



The Burt Lake Band Of Ottawa and Chippewa Indians  
PO Box 206, 3062 Indian Rd.  
Brutus, MI 49716



### Revised Request for Authority to Re-Petition<sup>1</sup>

The Burt Lake Band of Ottawa and Chippewa Indians request authority to re-petition for federal acknowledgement and recognition under 25 CFR 83, Subpart D.<sup>2</sup> The Burt Lake Band was denied federal recognition and, if authorized to re-petition under the changes made in 1994 and 2015 regulations, would obtain a positive determination. Under 25 CFR Part 83, Subpart D, Burt Lake Band is eligible to request authorization to re-petition.

The Burt Lake Band of Ottawa and Chippewa Indians stresses that a different outcome on its petition is "plausible" based on new evidence and changes in the 1994 and 2015 revised regulations.<sup>3</sup>

The Burt Lake Band asserts that it is a previously acknowledged tribe under current regulations 25 CFR § 83.12; **and** can satisfy federal recognition criteria (b) Community, (c) Political influence or authority, and (e) descent [currently 25 CFR § 83.11 (b)(c)(e)] within the meaning of 1994 and 2015 regulations and new evidence.

#### I. Procedural Background

The Department of Interior [Department] accepted and published in October of 1985 Burt Lake Band of Ottawa and Chippewa Indians [Band] original petition for recognition under *Procedures For Establishing That an American Indian Group Exists As An American Indian Tribe*<sup>4</sup>.

<sup>1</sup> The Burt Lake Band submitted its Authorization to Request Re-petitioning on April 10, 2025. The Office of Federal Acknowledgement advised the Band that its Request for Re-petitioning did not provide a complete narrative in what way the previous negative determination would be changed to a positive determination.

<sup>2</sup> Federal Acknowledgement of American Indian Tribes, 90 Fed Reg 3627-44 (January 15, 2025).

<sup>3</sup> The "plausible" evidentiary standard in Subpart D is significant. The unsuccessful petitioner need not prove a different outcome with certainty but must "plausibly allege one or both..." in an outcome determinative change in the regulations or new evidence. 25 CFR § 83.48. As the Department explained, this standard is similar to the standard for surviving a motion to dismiss. 90 Fed Reg at 3630, quoting *Ashcroft v Iqbal*, 556 US 662, 678 (2009) (explaining that, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'").

<sup>4</sup> *Procedures For Establishing That an American Indian Group Exists As An American Indian Tribe*, 43 Fed Reg 172, p 39361-4, Sept 5, 1978.

Throughout the administrative proceedings the Department assigned #101<sup>5</sup> to the Band's petition.

After fifteen years and no decision on its petition, the Burt Lake Band filed a legal Complaint for Equitable and Declaratory Relief "seeking to be re-affirmed and fully restored its status as a sovereign Indian Tribe" based on its two signed treaties with the federal government and the Department's unconscionable delay in failing to rule on the Band petition for reaffirmation.<sup>6</sup> The Federal District Court dismissed the lawsuit because the Band "failed to exhaust its administrative remedies" for acknowledgement, as the Part 83 process<sup>7</sup> was ongoing.

Twenty-one years after accepting the Band's petition, the Department issued a Final Determination [FD] denying the Band's petition. See Final Determination [FD] Notice, 71 Fed Reg 57995-96, October 2, 2006.

In June of 2013, the Department, in an attempt to reverse the criticism that its admittedly "broken" Part 83 acknowledgement process was "slow, expensive, inefficient, burdensome, intrusive, non-transparent, and unpredictable" announced it would hold "tribal consultation sessions and seek public comment on its discussion draft to revise and improve the federal acknowledgement process."<sup>8</sup>

In July of 2013, the Band appeared at the Petoskey, Michigan tribal consultation meeting [15 miles from the Band's headquarters] to support the proposed changes to the Part 83 process and advocate for re-petitioning for tribes with a negative determination under the "broken" process.

The Band also filed comments with the Department in support of the Department's proposed regulatory changes and again urged the Department to include re-petitioning as part of the Part 83 process. See 1076:AF18 comments of the Burt Lake Band of Ottawa and Chippewa Indian on proposed revisions of 25 CFR Part 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe* (September 25, 2013).

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<sup>5</sup> Burt Lake Band was formerly called the Cheboygan (of Cheboigan) Band of Ottawa and Chippewa Indians ("Cheboygan Band"), named for its proximity to the lake where it first settled. *Summary under the Criteria and Evidence for the Final Determination Against Acknowledgment of the Burt Lake Band of Ottawa and Chippewa Indians, Inc.*, Department of Interior, Petition 101, at 2. (Sept 21, 2006) (Final Determination). When Cheboygan Lake was renamed Burt Lake, the Band became known as the Burt Lake Band.

<sup>6</sup> Burt Lake Band of Ottawa and Chippewa Indians v Gale Norton, in her official capacity as Secretary of Interior, USDC 1:01CV00703, March 30, 2001.

<sup>7</sup> The Federal regulations for a group seeking recognition as an American Indian tribe is 25 CFR 83 process, commonly referred to as the "Part 83 process".

<sup>8</sup> *Procedures for Establishing That an American Indian Group Exists as an Indian Tribe*, 78 Fed Reg 124, 36,617-18 (June 27, 2013).



After completing tribal consultations and reviewing Comments, the Department on May 29, 2014 published a proposed Rule refining the “Federal Acknowledgement of American Indian Tribes”.<sup>9</sup> Three weeks later the Department published a proposed Rule to allow re-petitioning.<sup>10</sup>

On July 1, 2015, the Department published the Final Rule outlining substantial changes in the Part 83 process for recognizing a petitioning group as an American Indian Tribe and explicitly decreed that no re-petitioning would be allowed for any petitioner who received a negative Final Determination under §83.4(d).<sup>11</sup>

The Band legally challenged the ban on re-petitioning in 2017. Two federal district courts found the ban on re-petitioning violated the Administrative Procedures Act and remanded the re-petitioning ban back to the Department for further consideration.

On January 15, 2025, the Department published in the Federal Register the Final Rule for Federal Acknowledgement of American Indian Tribes which included Subpart D - Re-petition Authorization Process.<sup>12</sup>

Since 2006, Burt Lake Band of Ottawa and Chippewa Indians has advocated and litigated for the right to re-petition as a previously acknowledged tribe [reaffirmation] *and* to correct the deficiencies in its original petition [recognition] based on changes in the 2015 acknowledgment regulations and presentation of new evidence.

On August 9, 2025, the Band’s Tribal Council authorized the Official Request For Authorization To Re-Petition. *Attachment #1.*

**II. The Burt Lake Band is an unambiguously federally acknowledged Indian Tribe within the meaning of 25 CFR § 83.12(a)(b).**

To achieve reaffirmation based on unambiguous Federal acknowledgement, a tribe must meet the requirements of section 83.12(a) and (b) under the current Part 83 process.

**A. Relevant changes in the unambiguously federally acknowledged Indian Tribe within the meaning of 25 CFR § 83.12(a).**

The Cheboygan Band of Ottawa and Chippewa Indians [Burt Lake Band] were signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit in which they ceded their ancestral lands which formed the state of Michigan.

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<sup>9</sup> Federal Acknowledgement of American Indian Tribes, 79 Fed Register 103, 30,766-81 (May 29, 2014).

<sup>10</sup> Hearing and Re-Petition Authorization Processes Concerning Acknowledgment of American Indian Tribes, 79 Fed Reg 118, 35,129-40 (June 19, 2014)

<sup>11</sup> Federal Acknowledgement of American Tribes, 80 Fed Reg 37,862-895 (July 1, 2015) (Final Part 83 Rule).

<sup>12</sup> Federal Acknowledgement of American Indian Tribes, 90 Fed Reg 3627-44 (January 15, 2025).

Since August 23, 1985, the Burt Lake Band of Ottawa and Chippewa Indians have sought federal acknowledgement through the Department's Part 83 administrative process. In the Final Determination, the Department established that:

"Despite the substantial changes in the membership of this petitioning group over time, its current members participated in this identified organization and the current group is derived from and continues the existence of the entity that has been identified for the last quarter century. Thus, these identifications are considered identifications of the current petitioner. The various identifications demonstrate the "substantially continuous" identification of a Burt Lake band from 1917 to present."

"This review of the evidence submitted in response to the PF, together with the evidence available for the PF, demonstrates that external observers identified a Burt Lake entity on a substantially continuous basis since 1917. Therefore, the petitioner meets the requirements of criterion 83.7(a)." [Indian Entity Identification] See FD at 26. [Currently, 25 CFR 83.11(a) and 25 CFR 83.12(b)(2)]

In addition to the signed treaties, as explained below, the Band "has been treated by the Federal Government as having collective rights in tribal lands or funds" through the Department accepting its claim under Indian Claims Limitation Act of 1982 and the monetary settlement involved with the Michigan Indian Land Claim Settlement Act of 1997.

Thus, the first section of 25 CFR 83.12(a) to establish a federally acknowledged Indian tribe is met. Still, to achieve reaffirmation as a federally recognize tribe, the Band must also satisfy the three factors found in 25 CFR 83.12(b)(1)... "at present" the community criterion; and 83.12(b)(2) the Indian Entity Identification and Political Authority criterion since the time of previous federal acknowledgement or 1900, whichever is later.

#### **B. Relevant changes in the regulation "at present" community, 25 CFR 83.12(b)(1)**

The current "at present" community criterion, requires the Band to show its "at present" community over the last 20 years, preceding this 2025 Request for Authority to Re-petition and the subsequent new petition, if granted.

On page 5 of the FD, it states:

"Nevertheless, evidence from censuses, school records, interview, vital documents supported a finding that descendants of the historical Cheboygan band maintained a community centered near Brutus, Michigan until 1970, but that the petitioner needed to provide additional evidence of community at all periods..."

The 2015 regulations do not require that the Band demonstrate community from "all periods" but from "at present" which is a generation, from 2005 to 2025, assuming a new petition is submitted in 2025.



There is no evidence or analyses of the Band's contemporary community, political authority, or Indian entity identification for the current period under a new petition for which the Band seeks to submit. For this reason alone, there may be a positive determination especially when the Department determined that the Band is a previously acknowledged band under 83.12(a).

The Department stated in its FD on Burt Lake Band's "failure to meet criterion 83.7(b) [community] in the PF flowed primarily from a membership problem: almost half of the BLB membership evaluated in the PF were descendants of a man who was not part of the historical band."<sup>13</sup>

Whether it is community, descent, or political authority criterion under section 83.11 or 83.12, the Band was plagued and thwarted by the "membership problem."

The Band initially submitted a 1994 membership list of 634 members. When its petition was under "active consideration," the Band submitted a list of 858 members. During the Department's preliminary review, it evaluated 490 people as current members of the Band. From this preliminary review, the Band updated its membership in 2005 to reflect 320 members. See FD at 113-114.

The Band's "membership problem" was compounded by the fact that at the same time [September 1994] the Band submitted its first membership list of 634 individuals, Congress "reaffirmed" the Little Traverse Bay Band of Odawa [LTBB]. At the time of LTBB reaffirmation, 162 of the 634 Band's members were enrolled in LTBB. In all, 174 of the Band's members joined LTBB after its Congressional reaffirmation and "38 of the 174 members were enrolled in *both* LTTB and Burt Lake Band [emphasis added]. See FD at 5, 6, 12.

Today, the Band has removed from their membership list, individuals who cannot trace their ancestry back to the historic band; individuals and their descendants who moved to Burt Lake area after the "burn out" of October 1900, such as the Martell and Boda descendants; the 300 descendants of John B. Vincent family; and, individuals who have relinquished their Burt Lake Band membership or enrolled in federally recognized tribes such as LTTB.

The Band is prepared to submit new evidence of a certified enrollment list which has approximately 203 members which traces their ancestry back to the historic tribe. *Attachment #2 documents are:* Tribal Council Certification of Official Membership Roll-Resolution (July 12, 2025), Enrollment Committee Request for Certification (July 12, 2025), and Enrollment Committee Vote on Burt Lake Band Enrollment Roll (June 24, 2025).

Further evidence that the Burt Lake Band is a distinct tribal community separate from the Little Traverse Bay Band of Odawa Indians is the unanimous Tribal Declaration 090912-01

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<sup>13</sup> See FD at 27.

recognizing that Burt Lake Band “continues to exist as a distinct Tribal entity”. *See Attachment #3 Declaration 090912-01.*

The Band has secured over twenty acres of real estate, including its ancestral burial ground which was destroyed in the burn out in October 1900. The Band continues to maintain its ancestral burial ground along with a modern-day cemetery with St. Mary’s Catholic Church, Brutus, Michigan. The church is still actively used by Band members for ceremonies and social gatherings.

The Band has established a Tribal Center (building) located at 3062 Indian Road, Brutus, MI in which it holds Tribal Council meetings, elections, social and cultural gatherings.

The Band further alleges that third-party identification of the “at present” community is found in school records, township and county resolutions, and its legislative work with the Department to benefit all tribal members.

These examples are just a partial list<sup>14</sup> of the “at present” community that demonstrates and “plausibly allege” that there would likely be a different outcome on the Band’s reaffirmation petition, if considered under the present regulations.

Therefore, based on the new evidence and changes in the 2015 regulations, the final determination must be changed to a positive outcome.

### **C. Relevant changes in the regulation on political authority, 25 CFR 83.12(b)(2)**

Under section 83.12(b)(2) Political Authority criterion must be established since the time of previous federal acknowledgement or 1900, whichever is later.

The examples used to substantiate “at present community” listed above and in footnote #14 are interchangeable for community and political authority criteria in the Part 83 process.

As previously stated, Department of Interior has established the Band’s previous acknowledgement from 1836 through 1968. Thereafter, through its long line of Chairpersons, who acted in the best interest of the tribe and asserted influence over the tribal affairs, starting with Chief Kei-she-go-we in 1848 through current Chairperson, Bruce R. Hamlin, great-great-great-great grandson of Augustine Hamlin, Jr., lead negotiator and spokesman for all Ottawa and Chippewa bands south of the Straits of Mackinac, Michigan.

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<sup>14</sup> New evidence includes but is not limited to: Holy Childhood Indian School enrollment records from 1829 through 1978; MI Indian Land Claim Settlement Act (1997); Indian Claims Limitation Act of 1982; retention of ancestral burial grounds through a land reserve clause; real estate deed from the Catholic Diocese of Gaylord; and, state and federal grants to Burt Lake Band of Ottawa and Chippewa Indians.



Under Chief Kei-she-go-we, the Band began purchasing back their land ceded by treaty to the federal government and formed their village consisting of 375 acres along Cheboygan Lake. Upon purchasing the patents (deeds) from the federal government, their land was then placed in deeds to be held "in trust to the Office of Governor of Michigan and his Successors for the Cheboygan Band of Indians whom Kie-she-go-we is Chief."

After their village was burnt to the ground in 1900, tribal leadership never gave up regaining their ancestral home illegally taken from the Band. Efforts to reclaim their land, their community, and heritage for this unique Band of Indians, consisted of legal proceedings (McGinn lawsuit), the Band's 1934 petition for recognition and placing their land in trust under the Indian Reorganizations Act, filing a claim with the Department for its lost village under the Statute of Limitations Program as required by Sec. 3(a) of the Indian Claims Limitation Act of 1982, Pub. L. 97-394; and, the Michigan Indian Land Claims Act, Public Law No. 101-143, 111 Stat. 263-64 (1997).

The Michigan Land Claims Act of 1997 demonstrates the Band's leadership of "influencing and controlling the behavior of its [members] in significant respects, making decisions for the entity which substantially affects its members, and/or representing the entity in dealing with outsiders in matters of consequences". 25 CFR 83.11(c) Political influence or authority.

The Michigan Land Claim Settlement Act of 1997 accomplished a settlement between the federally recognized Michigan Indian tribes, the Band and its members, members of Congress and the President to access, secure and distribute a multimillion-dollar judgment that the ICC awarded the Michigan tribes in 1970 based on a lawsuit initiated by the Northern Michigan Ottawa Association that had been sitting idle for over 25 years.

Even though it was not a federally recognized tribe, the Band's leadership not only assisted in negotiating a universal settlement but specifically negotiated a provision in the Act protecting the rights and benefits of the Band and its members. The Band had to activate, inform, and devote considerable time, resources, and devotion to pass this legislation while keeping its members informed and satisfied with the payment allocation and distribution of the money.

The actions of the Band's leadership under the Michigan Indian Land Claim Settlement Act of 1997 demonstrates every desired aspect of political authority and influence, community, descent, and Indian entity identification criteria.

The Band's leadership asserted its authority by advocating for and having introduced by Democratic and Republican US Representatives and Senators more than a dozen legislative bills in both the US House of Representatives and US Senate from 1994 through 2016 for reaffirmation based on the 1836 Treaty of Washington and 1855 Treaty of Detroit and to clarify the Federal relationship with the Band as a distinct federally recognized Indian Tribe, and its unique history.

The Band's leadership testified before Congressional committees on the Band's tragic history, attempts to be acknowledged, and the minimal economic impact tribal acknowledgment would have on the federal budget. In November of 1997, the U.S. House of Representatives voted on US House bill HR-948 on the Band's reaffirmation which received a favorable vote of 240 yeas to 167 nays.

Since 1956 and through today, the Band's leadership has worked with every Michigan Governor and Member of Congress from northern Michigan to obtain its rights, benefits from the state and federal government.

Internally, Burt Lake Band leaders developed and ratified a Tribal Constitution, established an Enrollment Committee which still actively revises its membership in keeping with the Tribal Constitution. The Enrollment committee with support from Tribal Council monitors tribal members who may leave or join other tribes to receive benefits and social services and sends follow up letters re-affirming individual's enrollment in the Band as opposed to another tribe, such as LTTB.

The Band has secured over twenty acres of real estate, including its ancestral burial ground, which was part of the burn out in October 1900, The Band has continued to maintain its ancestral burial ground along with a modern-day cemetery. The church is still actively used by Band members for ceremonies and social gatherings.

These examples are just a partial list of political authority and influence that the lengthy line of leaders provided its members. In fact, the examples of community listed above and in footnote #14 are also reflective of the extensive political authority and influence that the Band provided its members since 1900.

Therefore, based on the new evidence and change in the 2015 regulations, the political authority and influence the final determination must be changed to a positive outcome.

#### **D. Relevant changes in the regulation on Indian Entity Identification**

It is not necessary to address the Indian Entity Identification criterion because the Department determined that the Band met this requirement. See FD analysis 21-26. Thus, 25 CFR 83.12.(b)(2) criterion for Indian Entity Identification is met.

#### **The Band is a previously federally acknowledged petitioner under § 83.12.**

Based on the changes in the 2015 regulations to the Part 83 process and the evidence outlined above, the Burt Lake Band of Ottawa and Chippewa Indians has plausibly alleged that its 2006 negative determination that it was not a previously federally acknowledged petitioner must be changed to a positive determination. The Band should be granted authority to re-petition under 25 CFR 83, Subpart D for reaffirmation.



**III. The Burt Lake Band meets the criteria of community, political authority, and descent under 25 CFR § 83.11(b)(c)(e) respectively and would result in a positive determination.**

The Department concluded in its FD that since 1917 the Band met four of the seven mandatory criteria, 83.7(a) (d) (f) and (g) and provided insufficient evidence of community (criterion b), political authority (c), and (e) descent.

The evidence of community, political authority, and descent criterion acceptable under § 83.12 Previous Acknowledgement and seven criteria for <sup>recognition</sup> necessary under § 83.11 for Federal Recognition in the 2015 regulations are interchangeable and support the documentation necessary for both sections of the 2015 regulations.

The Band incorporates all the previous pages and footnotes in support of its position and plausibly alleges that if it is authorized to re-petition under the 2015 regulatory changes and new evidence, it would obtain a positive determination.

If granted authority to re-petition, the Band will as outlined above satisfy the federal acknowledgement criteria (b) Community, (c) Political influence or authority, and (e) descent [currently 25 CFR § 83.11 (b)(c)(e)] within the meaning of amendments made to the acknowledgement regulations in 1994 and 2015 and new evidence.

The 2015 revised regulations for recognition, clarifies and promotes “flexibility in the context of the history, geography, culture, and social organization” for both community and political authority and would change the Department’s analysis when coupled with new evidence resulting in a different outcome on the Band’s petition.

**IV. Conclusion**

As a previously acknowledged Band under the 1994 revision to the regulations, the Burt Lake Band of Ottawa and Chippewa Indians is obligated only to make a streamline showing on contemporary community, political authority and descendancy.

The lesser burden of proof of “plausibly alleging” is sufficient basis alone to conclude there would likely be a different outcome on the Band’s petition, if considered under the present regulations.

As previously noted, the revised regulations for recognition, clarifies and promotes “flexibility in the context of the history, geography, culture, and social organization” for both community and political authority.” 25 CFR 83.11(b)(c). Thus, the 2015 regulations clarifying the proof required for both community, political authority, and descent would change the Department’s analysis when coupled with new evidence resulting in a different outcome on the Band’s petition for reaffirmation Under 25 CFR 83.12 and recognition under 25 CFR 83.11 (a)-(g).

The Department now has an opportunity to correct the gross injustice of failing to reaffirm and/or acknowledge the Band by granting it the authority to re-petition under 25 CFR 83, Subpart D and restore all its sovereign rights and benefits.

Respectfully submitted on Behalf of Burt Lake Band of Ottawa and Chippewa Indians,

A handwritten signature in black ink, appearing to read "Bruce Hamlin", with a long horizontal flourish extending to the right.

Bruce Hamlin, Chairman

