

**(5) Federal Register Notice of Proposed Finding**

- June 30, 1986

## Bureau of Indian Affairs

## Proposed Finding Against Federal Acknowledgment of the Wampanoag Tribal Council of Gay Head, Inc.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the Wampanoag Tribal Council of Gay Head, Inc., c/o Mrs. Gladys Widdiss, State Road, RFD Box 137, Gay Head, Massachusetts 02535, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet two of the mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

The Wampanoag Tribal Council of Gay Head is based on land which was traditionally and aboriginally Wampanoag. This organization represents a group of lineal descendants of the Gay Head Wampanoag Indians whose ancestors have inhabited this area since first sustained contact with European settlers in 1642. The Gay Head Wampanoags have been identified as being American Indians from historical times until the present, and Gay Head has been identified continuously throughout history as an Indian community. Since at least 1807,

however, a substantial portion of the Gay Head Indian descendants have not resided in this or any other American Indian community, and at present only about 15 percent of the group's 521 members reside at Gay Head. For most of this century, the Gay Head Indians have not maintained group interaction or tribal social relations, either within the historically Indian settlement or between those resident at Gay Head and the ever-growing number of non-resident Gay Head Indian descendants.

Aboriginal Wampanoag leadership was provided by a hereditary chief or sachem, and Gay Head was one of four major sachemships on the island of Martha's Vineyard. No reference to the sachemship could be found after 1687, and there is only one firsthand description of the political system or processes at work at Gay Head prior to 1687. However, there is evidence that Gay Head Indians continued to maintain some tribal authority through consensus of a general council between 1727 and 1870. These people continuously petitioned the colonial and state authorities of Massachusetts

during this period. State records acknowledge that between 1814 and 1862 these Indians were essentially autonomous and self-governing. In 1862 the State imposed greater jurisdictional control over Gay Head by establishing it as an Indian district. Full state citizenship was extended to the Gay Head Indians in 1869, and in 1870 the State incorporated Gay Head as a township. After that date, the State did not officially recognize the existence of a tribal entity at Gay Head until 1978.

Following incorporation as a town, the Indians at Gay Head lost their political authority and influence as a tribal group. The group's acknowledgment petition maintains that the "imposed" town government structure was adopted by the Indians as their tribal governing body until 1972, the year in which the Wampanoag Tribal Council of Gay Head was formed. However, the existing sources indicate that although the town government was dominated by Indian descendants, in substance and form it was indistinguishable from any other small New England town. It took no actions which might be interpreted as primarily benefitting the Gay Head Indians as a tribal group, and a number of its officers were not of Gay Head Indian descent. There is some evidence, in fact, that it actually spurned Indian activities and identification and rejected formal alliances with other Indian groups and communities.

Unlike any other tribal government, the town government was mandated by State law to accept legal responsibility for an increasing number of non-Indian residents, while it had no legal authority over the significant number of Gay Head Indian descendants who left the town. No evidence was found to indicate that town officials exerted any informal political influence or control over the non-resident Gay Head Indian descendants or that the non-residents participated in the political process within the town. Nor could it be established that sustained political influence or authority was maintained within the Gay Head community outside the town government through any formal or informal group structure or process. Neither has it been demonstrated that the Wampanoag Tribal Council of Gay Head, Inc., formed in 1972, has exercised significant political influence or authority over the Gay Head Indian descendants. This organization does not have a substantial base of political support in its claimed membership, either in Gay Head or elsewhere. The Tribal Council has not succeeded either in creating interest in the issues defined by its leadership as important or in promoting attendance and participation in group activities.

The group's governing document describes how membership is determined and how the group governs its affairs and its members. Approximately 98 percent of the 521 members can demonstrate that they meet the group's membership requirement. Documentary evidence exists establishing their ancestry back to the historical tribe as it existed in 1792.

No evidence was found that the members of the Wampanoag Tribal Council of Gay Head, Inc., are members of any other Indian tribe or that the group or its members have been the subject of Federal legislation which has expressly terminated or forbidden a relationship with the United States Government.

Based on this preliminary factual determination, we conclude that the Gay Head Wampanoags meet criteria a, d, e, f, and g, but do not meet criteria b and c of § 83.7 of the Acknowledgment regulations (25 CFR Part 83).

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120-days from the date of publication of this notice.

Under § 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision will be available to the petitioners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., South Interior Building, Room 32, Washington, DC 20245, Attention: Branch of Acknowledgment and Research.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish the final determination regarding the petitioner's status in the Federal Register as provided in § 83.9(h).

If at the expiration of the 120-day response period this proposed finding is confirmed, the Assistant Secretary, in accordance with § 83.9(j), will analyze and forward to the petitioner other options, if any, under which the petitioner might make application for services or other benefits.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

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