

September 23, 2025

Office of the Assistant Secretary–Indian Affairs
Attn: Office of Federal Acknowledgement Director Nikki Bass
Mail Stop 4071 MIB
1849 C Street NW
Washington, DC 20240

Re: Schaghticoke Tribal Nation Federal Acknowledgment Re-Petition Request

Dear Director Bass,

On behalf of the Schaghticoke Tribal Nation (“STN”), I am writing to request authorization to re-petition for federal acknowledgement pursuant to 25 C.F.R. Part 83.

As you may know, STN previously sought and obtained federal acknowledgment as an Indian tribe on February 5, 2004 after a decades-long recognition effort. Under highly irregular circumstances, the United States Department of the Interior reversed STN’s favorable determination on October 11, 2005. Despite our concerted efforts to obtain federal recognition since this reversal, we have been unable to do so in large part due to a regulatory ban on re-petitioning that was reaffirmed in the 2015 revisions to Part 83.

The newly revised regulations under Part 83 Subpart D now allow tribes to re-petition for federal acknowledgment. Accordingly, we submit this letter and supporting documentation to request authorization to repetition under the revised Part 83 regulations.

We are grateful for this opportunity to re-petition and look forward to working closely with your office on the re-petitioning process.

Respectfully,

Richard L. Velky
Chief, Schaghticoke Tribal Nation

RE-PETITION AUTHORIZATION REQUEST

I. Introduction

The Schaghticoke Tribal Nation (“STN”) seeks authorization to re-petition for federal acknowledgment pursuant to 25 C.F.R. Part 83 Subpart D, as authorized by Tribal Council Resolution.¹ STN obtained a Final Determination (“FD”) on February 5, 2004, but that determination was reversed on October 11, 2005.² In its Reconsidered Final Determination (“RFD”), the Department of the Interior (“Department”) cited three core deficiencies with the FD. Namely, the Department found that STN did not satisfy the “substantially continuous” requirement for certain periods of time under the mandatory “community” and “political authority” criteria because the Department in the original FD (1) did not employ the appropriate method to calculate culturally-patterned marriage rates, which, when recalculated did not reach the necessary fifty percent threshold to serve as sufficient evidence of both the distinct community and political authority criteria;³ (2) improperly relied upon evidence of state recognition; and (3) improperly considered forty-two individuals who were not enrolled in STN.⁴

In 2015, the Department significantly altered the criteria under § 83.11(b) (community) and (c) (political authority) in several critical ways that would, if applied to STN’s original documented petition, change the outcome of the RFD’s negative determination to a positive determination. These changes include each of the following:

(1) clarification of the methodology for marriage rate calculations, which affirms that the method STN and the Department originally used to demonstrate marriage rates within the group for the FD in 2004 is a valid method (and under that method STN’s culturally-patterned in-group marriages exceed the fifty percent threshold for the periods in question);

(2) allowing for consideration of historical context to justify gaps in the evidentiary record;

¹ Res. No. STN.RE-PETITION.25 (2025) (Tribal Council of the Schaghticoke Tribal Nation) (Attach. 1).

² See Final Determination, 69 Fed. Reg. 5570 (Feb. 5, 2004), <https://www.govinfo.gov/content/pkg/FR-2004-02-05/pdf/04-2532.pdf> [hereinafter Final Determination].

³ Ironically, as explained in more detail in Section III(B)(2)-(4) of this request, the Department has since codified and now employs the same method of calculating endogamy that formed the basis of STN’s favorable determination in the FD. Given the method for calculating endogamy is now the same as it was when the FD was issued, the Department never should have reversed the FD’s favorable determination within the RFD.

⁴ See Reconsidered Final Determination to Decline to Acknowledge the Schaghticoke Tribal Nation, 70 Fed. Reg. 60101 (Oct. 14, 2005), <https://www.govinfo.gov/content/pkg/FR-2005-10-14/pdf/05-20719.pdf> [hereinafter Reconsidered Final Determination]. There is some question as to whether the Department even had *authority* to reverse its 2004 determination to acknowledge STN, given that Congress “can limit an agency’s discretion to reverse itself,” *Natural Resources Defense Council v. Regan*, 67 F.4th 397, 401 (D.C. Cir. 2023), and did so by declaring in the List Act that “a tribe which has been recognized . . . may not be terminated except by an Act of Congress,” 108 Stat. 4791. Indeed, “Interior itself recognizes” that “it lacks the power to disestablish a tribe.” *Native Village of Eklutna*, 2021 WL 4306110, at *6 (D.D.C. Sept. 22, 2021). Notably, consistent with the List Act, today’s Part 83 no longer purports to countenance the type of reversal the Department undertook in 2005. Compare 25 C.F.R. §§83.10 and 83.11 (2004) (purporting to delay effectiveness of Final Determinations pending requests for reconsideration), with 25 C.F.R. §83.45 (2024) (recognizing Final Determinations as “immediately effective”).

- (3) allowing for consideration of evidence of land set aside by a state for the tribe; and
- (4) removing the “substantially continuous” requirement for periods prior to 1900.⁵

Additionally, the preamble to the 2015 regulations specifically states that “evidence or methodology that was sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner.”⁶

Initially, tribes which were previously denied federal acknowledgment could not re-petition under the 2015 regulations; however, the regulations were further revised in 2025 to allow for such tribes to request authorization from the Office of Federal Acknowledgment (“OFA”) to re-petition using the revised criteria under the 2015 regulations.⁷ If the 2015 regulations were applied to STN’s original petition the Department would make a positive determination for STN. Accordingly, STN seeks authorization to re-petition pursuant to Subpart D and the updated criteria established by the 2015 revisions, as explained in more detail below.

In presenting this request, STN hereby incorporates by reference the entirety of its original documented petition for federal acknowledgment, including all associated and supplemental documents, records, and analyses, as well as the Department’s entire administrative record relating to both the 2004 FD and the 2005 RFD. This request concludes with an appendix containing the supporting documentation cited herein.

II. Procedural Background

STN is based in present-day Kent, Connecticut (Quinnehtukqut), on a 400-acre state reservation between the western bank of the Housatonic River and the New York-Connecticut border.⁸ The

⁵ See Federal Acknowledgment of American Indian Tribes, 80 Fed. Reg. 37862, 37875 (July 1, 2015), <https://www.govinfo.gov/content/pkg/FR-2015-07-01/pdf/2015-16193.pdf> [hereinafter 2015 Regulations].

⁶ *Id.* at 27863; see also 25 C.F.R. § 83.10(4).

⁷ See Federal Acknowledgment of American Indian Tribes, 90 Fed. Reg. 3627 (Jan. 15, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00709.pdf> [hereinafter 2025 Regulations].

⁸ Note that Connecticut’s recognition of STN’s reservation derives from the colonial-era, whereby the governor of the Colony of Connecticut set aside land for the historical Schaghticoke people in 1736. See U.S. Dep’t of Interior, Bureau of Indian Affs., Off. of Fed. Acknowledgment, Summary under the Criteria and Evidence for Proposed Finding Schaghticoke Tribal Nation at 46 (Jan. 29, 2002), https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/079_schagh_CT/079_pf.pdf (summarizing the data from Connecticut colonial documents) [hereinafter Proposed Finding]. It is STN’s opinion that the United States government is successor to the Colony of Connecticut’s stewardship of STN’s reservation for the purposes of establishing federal jurisdiction over STN, pursuant to the Indian Reorganization Act of 1934. Moreover, STN has maintained repeated interactions with the federal government, such as a 1934 survey of northeastern tribes conducted by the U.S. Indian Service, which included references to the Schaghticoke people. See, e.g., Gladys Tantaquidgeon, Tantaquidgeon Manuscript (Dec. 6, 1934) (comprehensive survey of New England tribes commissioned by the U.S. Indian Services), referenced in U.S. Dep’t of the Interior, Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Schaghticoke Tribal Nation at 121 (Oct. 11, 2005), https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/079_schagh_CT/079_pf.pdf [hereinafter Summary of Final Determination].

State of Connecticut (“the State”) has recognized STN for more than 300 years, first establishing (then as the Colony of Connecticut) the Schaghticoke reservation in 1735. Schaghticoke’s state reservation is one of the oldest in the United States.

STN’s pursuit of federal recognition began in 1981, when STN submitted to the Department its letter of intent to petition for federal acknowledgment. STN submitted its original documented petition in 1994. In the 1990s, STN was a party to several consolidated federal cases before the U.S. District Court for the District of Connecticut, in which STN sought to reclaim lands transferred to private parties in violation of the Nonintercourse Act⁹ and to defend a portion of its reservation lands from condemnation by the United States.¹⁰ STN’s federal recognition status was a threshold question in each of these cases.¹¹ Due to agency delays, the court in 2000 partially assumed control over the Department’s process for issuing STN’s federal acknowledgement decision by setting certain agency deadlines and providing for judicial review of the final agency action, among other things.¹² In 2004, the Department formally recognized STN by issuing the FD.¹³ The FD found that STN met all seven criteria under Part 83.¹⁴ The result of decades of research, documentation, and careful analysis by STN and Department staff, STN’s petition was described by a senior Department official as “among the best and most thoroughly researched petitions ever reviewed.”¹⁵

Connecticut elected officials, including the Governor and the State’s Congressional delegation, responded by initiating a political campaign aimed at overturning the FD through unprecedented direct communications to pressure the Department to reverse the FD.¹⁶ Additionally, on May 3, 2004, Connecticut officials,¹⁷ as well as some local private interests, requested that the Interior Board of Indian Appeals (“IBIA”) reconsider the FD, arguing, among other things, that the FD’s

⁹ See, e.g., *United States v. 43.47 Acres of Land More or Less, Situated in Cnty. of Litchfield, Town of Kent*, 855 F. Supp. 549 (D. Conn. 1994).

¹⁰ *Id.* at 155.

¹¹ See also *United States v. 43.47 Acres of Land*, 45 F. Supp. 2d 187 (D. Conn. 1999) (deferring determination of STN’s federal recognition status to the Branch of Acknowledgement and Research).

¹² See, e.g., *United States v. 43.47 Acres of Land, More or Less, Situated in Cnty. of Litchfield, Town of Kent*, 896 F. Supp. 2d 151 (D. Conn. 2012), *aff’d sub nom. Schaghticoke Tribal Nation v. Kent Sch. Corp. Inc.*, 595 F. App’x 32 (2d Cir. 2014).

¹³ See generally Final Determination, *supra* note 2.

¹⁴ *Id.*

¹⁵ Decl. of Aurene M. Martin ¶ 5, *Schaghticoke Tribal Nation v. Kempthorne*, Petition for Writ of Certiorari, No. 10-1234 (U.S. May 25, 2010).

¹⁶ See *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 402 (D. Conn. 2008) (acknowledging that Connecticut’s Congressional delegation “fiercely opposed the FD’s acknowledgement of STN” and employed a team of lobbyists to “urge[] the Department to reverse its acknowledgement decision”).

¹⁷ Note that numerous elected officials throughout Connecticut have since expressed support for STN’s federal acknowledgment, including State Senator Cathy Osten, State Representatives Tom Arnone and Joseph P. Gresko, and the Mayors of Danbury, Ansonia, New Milford, Shelton, Derby, New London, and Naugatuck. These leaders from across the State urge the Department to “reinstate [STN’s] federal recognition” so that the Tribe may “become an even greater productive and valued citizen of Connecticut.” See App. Attach. 2 (letters of support from state and local officials).

reliance on state recognition, methodology of calculating marriage rates, and inclusion of certain individuals in STN’s base membership roll, was erroneous. After all briefing had been completed in the IBIA, the OFA issued a memorandum to the IBIA (the “Supplemental Transmission”) that took the extraordinary position that its own research methodology on marriage rates was in error.¹⁸ The Supplemental Transmission undermined OFA’s own FD—which it was supposed to be defending—by disavowing the reliability of evidence upon which it had previously relied and which STN had developed over two decades of research, with substantial technical assistance from the Department.¹⁹

On May 12, 2005, the IBIA vacated the FD and remanded it to the Assistant Secretary –Indian Affairs (“Assistant Secretary”) for reconsideration.²⁰ It premised its decision on the evidentiary relevance of state recognition, the marriage rate methodology, and the existence of unenrolled members.²¹ Thus, three primary disputed issues were raised with respect to STN’s petition: (1) the correct method for calculating marriage rates; (2) the significance of STN’s centuries-old state recognition, including the continuous existence of its state reservation; and (3) the effect of some of STN’s former members’ choice to no longer enroll with STN.

On remand, the Department, breaking with precedent, applied the acknowledgment criteria more onerously than it had to previous petitioners, particularly in reversing its own experts’ interpretation of the significance of certain evidence and in departing from the “reasonable likelihood” standard in the regulations, which deems the criteria “met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.”²² Based on that reevaluation, on October 11, 2005, the Department issued the negative RFD, finding that STN did not meet criteria (b) (community) and (c) (political authority) for certain points in time but otherwise affirming the FD’s findings that STN met the other five criteria.²³ STN subsequently sought judicial review of the Department’s RFD.²⁴ The court (and the Second Circuit on appeal) deferred to the judgment of the agency and declined to vacate the RFD.²⁵

¹⁸ Briefing Memorandum from the Off. of Fed. Acknowledgment to the Assistant Sec’y, re: Request for Guidance Regarding Schaghticoke Recognition (Jan. 12, 2004), <https://indianz.com/docs/bia/briefing011204.pdf> (last visited Sept. 11, 2025) [hereinafter Supplemental Transmission].

¹⁹ *Id.*

²⁰ *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 I.B.I.A. 30, 42 (2005), https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/079_schagh_CT/079_41ibia030.pdf.

²¹ *Id.* at 34–36.

²² 25 C.F.R. § 83.6(d) (2005).

²³ Reconsidered Final Determination, *supra* note 4; *See also* U.S. Dep’t of the Interior, Summary of the Criteria and Evidence: Reconsidered Final Determination Denying Federal Acknowledgment of the Petitioner Schaghticoke Tribal Nation (Oct. 11, 2005) [hereinafter Summary of Reconsidered Final Determination]. In an extraordinary irony, STN received the RFD on October 12, 2005, the anniversary of Columbus’ arrival in the Americas.

²⁴ *See Schaghticoke Tribal Nation*, 587 F. Supp. 2d 389.

²⁵ *See Schaghticoke Tribal Nation v. Kempthorne*, F.3d 132 (2d Cir. 2009). Note that, while the district court and Second Circuit deferred to the judgment of the agency and declined to vacate the RFD, nothing in either court’s decision constituted a substantive decision binding the Department or preventing it from granting STN federal recognition in the future.

STN continued to pursue its federal acknowledgment efforts by making direct appeals to the Department's leadership. For example, on July 28, 2015, STN wrote to Assistant Secretary Kevin Washburn requesting the Department reconsider its position with respect to STN's previous federal acknowledgment petition;²⁶ on May 24, 2018, STN wrote to Deputy Secretary David Bernhardt making a similar request for federal recognition;²⁷ and most recently, on April 1, 2024, STN sent a similar request to Assistant Secretary Bryan Newland.²⁸ In all of these letters, STN asked the Department to reevaluate its decision in the RFD and reinstate its favorable determination in the FD. The Department responded that it would only consider a Tribe's eligibility for federal recognition pursuant to Part 83.²⁹ Despite the 2015 revisions to Part 83—which would have yielded a favorable result for STN if implemented during its original petition—the 2015 regulations expressly prohibited tribes from re-petitioning for federal acknowledgment.³⁰

The Department changed its position with respect to re-petitioning when it promulgated the 2025 revisions to Part 83. Under these most recent revisions, petitioners who have previously been denied federal recognition under Part 83 may submit a request to re-petition, allowing such petitioners to benefit from the 2015 revisions, which provide more flexible criteria for establishing community and political authority. The 2015 regulations' flexible criteria combined with the 2025 regulations' exception to the ban on repetition establish the bases for STN to request authorization to re-petition pursuant to 25 C.F.R. Part 83 Subpart D, as STN can demonstrate (as it does below) that it satisfies all criteria for re-petitioning.

III. Reconsideration of STN's Original Petition Under the 2015 Revised Regulations Would Result in a Favorable Outcome

A. STN Previously Satisfied the Criteria Under Part 83.11(a), (d)-(g)

Neither the FD nor the RFD challenged STN's satisfaction of the criteria under Part 83.11(a), (d)-(g).³¹ Both determinations established that STN was regularly identified as an American Indian entity by federal and state records, local authorities, academic scholars, and newspaper articles,

²⁶ Letter from Schaghticoke Tribal Nation to Assistant Sec'y, Kevin Washburn, re: Request for Reinstatement of Final Determination (July 28, 2015) (Attach. 3).

²⁷ Letter from Schaghticoke Tribal Nation to Deputy Sec'y of the Interior, David Bernhardt, re: Updated Request for Reinstatement of Final Determination (May 24, 2018) (Attach. 4).

²⁸ Letter from Schaghticoke Tribal Nation to Assistant Sec'y, Bryan Newland, re: Renewed Request for Reinstatement of Final Determination (April 1, 2024) (Attach. 5).

²⁹ *See, e.g.*, Letter from Lee Flemming, Director, Office of Federal Acknowledgment to Schaghticoke Tribal Nation, re: Affirming Department Policy of Requiring Part 83 as Sole Means of Federal Acknowledgment (Apr. 25, 2016) (Attach. 6).

³⁰ 2015 Regulations, *supra* note 5, at 37875 (rejecting commenters' request to revise the Part 83 regulations to allow for a limited opportunity for re-petitioning and determining that "allowing repetition is not appropriate").

³¹ *See* Summary of Reconsidered Final Determination, *supra* note 23.

meeting the “Indian entity identification” requirement under criterion (a).³² Likewise, the Department determined that STN satisfied criterion (d) when it submitted its 1997 constitution and amendments containing criteria for membership and the status of unenrolled members of the “Historical Schaghticoke Community.”³³ Next, STN satisfied criterion (e) when it established that its September 28, 2003 membership list included full names, birthdates, and addresses of 273 STN members demonstrating 100% of its membership descended from the historical Schaghticoke tribe.³⁴ The Department also found STN satisfied the “unique membership” requirement under criterion (f), because none of STN’s members are known to be dually enrolled with any federally recognized tribe.³⁵ Lastly, STN satisfied criterion (g) because it is not, nor was it ever, the subject of congressional legislation that expressly terminated or prohibited the federal relationship.³⁶

These criteria were satisfied by the FD and reaffirmed by the RFD. They remain uncontroversial and were never in serious contention. Further, the 2015 regulations did not modify the criteria under Part 83.11(a), (d)-(g).³⁷ Accordingly, with respect to these criteria, re-petitioning would yield the same favorable determination for STN because it already satisfied the (a), (d)-(g) criteria under its previous petition.

B. STN Would Have Satisfied the Criteria Under Part 83.11(b) & (c) under the 2015 Regulations

1. Overview of the Department’s Reasoning for Reversing the FD Based on the RFD’s Analysis of Criteria (b) and (c)

As discussed above, STN received its FD in 2004 in which the Department determined that it satisfied the criteria under (b) (community) and (c) (political authority). However, in 2005 the IBIA vacated the STN FD based on the reasoning in its decision in *Historical Eastern Pequot Tribe*, finding that both cases involved an “impermissible” and “substantial” reliance on state recognition for additional evidence to satisfy criteria (b) and (c).³⁸ The IBIA also determined that the use of marriage rates for the time period 1801-1870 was improperly used as carryover evidence to satisfy criterion (c) in addition to criterion (b), and that endogamy calculations overall were found to be “inadequate.”³⁹

³² *Id.* at 17.

³³ *Id.* at 127.

³⁴ *Id.* at 143.

³⁵ *Id.*

³⁶ *Id.*

³⁷ 2015 Regulations, *supra* note 5, at 37863 (establishing that “[t]he rule does not substantively change the Part 83 criteria” except with respect to criteria (b) and (c)).

³⁸ Summary of Reconsidered Final Determination, *supra* note 23, at 3; *See also Eastern Pequot Indians of Conn. v. Acting Eastern Area Dir.*, 41 IBIA 1 (2005) (finding that state recognition provides no intrinsic evidentiary value that makes it relevant or probative for satisfying criteria (b) and (c)).

³⁹ Summary of Reconsidered Final Determination at 5, *supra* note 23.

On behalf of the Department, Associate Deputy Secretary James Cason considered the aforementioned deficiencies identified by the IBIA but noted that “[a]nalysis and conclusions in the STN FD that are not rejected, revised, or inconsistent with the RFD are affirmed.”⁴⁰ In addition to affirming that STN satisfied criteria (a), (d)-(g), the Department affirmed the FD’s finding that STN satisfied the community criterion (b) and political authority criterion (c) for the period 1967-1996.⁴¹

The Department explained that it re-evaluated the evidence for criterion 83.7(c) for the period 1801-1820 and 1840-1870 based on its revised endogamy analysis, which required that the ratio of in-group *marriages* to overall *marriages* reach the fifty percent threshold (rather than calculating the percentage of marriages in which an individual tribal *member* married another tribal *member*).⁴² The Department re-evaluated its evidence for the periods 1820-1840, 1870-1875, and 1892-1967 in light of the IBIA’s determination that state recognition was not proper evidence of political authority and influence.⁴³ The determination that STN erroneously relied on state recognition evidence similarly displaced the Department’s previous finding that STN satisfied the community criterion under (b) for the periods 1920-1940 and 1940-1967.⁴⁴ Lastly, the Department reevaluated criteria (b) and (c) for the period 1997 to present, based on the IBIA’s finding that forty-two prior STN members were not on the certified membership list at the time of the FD.⁴⁵ Ultimately, the Department’s reconsideration of the foregoing evidence led it to conclude, in a manner satisfying the goal of certain Connecticut politicians, that STN did not satisfy the criteria (b) and (c).⁴⁶

2. The 2015 Regulations’ Revisions to Part 83.11 (b) & (c) Significantly Reduced Petitioners’ Evidentiary Burden

The 2015 amendments to 25 C.F.R. Part 83 modified the evidentiary requirements for demonstrating community under criterion (b) and political influence and authority under criterion (c), which, for STN, created a significantly more favorable framework for affirming STN’s federal acknowledgment than even that under the 1994 regulations, which governed the Department’s review of STN’s original petition under the FD and RFD. The 2015 regulations also restructured the evaluation period by establishing 1900 as the uniform start date for both criteria, eliminating the previous requirement to demonstrate community and political authority from 1789 or the time

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 5, 6.

of first sustained contact.⁴⁷ In STN’s case, this change removes over a century of required historical documentation. This temporal limitation alone represents a dramatic reduction in the evidentiary burden, as the Department acknowledged that “records are generally more available beginning in 1900” and that the pre-1900 period involved “strong forces encouraging allotment of Indian lands and assimilation of Indian people” that made tribal continuity particularly difficult to document.⁴⁸

Under the community criterion, the 2015 regulations provide more specific and accessible pathways for satisfaction by allowing petitioners to demonstrate community through “some combination of two or more” specified forms of evidence, replacing the nebulous requirement to satisfy “a combination” of criteria.⁴⁹ Critically, the regulations clarified the marriage calculation methodology by counting each individual petitioner member within a marriage rather than the method used by the Department in the Supplemental Transmission and RFD, which required counting each in-group marriage as a ratio of all marriages to meet the fifty percent threshold.⁵⁰ In other words, the revised and current Part 83 regulations revert back to the method that STN used to show its marriage rates exceeded fifty percent. The revised regulations expressly provide that it is sufficient for an applicant to show that “[a]t least 50 percent of the *members* of the entity were married to other members of the entity.”⁵¹

Based on this clarified endogamy methodology, the 2015 regulations establish that petitioners “will be considered to have provided more than sufficient evidence to demonstrate distinct community” if they meet the fifty percent threshold to satisfy criterion (b), meaning the criterion is satisfied outright if they establish that at least fifty percent of individual members are married to other members.⁵² STN met the fifty percent threshold for much of the 19th century according to the FD’s endogamy analysis.⁵³

In addition to the recalculation of the endogamy threshold, the political authority/influence criterion similarly benefits from the clarifications incorporated into the 2015 regulations. Among other things, the regulations expanded acceptable evidence by explicitly including state reservations as proof of both community and political authority, creating entirely new evidentiary pathways that had been deemed unavailable to STN under the 1994 regulations. Additionally, the

⁴⁷ 2015 Regulations, *supra* note 5, at 37874.

⁴⁸ *Id.* at 37863.

⁴⁹ *Id.* at 37890; Procedures for Establishing That an American Indian Group Exists as an Indian Tribe, 59 Fed. Reg. 9280 (Feb. 25, 1994) [hereinafter 1994 Regulations].

⁵⁰ Summary of Reconsidered Final Determination, *supra* note 23 at 5; Supplemental Transmission, *supra* note 18, at 1.

⁵¹ 25 C.F.R. §83.11(b)(2)(ii) (emphasis added); *see also* 80 Fed. Reg. at 37863 (explaining that the 2015 revisions to Part 83 “provide[] that the Department count the number of petitioner members who are married to others in the petitioning group”).

⁵² 2015 Regulations, *supra* note 5, at 37890.

⁵³ Final Determination, *supra* note 2, at 26-29, 36-39. Note that, although the fifty percent threshold was not met for some dates, the endogamy rates were still “substantial” and therefore satisfied the criteria when combined with other evidence.

revised regulations provide greater flexibility regarding the requirement to demonstrate evidence on a “substantially continuous basis, without substantial interruption” by explicitly acknowledging that “documentary gaps longer than ten years may be justified in certain historical situations and context,” offering predetermined justifications for evidentiary gaps that previously had been fatal to a petition.⁵⁴

Perhaps most significantly, the 2015 regulations codified a precedent-based consistency standard requiring that “evidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner.”⁵⁵ This provision effectively establishes a floor below which standards cannot fall, ensuring that petitioners benefit from the most favorable interpretations previously accepted by the Department rather than facing increasingly stringent requirements over time. Collectively, these modifications represent a restructuring of the acknowledgment criteria that provide clearer guidance to petitioners and provide additional certainty as to what types of evidence can establish pathways to satisfy each criterion. As explained in greater detail below, STN would have received a favorable final determination if the 2015 regulations had governed its original petition.

3. STN Would Have Satisfied the Criteria Under Part 83.11(b) Under the 2015 Part 83 Regulations

If STN’s original petition were analyzed under the 2015 regulations’ revised approach to calculating endogamy, its successful petition for acknowledgment would never have been reversed by the Department. The 2015 regulations’ approach to the calculation of endogamy—which allows for the consideration of each married individual to count toward the fifty percent threshold—is the same approach originally found to be sufficient to satisfy criterion (b) under the FD in 2004 but later found to be insufficient under the RFD.⁵⁶ It follows, then, that if the 2015 regulations validate the methodology of calculating endogamy based on the ratio of individuals in culturally patterned marriages, as was originally found valid within the FD, then the FD’s marriage calculation would be found to satisfy criterion (b) from the date of first sustained contact with non-Indians through to the present. Importantly, the 2015 regulations’ evaluation of evidence from “historical times” through to the present no longer requires evaluation of evidence prior to 1900.⁵⁷ Thus, even if STN’s endogamy rates prior to 1900 were now somehow found to be deficient, these rates would not be required to satisfy criterion (b).

⁵⁴ 2015 Regulations, *supra* note 5, at 37890.

⁵⁵ 25 C.F.R. § 83.10(a)(4).

⁵⁶ 2015 regulations, *supra* note 5, at 37871 (explaining that the Department changed its marriage calculus for criteria (b) and (c) by “counting by individual petitioner member, rather than by marriage”).

⁵⁷ *Id.* at 37863.

With respect to the dates from 1900, the RFD reevaluated the evidence submitted by STN and found that it met criterion (b) for the periods 1900-1920 and 1967-1996 but did not meet the criterion for 1920-1940 and 1940-1967.⁵⁸ The RFD reasoned that the evidence of state recognition for the 1920-1940 and 1940-1967 periods was insufficient to meet the regulatory thresholds.⁵⁹ However, the 2015 regulations now include state recognition as a discrete source of evidence to satisfy (b), further solidifying STN’s satisfaction of this criterion. In finalizing the 2015 regulations, the Department confirmed that the existence and use of a state reservation may be used to demonstrate community and/or political influence or authority in satisfaction of criteria (b) and (c), respectively, including as evidence of “[l]and set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period.”⁶⁰

For the period 1997-2004, the RFD reversed the Department’s determination that STN satisfied the community criterion because it found that the petition’s inclusion of forty-two unenrolled members demonstrated that STN did not represent the “entire community.”⁶¹ The Department acknowledged that it “may under certain circumstances acknowledge a larger group than defined by the petitioner’s membership list” but declined to do so because of the Cogswell-family Group’s and Schaghticoke Indian Tribe’s (“SIT”) Part 83 petition requests.⁶² The 2015 regulations clarified, however, that petitioners need only provide evidence demonstrating a “significant and meaningful portion” of their members constitute a distinct community.⁶³ All of STNs enrolled members constitute one distinct community, as demonstrated by the other evidence offered to prove criteria (b) and (c). Namely, the fact that the State recognizes the reservation set aside for STN as successor to the historic Schaghticoke tribe⁶⁴ and STN and its leaders maintain continuing relationships with other federally recognized tribes both demonstrate that STN and its members represent a distinct community.⁶⁵

The 2015 regulations allow petitioners to satisfy criterion despite evidentiary gaps of ten years or more, taking into account “certain historical situations and context” which are “considered

⁵⁸ Summary of Reconsidered Final Determination, *supra* note 23, at 45.

⁵⁹ *Id.*

⁶⁰ 25 C.F.R. § 83.11(b)(1)(ix), (c)(1)(vii).

⁶¹ Summary of Reconsidered Final Determination, *supra* note 23, at 62.

⁶² *Id.*

⁶³ 2015 regulations, *supra* note 5, at 37870.

⁶⁴ State of Connecticut et al., Joint Comments on Schaghticoke Indian Tribe Federal Acknowledgment Petition, Bureau of Indian Affs. at 23 (July 5, 2022), https://www.bia.gov/sites/default/files/dup/inline-files/401_dpco_2022_ct-kent-kentschool_2022-07-05.pdf (citing the RFD’s findings that STN is the successor to the historic Schaghticoke tribe) [hereinafter Connecticut Joint Comments].

⁶⁵ See Letter from Chairman Ralph James Gessner, Jr., the Mohegan Tribe to Chief Richard Velky, Schaghticoke Tribal Nation (undated) (Attach. 7) [hereinafter Mohegan Support Letter]; see also Letter from Rodney Butler, Chairman, Mashantucket Pequot Tribal Nation to Sec’y Haaland and Assistant Sec’y Newland, Dep’t of the Interior (Jan 5, 2024) (Attach. 8) [hereinafter Mashantucket Pequot Support Letter].

flexibly.”⁶⁶ The regulations establish that, “substantially continuous basis . . . does not require meeting these criteria at every point in time.”⁶⁷ Likewise, the regulations provide that “any gaps in evidence that were allowable to satisfy any particular criterion previously will be allowable to satisfy the criterion for a present petitioner.”⁶⁸ The Department has previously recognized tribes whose members were disenrolled. For example, the Shinnecock Indian Nation failed to include 139 of 201 members who were disenrolled due to lack of descent documentation.⁶⁹ Nevertheless, the Department concluded that the Shinnecock Indian Nation existed as a community for a substantially continuous period of time despite the fact that a number of members of its community were not enrolled.⁷⁰ Accordingly, to the extent that an evidentiary gap exists from 1997 to the present due to the existence of forty-two unenrolled members, the Department should look to its prior Shinnecock Indian Nation acknowledgment to find the existence of unenrolled members does not prevent STN from satisfying criterion (b).

Lastly, the 2015 regulations allow STN to make use of carry-over evidence from criterion (c) in addition to evidence demonstrated under criterion (b) to satisfy the community criterion for the period from 1997.⁷¹ The regulations also allow the petitioner to use the same evidence to establish more than one criterion and specifically, “[a] demonstration of political influence under the criterion in §83.11(c)(1) will be evidence for demonstrating a distinct community for that same time period.”⁷² The 2015 regulations, under §83.11(b)(1)(ix), now allows STN to demonstrate community through establishing it has land set aside by the State. In fact, the RFD acknowledged that the Connecticut Colony and later the State of Connecticut had set aside and maintained STN’s reservation near Kent for over 200 years.⁷³ Similarly, §83.11(c)(1)(vii), now allows STN to demonstrate community via carryover evidence from (c) by establishing STN’s government has a significant relationship with leaders of other federally recognized Indian tribes. Two neighboring federally recognized Indian tribes—the Mohegan Indian Tribe and the Mashantucket Pequot Tribal Nation—have submitted letters of support for STN’s recognition efforts.⁷⁴ The letter of support from the Mashantucket Pequot Tribal Nation, in particular, specifically identifies STN as its “sister Nation” with whom it has had a “longstanding nation-to-nation relationship,” demonstrating that the two tribes’ governments have a significant relationship.⁷⁵ Thus, the fact that STN can

⁶⁶ 2015 regulations, *supra* note 5, at 37863.

⁶⁷ *Id.* at 37889.

⁶⁸ *Id.*

⁶⁹ Final Determination for Federal Acknowledgment of the Shinnecock Indian Nation, 75 Fed. Reg. 34760, 34763 (June 18, 2010) [hereinafter Shinnecock Final Determination].

⁷⁰ *Id.*

⁷¹ See 2015 regulations, *supra* note 5, at 37870.

⁷² See 25 C.F.R. §83.10(a)(3), §83.11(b)(1)(xi).

⁷³ Summary of Reconsidered Final Determination, *supra* note 23, at 48.

⁷⁴ See Mohegan Support Letter, *supra* note 65; see also Mashantucket Pequot Support Letter, *supra* note 65.

⁷⁵ Mashantucket Pequot Support Letter, *supra* note 65; see also National Congress of American Indians, Support for Reinstatement of the Federal Recognition of the Schaghticoke Tribal Nation, Res. No. 23-078 (Nov. 2023) (resolving to “urge[] the Secretary of the Department of the Interior to reinstate the 2004 federal recognition of STN

demonstrate that it has a state reservation set aside for it in addition to its significant relationships with both the Mohegan Indian Tribe and Mashantucket Pequot Tribal Nation, as well as other federally recognized tribes, satisfies the requirement that STN demonstrate two or more forms of evidence to establish community under criterion (b).

4. STN Would Have Satisfied the Criteria Under Part 83.11(c) under the 2015 Regulations

A consideration of STN's petition under the 2015 regulations would lead to a finding that STN meets criterion (c) for political authority and influence. The RFD relied on the endogamy calculation now disfavored by the Department, which determined that STN did not satisfy criterion (c) for the periods 1801-1820 and 1840-1870.⁷⁶ As discussed above, that calculation of endogamy was based on each marriage pair rather than each married individual to determine whether the petitioner met the fifty percent threshold for these time periods.⁷⁷ The 2015 regulations no longer require satisfaction of criterion (c) for periods predating 1900, but even if they did, STN would satisfy the criterion because of the regulations' clarified endogamy calculation is the same as was utilized by the Department in its positive FD.⁷⁸

The RFD determined that state recognition was not proper evidence of political authority and influence for the periods 1820-1840, 1870-1875, and 1892-1967.⁷⁹ Notwithstanding the fact that the 2015 regulations do not require consideration of evidence prior to 1900 to satisfy the criteria, the endogamy rates calculated based on individuals within marriages would have allowed STN to meet the fifty percent threshold and satisfy criterion (c) outright for much of these time periods. Even if the endogamy rates were insufficient to satisfy the criterion outright, the 2015 regulations would allow the Department to consider state recognition as supplemental evidence to satisfy criterion (c). For example, for the period 1900-1940, the FD acknowledged that "the evidence in the record, together with continuous state recognition with a reservation, which provided additional evidence, was sufficient to demonstrate that the criterion was met between 1900 and 1940."⁸⁰

Likewise, for the periods 1940-1967, the Department previously found that Franklin Bearce led STN's council and a political organization known as "the Federated Eastern Indians League" which advocated on behalf of STN to the federal government and the State throughout much of

because (1) STN "meets, and has always met, the criteria for federal recognition," and (2) Interior's revocation of STN's acknowledgment was "unprecedented" and improperly driven by "outside pressure") (Attach. 9).

⁷⁶ Summary of Reconsidered Final Determination, *supra* note 23, at 5.

⁷⁷ *Id.*

⁷⁸ Final Determination, *supra* note 2, at 5573 (finding that, "on the basis of [individual endogamy] calculations, the endogamy rate was sufficient that STN meets criterion 83.7(c) for the period 1801-1820 and 1841-1870").

⁷⁹ Summary of Reconsidered Final Determination, *supra* note 23, at 52-57.

⁸⁰ Summary of Final Determination, *supra* note 8, at 58.

this time period.⁸¹ This evidence, the Department concluded in the FD, in addition to the evidence of state recognition, was sufficient to satisfy criterion (c).⁸² The sole basis for this determination's reversal in the RFD was that state recognition and the existence of a state reservation was not then suitable evidence to satisfy the criterion.⁸³ As previously discussed, this is no longer the case, as the 2015 regulations now allow state recognition and the existence of a state reservation to be an independent form of evidence a petitioning tribe can use to meet the criterion.⁸⁴ Thus, STN's evidence of the State's recognition and the existence of STN's land set aside by the State are valid forms of evidence to confirm STN's satisfaction of criterion (c) for these time periods.

Based on the same reasoning in its determination that STN did not satisfy criterion (b) for the period 1997 to present, the Department found that STN did not satisfy criterion (c).⁸⁵ Because of the highly interrelated nature of criteria (b) and (c), the analysis for why STN would satisfy criterion (c) if considered under the 2015 regulations is largely the same for criterion (b). However, specific to criterion (c), the regulations require that a petitioning Tribe prove "that it has maintained political influence or authority over its members as an autonomous entity" for the relevant period, which requires a showing that

. . . the entity uses a council, Leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. **The process is to be understood flexibly in the context of the history, culture, and social organization of the entity.**⁸⁶

The Department's analysis in the RFD presupposed that STN and SIT were one political entity, albeit with disparate political opinions since 1997.⁸⁷ However, SIT has since completely segregated itself from STN as a community, drafted its own separate constitution, and developed its own governing body by which it purports to manage the affairs of its small group of members.⁸⁸ SIT and its members do not involve themselves in the political processes of STN and should not

⁸¹ *Id.* at 107.

⁸² *Id.* at 122-124.

⁸³ Summary of Reconsidered Final Determination, *supra* note 23, at 57.

⁸⁴ 2015 Regulations, *supra* note 5, at 37870 (citing former Chairman Inouye of the Senate Indian Affairs Committee's statement that "the fact that a State has recognized a tribe for over 200 years" should "be a factor for consideration in the acknowledgment process").

⁸⁵ *Id.*

⁸⁶ 25 C.F.R. § 83.11(a) (emphasis added).

⁸⁷ Summary of Final Determination, *supra* note 8, at 62.

⁸⁸ See Schaghticoke Indian Tribe Const. (approved Nov. 15, 2022), https://www.bia.gov/sites/default/files/media_document/401_dpwd_2022_sit_constitution.pdf (last visited Sept. 11, 2025).

be considered part of STN for the purposes of discussing STN as a political entity. If the Department reviewed STN's re-petition application under the 2015 regulations, it would recognize that STN's social organization is politically distinct from SIT and should not be considered to be the same political entity.

Moreover, SIT currently has a pending Part 83 petition with the Department, further demonstrating its political separation from STN.⁸⁹ In response to SIT's petition for federal acknowledgment, the State has published a comment stating that "[t]here is no dispute that the SIT separated from STN in the 1996/1997 time period."⁹⁰ Around the time SIT became its own distinct political entity, SIT submitted to the Department a declaration stating, "let it be known . . . Schaghticoke Tribal Nation from Monroe CT" has "no authority or jurisdiction over [SIT]."⁹¹

With respect to the other forms of evidence which can be used to satisfy criterion (c), STN can satisfy the criterion through 25 C.F.R. 83.11(c)(1)(vi) and (vii) by establishing that STN has a significant relationship with a federally recognized Indian tribe and that the State set aside land for STN. As discussed in Section III(B)(3) of this re-petition request, STN has received letters from both the Mohegan Tribe and Mashantucket Pequot Tribal Nation in support of its federal recognition efforts.⁹² Next, the State has maintained a reservation for STN, which STN continues to maintain ownership and stewardship over.⁹³ Thus, irrespective of any claims that the forty-two unenrolled individuals prevent STN from demonstrating political influence over its members, STN independently satisfies criterion (c).

To the extent that the Department deems the forty-two unenrolled individuals as problematic to STN's re-petition efforts under criterion (c), the Department should acknowledge its past precedent to find that the existence of unenrolled individuals descending from the historical Schaghticoke tribe is not fatal to STN's petition. As discussed above, the Shinnecock Indian Nation's failure to include 139 of 201 members who were disenrolled due to lack of descent documentation was not fatal to its petition for federal acknowledgment.⁹⁴ Based on this precedent, the Department should apply the same analysis and find that the fact that some individuals could potentially enroll with STN does not prevent it from meeting criteria (c). Furthermore, the idea that the existence of a small number of individuals who are unable or unwilling to enroll with a tribe could be fatal to a tribe's petition for federal acknowledgment would lead to the absurd result of Part 83 ineligibility for nearly all not-yet recognized tribes.

⁸⁹ See generally Schaghticoke Indian Tribe Petition for Federal Acknowledgment, Petition No. 401, Off. of Fed. Acknowledgment, Bureau of Indian Affs., U.S. Dep't of the Interior, <https://www.bia.gov/as-ia/ofa/401-schait-ct>.

⁹⁰ Connecticut Joint Comments, *supra* note 64.

⁹¹ Proposed Finding, *supra* note 8, at 176.

⁹² See Mohegan Support Letter, *supra* note 65; see also Mashantucket Pequot Support Letter, *supra* note 65.

⁹³ Summary of Reconsidered Final Determination, *supra* note 23, at 50; see also Schaghticoke Indian Tribe v. Rost, 138 Conn. App. 204, 206, 50 A.3d 411, 413 (2012) (upholding the lower court's finding that STN is a rightful owner of the Schaghticoke Reservation and therefore had the authority to evict the defendant from the Reservation).

⁹⁴ Shinnecock Final Determination, *supra* note 69 at 34763.

Instead, such members should not be included within analysis of either criterion (b) or (c) because, as is the case with STN, such members often do not interact nor maintain significant social relationships, nor do they engage with tribal political processes.⁹⁵

IV. Conclusion

As discussed above, the RFD was based on a misapplication of certain Part 83 acknowledgment criteria (whereas the Department's 2004 determination that STN satisfied those same criteria was legally sound). The 2005 reversal of STN's positive FD, moreover, is widely regarded by both Indian and non-Indian stakeholders as illegitimate because it was the consequence of "outside pressure" and "the politics of the day." In sum, the 2015 regulations have provided STN the ability to use all the forms of evidence under which its original petition was successful. A review of STN's original petition would lead to an equally successful outcome as STN's case for federal acknowledgment has only grown stronger in recent years as it continues to exist as a separate and distinct community and political entity. Accordingly, we request that the Department consider the foregoing evidence in light of STN's history and culture and allow STN the opportunity to petition and demonstrate that the consideration of the evidence submitted under its original petition would be equally successful today as it was previously, especially in light of the applicable revisions within the 2015 regulations.

⁹⁵ To the extent this issue were to be characterized as an "internal" or "leadership" conflict, it has been the Department's historic practice, now codified in the new federal acknowledgment regulations, that evidence of such "internal conflict[]" actually *supports* satisfaction of those criteria, by "show[ing] controversy over"—and thus the existence of—"valued entity goals, properties, policies, processes, or decisions" 25 C.F.R. §83.11(c)(1)(v).

APPENDIX

ATTACHMENT 1

Res. No. STN.RE-PETITION.25 (2025) (Tribal Council of the Schaghticoke Tribal Nation)
(Attach. 1)

(Cited in n 1, *supra.*)

SCHAGHTICOKE TRIBAL NATION CONNECTICUT

Chief

Richard L. Velky
Vice-Chairman
Charles E. Kilson
Secretary
Betty Kaladish
Treasurer
Dean Pomeroy

Council Members

Frederick Parmalee, Sr.
Colette Kimball
Linda Kilson
Kateri Brittell
Neal Kilson



TRIBAL COUNCIL OF THE SCHAGHTICOKE TRIBAL NATION RESOLUTION #STN.RE-PETITION.25, SEPTEMBER 4, 2025

WHEREAS, the Schaghticoke Tribal Nation (STN) a State-recognized Indian Tribe, governs itself pursuant to its Constitution;

WHEREAS, the Schaghticoke Tribal Nation at its duly head Tribal Council meeting held on September 4, 2025 approved by Tribal vote and;

WHEREAS, the Schaghticoke Tribal Nation approved the following Motion:
Motion to approve and certify the submission of the Tribe's official request for authorization to re-petition in compliance with 25CFR 83.50(a), with such submission being made in September 2025.

THEREFORE, BE IT RESOLVED, that the Schaghticoke Tribal Nation approves and certifies the Tribe's official request for authorization to re-petition in compliance with 25CFR 83.50(a), with such submission being made in September 2025.

CERTIFICATION

This is to certify that the above Resolution #STN.RE-PETITION.25, was duly passed by the Schaghticoke Tribal Nation Council in session on September 4, 2025. This Resolution was adopted pursuant to the authority vested in the Council by the Schaghticoke Tribal Nation Constitution.

ATTEST

SCHAGHTICOKE TRIBAL NATION CONNECTICUT



Chief

Richard L. Velky

Vice-Chairman

Charles E. Kilson

Secretary

Betty Kaladish

Treasurer

Dean Pomeroy

Council Members

Frederick Parmalee

Colette Kimball

Linda Kilson

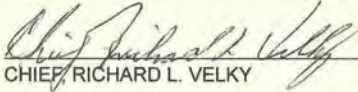
Kateri Brittell

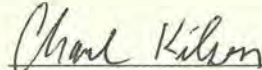
Neal Kilson

September 4, 2025

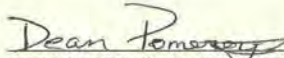
RE: RESOLUTION #STN.RE-PETITION.25

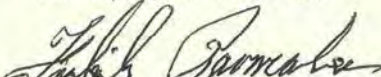
WE, THE UNDERSIGNED SCHAGHTICOKE TRIBAL NATION COUNCIL, DO HEREBY
ACCEPT AND APPROVE RESOLUTION #STN.RE-PETITION.25


CHIEF, RICHARD L. VELKY


VICE CHAIRMAN, CHARLES KILSON



SECRETARY, BETTY KALADISH



TREASURER, DEAN POMEROY


COUNCIL MEMBER, FREDERICK PARMALEE


COUNCIL MEMBER, LINDA KILSON


COUNCIL MEMBER, COLETTE KIMBALL


COUNCIL MEMBER, KATERI BRITTELL


COUNCIL MEMBER, NEAL KILSON

ATTACHMENT 2

Letters of Support from State and Local Officials

(Cited in n. 17, *supra.*)



Mayor Joseph DiMartino
One Elizabeth Street
Derby, Connecticut 06418
joedimartino@derbyct.gov

January 30, 2024

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Support for Reinstatement of Federal Recognition for the Schaghticoke Tribal Nation

Dear Secretary Haaland:

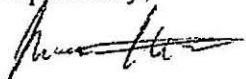
I am writing to express my strong support for the Schaghticoke Tribal Nation (STN), and the reinstatement of its federal recognition.

On January 29, 2004, the Department of the Interior issued a Final Determination, correctly concluding that STN met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon and extensively researched and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, "the STN petition was among the best and most thoroughly researched petitions ever reviewed by" Interior.

Nevertheless, this 2004 federal recognition was revoked a year later, on Columbus Day 2005. This was a grave injustice to STN, shaped by the politics of the day. STN met the standards for federal recognition in 2004, and it meets those standards today. You can reverse this injustice by reinstating federal recognition.

I know STN Chief Richard Velky well, and I firmly believe that if federal recognition is reinstated, STN will become an even greater productive and valued citizen of Connecticut, and its tribal members will receive the justice they deserve. I would urge your positive action to reinstate the federal recognition of the Schaghticoke Tribal Nation.

Respectfully,


Mayor Joseph DiMartino
City of Derby



BOROUGH OF NAUGATUCK
OFFICE OF MAYOR N. WARREN "PETE" HESS

229 Church Street
Naugatuck, CT 06770
TEL (203) 720-7009
FAX (203) 720-7099
www.naugatuck-ct.gov
nwhess@naugatuck-ct.gov

The Honorable Debra Haaland
Secretary U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Support for Reinstatement of Federal Recognition for the Schaghticoke Tribal Nation

Dear Secretary Haaland:

I am writing to express my strong support for the Schaghticoke Tribal Nation (STN), and the reinstatement of its federal recognition. It is imperative that we take this opportunity to reverse an extremely unjustified action in improperly revoking Federal recognition of the STN.

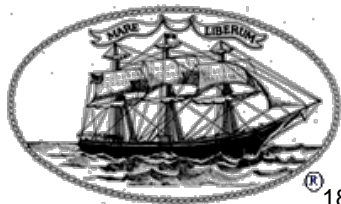
On January 29, 2004, the Department of the Interior issued a Final determination, correctly concluding that STN met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon an extensively researched and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, "the STN petition was among the best and most thoroughly researched petitions ever reviewed by "Interior.

Nevertheless, this 2004 federal recognition was revoked a year later, on Columbus Day 2005. This was a grave injustice to STN, shaped by the politics of the day. STN met the standards for federal recognition in 2004, and it meets those standards today. You can reverse this injustice by reinstating federal recognition. Please note that this action was taken on Indigenous Peoples Day.

I know STN Chief Richard Velky well, and I firmly believe that if federal recognition is reinstated, STN will become an even greater productive and valued citizen of Connecticut, and its tribal members will receive the justice they deserve. I urge your positive action to reinstate the federal recognition of the Schaghticoke Tribal Nation.

Respectfully,

N. Warren Hess, Mayor



City of New London Office of the Mayor

181 State Street • New London, CT 06320 • Phone (860) 447-5201 • Fax (860) 447-7971

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Support for Reinstatement of Federal Recognition for the Schaghticoke Tribal Nation

Dear Secretary Haaland:

I am writing to express my strong support for the Schaghticoke Tribal Nation (STN), and the reinstatement of its federal recognition.

On January 29, 2004, the Department of the Interior issued a Final Determination, correctly concluding that STN met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon an extensively researched and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, “the STN petition was among the best and most thoroughly researched petitions ever reviewed by” Interior. Nevertheless, this 2004 federal recognition was revoked a year later, on Columbus Day 2005. This was a grave injustice to STN, shaped by the politics of the day. STN met the standards for federal recognition in 2004, and it meets those standards today. You can reverse this injustice by reinstating federal recognition.

I know STN Chief Richard Velky well, and I firmly believe that if federal recognition is reinstated, STN will become an even greater productive and valued citizen of Connecticut, and its tribal members will receive the justice they deserve. I would urge your positive action to reinstate the federal recognition of the Schaghticoke Tribal Nation.

Respectfully,

Mayor Michael Passero
City of New London

SENATOR CATHY OSTEN
Nineteenth District

Legislative Office Building
Room 2700
Hartford, CT 06106-1591
Tel. 860-240-0579
Toll-free 1-800-842-1420
www.senatedems.ct.gov/Osten



State of Connecticut
SENATE

Chair
Appropriations Committee

Vice Chair
Labor & Public Employees Committee
Public Safety & Security Committee

Member
Legislative Management Committee
Regulation Review Committee
Transportation Committee
Veterans' Affairs Committee

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Support for Reinstatement of Federal Recognition for the Schaghticoke Tribal Nation

Dear Secretary Haaland:

I am writing to express my strong support for the Schaghticoke Tribal Nation (STN), and the reinstatement of its federal recognition.

On January 29, 2004, the Department of the Interior issued a Final Determination, correctly concluding that STN met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon an extensively researched and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, "the STN petition was among the best and most thoroughly researched petitions ever reviewed by" Interior.

Nevertheless, this 2004 federal recognition was revoked a year later, on Columbus Day 2005. This was a grave injustice to STN, shaped by the politics of the day. STN met the standards for federal recognition in 2004, and it meets those standards today. You can reverse this injustice by reinstating federal recognition.

I firmly believe that if federal recognition is reinstated, STN will become an even greater productive and valued citizen of Connecticut, and its tribal members will receive the justice they deserve. I would urge your positive action to reinstate the federal recognition of the Schaghticoke Tribal Nation.

Respectfully,

A handwritten signature in black ink that reads "Catherine G. Osten".

Cathy Osten
State Senator, 19th District

ATTACHMENT 3

Letter from Schaghticoke Tribal Nation to Assistant Sec'y, Kevin Washburn, re: Request for Reinstatement of Final Determination (July. 28, 2015)

(Cited in n. 26, *supra*.)



SCHAGHTICOKE TRIBAL NATION CONNECTICUT

July 28, 2015

The Honorable Kevin Washburn
Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Federal Recognition of the Schaghticoke Tribal Nation

Dear Assistant Secretary Washburn:

On behalf of the Schaghticoke Tribal Nation ("STN"), I am writing to advise you of the STN's intent to request that the Department of the Interior review its prior determination of our status as a federally recognized tribe.

As you know, the Department of the Interior, after a lengthy and rigorous process, made a positive final determination acknowledging the STN on February 5, 2004. Under circumstances that could be described as "highly irregular" that determination was reversed on October 11, 2005.

The STN is one of only two tribes that have been recognized pursuant to the federal acknowledgement process, only to have that recognition reversed. We do not consider the new recognition regulations as barring a review of our application and a correction by Interior of its final determination. Whether under the former evidentiary standards, or the new ones, we can once again demonstrate that STN meets the recognition criteria.

This letter is to provide you with formal notice, before the new regulations take effect, of our intent to ask the Department to review its prior decision with regard to the STN. We will be following up with you in the near future to discuss this matter further.

Respectfully,


Richard L. Velky
Chief, Schaghticoke Tribal Nation

ATTACHMENT 4

Letter from Schaghticoke Tribal Nation to Deputy Sec'y of the Interior, David Bernhardt, re:
Updated Request for Reinstatement of Final Determination (May 24, 2018)

(Cited in n. 27, *supra*.)

MEMORANDUM

May 24, 2018

TO: Deputy Secretary of the Interior David Bernhardt

FROM: Marc Kasowitz, Kasowitz Benson Torres LLP
Gregory A. Smith, Hobbs Straus Dean & Walker, LLP

RE: Federal Recognition of the Schaghticoke Tribal Nation

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I. EXECUTIVE SUMMARY

As set forth in Chief Velky's May 21, 2018 letter to Secretary Ryan Zinke, the Schaghticoke Tribal Nation ("STN") requests that the Department of the Interior ("Department"), take the necessary steps to correct a manifest injustice by reinstating the Department's federal recognition of STN. This memorandum sets forth an analysis of the pertinent legal issues. To be clear, this is not an application for federal recognition under Part 83. Rather, this is an application for the Department to exercise, as a matter of fundamental fairness, its inherent authority to reinstate its original and correct federal recognition of STN.

The Department's January 29, 2004 Final Determination should be reinstated, as it correctly determined that STN met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon an extensively researched and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, "the STN petition was among the best and most thoroughly researched petitions ever reviewed by" the Department.¹

Only two of Part 83's recognition criteria were ever in serious dispute in connection with STN's petition (and even then only for certain circumscribed time periods)—criterion (b), community, that the petitioner comprises a distinct community and demonstrates that it existed as a community from historical times until the present, and criterion (c), political influence or authority, that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. Evaluating those two criteria turned primarily on three questions for the Department: (1) the correct method for calculating endogamous marriage rates; (2) the significance of STN's state recognition, including the continuous existence of its state reservation; and (3) the effect of some of the petitioner's former members choosing not to enroll for membership.

How the Department answered these questions determined whether STN for certain periods of time satisfied those two criteria. In the Final Determination, the Department correctly found that STN's endogamous marriage rates through most of the 1800s were over 50%. For these time periods, this evidence alone was sufficient to demonstrate that criterion (b), related to community, was met.² Through carryover provisions, this evidence also demonstrated that criterion (c), related to political authority, was met.³ The Final Determination also found that the State of Connecticut's ("Connecticut") long recognition of STN, including the continuous existence of its state reservation, provided additional evidence to support criteria (b) and (c) during certain time periods, especially when additional strong evidence was available before and after those time periods. The Final Determination also found that the fact that certain former

¹ Declaration of Aurene Michelle Martin at 2, *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (No. 36-4) (D. Conn. 2008) [hereinafter Decl. of Aurene Michelle Martin]. Attached as Exhibit A.

² 25 C.F.R. § 83.7(b)(2)(ii) (2005) (stating 50% of marriages in group between members is sufficient evidence of community). However, the Final Determination did not rely on marriage rates to establish criteria (b). Memorandum from Principal Deputy Assistant Secretary – Indian Affairs, re Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Schaghticoke Tribal Nation, at 56 (Jan 29, 2004) [hereinafter Final Determination].

³ 25 C.F.R. § 83.7(c)(3) (2005) (stating political authority is met if a party met 83.7(b)(2)(ii) during that time period).

members chose not to enroll for membership “reflects the most current stance of a conflict,”⁴ which was not a reason to deny recognition. In fact, this conflict supports recognition, because “internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions” are evidence of a petitioner’s political authority over its members, which may be used to demonstrate satisfaction of criteria (b) and (c).⁵

However, this federal recognition was subsequently revoked after Connecticut officials initiated a campaign between 2004 and 2005 aimed at overturning the Final Determination. They did so because they feared that, with federal recognition, STN would be able to reclaim land in Connecticut in connection with a then-pending lawsuit and develop a third tribal casino in Connecticut. Connecticut officials appealed the Final Determination to the Department’s Interior Board of Indian Appeals (“IBIA”). The IBIA vacated the Final Determination, and it remanded the Final Determination to the Department for reconsideration based on the IBIA’s finding that Connecticut’s implicit recognition of STN as a distinct political body was not “reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within” STN,⁶ among other issues that were not within the IBIA’s jurisdiction. The Department reconsidered its decision and revoked STN’s recognition on October 11, 2005, pursuant to a Reconsidered Final Determination, in which it erroneously determined that STN did not meet criteria (b) and (c) during certain time periods, and it declined to acknowledge STN. However, in doing so, the Department used an overly restrictive evidentiary standard in ways that were inconsistent with precedent.

Because the Department, when it initially granted STN’s recognition, correctly decided that STN met all seven recognition criteria under Part 83, STN asks that the Department revoke the erroneous Reconsidered Final Determination and reinstate STN’s Final Determination recognizing STN.

Doing so is well within the Department’s authority. Under applicable law, the Department has the authority to recognize Indian tribes, and with that power comes the discretion to exercise that authority to establish and maintain government-to-government relations with tribal nations. Moreover, the Department has the inherent authority to reconsider its decisions, where, as here, reconsideration: does not violate a statute; is not arbitrary, capricious, or an abuse of discretion; and takes place within a reasonable amount of time.

Reinstatement of the Department’s Final Determination recognizing STN is a matter of fundamental fairness and would correct the injustice STN suffered when the Reconsidered Final Determination served to discredit the Department’s own experts and reverse an extensive evidentiary record. Moreover, the political climate in Connecticut is different today than it was in 2004. At the time, Connecticut opposed STN’s recognition because it feared STN would open a third casino in the state, and because STN was pursuing land claims against the state and private landowners and federal recognition was a prerequisite to succeeding with those claims. Connecticut’s opposition led to depriving STN and its tribal members of the many benefits

⁴ Final Determination at 56.

⁵ 25 C.F.R. § 83.7(c)(1)(v) (2005); *id.* § 83.7(b)(1)(ix) (2005) (“A demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community.”)

⁶ *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 I.B.I.A. 30, 34 (2005).

associated with federal recognition, including the exercise of tribal sovereignty as well as access to federal healthcare, federal housing, educational programs, and economic diversification benefits that also extend to the surrounding communities at large. Today, by stark contrast, Connecticut's concerns are no longer applicable. It is actively exploring opening a third casino, and it has passed multiple rounds of legislation paving the way towards that goal. And STN has no intention of refiling its land claims.⁷

STN requests that the Department use its inherent authority to protect the integrity of the recognition process by revoking the Reconsidered Final Determination and reinstating STN's recognition. To be clear, although in July 2015, the Department issued amended Part 83 with the express "aim of making the [federal recognition] process more transparent, promoting fairness and consistent implementation, and increasing timeliness and efficiency,"⁸ STN is not asking to proceed under the amended Part 83. Rather, STN is asking the Department to correct its past injustice, revoke the Reconsidered Final Determination and the IBIA decision, and reinstate the Final Determination for all the reasons discussed herein.

II. STN'S EFFORTS TO AFFIRM ITS TRIBAL STATUS

STN's journey through the Department's federal recognition process has been unique and protracted. STN has long been recognized by the State of Connecticut, and it has held a tribal reservation since colonial times, while STN's aboriginal lands extend down the Housatonic River, and into the land surrounding. In 1981, STN submitted to the Department its letter of intent beginning the federal recognition process, although limited resources prevented STN from submitting its documented petition until 1994. In the 1990s, STN was a party to several consolidated federal cases before the U.S. District Court for the District of Connecticut, in which STN sought to reclaim lands transferred to private parties in violation of the Non-Intercourse Act and to defend a portion of its reservation lands from condemnation by the United States. STN's tribal status was a threshold question in each of these cases. Due to agency delays, the Court in 2000 assumed control over the Department's process for issuing STN's federal recognition decision. The Court issued a scheduling order that established a framework for the determination of the STN petition, set deadlines, and provided for judicial review of final agency action.

In 2004, 23 years after STN submitted its letter of intent, the Department through Principal Deputy Assistant Secretary - Indian Affairs Aurene Martin, formally recognized STN by issuing the Final Determination.⁹ The Final Determination found that STN met all seven criteria, including criterion (b), community, that the petitioner comprises a distinct community and demonstrates that it existed as a community from historical times until the present, and criterion (c), political influence or authority, that the petitioner has maintained political influence

⁷ STN currently has a case pending against Connecticut, asserting constitutional claims and claims for breach of fiduciary duty, but it is not bringing claims under the Non-Intercourse Act and does not seek to reclaim any of its former land.

⁸ Federal Acknowledgment of American Indian Tribes, 80 Fed. Reg. 37862-01, 37862 (July 1, 2015).

⁹ See Final Determination; see also Office of Federal Acknowledgment, Dep't of Interior, Final Determination to Acknowledge the Schaghticoke Tribal Nation, 69 Fed. Reg. 5570 (Feb. 5, 2004) (providing notice) [hereinafter Final Determination Notice].

or authority over its members as an autonomous entity from historical times until the present.¹⁰ Principal Deputy Assistant Secretary Martin later stated, in a sworn declaration, that “[t]he consensus among [the Office of Federal Acknowledgement’s (“OFA”)] highly trained research staff was that the STN petition was among the best and most thoroughly researched petitions ever reviewed by the BIA” and that STN satisfied the mandatory criteria for federal recognition.¹¹

Fearing that STN would reclaim land based on its then pending lawsuits and develop a third tribal casino in Connecticut, which Connecticut opposed, Connecticut officials initiated a political campaign between 2004 and 2005 aimed at overturning the Final Determination and engaged in unprecedented efforts to pressure the Department to reverse the Final Determination. Connecticut officials, as well as some local private interests, requested that the IBIA reconsider the Final Determination, arguing, among other things, that the Final Determination’s reliance on State recognition, methodology of calculating marriage rates, and inclusion of certain individuals in STN’s base membership roll, were erroneous. OFA issued a post-briefing memorandum to the IBIA (the “Supplemental Transmission”) undermining its own Final Determination, which it was supposed to be defending, by disavowing the reliability of evidence it had previously relied upon. Not only did the Supplemental Transmission represent a dramatic procedural anomaly, as OFA challenging its own decision during IBIA review is unheard of, but its substance was misleading as well. The Supplemental Transmission incorrectly stated that the Final Determination should have counted the number of marriage unions, rather than the number of individual members marrying, in order to calculate STN’s marriage rate, which would require a larger number of STN members to marry each other to meet the required evidentiary threshold.¹² OFA’s Supplemental Transmission went so far as to assert that the decision “should not be affirmed on these grounds absent explanation or new evidence.”¹³ However, the Department’s past precedent had included instances where the marriage rates had been calculated the same way they were in the Final Determination.¹⁴

On May 12, 2005, the IBIA vacated the Final Determination and remanded it to the Assistant Secretary – Indian Affairs for reconsideration.¹⁵ It premised its decision on the evidentiary relevance of State recognition, the marriage rate issue and the existence of unenrolled community members.¹⁶ Thus, three primary disputed issues were raised with respect to STN’s petition: (1) the correct method for calculating marriage rates; (2) the significance of STN’s state recognition, including the continuous existence of its state reservation; and (3) the effect of some of STN’s former members choosing not to enroll for membership.

On remand, the Department applied the criteria for federal recognition more onerously than it had to previous petitioners, particularly in reversing its experts’ interpretation of the

¹⁰ Final Determination at 62, 122.

¹¹ Decl. of Aurene Michelle Martin at 2.

¹² Supplemental Transmittal under 25 C.F.R. § 83.11(e)(8), *In re Federal Acknowledgment of the Schaghticoke Tribal Nation* (Dec. 2, 2004).

¹³ *Id.* at 3.

¹⁴ *See* the discussion on page 8, below.

¹⁵ *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 I.B.I.A. 30, 42 (2005).

¹⁶ *Id.* at 34–36.

significance of certain evidence and in departing from the “reasonable likelihood” standard in the regulations, which deems the criteria “met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.”¹⁷ Based on that reevaluation, on October 11, 2005, the Department issued the negative Reconsidered Final Determination, finding that STN did not meet criteria (b) and (c) for certain points in time but otherwise affirming the Final Determination’s findings that STN met the other five criteria.¹⁸ As discussed below, while there were several substantive (and procedural) inconsistencies in the Reconsidered Final Determination, the conclusions in the Final Determination were well supported by the evidence and by Department precedent. STN’s recognition therefore should be reinstated.

STN sought review of the Department’s Reconsidered Final Determination at the District Court. *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (D. Conn. 2008). The District Court (and the Second Circuit on appeal) deferred to the judgment of the agency and declined to vacate the Reconsideration Final Determination. *Schaghticoke Tribal Nation*, 587 F. Supp. 2d 389, *aff’d* 587 F.3d 132 (2d Cir. 2009). Nothing in either court’s decision, however, constitutes a substantive decision binding the Department or preventing it from reinstating its first and correct determination.

III. THE FINAL DETERMINATION CORRECTLY RECOGNIZED THAT STN CLEARLY SATISFIES PART 83’S FEDERAL RECOGNITION CRITERIA

To qualify for federal acknowledgement, a tribe must satisfy the seven criteria set forth in 25 C.F.R. Part 83, which governs the procedures for federal acknowledgment of Indian tribes.¹⁹ In the Final Determination, the Department correctly found that STN met all seven criteria under Part 83: (a) the petitioner has been identified as an Indian entity on a substantially continuous basis since 1900; (b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; (c) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present; (d) the petitioner’s governing document includes its membership criteria; (e) the petitioner’s membership descends from an historical tribe; (f) the petitioner’s membership are persons who are not members of another acknowledged tribe; and (g) neither the petitioner nor its members are the subject of legislation terminating or forbidding the Federal relationship.²⁰ The Reconsidered Final Decision also confirmed that STN met all of the criteria except (b) and (c) for certain time periods.²¹

Under the former version of Part 83, criterion (b), “community,” was defined as “any group of people which can demonstrate that consistent interactions and significant social

¹⁷ 25 C.F.R. § 83.6(d) (2005).

¹⁸ Memorandum from Associate Deputy Secretary, re Summary of the Criteria and Evidence: Reconsidered Final Determination Denying Federal Acknowledgment of the Petitioner Schaghticoke Tribal Nation (Oct. 11, 2005) [hereinafter Reconsidered Final Determination]; *see also* Bureau of Indian Affairs, Dep’t of Interior, Reconsidered Final Determination to Decline to Acknowledge the Schaghticoke Tribal Nation, 70 Fed. Reg. 60101 (Oct. 14, 2005) (providing notice) [hereinafter Reconsidered Final Determination Notice].

¹⁹ *See* 25 C.F.R. § 83.7 (2005); *see also* 25 C.F.R. § 83.11.

²⁰ *See* Final Determination.

²¹ Reconsidered Final Determination at 5-6.

relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers,” as understood “in the context of the history, geography, culture and social organization of the group.”²² A petitioner could demonstrate satisfaction of criterion (b) through a variety of cumulative evidence, including significant rates of marriages within the group, social relationships, patterns of social interaction, shared labor or economic activity, as well as a demonstration of political authority under criterion (c).²³ Certain evidence could, alone, satisfy criterion (b) for a specific period of time, such as rates of over 50% of endogamous marriages, or rates over 50% of residency in an exclusive geographical area.²⁴

Criterion (c) under Part 83, “political influence or authority,” was defined as “a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence” as understood “in the context of the history, culture and social organization of the group.” A petitioner could satisfy criterion (c) through a combination of cumulative evidence, including that the group was able to mobilize members, that members were involved in the political process, through internal conflicts which show controversy over valued group goals, or that mechanisms existed to allocate group resources such as land, among other things.²⁵

This criteria could also be satisfied through carryover evidence from criterion (b), related to community. A petitioner who met criterion (b) under a method described in (b)(2) was deemed to have met criterion (c) -- related to political authority -- for that same point in time.²⁶ One way to meet (b)(2) was by demonstrating “[a]t least 50 percent of the marriages in the group are between members of the group.”²⁷ Provision (b)(2) provides types of evidence that in themselves are sufficient to demonstrate criterion (b) is met for a particular point in time without the addition of other forms of evidence.²⁸

With both criteria, the “specific forms of evidence stated in the criteria . . . are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions.”²⁹

The Department, in the Final Determination, correctly concluded that STN meets criterion (b) for community and criterion (c) for political authority throughout time, as described below.

²² 25 C.F.R. § 83.1 (2005).

²³ *Id.* § 83.7(b)(1) (2005).

²⁴ *Id.* § 83.7(b)(2) (2005).

²⁵ *Id.* § 83.7(c)(1)(i)-(iv) (2005).

²⁶ *Id.* § 83.7(c)(3) (2005).

²⁷ *Id.* § 83.7(b)(2)(ii) (2005). The regulations also stated evidence of marriage rates could be provided in conjunction with other evidence under (b)(1). *Id.* § 83.7(b)(1)(i) (2005).

²⁸ *Id.* § 83.7(b)(2) (2005).

²⁹ Final Determination at 16 (*citing* 25 C.F.R. § 83.6(g) (2005)).

A. STN Satisfies Criterion (c), In Part, Because Of Its High Rates Of Endogamous Marriages.

In finding that STN satisfied criterion (c) in the 1800s, the Department in its Final Determination considered multiple forms of evidence, including petitions submitted by STN to Connecticut, as well as strong carryover evidence of community such as high rates of residency on STN's reservation.³⁰ The Department also correctly found that for the periods 1801-1820 and 1841-1870, because at least 50% of marriages during these years were between members of the group, STN satisfied criterion (c) for these periods.³¹ For other time periods in the 1800s, the Department found sufficiently high marriage rates to provide supporting evidence for the existence of community, which in turn, can provide carryover evidence for political influence and authority under 83.7(c)(iv) (stating that a group can establish criteria (c) if “[t]he group meets the criterion in § 83.7 (b) at more than a minimal level.”).

In calculating the endogamous marriage rate, the Final Determination compared the number of individual *members* within STN who chose to marry other members of STN to the number of total individual *members* in STN who were married. The Final Determination's method of calculating marriage rates was consistent with the Department's own guidance on the matter. Although Department precedent was inconsistent and sometimes ambiguous regarding the correct method for calculating marriage rates,³² in 1997, in The Official Guidelines to the Federal Acknowledgment Regulations, the Department advised in question and answer format: “What's the easy way to show that we have a modern community and had a tribal community in the past? Do you have, or did you have at some past time . . . more than half of your group's *members* marrying each other? . . . [T]ake a look at the provisions of 25 CFR 83.7(b)(2)”.³³

The Final Determination's method was also consistent with past precedent, as the Department has explicitly counted marriage rates by considering individual members' choices. For example, in the 1997 Proposed Finding for the Cowlitz Tribe of Indians, under a chart of marriages, a note explained that the Indian marriage numbers were “double count[ed] to ascertain number of individuals.”³⁴ And in the preliminary finding for the Chinook Indian Tribe, although the Department noted that more information was needed, the Department explicitly

³⁰ *Id.* at 84-90. The fact that STN had been recognized by Connecticut and had a state reservation was also considered during certain time periods; this issue is addressed below in Section III.B.

³¹ Final Determination at 83.

³² *Compare* Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Proposed Finding Eastern Pequot Indians of Connecticut, 90 (Mar. 24, 2000) (describing marriage rates as significant but not reaching 50% rate under b(2)(ii), which suggests continuum based on unions), *with* Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria for the Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, 178-79 (July 14, 2000) (stating percentage of unions at issue in (b)(2)(ii), while percentage of individuals at issue in (b)(1)(i)).

³³ The Official Guidelines to the Federal Acknowledgment Regulations, 25 C.F.R. § 83, 45-46 (1997) *available at* <http://www.bia.gov/cs/groups/public/documents/text/idc-001214.pdf>, (emphasis added).

³⁴ Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Proposed Finding Cowlitz Tribe of Indians. Genealogical Technical Report 86 (Feb. 12, 1997).

counted the number of adults in patterned marriages as opposed to the number of marriages.³⁵ The Ramapough Final Determination and the Houma Preliminary Finding likewise considered members' marriage choices.³⁶

The method that the Department used to calculate marriage rates was later one of the bases for the Department's denial of STN's federal acknowledgment in the Reconsidered Final Determination. Despite the Department guidance and precedent, the Reconsidered Final Determination incorrectly determined that Department precedent required comparing the number of marriage *unions* between STN members versus the total number of marriage *unions* collectively among STN members. Applying this more stringent method, the Department found that STN's marriage rate was below 50%.

The difference between the former (Final Determination) method of counting individual married members versus the latter (Reconsidered Final Determination) method of counting marriage unions is notable, with the former placing more weight on each individual member's marriage choice. Thus, for example, if 100 STN members are married with 50 STN members choosing to marry each other (50 members are married, but there are only 25 marriage unions) and 50 STN members choose to marry outside STN (50 members are married and there are 50 marriage unions), comparing the number of members marrying versus comparing the number of marriage unions results in vastly different marriage rates of 50% versus 33%.

	Rate of Individual Members Marrying	Rate of Marriage Unions
A total of 100 married STN members	50 STN members marry each other (50 individual members are married) 50 STN members marry outside STN (50 individual members are married)	50 STN members marry each other (25 marriage unions) 50 STN members marry outside STN (50 marriage unions)
Marriage Rate	50 STN members <u>marry each other</u> = 50% 100 total married STN members	25 marriage unions <u>between STN members</u> = 33% 75 total marriage unions

³⁵ Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Proposed Finding for Chinook Indian Tribe 71 (Aug. 11, 1997) (“At least 35 of the 314 married adults (11%), were in culturally-patterned marriages.”).

³⁶ See Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Final Determination for Ramapough Mountain Indians, Technical Report 79, 83 (Jan. 14, 1996) (“they married each other at a very high rate”) (Ramapough was denied on other grounds); Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Proposed Finding for United Houma Nation Inc. Genealogical Report 24 (Dec. 13, 1994) (“the portion of the membership which is marrying out may be significant and, further, that the majority of the members may not have been marrying other members of the group since the 1940’s.”).

Due to the Department using the rate of marriage union method as opposed to the rate of STN individuals marrying, the Department found in the Reconsidered Final Determination that STN no longer met criterion (c) for 1801-1820 and 1841-1870, and the Reconsidered Final Determination found that STN did not satisfy criterion (c) for the years prior to 1892.³⁷

The Final Determination, however, used the correct methodology, which was supported by precedent and the Department's policy. The Reconsidered Final Determination applied an unnecessarily rigorous standard when it found that Department precedent required calculating marriage rates by counting the number of unions. STN, if examined using the correct method for calculating marriage rates, plainly satisfies criterion (c) in the 1800s, consistent with the Department's conclusions in the Final Determination.³⁸ For the periods 1801-1820 and 1841-1870, the endogamy rates were between 50% and 80%, establishing this criterion.³⁹ For other time periods in the 1800s, high marriage rates, though below 50%, provide supporting evidence for the existence of community. The Department should reinstate STN's federal acknowledgment based, in part, on STN's endogamous marriage rates.

B. STN Satisfies Criteria (b) And (c), In Part, Because Of Its Political And Community Activity Surrounding Its State Reservation.

In the Final Determination, the Department also relied on evidence that STN was a State-recognized tribe with a reservation, as cumulative evidence to support the finding that STN satisfied criteria (b) and (c). The Department correctly noted that it could not "merely equate state recognition with the same trappings as federal recognition."⁴⁰ Instead, it said, "it is necessary to determine the character of the state's relationship by a direct examination of the laws, policies and actions of the State of Connecticut."⁴¹ Considering multiple aspects of STN's history, the Final Determination used STN's State recognition and the existence of its reservation as additional supporting evidence to establish criteria (b) between 1920-1967 and (c) between 1820-1840 and 1892-1936.

Evidence of criterion (b) between 1920-1967: In finding that STN met criterion (b) between 1920-1967, the Final Determination considered a wide range of evidence from multiple sources. From 1900-1940, the Final Determination considered the existence of a distinct

³⁷ Reconsidered Final Determination at 34-36.

³⁸ That the Final Determination's methodology is correct was also recently confirmed by amendments to Part 83. In July 2015, the Department promulgated amended Part 83 with the express "overriding purpose" "to address assertions of arbitrariness and ensure consistency." Federal Acknowledgment of American Indian Tribes, 80 Fed. Reg. 37862, 37873 (July 1, 2015). Amended Part 83 now clarifies that marriage rates must be calculated by counting individual members rather than unions. 25 C.F.R. § 83.11(b)(2)(ii); Federal Acknowledgment of American Indian Tribes, 80 Fed. Reg. 37,862, 37,870 (July 1, 2015). The Department's specific changes in amended Part 83 seem directed at undoing the inconsistent positions it has taken regarding calculation of marriage rates, thus demonstrating the compelling need to correct this oversight with respect to STN's petition and reinstate STN's recognition.

³⁹ Final Determination at 84.

⁴⁰ *Id.* at 16.

⁴¹ *Id.*

reservation community which encompassed three main family lines and their kinsmen who resided in the nearby region and who maintained contact with the reservation residents. The Final Determination further considered STN's membership selectivity (involving only a limited portion of the total number of Schaghticoke descendants), which provided additional evidence of social cohesion and that STN identity and community were not based on descent alone. The Final Determination also considered a 1902 census of Schaghticoke living in Connecticut, and intermarriage and residency patterns for the 19th century provided supporting context for the existence of a community in the first two decades of the 20th century. Further, the reservation continued to be occupied, although the resident population declined; the State made appropriations for STN and passed legislation transferring supervision of the Schaghticoke from one state agency to another; documentary evidence from this period finds references to the Schaghticoke as an existing group, including both the reservation and non-reservation members; and interview data from individuals born in the '20s and '30s showed social contacts among members from the 1930s through the 1960s.⁴²

From 1940 to 1967, the Final Determination found even more "significant" social relationships, through interview statements and documentary evidence that showed that the STN families knew each other and maintained a social connection, often centered around the reservation. For example, there continued to be a resident community on the reservation, with social ties with others living nearby; STN continued to only include as members individual descendants who maintained social relations; oral histories of reservation meetings demonstrated social and political contact; and enrollments in 1949 and 1954 generally correspond with the families of STN who enrolled between 1967 and 1973, indicating the continuity of community. Further, the activities of a tribal council, which was especially active from 1940 until at least 1964 and drew on all three main family lines and various sublines, showed social and political contact. And between 1958 and 1967, and continuing for a number of years after, the STN leadership, united to that point, became divided into two parts, and this inter-family line conflict provided evidence of the existence of community for those years.⁴³

Evidence of criterion (c) between 1820-1840 and 1892-1936: In finding that STN met criterion (c) between 1820-1840 and 1892-1936, the Final Determination also considered multiple forms of evidence, including STN petitions to the Connecticut government, published contemporary accounts of STN, court transcripts, STN activity to maintain the reservation trails and land, and oral histories, among other things. The Final Determination also considered carryover evidence of community, and found that there was "strongly established" evidence of community from 1820-1840, and "sufficient" evidence for 1892-1936. Further, political influence was demonstrated by direct evidence (including carryover evidence of marriage rates) for very substantial historical periods before and after 1820-1840 and 1892-1936, and because there was no evidence to indicate that the tribe ceased to exist as a political entity during these two periods, the Final Determination made the reasonable inference that the tribe continued to exist as a political entity in the intervening periods.⁴⁴

State Recognition And The Reservation Constituted Additional Evidence: It was within this context, of multiple forms of evidence for criteria (b) and (c), that the Final

⁴² *Id.* at 39-41.

⁴³ *Id.* at 41-48.

⁴⁴ *Id.* at 84-92, 118.

Determination also considered for certain time periods the evidence of STN's continuous State recognition and the existence of STN's reservation. In so doing, with respect to 1820-1840 and 1892-1936, the Department concluded that, in addition to the direct evidence of political influence for "very substantial historical periods," the lack of evidence that the tribe ceased to exist as a political entity during 1820-1840 and 1892-1936, and the carryover evidence of community,⁴⁵ State recognition and the existence of the reservation provided additional evidence of continuity of political authority, stating:

the historically continuous existence of a community recognized throughout its history as a political community by the State and occupying a distinct territory set aside by the State (the reservation), provides sufficient evidence for continuity of political influence within the community, even though direct evidence of political influence is almost absent for two historical time periods. This conclusion applies only because it has been demonstrated that the Schaghticoke have existed continuously as a community (within the meaning of criterion 83.7(c)), and because of the specific nature of their continuous relationship with the State.⁴⁶

The Final Determination also found that for 1920-1967 "[c]ontinuous state recognition provides additional evidence here, where specific evidence of community exists. Supporting evidence for community for this time period was the continuous relationship with the State as a tribe with a reservation."⁴⁷

While the Final Determination did not specifically articulate "the specific nature of STN's continuous relationship with the State" or to its reservation, evidence in the record showed, among other things, petitions by STN concerning the reservation, the presence of a distinct reservation community, STN's use of the reservation over time to host public and private powwows, ceremonies, camping trips, and hunts, and cooperative work groups organized by tribal leaders to maintain the tribal cemetery and other common grounds, among other things.⁴⁸

On appeal, the IBIA found that State recognition of a tribal entity "as a distinct political body . . . is not reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within that group."⁴⁹ The IBIA directed the Department on remand to "articulate specifically how the State's actions toward the [group]

⁴⁵ *Id.* at 120, 121.

⁴⁶ *Id.* at 120, 59.

⁴⁷ *Id.* at 59.

⁴⁸ *See, e.g. Id.* at 43, 62, 87; Historical Report Supplementing the Petition of The Schaghticoke Tribal Nation of Kent, Connecticut for Federal Acknowledgment, Prepared for The Schaghticoke Tribal Nation of Kent, Connecticut by Michael L. Lawson, Ph.D., Senior Researcher, and Robert Autabee, M.A., Research Associate, at Morgan, Angel and Associates, Washington, D.C., April 1997 ("Historical Report") pp. 97, 102-103; Summary of Evidence Supplementing the Petition of the Schaghticoke Tribal nation of Kent, Connecticut for Federal Acknowledgement, Prepared for The Schaghticoke Tribal nation of Kent, Connecticut by Michael L. Lawson, Ph.D., Senior Researcher at Morgan, Angel and Associates, Washington, D.C., April 1997 ("Summary of Evidence") pp. 31-33.

⁴⁹ *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 I.B.I.A. 30, 34 (2005).

during the relevant time period(s) reflected or indicated the likelihood of community and political influence or authority within” the group.⁵⁰

Instead of articulating its reasoning on remand, however, the Department merely switched its position on almost every aspect of the evidence. The Reconsidered Final Determination re-evaluated and re-weighted multiple aspects of evidence relied on in the Final Determination, discounting the value of historical STN petitions to Connecticut and other evidence. The Reconsidered Final Determination also improperly discounted the relevance and weight of evidence related to STN’s reservation, and focused only on the relationship between Connecticut and STN and how Connecticut viewed STN,⁵¹ including what the reservation demonstrated about the relationship between Connecticut and STN.⁵² It did not examine the interactions within STN’s membership related to the land which evidenced STNs’ community and political authority.⁵³

The Reconsidered Final Determination found that the nature of Connecticut’s relationship with STN did not demonstrate community within STN for purposes of criterion (b) or demonstrate political authority within STN for purposes of criterion (c).⁵⁴ Thus, according to the Reconsidered Final Determination, neither State recognition nor the existence of the reservation could serve as “additional weight to demonstrate that the criteria [b and c] were met,”⁵⁵ and it concluded that STN no longer sufficiently demonstrated criterion (b) from 1920-1966 or criterion (c) from 1885-1966.⁵⁶ The Reconsidered Final Determination, however, ignored or overlooked the above critical evidence that was in the record at the time, including evidence about STN’s ongoing use of the Reservation, and all of the associated related internal interactions within STN’s membership, which shows its political authority and community.

The Department Should Reinstate STN’s Acknowledgment: It should make this decision based, in part, on evidence in the record concerning STN’s relationship to its reservation, which demonstrates political authority and community. The express provisions of Part 83 allow the Department to consider STN’s activities on tribal land to establish criteria (b) and (c). For instance, the Department can consider, under Section 83.7(b)(1)(iv) and (vi) (2005), if there is shared or cooperative labor or other economic activity, and shared sacred or secular ritual activity encompassing most of the tribal group. Further, the Department may consider, under Section 83.7(c)(1)(v), 2(i) and 2(iv) (2005), if there are internal conflicts that show

⁵⁰ *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 413 (D. Conn. 2008), *aff’d*, 587 F.3d 132 (2d Cir. 2009).

⁵¹ Reconsidered Final Determination at 48–52; Final Determination at 16, 59-60, 118-22; Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Proposed Finding, Schaghticoke Tribal Nation (Dec. 5, 2002) [hereinafter Proposed Finding] at 10-11. *See also* Decl. of Aurene Michelle Martin at 3–4.

⁵² Reconsidered Final Determination at 48, 50.

⁵³ *See, e.g.*, 25 C.F.R. § 83.7(b)(1)(iv) (2005) (shared or cooperative labor or other economic activity); *Id.* § 83.7(b)(1)(vi) (shared sacred or secular ritual activity encompassing most of the group); *Id.* § 83.7(c)(1)(v) (internal conflicts that show controversy over valued group goals, properties, policies, processes, or decisions); *Id.* § 83.7(c)(2)(i) (allocation of group resources such as land, residence rights, etc.); *Id.* § 83.7(c)(2)(iv) (organization of or influence over economic subsistence activities).

⁵⁴ Reconsidered Final Determination at 48-52.

⁵⁵ *Id.* at 5.

⁵⁶ *Id.* at 48–52.

controversy over valued group goals, properties, policies, processes, or decisions; allocation of group resources such as land, residence rights, etc.; and organization of or influence over economic subsistence activities. Here, there is evidence in the existing record that the Department previously overlooked that demonstrates STN satisfied criteria (b) and (c) through STN's actions with respect to its reservation, such as actions to keep outsiders off the land; caretaking activities, including for a burial ground; holding ceremonies and festivals on the land; economic activities, including related to a rattlesnake-hunting club that used the reservation; internal and external disputes over use of the land; and interactions regarding a suit STN brought against the federal government over its plan to use some of the land for the Appalachian Trail.

Furthermore, the Final Determination took a reasonable and supported approach to reviewing STN's evidence of political authority and community, including by considering the cumulative weight of STN's well-researched petition, and by making reasonable inferences -- consistent with past precedent -- that, among other things, the tribe continued to exist as a community and political entity even when gaps in direct historical evidence existed. These reasonable inferences from the record included using the existence of STN's reservation and relationship with Connecticut as cumulative evidence to show criteria (b) and (c).⁵⁷

Conversely, the Reconsidered Final Determination overlooked or harshly reweighted STN's plentiful evidence, including evidence that STN had used its land to carry on internal activities and interactions within the group. As Kevin Washburn, Assistant Secretary – Indian Affairs at the time amended Part 83 was promulgated, stated, all legitimate tribes deserve federal recognition. Because the Reconsidered Final Determination overlooked evidence showing that STN meets criteria (b) and (c), STN requests that the Department find that STN satisfies criteria (b) between 1920-1967 and (c) between 1820-1840 and 1892-1936, as originally stated in the Final Determination.

C. The Presence Of A Leadership Dispute Helps Establish That STN Should Be Recognized, Not That STN's Application Should Be Denied.

Under Part 83 “internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions” are evidence of a petitioner's political authority over its members, which may be used to demonstrate satisfaction of criteria (b) and (c).⁵⁸ The Department has thus, in previous determinations conferring recognition, found involvement of and communication between opposing factions of a tribe in political conflicts⁵⁹ and ongoing leadership disputes⁶⁰ to be evidence supporting a finding that the petitioner satisfied criterion (c).

⁵⁷ In adopting amended Part 83, the Department confirmed that the existence and use of a state reservation may be used to demonstrate community and/or political influence or authority in satisfaction of criteria (b) and (c), respectively. 25 C.F.R. § 83.11(b)(1)(ix), (c)(1)(vii).

⁵⁸ 25 C.F.R. § 83.7(c)(1)(v) (2005); *see also id.* § 83.7(b)(1)(ix) (2005) (stating “demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community”).

⁵⁹ *See, e.g.*, Memorandum from Assistant Secretary – Indian Affairs, re Summary under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Snoqualmie Tribal Organization, 13, 15 (Aug. 22, 1997).

⁶⁰ *See, e.g.*, Memorandum from Assistant Secretary – Indian Affairs, re Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Mohegan Tribe of Indians of the State of Connecticut,

Additionally, the Department has previously considered political conflict as evidence of community in satisfaction of criterion (b).⁶¹

The Final Determination correctly found that STN satisfied criteria (b) and (c) for the period after 1996, despite the existence of political conflict. STN submitted two membership lists: a certified membership list, which it identified as not being complete, and a list of the “Unenrolled Schaghticoke Community,” which included 42 individuals who, despite being identified by STN as part of its community and meeting its membership requirements, had not consented to inclusion on the certified membership list.⁶² The Final Determination concluded that these lists together comprised STN’s base membership roll and its present membership for federal recognition purposes.⁶³ The Final Determination reasoned that the “current membership list reflects a temporary political condition,” that is, an ongoing leadership dispute within STN, and concluded that “this circumstance . . . does not reflect the actual membership of the tribe that continues to exist”; rather, the two lists together were the most accurate summary of STN’s membership.⁶⁴

The Reconsidered Final Determination, however, appeared to rely solely on the certified membership list and found that “most of the 42 individuals [who did not join the certified membership list and were part of the Unenrolled Schaghticoke Community]” had continually refused to be members of STN since 1996.⁶⁵ As a result, the Reconsidered Final Determination concluded “STN does not reflect the community and political processes that existed between 1996 and the time of the [Final Determination],” and, accordingly, the Reconsidered Final Determination summarily concluded that STN did not meet criteria (b) and (c) after 1996 because “it does not constitute the entire community and political system and because the Secretary has no authority to acknowledge only part of a community.”⁶⁶

Importantly, the Reconsidered Final Determination did *not* find that any dispute within STN amounted to a split within one cohesive community or political entity.⁶⁷ Rather, the

19, 23-24 (Mar. 7, 1994) (describing longstanding rivalry between two tribal leaders as evidence of criterion (c)) [hereinafter “Mohegan Final Determination”].

⁶¹ See, e.g., Mohegan Final Determination at 17 (finding “evidence for a major political conflict” “important” in determining that petitioner met criterion (b)). Note that amended Part 83 aims to codify the Department’s longstanding policy -- which many claim the Department has fallen short of in the past -- of applying its own administrative precedent so that “[e]vidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner.” 25 C.F.R. § 83.10(a)(4).

⁶² See Final Determination Notice at 5574; see also Final Determination at 56-57 (“[T]he [Assistant Secretary] does not have authority to acknowledge the STN as defined by the September 28, 2003, membership list without also acknowledging the unenrolled individuals on the second list, who are a part of the tribe that continues to exist”).

⁶³ Final Determination Notice at 5574.

⁶⁴ Final Determination at 56–57.

⁶⁵ See Reconsidered Final Determination Notice at 60103.

⁶⁶ Reconsidered Final Determination at 62.

⁶⁷ This finding is in stark contrast to the Department’s reconsidered final determination for the petitioners associated with the Historical Eastern Pequot Tribe, which indicated that a petitioner’s recent split into multiple political entities would bar federal recognition under Part 83 for all splinter groups. See Memorandum from Assoc. Deputy Secretary of the Interior, re Summary of the Evaluation Under the Criteria and of the Evidence for Reconsidered Final Determination Denying Federal Acknowledgment to the Eastern Pequot Indians of Connecticut and the

Department found that STN's members and other unenrolled members were part of one political entity, although some members would not consent to membership -- thus implying it believed a leadership dispute existed within STN. Under the Department's own rules and precedent, however, a leadership dispute is actually evidence of criteria (b) and (c), and thus it was improper to deny STN's petition because of a mere leadership dispute.⁶⁸ Rather, the reasoning in the Final Determination was correct.

In the alternative, the fact that some individual members have left the tribe should not preclude recognition. Under general principles surrounding tribal membership, individuals otherwise eligible for membership may choose to opt out of a tribe's organization and recognition efforts,⁶⁹ and tribes are permitted to be more restrictive in their membership requirements than including all individuals descended from members of a historical tribe.⁷⁰ Therefore, even if certain individuals are no longer members of the tribe, there is no legal basis in Part 83 for denying STN's federal recognition.

If, however, the Department concludes that STN's leadership amounted to a true leadership dispute within the petitioning group such that "conflicting claims to leadership [within STN] interfere[d] with [OFA's] ability to conduct its business with the group," the appropriate action pursuant to OFA's own guidance would have been to suspend review for practicality reasons.⁷¹ The policy guidance states that OFA has significant discretion in dealing with such disputes and that OFA's response to such disputes "will depend entirely" upon the specific facts of each situation.⁷² The Department in issuing amended Part 83 affirmed its adherence to this guidance and that such a leadership dispute is a simple "administrative problem."⁷³ Thus, denial of STN's federal recognition on this basis was inappropriate and inconsistent with the

Paucatuck Eastern Pequot Indians of Connecticut, at 79, 91 (Oct. 11, 2005) [hereinafter Eastern Pequot Reconsidered Final Determination]. Here, the Department found no such split and, accordingly, should not have found any bar.

⁶⁸ It is not clear what the precise legal reason was for the Department's belief in the Reconsidered Final Determination that community members who were not officially enrolled prohibited STN from meeting criteria (b) and (c). In some instances in STN's decision documents, the Department indicated that recognition was barred because the Department could not recognize only part of the tribal community. *See, e.g.*, Reconsidered Final Determination at 62. In other instances in STN's decision documents, the Department indicated that recognition was barred because STN could not meet criteria (b) and (c) from 1997-present without the added evidentiary support created by consideration of the activities of the unenrolled community members. *See, e.g.*, Reconsidered Final Determination at 60. Neither is a basis for denial.

⁶⁹ *See, e.g.*, 25 C.F.R. § 81.29 (indicating registered voters list for organization contains only those eligible to vote who have registered to vote); Memorandum from Harold L. Ickes, Secretary, Dep't of Interior, re Instructions for Organization in Alaska under the Reorganization Act of June 18, 1934 (48 Stat. 94), and the Alaska Act of May 1, 1936 (49 Stat. 1250), and the Amendments Thereto, 1 (Dec. 22, 1937).

⁷⁰ *See, e.g.*, 25 C.F.R. § 83.7(d), (e) (requiring petitioners to submit their membership criteria as a separate requirement from submitting membership list descending from members of historic tribe); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) (acknowledging tribes' authority over membership criteria).

⁷¹ Office of Federal Acknowledgment; Guidance and Direction Regarding Internal Procedures, 73 Fed. Reg. 30146, 30146-47 (May 23, 2008).

⁷² *Id.* at 30147.

⁷³ Federal Acknowledgment of American Indian Tribes, 80 Fed. Reg. 37862, 37874 (July 1, 2015).

Department's guidance and suggestive that Connecticut's political campaign was having an effect.

In short, the presence of a leadership dispute, particularly a recently-arising one such as that within STN, is not grounds to deny an application. STN should not have been denied recognition on the basis of any conflict but, rather, should have been found to satisfy criteria (b) and (c) from 1997-present on the basis that such conflict is evidence demonstrating community and political authority.

IV. THE DEPARTMENT HAS AUTHORITY TO RECONSIDER AND REVOKE THE RECONSIDERED FINAL DETERMINATION AND GRANT STN FEDERAL RECOGNITION PURSUANT TO THE FINAL DETERMINATION

An administrative agency has the “inherent authority to reconsider its decisions.”⁷⁴ In examining whether an agency's reconsideration of a past decision takes place within the legal parameters of its inherent authority, courts look to whether the reconsideration: violates a statute; is arbitrary, capricious, or an abuse of discretion; or takes place within an unreasonable amount of time.⁷⁵ Courts also look towards whether an agency chose to act based on justified motives or good cause or to prevent or mitigate a miscarriage of justice.⁷⁶ (Although some courts examine third party reliance on a decision an agency is reconsidering,⁷⁷ no third party reliance is at issue here.⁷⁸) Accordingly, the Department has broad discretion to revisit the Reconsidered Final Determination, so long as it does so within these parameters.⁷⁹

⁷⁴ *Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002); *see also ConocoPhillips Co. v. U.S. E.P.A.*, 612 F.3d 822, 832 (5th Cir. 2010) (“Embedded in an agency's power to make a decision is its power to reconsider that decision.”); *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360 (Fed. Cir. 2008) (“The power to reconsider is inherent in the power to decide.”) (citation omitted); *Belville Min. Co. v. United States*, 999 F.2d 989, 997 (6th Cir. 1993); *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12 (2d Cir. 1981) (recognizing “inherent power of any administrative agency to protect the integrity of its own proceedings”); *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972).

⁷⁵ Some courts emphasize the requirement to comply with statutory provisions. *See, e.g., Tokyo Kikai Seisakusho, Ltd.*, 529 F.3d at 1361; *Macktal*, 286 F.3d at 825; *Belville Min. Co.*, 999 F.2d at 997. Others emphasize the requirement that the reconsideration not be arbitrary and capricious and take place within a reasonable amount of time. *See, e.g., ConocoPhillips Co.*, 612 F.3d at 832; *Tokyo Kikai Seisakusho, Ltd.*, 529 F.3d at 1361; *Frito-Lay, Inc. v. U.S. Dep't of Labor*, 20 F. Supp. 3d 548, 554 (N.D. Tex. 2014). Additionally, some courts require notice be given to parties to the decision. *See, e.g., ConocoPhillips Co.*, 612 F.3d at 832; *Tokyo Kikai Seisakusho, Ltd.*, 529 F.3d at 1361; *Frito-Lay, Inc. v. U.S. Dep't of Labor*, 20 F. Supp. 3d 548, 554 (N.D. Tex. 2014). Since the only party to STN's federal recognition decision is STN, this requirement is not at issue here.

⁷⁶ *Jones v. SC Dep't. of Health and Env'tl. Control*, 682 S.E.2d 282, 287 (Ct. App. 2009); *see e.g., Bennett v. City of Clemson*, 358 S.E.2d 707, 709 (S.C. 1987) (holding that “an agency's power to reconsider or rehear a case is not an arbitrary one, and such power should be exercised only when there is justification and good cause”).

⁷⁷ *See, e.g., Bookman*, 453 F.2d at 1265.

⁷⁸ We note that even where a third party is acknowledged as having an interest in the outcome of a federal recognition determination, federal courts have maintained that federal recognition and the exercise of statutory rights “serve different purposes, with independent effect.” *Samish Indian Nation v. United States*, 419 F.3d 1355, 1370 at n. 17 (Fed. Cir. 2005). Accordingly, the Department is not prevented from reconsidering its STN decision due to third party interests because federal recognition is considered independent from the vesting and implementation of statutory rights and benefits.

⁷⁹ *Alberta Gas Chemicals, Ltd.*, 650 F.2d at 13 (quoting *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1943)).

The Department also has the authority to reinstate the Final Determination upon revocation of the Reconsidered Final Determination. It is a fundamental rule of statutory construction that, when a power is conferred by statute, whatever is necessary to carry out that power and make it effective and complete is implied.⁸⁰ Because the Department exercises properly delegated authority to recognize petitioners that qualify as Indian tribes for purposes of federal law, it possesses the authority to reinstate STN's Final Determination.

A. Reconsideration And Revocation Are Authorized, Not Prohibited, By Statute.

Congress has delegated broad authority to the Department for the management of Indian affairs, including the authority to federally recognize tribes.⁸¹ There is no statute prohibiting the Department's reconsideration of a wrongly-issued federal recognition decision denying recognition. To the contrary, that delegation impliedly authorizes reconsideration to effectively and appropriately carry out that responsibility.⁸²

Further, no regulations or Department policies or guidance prohibit recognizing STN. STN has properly proceeded through the Part 83 process, and it has satisfied the Part 83 substantive criteria for recognition. All that remains is for the Department to exercise its implied inherent authority to reexamine the Reconsidered Final Determination and, after doing so, revoke it and reinstate the Final Determination. The Department's reinstatement of the Final Determination complies with Part 83 but does not itself take place under Part 83. Under amended Part 83, petitioners that were previously denied cannot be recognized "under this part."⁸³ Because STN is not presently seeking recognition under amended Part 83 -- but rather is requesting the Department utilize its authority to reconsider past decisions -- amended Part 83's prohibition against recognizing previously denied petitioners would not apply. Further, upon revocation of the Reconsidered Final Determination, STN would no longer qualify as a petitioner

⁸⁰ *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 845 (1986) ("An agency's expertise is superior to that of a court when a dispute centers on whether a particular regulation is 'reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes' of the Act the agency is charged with enforcing; the agency's position, in such circumstances, is therefore due substantial deference.") (citation omitted).

⁸¹ 25 U.S.C. § 2 ("The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations."); see 25 U.S.C. § 9; 43 U.S.C. § 1457; see also 25 U.S.C. § 479a(2) (defining "Indian tribe" to mean "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe"). Many courts have recognized Congress's proper delegation of recognition authority to the Department through these broad statutes. See *Muwekma Oholne Tribe v. Salazar*, 708 F.3d 209, 211 n.1 (D.C. Cir. 2013) (citing 25 U.S.C. §§ 2, 9); *Samish Indian Nation v. United States*, 419 F.3d 1355, 1370 (Fed. Cir. 2005) (citing 25 U.S.C. §§ 2, 9); *Miami Nation of Indians of Indiana, Inc. v. U.S. Dep't of the Interior*, 255 F.3d 342, 345 (7th Cir. 2001) (citing 25 U.S.C. §§ 2, 9); *Burt Lake Band of Ottawa and Chippewa Indians v. Norton*, 217 F. Supp. 2d 76, 77 (D.D.C. 2002) (citing 25 U.S.C. § 2, 43 U.S.C. § 1457).

⁸² Moreover, courts have a longstanding policy of deferring to the Department in recognition-related matters. See, e.g., *Samish Indian Nation*, 419 F.3d at 1370–73; *Miami Nation of Indians of Indiana, Inc.*, 255 F.3d at 346–48; *W. Shoshone Bus. Council For and on Behalf of W. Shoshone Tribe of Duck Valley Reservation v. Babbitt*, 1 F.3d 1052, 1057 (10th Cir. 1993).

⁸³ 25 C.F.R. § 83.4.

previously denied under Part 83. Accordingly, this prohibition against reapplication would not be applicable here.

Additionally, the Department's recent guidance regarding its implementation of amended Part 83 does not impede the Department from recognizing STN. Specifically, after finalizing amended Part 83, the Department issued guidance stating it will only federally recognize Indian tribes through Part 83.⁸⁴ To the extent the Department's act of correcting the injustice done to STN by reinstating the Final Determination conflicts with this guidance, the Department has authority to depart from such guidance to reinstate the Final Determination and revoke the Reconsidered Final Determination upon provision of a well-reasoned explanation. The explanation here is clear: STN qualifies as an Indian tribe deserving of federal recognition, as the Department correctly concluded in the Final Determination. Further, as detailed below, such reconsideration is not arbitrary or capricious for the same reasons.

B. Reconsideration And Revocation Would In No Way Be Arbitrary, Capricious, Or An Abuse Of Discretion.

The Department can also revoke the Reconsidered Final Determination because doing so would not be arbitrary, capricious, or an abuse of discretion. Indeed, courts have recognized that “[a]n agency is entitled to reverse course on a decision, so long as it provides a reasoned analysis for doing so,”⁸⁵ and they are highly deferential to such decisions.⁸⁶ They look to determine whether the agency's decision was “‘reasoned,’ *i.e.*, whether ‘it considered the relevant factors and explained the facts and policy concerns on which it relied, and whether those facts have some basis in the record.’”⁸⁷ Courts favor reconsideration in compelling situations as justice may require.⁸⁸

The issue raised by STN is a matter of fundamental fairness. Indeed, all Indian tribes -- and not just STN -- would benefit from the Department maintaining and carrying out a uniform, consistent recognition process that provides confidence in the reliability of the outcome. Here, the Department diverged from its procedure and precedent in undermining its Final Determination. The Department's changes in amended Part 83 appear to acknowledge the injustice suffered by STN, as many of the changes realign the Department's practices with those of the Final Determination and break with the positions taken in the Reconsidered Final Determination.

Recognizing the propriety of the Final Determination and reinstating STN's recognition would not set a new precedent due to the unique circumstances that apply to STN. The inconsistencies in the Reconsidered Final Determination, as well as the procedural anomalies with the Supplemental Transmission, significantly distinguish STN from other petitioners. The

⁸⁴ Requests for Administrative Acknowledgement of Federal Indian Tribes, 80 Fed. Reg. 37538-02 (July 1, 2015).

⁸⁵ *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389, 413 (D. Conn. 2008), *aff'd*, 587 F.3d 132 (2d Cir. 2009) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983)).

⁸⁶ See *Alto v. Jewell*, 661 F. App'x 502, 504 (9th Cir. 2016) (applying “highly deferential” standard of review for agency decisions to Assistant Secretary – Indian Affairs' review of prior decision).

⁸⁷ See *Tiare Enters, Inc. v. United States Dep't of Transp.*, No. CV 15-1553 (RJL), 2017 WL 1214394, at *4 (D.D.C. Mar. 31, 2017) (quoting *Nat'l Treasury Emps. Union v. Horner*, 854 F.2d 490, 498 (D.C. Cir. 1988)).

⁸⁸ See *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972).

Department can point to these circumstances as evidence that other petitioners are not similarly situated to STN.⁸⁹

Further, legislative policy supporting the federal recognition of Indian tribes would be seriously frustrated if the Department were unable to take renewed action where the administration of justice and the correction of inconsistencies demand restorative action. Federal recognition of Indian tribes is a political act of the federal government, not third parties. Yet, for STN, it was third parties that unjustly held sway over its petitioning process despite STN having received a Final Determination based upon the Department's specialized expertise that evaluated STN's extensive evidentiary record and determined the evidence met the mandatory criteria to entitle STN to federal recognition. As one court noted, "[t]here may also be instances when unmistakable shifts in our basic judgments about law or policy necessitate the revision or amendment of previously established rules of conduct."⁹⁰ The Department's revocation of its Reconsidered Final Determination would demonstrate its commitment to upholding a fair and rigorous process for federally recognizing Indian tribes.

C. Reconsideration And Revocation Are Timely.

The Department can reconsider and revoke the Reconsidered Final Determination because doing so is timely. There are no set parameters as to when an agency's reconsideration of a previous decision is timely or, for that matter, untimely. Rather, courts look to the unique facts of each case to determine whether, under the circumstances, reconsideration is timely, and, in fact, reconsideration of an agency action years later has been found timely.⁹¹ Here, taking into account the unique and troubling circumstances surrounding STN's 36-year recognition process, it would be reasonable for the Department to take renewed action on the Reconsidered Final Determination at this time.⁹²

D. The Department Has Authority To Reinstate.

It is a fundamental rule of statutory construction that, when a power is conferred by statute, whatever is necessary to carry out that power and make it effective and complete is implied.⁹³ As discussed previously, Congress has delegated authority to the Department to

⁸⁹ At most, the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut -- together the Historical Eastern Pequot Tribe -- had the most similar experience to STN in their Part 83 process, and they are the tribes most likely to assert that they are similarly situated to STN. *See* Eastern Pequot Reconsidered Final Determination. However there are some fundamental differences between STN and the Historical Eastern Pequot Tribe, including that the Department found that the Eastern Pequot had split into two tribes that set their experiences apart and, thus, mitigate any concerns about establishing new precedent. *See* n.67, above.

⁹⁰ *Bookman*, 453 F.2d at 1265.

⁹¹ *See, e.g., Macktal*, 286 F.3d at 826 (reconsideration 30 days after earlier decision was timely); *Elkem Metals Co. v. United States*, 193 F. Supp. 2d 1314, 1322 (Ct. Int'l Trade 2002) (reconsideration four and one-half years after previous decision was timely).

⁹² *See, e.g., Tokyo Kikai Seisakusho, Ltd.*, 529 F.3d at 1362 (upholding review of seven-year-old previous decision where agency "acted within a reasonable time after learning of the fraud"); *see generally Bookman*, 453 F.2d at 1265 ("It is often the case that reconsideration of a prior decision, within a reasonable period of time, is absolutely essential to the even administration of justice.").

⁹³ *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 845 (1986) ("An agency's expertise is superior to that of a court when a dispute centers on whether a particular regulation is 'reasonably necessary to effectuate any of

federally recognize Indian tribes as part of its management of Indian affairs, and courts have deferred to the Department's decisions in this area. In keeping with this authority, once the Reconsidered Final Determination has been revoked, the Department can reinstate federal acknowledgement of STN.

Courts have looked favorably on the reinstatement of agency decisions after later-in-time determinations have been issued reaching an opposite conclusion.⁹⁴ For example, in *County of Amador, California v. Department of Interior*, a United States District Court found that the Department had the authority to reinstate an earlier positive decision regarding eligibility of certain lands for gaming under the Indian Gaming Regulatory Act ("IGRA") after revoking a negative decision reaching an opposite conclusion.⁹⁵ The Department, in justifying its reinstatement of its earlier decision, explained that reinstatement was consistent with the Secretary of the Interior's Indian Reorganization Act ("IRA") land acquisition authority and the purposes of IGRA.⁹⁶ The Department cautioned that denying it the authority to interpret and apply its own regulations would "bind[] the Band and Interior to every erroneous federal step along the untidy path to the decision before the Court."⁹⁷ The Court agreed with the Department, finding that the action did not violate the Administrative Procedure Act, but was instead a valid exercise of the Department's authority to reevaluate the effectiveness of previous agency decisions.⁹⁸

Further, in *County of Amador*, the Court acknowledged the Department's authority to reconsider its inconsistent positions regarding whether a tribe should receive federal recognition and to reinstate the tribe's federal recognition. In that case, the Court addressed tribal status issues in its examination of whether the Department's trust acquisition of the land in question under the IRA was properly undertaken for a "recognized Indian tribe now under Federal jurisdiction."⁹⁹ There, a 1994 decision by the Department administratively reaffirming the tribe's recognition noted that an earlier 1972 decision by the Department effectively established the tribe was federally recognized and it was thus erroneous to leave the tribe off the Department's original 1978 list of federally recognized tribes.¹⁰⁰ The Court found the Department had properly determined it had authority to acquire the land into trust for the tribe,

the provisions or to accomplish any of the purposes' of the Act the agency is charged with enforcing; the agency's position, in such circumstances, is therefore due substantial deference.").

⁹⁴ See, e.g., *Tokyo Kikai Seisakusho, Ltd.*, 529 F.3d at 1355, 1362 (noting that Commerce Department "acted lawfully under its inherent authority in reconsidering the 1997-1998 [yearly] administrative review," which led to revocation of the Commerce Department's decision to revoke-in-part previous antidumping duty order and reinstatement of antidumping duty order).

⁹⁵ *Cty. of Amador, California v. U. S. Dep't of the Interior*, 136 F. Supp. 3d 1193, 1203–04 (E.D. Cal. 2015). As part of the determination that the land was eligible for gaming, the Department took the position and the court agreed that the tribe at issue there qualified as a restored tribe for purposes of IGRA.

⁹⁶ *Id.* at 1204.

⁹⁷ Federal Defendants' Memorandum of Points and Authorities in Support of Cross-Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment at 2, *Cty. of Amador, California*, 136 F. Supp. 3d 1193 (No. 12-1710).

⁹⁸ *Cty. of Amador, California*, 136 F. Supp. 3d at 1227.

⁹⁹ *Id.* at 1208-20 (quoting 25 U.S.C. § 5129).

¹⁰⁰ *Id.* at 1219.

including concluding that the tribe was federally recognized.¹⁰¹ The Court noted that the “main issue here is whether the Department may assert it mistakenly failed to extend federal recognition to a tribe (the period following the [1972 decision]), subsequently implement . . . the part 83 regulations[], and then be barred from correcting that mistake except for proceeding through such regulations.”¹⁰² The Court concluded that the Department could indeed correct its mistake.¹⁰³

The reinstatement of positive agency decisions after the issuance of multiple, sometimes conflicting, determinations is a permitted agency practice, and one that the Department can use in reinstating STN’s recognition. Indeed, it would be consistent with, and reflective of, the two decades of extensive review and research, under an established administrative process that led to STN’s positive Final Determination. The Department may exercise discretion in taking renewed action on its decisions in accordance with the Department’s stated commitment to a rigorous, fact-based federal recognition process rooted in principles of fundamental fairness to Indian tribes. Reinstatement of STN’s Final Determination would ensure a just outcome.

Further, reinstatement of STN’s federal acknowledgement would demonstrate the Department’s commitment to fixing its federal recognition process. STN’s experience of having its federal recognition stripped after the Department’s well-analyzed Final Determination has undermined the credibility of the federal recognition process. After completing a rigorous and searching review of STN’s petition, which included close consultation with the Department’s own experts, the Department concluded that STN met all the qualifications for federal recognition. However, not one year later, the Department in response to significant outside pressure reversed course, engaging in procedural anomalies that led to the withdrawal of STN’s federal recognition. The Department ultimately recognized the need to reform the Part 83 process and promulgated amended Part 83, in part, to mitigate such effects and increase the level of transparency surrounding its administrative actions.¹⁰⁴ In other words, the Department amended the federal recognition process to expressly protect tribes from the exact injustice that STN suffered.

V. CONCLUSION

The Department should revisit and revoke the negative Reconsidered Final Determination and reinstate the positive Final Determination. The Secretary has the inherent authority to reconsider and then revoke an earlier agency decision, and reconsideration of a previous federal recognition decision falls within this inherent authority. He also has broad delegated congressional authority to recognize Indian tribes, and he may use this authority to reinstate a previously issued positive federal recognition decision.

¹⁰¹ *Id.* at 1220-21.

¹⁰² *Id.* at 1219-20.

¹⁰³ *Id.*

¹⁰⁴ The Department’s action was in accordance with Supreme Court precedent that “[a]n agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past, any more than it can ignore inconvenient facts when it writes on a blank slate.” *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 537 (2009) (Kennedy, J., concurring in part and concurring in the judgment) (discussing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983)).

STN has always met the criteria for federal recognition on the merits, and if the Department reinstates the positive Final Determination, it would right a historic wrong.

ATTACHMENT 5

Letter from Schaghticoke Tribal Nation to Assistant Sec'y, Bryan Newland, re: Renewed Request for Reinstatement of Final Determination (April 1, 2024)

(Cited in n. 28, *supra*.)

Seth P. Waxman

+1 202 663 6800 (t)
+1 202 663 6363 (f)
seth.waxman@wilmerhale.com

April 1, 2024

Assistant Secretary Bryan Newland
Office of the Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, N.W. MS-4660-MIB
Washington, DC 20240

Dear Assistant Secretary Newland,

Attached please find the Schaghticoke Tribal Nation's petition for federal acknowledgment and reinstatement of prior acknowledgment, along with accompanying exhibits.

As explained in the petition, the Department of the Interior correctly determined in 2004 that STN qualified for federal acknowledgment, only to purportedly rescind that decision in 2005 based on flawed reasoning. STN's qualification for acknowledgment has become only more evident in the intervening years, as has support for STN's acknowledgment among Tribal and non-Tribal stakeholders alike.

The Department already has everything it needs to acknowledge STN, and it may do so through any of several procedural avenues. As such, STN respectfully requests that the Department do so without delay.

Respectfully,



Seth P. Waxman

ATTACHMENT 6

Letter from Lee Flemming, Director, Office of Federal Acknowledgment to Schaghticoke Tribal Nation, re: Affirming Department Policy of Requiring Part 83 as Sole Means of Federal Acknowledgment (Apr. 25, 2016)

(Cited in n. 29, *supra*.)



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 25 2016

Mr. Gregory A. Smith
Hobbs Straus Dean & Walker, LLP
2120 L Street, N.W., Suite 700
Washington, D.C. 20037

Dear Mr. Smith:

Thank you for your e-mail of April 3, 2016, to Acting Assistant Secretary – Indian Affairs (AS-IA) Lawrence S. Roberts and Deputy Solicitor – Indian Affairs Jody Cummings, indicating a possible future request on behalf of the “Schaghticoke Tribal Nation” (STN). The STN is seeking acknowledgment as an Indian tribe. The AS-IA Office referred your communication to the Office of Federal Acknowledgment (OFA) for a response.

Through this letter, we are advising you that on July 1, 2015, the Department of the Interior (Department) published policy guidance regarding the Department Federal acknowledgment process (Part 83). This policy states:

The Department has determined that it will no longer accept requests for acknowledgment outside the Part 83 process. Rather, the Department intends to rely on the newly reformed Part 83 process as the sole administrative avenue for acknowledgment as an Indian tribe. (see 80 FR 37538)

In addition, revisions to Part 83 became effective on July 31, 2015. As did the prior regulations, the current regulations preclude re-petitioning (§ 83.4(d)):

“Who cannot be acknowledged under this part?”

An entity that previously petitioned and was denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title (including reconstituted, splinter, spinoff, or component groups who were once part of previously denied petitioners).

In October 2005, the “Reconsidered Final Determination to Decline to Acknowledge the Schaghticoke Tribal Nation” became final and effective for the Department. STN litigated this decision and the Supreme Court denied certiorari in October 2010. STN has exhausted both its administrative and judicial remedies. The only available remedy for STN now is to seek Congressional legislation.

Sincerely,

Director, Office of Federal Acknowledgment

Enclosures

ATTACHMENT 7

Letter from Chairman Ralph James Gessner, Jr., the Mohegan Tribe to Chief Richard Velky,
Schaghticoke Tribal Nation (undated)

(Cited in n. 65, *supra*.)



Mohegan
Tribe
MUNDU WIGO

Chief Richard Velky
Schaghticoke Tribal Nation
101 Elizabeth Street, 2nd Floor
Derby Connecticut 06418

Dear Chief Velky,

We appreciate your outreach to the Mohegan Indian Tribe as the Schaghticoke Tribal Nation (STN) awaits the Department of the Interior's issuance of a final rule relating to repetitioning under Part 83. We understand that the Department recently issued a revised proposed rule. As you shared with us, STN is hopeful that the Department's final rule regarding Part 83 repetitioning will allow STN to move forward for Federal Acknowledgment under the Department's process.

Mohegan reiterates its long-standing support of Tribes utilizing the Part 83 process and we likewise support STN's efforts in this regard. As you know, the Mohegan Tribe has steadfastly supported Tribes recognized by the State of Connecticut in a multitude of ways, such as including a hiring preference under Mohegan's Tribal Employment Rights Ordinance and in supporting Connecticut's enactment of the Indian Child Welfare Act as a matter of State law.

Thirty years ago, the Mohegan Indian Tribe's federal acknowledgment was confirmed by the Department of the Interior through the arduous Part 83 process. While no process is perfect, in these modern times the Department is often better suited than Congress to confirm the continued existence of Tribal Nations. We support the STN's efforts to seek acknowledgment from the Department of the Interior should the Part 83 process be amended to allow it to do so.

Sincerely,

Ralph James Gessner, Jr

Chairman

THE MOHEGAN TRIBE

13 Crow Hill Road • Uncasville, CT 06382 • Telephone (860) 862-6100

ATTACHMENT 8

Letter from Rodney Butler, Chairman, Mashantucket Pequot Tribal Nation to Sec'y Haaland and Assistant Sec'y Newland, Dep't of the Interior (Jan 5, 2024)

(Cited in n. 65, *supra*.)



The Honorable Debra Haaland
The Honorable Bryan Newland
Department of the Interior
1849 C Street, NW
Washington, DC 20240

January 5, 2024

Re: Schaghticoke Federal Recognition

Dear Secretary Haaland and Assistant Secretary Newland:

The Mashantucket Pequot Tribal Nation has always acknowledged the Schaghticoke Tribal Nation (STN) as one of the longstanding and surviving tribes of Connecticut. For that reason, it was deeply troubling when in 2005 the Department of Interior (DOI) overturned its own positive Final Determination that the STN should be federal recognized—a determination which had been reached after years of research and close coordination between the Schaghticoke and Interior. At that time we submitted TCR092005-01 of 01 (enclosed) in support for our sister Nation, urging DOI to reverse that unprecedented decision and to reaffirm the Schaghticoke federal recognition.

We understand that efforts are underway to have DOI revisit the 2005 IBIA decision, and confer federal recognition on STN. Consistent with our longstanding nation-to-nation relationship with Schaghticoke, we reiterate our support for the STN and urge the Department to give every consideration to Schaghticoke's request to reinstate their federal recognition. This position was also overwhelmingly supported by the National Congress of American Indians at their recent annual meeting (enclosed). We appeal to you to correct this injustice so that the STN can take its rightful place among the federally recognized tribes of Connecticut.

Respectfully,

A handwritten signature in blue ink that reads "Rodney Butler". The signature is fluid and cursive.

Chairman Rodney Butler

On Behalf of the Mashantucket Pequot Tribal Council



**RESOLUTION NUMBER TCR092005-01 OF 01
OF THE
MASHANTUCKET PEQUOT TRIBAL COUNCIL,
THE GOVERNING BODY
OF THE
MASHANTUCKET PEQUOT TRIBE**

Approval To Support the Schaghticoke Tribal Nation

WHEREAS, the Mashantucket Pequot Tribe (the "Tribe") is a federally recognized Indian Tribe;
and

WHEREAS, the Mashantucket Pequot Tribal Council (the "Council") is the duly authorized governing body of the Tribe pursuant to the Constitution and By-Laws of the Tribe, and is a federally recognized Indian Tribal Government; and

WHEREAS, the Mashantucket Pequot Tribal Council has developed positions over the years concerning the advancement of regional Tribal Federal Recognition; and

WHEREAS, the Mashantucket Pequot Tribal Council notes that the Connecticut General Statutes provides (at Sec. 47-63) that "Indian" means a person who is a member of any of the following tribes, Paucatuck Eastern Pequot, Mashantucket Pequot, Schaghticoke, Golden Hill Paugussett and Mohegan; and

WHEREAS, the Mashantucket Pequot Tribal Council notes that this Tribe has had a long history of relations with the four other Connecticut Indian Tribes, which has been recognized by State statute; and

WHEREAS, the United States Bureau of Indian Affairs published its "Final Determination to Acknowledge the Schaghticoke Tribal Nation" (at 69 *FR* 5570) on Thursday, February 5, 2004; and

WHEREAS, the Interior Board of Indian Appeals received five requests for reconsideration of the Final Determination to acknowledge the Schaghticoke Tribal Nation (STN) as an Indian tribe within the meaning of Federal law and the five requests were filed by (1) the "Coggswell Group," IBIA 04-83-A, a

RESOLUTION NUMBER TCR092005-01 OF 01

group of individuals described as “descendants of the historical tribe known today as the Schaghticoke Tribal Nation;” (2) the Town of Cornwall, Connecticut, IBIA 04-94-A; (3) the State of Connecticut; the Towns of Kent, Bethel, New Fairfield, Newtown, Ridgefield, Greenwich, Sherman, Westport, Wilton, and Weston; the Cities of Danbury and Stamford; the Kent School Corporation; the Connecticut Light and Power Company; and the Housatonic Valley Council of Elected Officials, IBIA 04-95-A; (4) the Preston Mountain Club, Inc. (PMC) IBIA 04-96-A, a landowner; and (5) the Schaghticoke Indian Tribe, IBIA 04-97-A, a group which has separately petitioned for Federal acknowledgment (petitioner #239); and

WHEREAS, the United States Bureau of Indian Affairs has published its list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs” (at 68 *FR* 68179-68184) on December 5, 2003; and said list includes the “Mashantucket Pequot Tribe of Connecticut (at 68 *FR* 68181) and the Mohegan Indian Tribe of Connecticut (at 68 *FR* 68181); and

WHEREAS, the United States Interior Board of Indian Appeals (IBIA) (In re Federal Acknowledgment of the Schaghticoke Tribal Nation; 41 IBIA 30 (05/12/2005)) has vacated and remanded the “Final Determination to Acknowledge the Schaghticoke Tribal Nation” back to the Assistant Secretary for further work and reconsideration, pursuant to 25 C.F.R. § 83.11(e)(10); and

WHEREAS, the Mashantucket Pequot Tribal Council enacted Resolution Number TCR042400-03 of 03, which created a Federal Recognition/Gaming Expansion Task Force and directed that this Task Force would be responsible for developing and recommending goals, objectives, strategies and tactics concerning coordinated Federal recognition and gaming expansion positions to the Tribal Council for consideration; and

WHEREAS, by TCR022602-03, the Tribal Council mandated that the Tribal Council Sponsor of any proposed enactment work in conjunction with the Chief Financial Officer to ensure that drafts of proposed legislative actions and resolutions specify whether there is or is not a financial impact on the current fiscal year's budget, or the approved 10 year financial forecast, and to identify how a negative financial impact, if any, shall be funded; and

WHEREAS, by TCR031803-01 of 01, the Tribal Council amended TCR022602-03 of 07 and directed that all proposed legislative actions and resolutions require the attachment of a form Finance Impact Protocol - Certificate of Compliance, which must be signed by Chief Financial Officer and the Tribal Council Treasurer, and will include detail of any financial impact; and

WHEREAS, as requested by the Tribal Council Sponsor of the proposed resolution, the Chief Financial Officer and Tribal Council Treasurer have submitted the **attached Finance Impact Protocol - Certificate of Compliance**, pursuant to TCR031803-01 of 01, which certifies compliance with TCR022602-03 of 07, as follows:

Enactment of the proposed resolution does not authorize spending outside of the approved fiscal year budget and/or approved 10-year financial forecast and therefore does not have a negative financial impact. Note – there is no funding required as a result of enactment of

RESOLUTION NUMBER TCR092005-01 OF 01

this resolution.

THEREFORE, BE IT RESOLVED, that the Mashantucket Pequot Tribal Council hereby affirms its support for the Schaghticoke Tribal Nation.

BE IT FINALLY RESOLVED, that the Mashantucket Pequot Tribal Council hereby urges the Assistant Secretary to utilize the Schaghticoke Tribal Nation Petitioning documentation to reverse the IBIA finding and re-affirm the Assistant Secretary's "Final Determination to Acknowledge the Schaghticoke Tribal Nation".

Upon motion duly made and seconded, the foregoing Resolution was adopted by the following vote:

Number of "Yes" votes	5
Number of "No" votes	0
Number of "Debate" votes	0
Number of Abstentions	0
Number of Absent members	2

CERTIFICATION

I, the undersigned, Michael J. Thomas, Chairman of the Mashantucket Pequot Tribal Council, do hereby certify that the Mashantucket Pequot Tribal Council is composed of **SEVEN (7)** members of whom **FIVE (5)** were present, thereby constituting a quorum, at a duly called Mashantucket Pequot Tribal Council Meeting held on the **20th day of September, 2005**; and that the foregoing Resolution was adopted by the affirmative vote of **FIVE (5)** members.

For: Kenneth Reel
Michael J. Thomas, Chairman
Mashantucket Pequot Tribal Council

Date: 10-8-2005

ATTEST:

Charlene R. Jones
Charlene R. Jones, Secretary
Mashantucket Pequot Tribal Council

Date: 10/8/05

APPROVED AS TO FORM:

J. T. King, Jr.
Jackson T. King, Jr., Tribal General Counsel
Mashantucket Pequot Tribal Council

Date: 9/22/05

Finance Impact Protocol – Certificate of Compliance

Pursuant to TCR022602-03 of 07, the Tribal Council mandated that the Tribal Council sponsor of any proposed enactment work in conjunction with the Chief Financial Officer to ensure that drafts of proposed legislative actions and resolutions specify whether there is or is not a financial impact on the approved current fiscal year's budget or the approved 10-year financial forecast and to identify how a negative financial impact, if any, shall be funded.

The financial impact of enacting the proposed resolution:
To Support the Schaghticoke Tribal Nation

submitted on: ***Tuesday, June 21, 2005***

has been reviewed by the Tribal Council Treasurer / Chief Financial Officer and complies with the intent of the Finance Impact Protocol. Compliance is based on the following:

Enactment of the proposed resolution does not authorize spending outside of the approved fiscal year budget and/or approved 10-year financial forecast and therefore does not have a negative financial impact. **Note - there is no funding required as a result of enactment of this resolution**

A funding source (listed below) has been identified and verified to offset the spending authorized by enactment of this resolution and therefore does not have a negative financial impact.

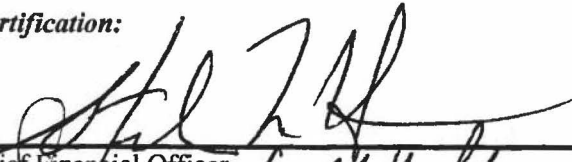
Funding source :

The capital spending or investment authorized by enactment of this resolution is justified by the projected Internal Rate of Return (IRR) and therefore does not have a negative financial impact.

Unique circumstances (listed below) have arisen that could require spending for which cost offsets cannot currently be identified or for which costs cannot be reasonably estimated at this time.

Circumstance :

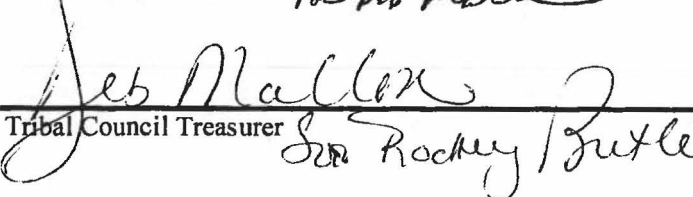
Certification:



Chief Financial Officer *for Deb Math*

6/21/05

Date



Tribal Council Treasurer *Sen. Rocky Butler*

6/21/05

Date

ATTACHMENT 9

National Congress of American Indians, Support for Reinstatement of the Federal Recognition of the Schaghticoke Tribal Nation, Res. No. 23-078 (Nov. 2023)

(Cited in n. 75, *supra*.)

EXECUTIVE COMMITTEE

PRESIDENT

Mark Macarro
Pechanga Band of Luiseño Indians

1ST VICE PRESIDENT

Brian Weeden
Mashpee Wampanoag

RECORDING SECRETARY

Nickolaus D. Lewis
Lummi Nation

TREASURER

David Woerz
Chickasaw Nation

REGIONAL VICE PRESIDENTS

ALASKA

Brian Ridley
Native Village of Eagle

EASTERN OKLAHOMA

Joe Deere
Cherokee Nation

GREAT PLAINS

Ryman LeBeau
Cheyenne River Sioux Tribe

MIDWEST

Leonard Fineday
Minnesota Chippewa Tribe
Leech Lake Band

NORTHEAST

Lance Gumbs
Shinnecock Indian Nation

NORTHWEST

Leonard Forsman
Suquamish Tribe

PACIFIC

Leo Sisco
Santa Rosa Rancheria Tachi Yokut Nation

ROCKY MOUNTAIN

Jennifer Finley
Confederated Salish & Kootenai Tribes

SOUTHEAST

Reggie Tupponce
Upper Mattaponi Indian Tribe

SOUTHERN PLAINS

Reggie Wassana
Cheyenne and Arapaho Tribes of Oklahoma

SOUTHWEST

Raymond Aguilar
Pueblo of Santo Domingo

WESTERN

Randi Lone Eagle
Summit Lake Paiute Tribe

EXECUTIVE DIRECTOR

Larry Wright, Jr.
Ponca Tribe of Nebraska



**The National Congress of American Indians
Resolution #NO-23-078**

TITLE: Support for Reinstatement of the Federal Recognition of the Schaghticoke Tribal Nation

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety, and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, over the preceding four centuries, the United States and other foreign countries who occupied North America prior to the formation of the United States, did everything they could to eliminate many Tribal nations; and

WHEREAS, members of tribal nations that were not formally recognized by the Federal government continued to maintain their tribal affiliation and heritage, and have now been seeking federal recognition as Indian tribes pursuant to federal law and regulation; and

WHEREAS, the Schaghticoke Tribal Nation is one of Connecticut's aboriginal peoples since time immemorial, and has been recognized by Connecticut for over three hundred years; and

WHEREAS, in 2004 the Department of the Interior granted federal recognition to the Schaghticoke Tribal Nation, through Principal Deputy Assistant Secretary - Indian Affairs Aurene Martin, having correctly determined that the Schaghticoke Tribal Nation met all seven criteria for federal recognition under 25 C.F.R. Part 83, based upon an extensively researched, and well-supported evidentiary record. Indeed, as then Principal Deputy Assistant Secretary of the Interior, Aurene Martin, has attested to, "the STN petition was among the best and most thoroughly researched petitions ever reviewed by" the Department of the Interior; and

WHEREAS, in 2005 the Department of the Interior, responding to outside pressure, vacated its own federal recognition of the Schaghticoke Tribal Nation. See *In re Federal Acknowledgement of the Schaghticoke Tribal Nation*, 41 LB.I.A. 30, 42 (2005). This revocation was unprecedented in the entire history of the Department; and

WHEREAS, the Secretary of the Department of the Interior has the inherent authority to correct this injustice and reinstate the Department's original and correct federal recognition of the Schaghticoke Tribal Nation; and

WHEREAS, the Schaghticoke Tribal Nation meets, and has always met, the criteria for federal recognition on the merits.

NOW THEREFORE BE IT RESOLVED that the National Congress of American Indians supports the federal recognition of the Schaghticoke Tribal Nation and the reinstatement of the original positive Final Determination to Acknowledge the Schaghticoke Tribal Nation, and hereby urges the Secretary of the Department of the Interior to reinstate the 2004 federal recognition of the Schaghticoke Tribal Nation; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2023 Annual Convention of the National Congress of American Indians, held November 12-17, 2023, in New Orleans, Louisiana, with a quorum present.



Mark Macarro, President

ATTEST•



Nickolaus D. Lewis, Recording Secretary