The three lists relied upon include (1) the 1930 Federal census that enumerated 161 residents on the Shinnecock reservation, (2) an October 1960 school census that identified 185 total adult and minor residents on the reservation, and (3) Petitioner #4’s July 2008 electronic database of current and “pending” members which specified Shinnecock reservation as the residential address for 487 individuals. However, some members with Shinnecock reservation addresses in the petitioner’s 2008 membership list had out-of-state addresses on the labels to membership folders, which did not contain evidence that might reconcile the differences.

Subject to a caveat necessitated by the inconsistent addresses, the 487 current reservation residents constitute 38 percent of Petitioner #4’s total membership (487 of 1,269). A total of 419 current reservation residents (86 percent) claim to descend from an ancestor who resided on the reservation in 1910, and 68 (14 percent) do not claim to descend from an ancestor who resided on the reservation in 1910.

OFA consulted the petitioner’s genealogical database to identify the descendants of the family heads within all of the 43 households enumerated in 1910. The heads of 18 households (of 43, or 42 percent) had descendants listed as residents of the reservation on all three lists for 1930, 1960, and 2008, and the heads of 11 households (of 43, or 26 percent) had descendants appearing on one or two but not all three of the lists. The heads of the remaining 14 households (of 43, or 33 percent) did not have descendants identified in the genealogical database to compare to the 1930, 1960, or 2008 lists.

In addition to evaluating the 1910 residents and their descendants on the reservation, OFA also evaluated the 2008 residents and their ancestors on the reservation. A total of 69 percent of current residents (338 of 487) or their demonstrated ancestors resided on the reservation also in 1910, 1930, and 1960, and another 11 percent (54 of 487) or their demonstrated ancestors appeared on one or two but not all three of the lists. About 14 percent of current residents (68 of

487) do not claim 1910 residents as ancestors, and nearly half of these members did not appear, or have claimed ancestors who appeared, on any of the three lists.

The results demonstrate a satisfactory level of continuous residence and association on the reservation for the past 100 years for the purposes of this preliminary review.

In conclusion, this review is strictly preliminary and does not constitute an evaluation of Petitioner #4's documented petition under any of the criteria in 25 CFR Part 83. OFA has not determined whether the residents of the Shinnecock reservation demonstrated community between 1910 and 2008, or before 1910 (§ 83.7(b)). OFA has not determined that the Indian population schedule of the 1910 Federal census used in this preliminary review constitutes a reliable definition of the historical Indian tribe from which the petitioner descends (§ 83.7(e)).

### **Summary**

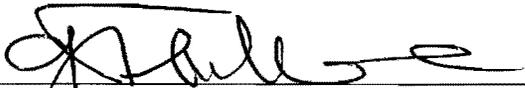
This preliminary review indicates that the Shinnecock petitioner can show a satisfactory level of residence and association on a State Indian reservation continuously for the past 100 years for purposes of a waiver of the priority provisions. The preliminary review also shows that a predominant portion of the group's current members appears to descend from a representative portion of persons on a 1910 governmental list of the residents of the Shinnecock State reservation.

### **Recommendation**

OFA's preliminary review suggests Petitioner #4 meets the requirements described in the May 23, 2008, Directive for a waiver of the § 83.10(d) priority provisions in order to move the petitioner to the top of the "Ready" list. Therefore, in accordance with the May 23, 2008, Directive, OFA recommends that the decision-maker, currently the Acting Deputy Assistant Secretary for Policy and Economic Development, waive the regulation and move Petitioner #4 to the top of the "Ready" list.

Based on the foregoing, I find that it is in the best interests of the Indians to waive the priority provisions of 25 CFR Part 83. It appears that a review of the petition will impose a lesser burden on the OFA researchers than other petitions and thus should not delay consideration of other petitioners as a whole to any significant degree. It is in the best interests of all the Indian petitioners because it allows more petitions to be processed during a set time period and thus makes the process move faster for all petitioners. I direct the Office of Federal Acknowledgment to move Petitioner #4 to the top of the "Ready" list.

Approved:



George T. Skibine  
Acting Deputy Assistant Secretary for  
Policy and Economic Development

10-30-08

Date

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix C

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## Appendix D

### Four 18th Century Claimed Shinnecock Ancestors

The Shinnecock petitioner has described the historical process by which members apply for an allotment of land on the reservation. The Shinnecock Trustees must first determine whether a member is “Blood Shinnecock”:

To determine blood, an applicant must be a lineal descendant through the paternal and/or maternal line of one or more of the Shinnecock ancestors living in the late 18th century. Those ancestors are 1) Peter Paul Cuffee; 2) James Bunn; 3) Charles Kellis and his wife, Charity Bunn; 4) David Walker (also spelled Wakus), and their consanguineal kin. (Aschenbrenner [2/8/1978], 19)

This appendix presents synopses of evidence and analysis for the 18th century individuals cited above, with the exception of 19th century Charles Kellis who married the daughter of James Bunn, the second historical individual cited. All of Charles Kellis’ descendants also descend from James Bunn. Some current members claim Kellis descent solely through a sibling of Charles Kellis. Therefore, the father ascribed to Charles Kellis and Charles’ siblings—“David” Kellis—is presented below instead of Charles Kellis.

#### Paul Cuffee (b.1757-d.1812)

An 1839 church history states that "Rev. Paul Cuffee, was the second of seven sons, of Peter Cuffee, a native Indian of the Shinnecock tribe, and was born in the town of Brookhaven, on Long Island, March 4th, 1757" (*Strict Congregational Churches* 1839, 17).<sup>149</sup> This birth date can be calculated from his age at death as inscribed on his tombstone, erected by the New York Missionary Society (*Strict Congregational Churches* 1839, 17, 21). The history also states that Cuffee was indentured as a servant to Maj. Frederick Hudson of Wading River from his youth until age 21 (1778), around which time “he married Hannah, eldest daughter of Robin and Smilas, eminently pious people of color, by whom he had seven children, five of whom survived him” (*Strict Congregational Churches* 1839, 18).<sup>150</sup> Five of the couple’s reported seven children were yet living when Rev. Cuffee died in 1812 (*Strict Congregational Churches* 1839, 18). After his religious conversion circa 1778, Paul Cuffee joined the Wading River Indian church and was ordained in 1790 at Poospatuck, in Brookhaven, by the ministers of the “Connecticut Convention” (*Strict Congregational Churches* 1839, 18-19).

About the year 1798, he was employed by the "New York Missionary Society," to labor with the Montauk tribe of Indians, for which he received a liberal compensation. The field of his labors was now extensive. He preached

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<sup>149</sup> Brookhaven is the town adjoining Southampton to the southwest.

<sup>150</sup> Wading River is located on Long Island Sound, at the western end of Riverhead where it adjoins Brookhaven, about 15 miles northwest of the Shinnecock Reservation. See Figure 1.

alternately at Islip, Poosepetauk, Canoe Place, and Montauk, a distance of more than eighty miles; besides, he occasionally visited and supplied vacant churches in the State of New Jersey. (*Strict Congregational Churches* 1839, 19)

A contemporary of Paul Cuffee—James Bunn—furnished a statement circa 1815 about his long acquaintance with both Paul Cuffee and his wife Hannah:

Have known Hannah Cuffee, 40 years lived at the wading River. ~~was~~ her mother was a molatto and lived at Wading river her husband was a black man—came to Shinecock to live 21 years ago, was Paul’s wife,—Has known Paul 40 years never came to Shinecock till he was settled there. Paul has been dead 2 years- [strikeouts, spelling, and punctuation in the original] (James Bunn *in* Anonymous ca.1815)

Three contemporary accounts identify Paul Cuffee’s parents (Peter Cuffee and Jayne Peter) and maternal grandparents (Rev. Peter John, or “Priest Peter,” and Peggy, a “Montauk sq[u]aw”) (Anonymous ca. 1815; *Strict Congregational Churches* 1839, 17). One of these contemporary accounts is from Paul Cuffee’s brother Meshack Cuffee.<sup>151</sup> Neither Paul’s brother nor his acquaintance of 40 years, James Bunn, attributed Shinnecock ancestry to Paul, although Meshack stated that their grandmother was Montauk. Presbyterian minister Nathaniel Scudder Prime (b.1785-d.1856) stated in his 1845 Long Island history that he knew the Rev. Paul Cuffee personally, and heard him preach (Prime 1845, 116). Prime did not identify Cuffee as Shinnecock but instead quoted the 1839 church history that stated Paul Cuffee was Shinnecock (Prime 1845, 115).

Paul Cuffee does not appear in any of the extant pre-1800 Indian records books, although Bunn’s statement indicates that Hannah and/or Paul Cuffee “came to Shinecock” [*sic*] circa 1794. Land records after his death show that Paul Cuffee owned land off the reservation, in the Canoe Place Division of the Quogue Purchase, but its date of purchase is not known (Squires 6/5/1829). A notice published shortly after Paul Cuffee’s death in 1812 cited lots he had mortgaged there in 1810, and refers to him as “late of Montauk” (*Long Island Star* 5/19/1813). An obituary published in two New Jersey newspapers specifies that the Rev. Paul Cuffee died at Montauk (*Palladium of Liberty* 3/16/1812; *Centinel of Freedom* 3/31/1812). No probate for his estate was found in the Suffolk County’s Surrogate’s Office in Riverhead, NY.

The evidence of Paul Cuffee’s tribal ancestry or affiliation is inconsistent. An 1839 church history identified his grandfather as the Rev. Peter John, and a “Peter John” signed the 1764 Shinnecock agreement (*Strict Congregational Churches* 1839, 17; Simeon Tittum *et al.* 6/12/1764). However, Paul Cuffee’s brother Meshack Cuffee, whose statements were recorded circa 1815, did not claim their grandfather “Priest Peter” was Shinnecock. Meshack Cuffee claimed that Peter John’s child (Paul’s mother) by his Montauk wife “Peggy” was “Mulatto”

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<sup>151</sup> Meshack Cuffee’s last will and testament identifies Obadiah Cuffee as one of his siblings (Meshack Cuffee 1841), and another contemporary account identifies Obadiah Cuffee as Paul’s brother (Allen 1857, 273).

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix D

(Meshack Cuffee *in* Anonymous *ca.* 1815).<sup>152</sup> The term “Mulatto” generally denoted a person with Black ancestors as well as White or Indian or other non-Black ancestors, and, therefore, its use here does not rule out Indian or Shinnecock ancestry for Peter John. Paul Cuffee’s son Vincent Cuffee (and Paul’s widow Hannah) were debarred from drawing land on the reservation in 1815 (*Indian Records Book 2*, 42).<sup>153</sup> Yet the New York Missionary Society, an institution for which he worked for about 14 years, erected a tombstone for Paul Cuffee that describes him as “an Indian of the Shinnecock Tribe” (*Strict Congregational Churches* 1839, 21).

Ten historical individuals on the 1865 reservation have documented descent from Paul Cuffee. A total of 723 current members claim Paul Cuffee as an ancestor, excluding the 51 members who claim that descent through Noah Cuffee (see “Special Note” at the end of this appendix). All 723 claim descent through one child of Paul Cuffee (son Vincent Cuffee), and 573 have documented their descent, generation-by-generation, from Paul Cuffee. Of these 573 current members, 333 demonstrate descent from both Paul Cuffee and James Bunn.

James Bunn (b.ca.1767-d.aft.1836)

The petitioner’s genealogical database states, without source citation, that James Bunn was born circa 1774 in Islip (two towns southwest of Southampton), Suffolk County, NY. James Bunn does not appear in any of the extant pre-1800 Indian records. The earliest appearance of James Bunn in records reviewed for the PF is the 1800 Federal census of Southampton (Census 1800, 67). The following year James Bunn was elected a Shinnecock Trustee (*Indian Records Book 2*, 34).

The notes taken on James Bunn’s circa 1815 statements in support of Hannah [—?—] Cuffee’s entitlement to draw land give his age at that time as 48, placing his birth at circa 1767 (James Bunn *in* Anonymous *ca.* 1815). James Bunn claimed to have known Paul Cuffee for 40 years, or since circa 1775, at which time James Bunn would have been about 8 years old. The notes on James Bunn’s acquaintanceship with Paul’s wife Hannah [—?—] are less clear: “Have known Hannah Cuffee, 40 years lived at the wading River” (James Bunn *in* Anonymous *ca.* 1815). James Bunn himself may have resided in Wading River before his arrival in Southampton, if he was claiming to have known her for 40 years, especially as he knew Hannah’s “mother was a molatto and lived at Wading river her husband was a black man—came to Shinecock to live 21 years ago” (James Bunn *in* Anonymous *ca.* 1815).<sup>154</sup>

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<sup>152</sup> An alternative interpretation is that Meshack was describing his paternal grandmother (i.e., the mother of Peter Cuffee) as “Peggy” the Montauk woman.

<sup>153</sup> Shinnecock reservation residents could draw annual allotments for farm land, subject to certain restrictions spelled out by the Shinnecock Trustees in 1799 (*Indian Records Book 2*, 33). The Town Trustees’ records and *Indian Records Books* show that specific individuals were debarred from drawing land in 1806 and in 1815, but the reasons for the debarments do not appear in the record.

<sup>154</sup> James Bunn made no assertion that Hannah [—?—] Cuffee had Indian ancestry, although his use of the term “Mulatto” allows for that possibility.

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An 1836 Canoe Place deed establishes that James Bunn was married to Dency Cuffee, a sister of Noah Cuffee, but neither James's nor Dency's claim to Shinnecock ancestry is demonstrated by this or other records (Noah Cuffee *et al.* 5/26/1836). This is significant in that 12 current members claim James Bunn as their only Shinnecock ancestor among the four being discussed in this appendix. In the 1836 deed, Dency (Cuffee) Bunn was joined by her apparent siblings, Noah Cuffee, Sally Cuffee, and Charity (Cuffee) Jack (Noah Cuffee *et al.* 5/26/1836). "Dency" can be a nickname for "Prudence," and a Prudence Cuffee was a Shinnecock lot holder in 1793 and 1794. OFA estimated the age of lot holders to have been at least 21, the age at which Shinnecock men could vote for their trustees. If Prudence Cuffee were at least 21 years old when she held a lot of land in 1793, then she was born by 1772. Federal census entries 1830-1850 support Dency (Cuffee) Bunn's birth as after 1775, after 1785, or in 1780, respectively, which may indicate Dency was a younger woman than the Shinnecock lot holder Prudence Cuffee, unless Prudence was younger than 21 in 1793 (Census 1830, 215; 1840, 142; 1850, 363B). None of Dency's siblings—Noah, Sally, or Charity—appears as a lot holder as might be expected if Dency was Prudence and all were equally eligible to draw land.<sup>155</sup>

James Bunn was elected as a Shinnecock Trustee seven consecutive times between 1801 and 1807. On April 1, 1806, the Town Trustees voted

That Ebenezer Howel be appointed to notify Absalom Cuffee, Bun, and the several branches of that Family, to meet the Trustees on Tuesday next at H. Rogers and give them satisfaction respecting their title to the Indian Land, or otherwise they shall be debarred drawing any land this season. (Southampton Trustees 1806, 541)

Despite being debarred by the Town Trustees from drawing land in 1806, Bunn was again elected as a Shinnecock Trustee in 1807 at which time he and the other two Shinnecock Trustees voted to allow those previously debarred to draw land once again (*Indian Records Book 2*, 36). Between 1819 and 1823, Town Trustee records refer to charging and prosecuting James Bunn for pasturing his cows and trespassing on Shinnecock Neck, giving the impression that he resided off the reservation (Sleight 1931, 259, 280, 283).<sup>156</sup> Three of his granddaughters born in the 1840s (apparently not living in James Bunn's known lifetime) stated that James Bunn was "not an Indian" in their 1901 unsuccessful Brothertown claims applications (BIA 1901 #2913;

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<sup>155</sup> On one hand, records of lot holders are incomplete, and Noah, Sally, and Charity may have owned lots but never appeared in the surviving records. The marriage of James Bunn to a known Cuffee Shinnecock lot holder (their sister Dency) would explain his appearance on the scene circa 1800 and could explain why the Town Trustees questioned his right to Indian land in 1806, even though Bunn had been elected as a Shinnecock Trustee several times by then. On the other hand, surviving records show that Dency's brother Noah Cuffee was debarred from drawing land in 1806 (as was her possible brother-in-law Tom Jock/Jack) and her sister Sally (Cuffee) Thompson Wood(s) owned land off the reservation at Canoe Place, adjacent to the property the four siblings sold together in 1836 (Wood 2/1/1851; Noah Cuffee *et al.* 5/26/1836).

<sup>156</sup> August 1819: Matthew Scott and James Bun to be prosecuted "for trespassing on Shinnecock Neck" (p. 259); June 25, 1822: "Shinnecock -- Voted that James Bun pasture his Cows in Shinnecock this season. He shall pay Six dollars & give security for the payment, within the term on One week" (p. 280); April 8, 1823: "Call on Indians -- Voted that the Clerk call on Jas. Bun & David Wamcy for 6 dollars each for Cow pa[s]ture in Shinnecock last summer, with power to prosecute" (p. 283); September 2, 1822 [or 1823]: "Abm. T. Rose, Esq. prosecute James Bun for Trespass in Shinnecock Neck; and also prosecute Joel Raynor (if he shall deem proper)" (p. 284).

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#2994; #3094).<sup>157</sup> However, the demonstrated father of the three applicants—James Bunn “Jr.”—and his wife Sophia Waukus were both recorded as “Indians” in the Presbyterian Church register entry of their 1830 marriage (NY DAR GRC 1925-1926, 280). The marriage record of Mary Bunn, a probable child of the elder James Bunn, and her 1826 groom Ira Cuffee were similarly recorded as “Indians” in the same register (NY DAR GRC 1925-1926, 279). The elder James Bunn signed an 1822 petition as a Shinnecock member, and was elected as Shinnecock Trustee another ten times between 1823 and 1833.

James Bunn appears to have died between May 26, 1836 (when he signed the deed involving his wife’s off-reservation land) and June 1, 1840 (when the Federal census of Southampton recorded “Dency Bunn” as the head of a household there, age 36-55). No probate for his estate was found in the Suffolk County Surrogate’s Office in Riverhead, NY.

The petitioner’s genealogical database presents James Bunn as the father of nine children, three of whom are documented as his children. Seven of the nine children married Cuffee, Kellis, and Walker/Waukus individuals who are ascribed, but not all documented, as children of Paul Cuffee, Noah Cuffee, David Waukus, and David Kellis. James Bunn’s other two children were daughters who married non-Indian men, according to the petitioner. The progeny of all these couples intermarried to a significant degree. As a result, current members claim James Bunn as an historical ancestor more often than they do Paul Cuffee, David Kellis, or David Waukus.<sup>158</sup>

In response to OFA’s request for the evidence relied upon for six undocumented children attributed to James Bunn, all of whom have descendants in the current group, the petitioner’s researcher’s report iterated the information in OFA’s request without further response or providing the requested evidence (Campisi 5/4/2009, 3).<sup>159</sup> Nevertheless, the report concludes, “Of this number [*i.e.*, 1,066 current members], there is a [*sic*] unbroken documented genealogical chain connecting 992 of the 1,066 members to at least one of the following progenitors: Paul Cuffee, James Bunn, or Charles Kellis” (Campisi 5/4/2009, 4). It is unclear whether this calculation confined itself to the three documented children of James Bunn.

Ten historical individuals on the 1865 reservation have documented descent from James Bunn. All but 70 current members (996 of 1,066, or 93 percent) claim James Bunn as an ancestor. Twelve current members claim James Bunn as their only Shinnecock ancestor among the four being discussed in this appendix. Although current members claim descent from James Bunn through all nine of the children attributed to him, evidence documents parentage for only three of those nine. Nevertheless, 605 of the 996 claiming descent from James Bunn have documented

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<sup>157</sup> Four other rejected Brothertown claim applicants appear as James Bunn descendants in the petitioner’s genealogical database, but James Bunn does not appear on their applications (BIA 1901 #2815; #3230; #3231; #3232).

<sup>158</sup> Two current members’ ancestry charts were noted to include James Bunn 12 times (members 668 and 669).

<sup>159</sup> “James Bunn has nine ‘claimed’ children, all of whom have descendants among the present-day members. According to the Department’s letter, three have acceptable proof of ancestry: Luther, James, and Charity” (Campisi 5/4/2009, 3).

their descent, generation-by-generation, from James Bunn. Of these 605 current members, 333 demonstrate descent from both James Bunn and Paul Cuffee.

David Kellis (b.ca.1789?–aft.1825?) (the father ascribed to Charles Kellis)

In 1978, the petitioner explained that historically it has made land allotment determinations based on descent from “Peter Paul Cuffee,” James Bunn, Charles Kellis and wife Charity Bunn, David Waukus, “and their consanguineal kin” (Aschenbrenner [2/8/1978], 19). Charles Kellis (b.ca.1810) was married to James Bunn’s daughter Charity Bunn, so their progeny would qualify by virtue of descent from James Bunn, regardless of Charles Kellis’s intermarriage with this family. Some current members claim Kellis ancestry (without any claim of Bunn, Cuffee, or Waukus ancestry) through two claimed siblings of Charles Kellis. Thus it appears that the Shinnecock Trustees could allot Kellis descendants of Charles Kellis’s parents, not descendants of Charles Kellis only (“consanguineal kin”). The parents whom the petitioner attributed to Charles Kellis in its genealogical database are “David Kellis” and “Phoebe Hugh,” without source citation.<sup>160</sup>

The approximate birth date of “circa 1789” furnished in the petitioner’s genealogical database for David Kellis appears to be calculated by estimating his age as 20 at the time of birth of the first child attributed to him, and his death date of “after 1825” as occurring after the birth date of the last child attributed to him. No contemporary evidence reviewed for this PF documents the existence of a Kellis man with this given name living in the timeframe described for him, nor that he married a “Phoebe Hugh.” This is significant in that 19 current members claim “David” Kellis as their only Shinnecock ancestor among the four being discussed in this appendix (through a child of his other than Charles Kellis).

The extant pre-1800 Indian Records books show four other Kellis, or “Killis,” men as Shinnecock lot holders: John, Joseph, Stephen, and “Vinne” (Indian Records Book 1, 5; 2, 8, 18; Indian Lands Recorded, 2, 6, 10-12, 15).<sup>161</sup> All four pre-1800 Kellis men drew land on the Shinnecock reservation, and none were among those debarred from drawing land by the Town Trustees in 1806 or by the Indian Trustees in 1815. Further research may document one of these early Killis men as the father of the Kellis siblings currently attributed to a “David” Kellis. The only probate found in the Suffolk County Surrogate’s Office in Riverhead, NY, for a Kellis decedent in the 1800s did not pertain to this family (Killis 1/6/1841).

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<sup>160</sup> A “Phebe Hugh” served as a witness to the 1793 leasing of a Shinnecock lot by Joseph Kellis at which a “Phebe Kellis” either served as a witness or joined Joseph Kellis as a lessor (*Indian Records Book* 1, 4). A “Phebe Jo Kellis” leased her lot in 1797 (Indian Lands Recorded 1797, 6). The petitioner’s genealogical database tags David Kellis’s wife Phoebe Hugh as “Montauk.” The birthplace of David Waukus’s wife Mary Hugh was recorded in the 1865 State census as “Montauk.”

<sup>161</sup> Five Kellis or Killis men served with the Provincial New York troops 1758-1760 who were not designated as Indian in the published muster rolls: Charles, Edward, “Mulatto,” Namus/Nemos, and Robin (NYHS 1892, 123, 128, 196, 198, 202, 234, 240, 286). Two identified Suffolk County as their birthplace and one specified Brookhaven.

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A total of 581 current members claim descent from “David” Kellis, including the 19 members who claim him as their only Shinnecock ancestor of the four discussed in this appendix. No current members document descent from “David” Kellis and his reported wife Phoebe Hugh.<sup>162</sup>

David Waukus (b.ca.1773-d.aft.1828)

David Waukus’ first election as Shinnecock Trustee in 1794 establishes that he was at least 21 years old at the time, as required by the 1792 State law, and therefore born by 1773. He may have been born earlier as the age recorded in the 1865 State census entry for his Montauk-born widow, Mary Hugh, places her birth at circa 1767-1768 (NY Census 1865). David was also a lot holder on the Shinnecock reservation in 1798 and 1799. He is presumed to be the same David Waukus who last served as Indian Trustee in 1828 (Indian Records Book 2, 47), and no later records have been located for him.<sup>163</sup>

The petitioner attributes seven children to David and Mary Waukus. The widowed Mary’s 1865 State census entry records that she was the mother of 12 children, and she then resided with her daughter, Minerva (Walker) Green, from whom no current members claim descent. Current members claim to descend from three of David and Mary’s children, but have not provided evidence of it. OFA obtained a death record for the youngest child that the petitioner ascribed to David Waukus and Mary Hugh—namely Harriet (Walker) Hudson—in an effort to document whether these were the parents of any of the children ascribed to them. Harriet Hudson’s death record did identify David “Walker” and Mary Hugh as her parents. No current members claim descent from Harriet Walker, who did not reside on the reservation in 1850, 1865, or 1870, although she was buried in the Shinnecock cemetery upon her death in 1896.

Despite the large number of children claimed by David’s widow, relatively few of their descendants—as identified by the petitioner—appear in the 1850 Federal census “cluster” that appears to be the reservation or in the 1865 State enumeration of the reservation, and very few of these residents have descendants in the current membership. A total of 6 of the 25 alleged Waukus descendants identified in 1850, also found among the 16 identified in 1865, have descendants in the current group.

OFA requested the parentage evidence relied upon for the three children (of the seven listed in the genealogical database) attributed to David Waukus who have descendants in the current group. The petitioner’s researcher’s report responding to this request stated, “There is as yet no documented evidence tying individuals back to David Waukus” (Campisi 5/4/2009, 4). No

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<sup>162</sup> Current members who have documented descent from his son Charles Kellis and Charity Bunn are reflected in the total given for her father James Bunn, above.

<sup>163</sup> The *Indian Records Books* do not mention another contemporary David Waukus who instead might have served as Indian Trustee in the 1820s. However, an original probate record identifies a “David” Waukus who appears in published marriage abstracts as “Samuel” Waukus, who married “Smilas” Cuffee on August 23, 1803, in Southampton (NY DAR GRC 1925-1926, 274). Notice of Meshack Cuffee’s 1842 will proving was served upon “Smilas, wife of *David Walkers*” of Southampton (Meshack Cuffee 10/2/1841). One of these records appears to be in error, unless Smilas married two different Waukus/Walker men. No current members claim descent from Smilas/Similas Cuffee.

probate for David Waukus's estate was found in the Suffolk County Surrogate's Office in Riverhead, NY.

A total of 283 current members claim David Waukus as an ancestor. No current members claim David Waukus as their only Shinnecock ancestor among the four being discussed in this appendix. No current members have documented descent from David Waukus.

Special Note on Noah Cuffee (b.1778 – d.1852)

The petitioner's researcher stated that "oral tradition" attributes Noah Cuffee as Paul Cuffee's son (Campisi 5/4/2009, 3), and the father-son relationship is asserted in the group's genealogical database. In response to OFA's request for the evidence relied upon for this child (and other children) attributed to Paul Cuffee, the petitioner's researcher's report states, "We have no documented evidence showing the connection between Noah and Paul" (Campisi 5/4/2009, 3).

Two original documents offer evidence that Noah Cuffee was not Paul Cuffee's son. (1) An 1836 deed shows that Noah Cuffee, Dency Bunn "wife of James Bunn," Sally Cuffee, and Charity Jack sold a parcel of land near Canoe Place (Noah Cuffee *et al.* 5/26/1836). The text of the deed does not describe the seven and one-half acre parcel as land they inherited from a deceased parent, but that is the reasonable inference taken although other scenarios are possible. The grantors did not include then-living Vincent Cuffee, a documented son of Paul Cuffee, nor either of the two other women whom the petitioner attributes to Paul Cuffee as daughters (Smilas and Miriam).<sup>164</sup> Thus, the four similarly-aged grantors in 1836 are not demonstrated to be children of Paul Cuffee.<sup>165</sup>

(2) Meshack Cuffee left a will signed in 1841 that granted his real and personal estate to "my brother" Obadiah Cuffee, who also served as executor (Meshack Cuffee 10/2/1841). The Surrogate's Court, which handles probate in New York, required executors to send a notice, or "certification," announcing the upcoming proving of a will to a decedent's "next of kin and heirs at law." Obadiah Cuffee did make such notification to a multitude of Meshack's "next of kin and heirs at law," but without specifying their relationships.<sup>166</sup> Under the laws in effect at least by 1861, Meshack's next of kin should have included his surviving siblings or else his nieces and nephews (Dayton 1861, 556-557, 565).<sup>167</sup> Among those notified was Vincent Cuffee, a

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<sup>164</sup> The petitioner provided an 1873 newspaper article identifying Vincent Cuffee as the last surviving son of the Rev. Paul Cuffee (*South Side Signal* 8/9/1873, 1).

<sup>165</sup> Federal census entries provide age ranges for three of these four grantors (cited in the genealogical database).

<sup>166</sup> The OFA genealogist's interpretation of the relationships of those named individuals to Meshack Cuffee appear in OFA genealogist Workpaper 6. Meshack Cuffee's will mentioned only one brother and the resulting probate records do not furnish the specific relationships of the "next of kin and heirs at law" notified about Meshack Cuffee's estate. He does not appear to have been survived by a widow or children, who would have been his obvious "next of kin."

<sup>167</sup> Earlier probate laws, not reviewed for the PF, may have been in place in 1841 which would alter this interpretation of Meshack Cuffee's "next of kin and heirs at law." OFA requests such comments from the petitioner, interested parties, and the public.

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documented son of Paul Cuffee, as well as the two other women whom the petitioner attributes to Paul Cuffee as daughters (Similas and Miriam). Missing from the 1842 “next of kin and heirs at law” list are Noah Cuffee, Dency Bunn, Sally Cuffee, and Charity Jack, at least three of whom were then living. If they were children of Paul Cuffee, or of another brother of Meshack Cuffee, then it is reasonable to expect their inclusion among the various “next of kin.” Therefore, evidence reviewed for this PF does not demonstrate Paul Cuffee as the father, or uncle,<sup>168</sup> of Noah Cuffee (or of Dency (Cuffee) Bunn, Sally Cuffee, or Charity (Cuffee) Jack).<sup>169</sup> This is significant in that 51 current members claim Paul Cuffee, through this Noah Cuffee, as their only Shinnecock ancestor among the four being discussed in this appendix.

The petition does not contain evidence that documents parentage for any of the nine children ascribed to Noah Cuffee. Four women filed three unsuccessful Brothertown claims and one unsuccessful Oneida claim (Kansas Claims of New York Indians) as descendants of the wife of this Noah Cuffee, who is identified as Mary Wampy, an Oneida Indian (BIA 1901 #2772; #2831; #2833; #2992).<sup>170</sup> Those applications do not attribute Indian ancestry to Noah Cuffee. No contemporary evidence reviewed for this PF provided the identity or possible tribal affiliation of Noah Cuffee’s wife. Broken tombstones near Canoe Place provide the only evidence of Noah and Mary’s dates of death (Hamptons n.d., 3). No probate for Noah Cuffee’s estate was found in the Suffolk County Surrogate’s Office in Riverhead, New York.

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<sup>168</sup> Although other scenarios could explain why these individuals held the land jointly, a reasonable interpretation of the 1836 deed for the Canoe Place land would be that the grantors inherited it from an as-yet-undocumented Cuffee father who was then deceased (Noah Cuffee *et al.* 5/26/1836). If that father had been a brother to Meshack (and Obadiah, and, apparently, Paul), then his four surviving children should have received notice of Meshack’s probate. Therefore, this deed does not demonstrate that these four were the children of Paul Cuffee or of any brother of Paul Cuffee.

<sup>169</sup> If these four Cuffee siblings were descended from a brother of Peter Cuffee (Paul Cuffee’s father), then they may not have had Indian ancestry. The Cuffees had been in Suffolk County since at least the 1730s, according to their birth information as recorded in the New York Provincial Troop muster rolls (NYHS 1892, 284). If Peter Cuffee (b.ca.1734) was the only Cuffee to marry a spouse with Indian ancestry, then that could account for the confusion (i.e., the 1806 debarments) as to which Cuffees had rights to draw land at Shinnecock.

<sup>170</sup> These four women claim descent from Noah and Mary (Wampy) Cuffee’s ascribed daughter Eliza Cuffee (b.ca.1798- d.aft.1830). The four applicants claim to be three great-granddaughters and one great-great-granddaughter of Noah and Mary (Wampy) Cuffee.

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**Appendix E**

Diagram Showing Continuity of Leadership 1792 to 1835

Copy of diagram follows.

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*Shinnecock Leadership: 1792 -- 1835*

Name	Birth date	Death date	1792	1793	1794	1795	1796	1797	1798	1799	1800	1800 P	1801	1802	1803	1804	1805	1806	1807	1813	1814	1815	1816	1822 P	1823	1824	1825	1826	1827	1828	1829	1830	1831	1832	1833	1834	1835		
Abraham Jacob (S)	Bef. 1771	Apr. 28 Jan 1822	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
David Jacob (S)	Bef. 1771	Apr. 17 Jan 1800	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Samuel Waukus	Apr. 1741	Apr. 19 Apr 1815	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Abasalom Cuffee	Apr. 1744	Apr. 08 Apr 1806	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Samuel Ruckets (S)	Apr. 1741	Apr. Aug. 1798	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
David "Walker" (Wacus)	Bef. 1773	Apr. 1828	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Silas Tony (S)	Bef. 1772	Apr. 01 Apr 1800	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Sam Bud (S 1800c)	Bef. 1757	Apr. 1822	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Amos Cuffee S 1800c181	Bef. 1776	Apr. 1830	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Joseph Peter	Bef. 1769	Apr. 17 Jan 1800	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
James Bunn (S 1800c 181	Apr. 1767	Apr. 26 May 1836	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Aaron Cuffee (S 00c 10c 2	Apr. 1780	Apr. 1820	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Samuel (Wacus Waukus)	Bef. 1782	Apr. 1840	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Neath Cuffee S 1810c 20c	1778	1852	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
James Warburton	Bef. 1776	Apr. 1816	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Wicks Cuffee S 30c 40c 5	1797	13 Jul 1868	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Luther Bunn S 30c 50c 40	1800	11 Jul 1893	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Ananias Cuffee (S 1830c 1	Apr. 1798	Apr. 1846	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Vincent Cuffee S 20c30c4	1793	24 Jun 1879	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Steven H. Walker (S 1840	1813	11 Dec 1866	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
James Lee (NI 1840c 1850	1791	21 Nov 1875	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	

Legend  
 Y: Elected Trustee in Year Shown  
 1800 Petition (P) and 1822 petition (P). Numbers indicate positions of signature or mark

Shinnecock Indian Nation (Petitioner #4) Proposed Finding  
Appendix E

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## Appendix F

### Documents Created Prior to 1865 that Provide Identifications of some Individuals as Shinnecock and Others Associated with the Shinnecock

#### 1755-1764 Muster Rolls

The muster rolls of the New York provincial troops between 1755 and 1764 include a number of Suffolk County soldiers whose names are associated with Southampton and the Shinnecock Reservation, although the muster rolls do not identify any soldier as a Shinnecock Indian. A muster roll typically recorded the man's name, enlistment date, his age, and his place of birth. For example, "Warinose, Indian," enlisted on April 23, 1760, in Capt. Jonathan Baker's company (NYHS 1892, 282-283). Warinose was born in Suffolk County, worked as a laborer, and was then age 56. Four years later a Mary Warinose signed a 1764 Shinnecock agreement (see next item). Others identified as "Indian," and with single given names only, in Warinose's same company were George, Harry, Matthew, Ocus, and Solomon (NYHS 1892, 282, 286).

Captain Baker's muster roll also listed three Cuffee men consecutively—Peter, age 26 (b.ca.1734), Cuffee, age 20 (b.ca.1740), and Absalom, age 16 (b.ca.1744)—all born in Suffolk County, whose ages, common birthplace, and clustered recording give the impression that they may have been brothers (NYHS 1892, 284-285). They enlisted May 1-3, 1760, and their entries on the roll do not include any ethnic identifiers. A Peter Cuffee, presumably this soldier, was identified in a circa 1815 witness statement and in early church publications as the father of Rev. Paul Cuffee (b.1757) who was born just before the time of this muster roll (Meshack Cuffee *in* Anonymous ca. 1815; *Strict Congregational Churches* 1839, 17).

#### 1764 Shinnecock Agreement

The town of Southampton holds an original 1764 agreement made amongst 38 "Indians and Squaws belonging to Shinnecock" not to hire out land to "the English" "without consent of the whole or the major part" (Simeon Tittum *et al.* 6/12/1764). If the group agreed to hire out the land, then the proceeds would be "divided among the whole." The agreement also specified monetary penalties for anyone hiring out land or selling timber without the group's consent. The names of five signers also appear 28-35 years later as Shinnecock lot drawers, lot holders, witnesses, or trustees between 1792 and 1799: Phebe Peter, Hannah Solomon, Simeon Tittum, Anne Waukus, and Samuel Waukus. The final 1764 signature belongs to Peter John, who appears to be the same person as the Peter John who became a minister; his daughter (Jayne Peters) married Peter Cuffee and they were the parents of Rev. Paul Cuffee (Meshack Cuffee *in* Anonymous ca. 1815; *Strict Congregational Churches* 1839, 17). (See Appendix D for further information on Paul Cuffee and his family.)

### 1792 Trustee System and Land Records

The 1792 New York State law establishing an annually-elected, three-Indian-Trustee system of government for the Shinnecock Reservation resulted in the creation and maintenance of *Indian Records Books*, in which the Southampton Town Clerk recorded the results of the annual elections as well as land allotment information and other Shinnecock business. *Indian Records Book 1* covers April 3, 1792, to May 3, 1793, and *Indian Records Book 2* covers November 22, 1793, to April 7, 1835 (*Indian Records Books 1 and 2*). A separate record book, *Indian Lands Recorded* “1797 & 1798 and onward,” covers September 15, 1797, to at least April 4, 1799 (*Indian Lands Recorded*). The *Indian Lands Recorded* book includes land leasing details that are missing from *Indian Records Book 2*, in which latter book the recording of trustee elections and other business occurring 1797-1799 are condensed onto one page (page 35).

While the earliest Town Clerk did not record a precise listing of which Shinnecock drew what numbered lots of land, he did record individuals entitled to draw lots in 1794, and those who leased their farming lots to others (mostly to townspeople but some to Shinnecock as well) (*Indian Records Book 2* 4/14/1794, 28-29). Leasing of lots required the Shinnecock lessors to go before the Town Clerk and declare such leases, and “the said Clerk shall Record the same on the Indian Records by him ordered to be kept” (*Indian Records Book 2* 4/14/1794, 22-23). The recorded leases also list Shinnecock witnesses as well as the three Indian trustees and “three justices of the peace residing next to the lands of lands of the said Shinnecock tribe” witnessing the leases (New York 1792).

From these *Indian Records Books* it was possible to identify 113 Shinnecock individuals who were lot holders, witnesses, or Trustees between 1792 and 1799. The record books do not furnish a total number of individuals residing on the reservation during this time period, and identify only those whose activities caused their names to be recorded.

### 1800 Petition

On January 17, 1800, five self-described “principal Indians belonging to the Shinnecock Tribe” petitioned the New York State legislature for relief from “such Strangers who marry in among us and[,] by virtue of such connection, claim a right and Settle with us and who will, in a short time[,] entirely extirpate us from off our Lands” (Samuel Waukus *et al.* 1/17/1800). The signers included two of the three then-sitting Shinnecock Trustees (Samuel Budd and Abraham Jacob signed, but not David Waukus), two former trustees (David Jacob and Samuel Waukus), and a lot holder (Joseph Peter).<sup>171</sup>

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<sup>171</sup> The petitioner’s transcription of this petition interprets the date as January 14 rather than January 17, and transcribes one of the signers as Samuel “Cuff” rather than Samuel “Budd.”

### 1806 Debarment

On April 1, 1806, the town trustees voted

That Ebenezer Howel be appointed to notify Absalom Cuffee, Bun, and the several branches of that Family, to meet the Trustees on Tuesday next at H. Rogers and give them satisfaction respecting their title to the Indian Land, or otherwise they shall be debarred drawing any land this season. (Southampton Trustees 1806, 541)

The reference to “[t]hat family” appears to pertain to the Cuffee family, because James Bunn was married to a Cuffee and no adult Bunn other than James Bunn appear in *Indian Records Books* until 1822. The record does not demonstrate whether the aforementioned 1800 complaint about “strangers” marrying Shinnecock women played any role in the 1806 action. Ten specific individuals appear to have been, in fact, debarred by the town trustees from drawing land in 1806 (Southampton Trustees 4/-/1806, 545).<sup>172</sup> The *Indian Records Book* shows that, in 1807, “[t]he question being put whether Absalom Cuffee, Bun & others debarred by the [Town] Trustees should draw land the ensuing year The Vote was negative by the Justices But the Indian Trustees voted for it or in the affirmative” (*Indian Records Book 2*, 40). One of the three Indian trustees in 1806 and 1807 was among those debarred, namely James Bunn. (See Appendix D for further information on James Bunn and his family.)

The Town Trustees’ records do not articulate their basis for challenging the rights of Cuffee-related individuals to draw land on the reservation. One theory is that these 10 individuals were the “strangers” marrying Shinnecock women before 1800, about whom the group’s 1800 petition complained. To analyze the plausibility of that theory, it would be extremely helpful to have the evidence identifying their Shinnecock wives. OFA located evidence, of varying degrees of reliability, for the probable identities of wives of four of these men, only one of whom is a near name match for a woman previously identified as Shinnecock.<sup>173</sup>

Another theory for the 1806 debarment, which appears to have targeted Cuffee-related individuals, is that the town trustees may have been endeavoring to distinguish between Cuffees they believed had Indian ancestry and Cuffees they believed did not have Indian ancestry. As described earlier, 1760 provincial muster records list soldiers Peter Cuffee, Cuffee Cuffee, and Absalom Cuffee (NYHS 1892, 284). A grandson’s circa 1815 statements indicate that Peter

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<sup>172</sup> Shinnecock Reservation residents could draw annual allotments for farm land, subject to certain restrictions spelled out by the Shinnecock Trustees in 1799 (*Indian Records Book 2*, 33). The Town Trustees’ records and *Indian Records Books* show that specific individuals were debarred from drawing land in 1806 and in 1815, but the reasons for the debarments do not appear in the record. Those debarred in 1806 include Absalom Cuffee, Abraham Cuffee, Noah Cuffee, James Bunn, Simeon Tittum, Tom Jock, Jason Cuffee, Meshack Cuffee, Aaron Cuffee, and James Cuffee.

<sup>173</sup> Dency Cuffee was the spouse of James Bunn, and Charity Cuffee may have been the spouse of Tom Jock/Jack (Cuffee 5/26/1836); Mary Wampy was identified as the spouse of Noah Cuffee (Adair 11/16/1901); and Ruth [–?–] was the spouse of an Abraham Cuffee (Cuffee 4/30/1814). The spouse of James Bunn—Dency Cuffee—may be identical to Prudence Cuffee who held lots in 1793 and 1794 (see Appendix D). The women among the known 113 pre-1800 Shinnecock individuals do not include Charity Cuffee, Mary Wampy, or any woman with the given name of Ruth.

Cuffee married the daughter of a Montauk woman (Meshack Cuffee *in* Anonymous ca. 1815). Their son Paul Cuffee may or may not have been debarred (if so, it was posthumously in 1815) but their son Meshack Cuffee was debarred in 1806 and never served as a Shinnecock trustee. Evidence in the record does not demonstrate that soldiers Cuffee Cuffee or Absalom Cuffee married Indians. Cuffee Cuffee had a son Jason Cuffee (Van Buren 1931, 12), and a Jason Cuffee was among those 10 debarred in 1806. The soldier Absalom Cuffee would have been about age 62 at the time of the 1806 debarment, and other evidence would be needed to determine whether the Absalom Cuffee debarred in 1806 was the veteran or a younger man of the same name.

### 1815 Debarment

Debarments appeared a second time in the record, this time in the *Indian Records Book* rather than in the town trustees' records. Three Shinnecock Trustees, elected two weeks before the debarment, were all individuals appearing in pre-1800 records, none of whom had been threatened with debarment in 1806: Abraham Jacob, Jonathan Tony, and David Waukus. On April 19, 1815, the Shinnecock trustees debarred "Hannah Cuff, Paul Cuff, Vincent Cuff, Polly Dyer, Polly Dick, [and] Sukey Dyer" from drawing land (*Indian Records Book 2*, 42). The document described next appears to embody evidence that at least two of the six debarred individuals—Poll[y] Dick and Hannah [—?—] Cuffee—contemplated a lawsuit to recover their rights to draw land on the reservation.

### Circa 1815 Document

The Suffolk County Historical Society's (SCHS) manuscript collection of "legal documents" includes a single-page document that bears no date and no obvious author (Anonymous ca. 1815).<sup>174</sup> The document appears to contain notes on witness statements gathered for two anticipated court cases against the Indian Trustees, perhaps recorded by an attorney or Justice of the Peace.<sup>175</sup> One side of the document lists "Hannah Cuffee vs. Trustees of Shinnicock." The other side lists "Poll Dick vs. Trustees of Shinicock," below which is written, "If we can prove that these Indians are of Shinicock tribe, they are entitled to recover." The header for each apparent plaintiff is followed by what appear to be transcriptions from statements made by James Bunn and Meshack [Cuffee], with Samuel Walker and Samuel Budd providing statements for Poll Dick only. All witnesses but Budd furnished their ages, and the unknown scribe abbreviated their statements into incomplete sentences.

The *Indian Records Book* evidence of the April 19, 1815, debarments suggest this same time frame for the creation of this document, in that two of the women debarred on that date are listed

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<sup>174</sup> However, the statement notes for Poll Dick are followed by the single name "Thos. Ledyard." The 1810 census of Southold recorded a Thomas Ledyard (age over 45; born before 1765). *Records of the First Church of Southold, 1749-1823* (Shippensburg, Pa.: Overton Publications, 1984, p. 73) lists his death there on September 15, 1820.

<sup>175</sup> The Town Trustees voted at a meeting on April 11, 1815, to authorize "advocates" to defend against any lawsuit brought against the Town Justices or Indian Trustees as a result of their denying "any persons Indian Land for planting[,] not allowing such suspected persons liberty to draw" (Sleight 1931, 219).

on this document and the purpose statement, quoted above, indicates that the witness statements were gathered to support the women's entitlement to draw land. Witness James Bunn stated that Paul Cuffee had "been dead 2 years," and newspaper obituaries confirm that Paul Cuffee died in March 1812. If the witness were correct in his recollection, it would place the document's creation at circa 1814. It seems more likely that James Bunn's estimate was off by one year than for the witness statements to have been recorded before the debarments occurred.

The statements in the circa 1815 document do not assert Shinnecock ancestry for either woman. Poll Dick was described as an Indian orphan brought to Shinnecock from Southold as a small child, and Hannah [—?—] Cuffee was described as being from Wading River and as having married Paul Cuffee. Paul Cuffee's Indian ancestry is described as Montauk. Yet the witnesses agree that Poll Dick had drawn land for 25 years (since 1790) and that Hannah [—?—] Cuffee had lived on the land for 18 years (since 1797). James Bunn described Poll Dick's entitlement to draw land: "It was agreed some years ago among the Indians that the then occupants should have the shares[;] she was then an occupant" (James Bunn *in* Anonymous ca. 1815). The recorded notes of Bunn's description of Hannah [—?—] Cuffee's entitlement are less clear: "Pltff lived on land about 18 years. She d Indians & Molattos agreed that Paul shou all be" (James Bunn *in* Anonymous ca. 1815).

The witness statements attest to the presence of Poll Dick and Hannah Cuffee on the Shinnecock Reservation prior to 1800, and assert that they drew land in that time period. However, neither woman's name appeared in *Indian Records Books* 1 or 2 or in *Indian Lands Recorded* documents of 1797-1799.

The SCHS's collection of "legal documents" did not include other documents in the same handwriting or for the other individuals debarred in 1815. The OFA genealogist did not locate evidence in the Suffolk County Clerk's Historic Documents Room that lawsuits were filed locally by Hannah Cuffee or Poll[y] Dick. Since the content of the testimony transcribed here does not indicate Shinnecock ancestry for either potential plaintiff—the purpose stated at the beginning of the document—it may be that no lawsuits were filed.

### 1822 Petitions

The New York State legislature received two variations of a petition from individuals "of the tribe of Shinnecock Indians" requesting amendments to the State law of April 15, 1816 (Wicks Cuffee *et al.* 1/28/1822; Russell Cuffee *et al.* 3/11/1822). These petitions allege that the Shinnecock were being prohibited from planting summer and winter wheat on their lands, that White neighbors had wrongly enclosed some of the reservation land within their fences and had taken crops planted there by the Indians and removed the Indians' livestock, that the Town Clerk would not allow them to vote for the trustees of their choosing, and that the White neighbors trespassed to take seaweed from the Shinnecock shore and carted it through their crops. Twelve individuals signed the January petition presented in February, and 13 individuals signed the undated petition presented in March.<sup>176</sup>

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<sup>176</sup> Samuel Budd, James Bunn, Luther Bunn, Aaron Cuffee, Agee Cuffee, James Cuffee, Meshack Cuffee, Noah Cuffee, Russell Cuffee, Wicks Cuffee, Abraham Jacob, William Richards, and David Waukus. Noah Cuffee's name

A gap in the recording of Shinnecock Trustees for 1817 to 1822 prevents easy identification of which, if any, of the signers were then-sitting Shinnecock Trustees. The names of the three Shinnecock Trustees elected in April 1823 appear on both versions of the 1822 petition (James Bunn, Noah Cuffee, and David Waukus). More significantly, signers Samuel Budd, Abraham Jacob, and David Waukus appeared in pre-1800 Shinnecock records and were not among those debarred in 1806, and Samuel Budd and Abraham Jacob had also signed the 1800 petition. These signers provide evidence that the population changes taking place on the reservation between 1800 and 1822 were not “wholesale,” but rather were occurring with the awareness and participation of the pre-1800 Shinnecock individuals.

### 1853 Rose v. Bunn et al.

Austin Rose brought a lawsuit in 1853 against Luther Bunn, James Bunn, and Francis Willis, as representatives—and likely Shinnecock Trustees, although this is not stated—of the Shinnecock Indians who seized Rose’s 320 sheep which Bunn *et al.* asserted had trespassed onto Shinnecock Hills and damaged their corn crop (NY Court of Appeals 3/-/1860).<sup>177</sup> The June 18, 1853, answer to Rose’s original complaint provides a mini-census of the reservation: “...the [three] said defendants and Stephen Walker, David Bunn, Paul Cuffee, Wicks Cuffee, Oliver Killis, Ann Williams, Darius Jackson, Thomas Beman, Minerva Green, Age Cuffee, Charles Killis, James Lee and Charles Smith, were lawfully possessed of a certain close piece or parcel of land situate upon Shinnecock Hills in the town of Southampton in the County of Suffolk...” (NY Court of Appeals 3/-/1860). However, this list may reflect residents of Shinnecock Hills only, where the alleged damage occurred, as Vincent Cuffee, not on this list, provided evidence for the defendants, stating, “I am one of the Shinnecock tribe of Indians” (New York Court of Appeals 3/-/1860). All but one of the 16 named possessors of land on Shinnecock Hills appear within the cluster of 1850 residents believed to represent the reservation, and 11 appear as residents of the Shinnecock Reservation in the 1865 State census (Vincent Cuffee appears in both 1850 and 1865 enumerations).

### Federal Census before 1865

Decennial Federal census schedules of Southampton, Suffolk County, New York, survive from 1790 to 1860 in this pre-1865 era (later schedules were reviewed for evidence documenting descent). However, the 1860 (and 1880) schedules of Southampton did not enumerate the reservation population. Only seven of those individuals on the reservation in 1850 and 1865 were enumerated in the 1860 schedules for Southampton, and all worked in White households.

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appears in the text of the earlier petition, appointing him as their agent, and Noah Cuffee signed the later petition. Thus the same 13 individuals are named in both petitions.

<sup>177</sup> The petitioner describes Francis Willis as the non-Indian spouse of Acenthia Cuffee (SHN 2009 FTM). The 1850 Federal census recorded the “color” of all members of the Willis household as “M” for Mulatto (1850 Census).

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OFA compared the names of known lot holders and trustees of the Shinnecock Reservation with names of individuals enumerated in these years and found that only the 1850 census and possibly the 1840 census appeared to enumerate the reservation residents.<sup>178</sup> In the earlier census years, the enumerator recorded some individuals associated with Shinnecock activity (possibly non-Shinnecock husbands of Shinnecock women) but did not record others (pre-1800 individuals such as Abraham Jacob and David Waukus never appear in the early census years, although both were living into the 1820s).

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<sup>178</sup> A summary of the analysis for each census year appears as OFA Genealogist's Workpaper 3.

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