

(4310-4J-U)

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Final Determination to Acknowledge the Schaghticoke Tribal Nation**

**AGENCY:** Office of Federal Acknowledgment, Interior.

**ACTION:** Notice of Final Determination.

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**SUMMARY:** Pursuant to 25 CFR § 83.10(m), notice is hereby given that the Assistant Secretary - Indian Affairs acknowledges the Schaghticoke Tribal Nation c/o Mr. Richard L. Velky, 33 Elizabeth Street, 4th Floor, Derby, Connecticut 06148, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioning group satisfies all seven criteria for Federal acknowledgment as a tribe in 25 CFR § 83.7, and therefore meets the requirements for a government-to-government relationship with the United States.

**DATES:** This determination is final and is effective [Insert date 90 days after date of publication in the FEDERAL REGISTER], pursuant to 25 CFR § 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR § 83.11. On-going negotiations in current litigation may modify or eliminate the applicability of this provision of the regulations.

**FOR FURTHER INFORMATION CONTACT:** R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513-7650.

**SUPPLEMENTARY INFORMATION:** 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.

This notice is based on a determination that the Schaghticoke Tribal Nation (STN) satisfies the seven criteria for Federal acknowledgment as an Indian tribe in 25 CFR § 83.7.

The Department is considering the STN petition under a court approved negotiated agreement between the STN, the State of Connecticut, and other interested parties involved in pending litigation. This agreement neither modifies the criteria nor the standards required to demonstrate that all of the criteria have been met.

A notice of proposed finding (PF) to decline to acknowledge the STN was published in the Federal Register December 11, 2002 (67 FR 76184). That notice was based on a determination that the petitioner did not satisfy all seven of the criteria set forth in 25 CFR § 83.7, specifically criteria 83.7(b), and (c), and therefore did not meet the requirements for a government-to-government relationship with the United States.

The evidence available at the time of the PF showed that the STN petitioner and its antecedents met criteria 83.7(a) for identification as a Indian entity since 1900, 83.7(d) for providing a governing document, 83.7(e) for having a membership list and demonstrating descent from the historical tribe, 83.7(f) for not being members of an acknowledged Indian tribe, and 83.7(g) for not being the subject of legislation that terminated or forbade the Federal relationship. The PF concluded that the petitioner did not meet the requirements for criteria 83.7(b) to demonstrate community from first sustained historical contact to the present because there was insufficient evidence to demonstrate that community existed between 1940 and 1967. The PF concluded that the petitioner did not meet criterion 83.7(c) for political influence or authority from first sustained historical contact to the present. The PF concluded that the evidence was insufficient to demonstrate that the Schaghticoke met criterion 83.7(c), political influence within the group, from 1801 to 1875, that there was almost no specific evidence of Schaghticoke political activity from 1885 to 1949, and that there was insufficient evidence of political activity from 1949 to 1967. The PF concluded further concerning criterion 83.7(c) that the continuous state relationship with a reservation did not provide additional evidence during

those periods when there was an absence of specific evidence of the exercise of political influence within the group within the meaning of the acknowledgment regulations.

Criteria 83.7(b) and 83.7(c) were also not met after 1996 because the STN's 2001 membership list (317 members) used for the PF did not include approximately 60 individuals, who were a part of the Schaghticoke social and political community between 1967 and 1996. These criteria were also not met because almost a third of the membership (110 of 317) were from a family line that was not part of the community and had no known social and political contact with the Schaghticoke before 1996.

This final determination (FD) is made following a review of the responses to the PF, the public comments on the PF, and STN responses to the public comments. This FD has reviewed the evidence considered for the PF, and evaluated that evidence in the light of the new documentation and argument received from third parties and the petitioners. This FD reevaluates the evidentiary weight given to continuous state recognition with a reservation.

The PF found that the Schaghticoke were regularly identified as an American Indian entity in Federal and state documents, by local authorities, by academic scholars, and in newspaper articles since 1900, thus meeting criterion 83.7(a). Neither the petitioner nor the third parties addressed criterion 83.7(a) in the comments on the PF. Some exhibits submitted for the FD provided additional external identifications of Schaghticoke as an American Indian entity from 1900 to the present. The conclusion of the STN PF that the petitioner meets criterion 83.7(a) is affirmed.

The PF found that Moravian mission records (1743 through 1771), the continued existence of a distinct residential settlement, repeated petitions by the group to the Colony and the State, and a detailed external enumeration of all members by name and age in 1789, demonstrated that there was a Schaghticoke community from the 1740's to 1801. Throughout the 19th century, the overseers' reports, the existence of a distinct geographical settlement to which off-reservation residents frequently returned, and the close kinship ties between reservation residents and non-resident members provided sufficient evidence to show that a

Schaghticoke community existed until about 1900. The additional analysis of the evidence undertaken for the FD strengthened these conclusions. The FD affirms that the Schaghticoke meet 83.7(b) through 1900.

Additional evidence submitted for the FD confirms the conclusions of the PF that a portion of the Schaghticoke formed a residential community on the reservation between 1900 and 1920. Other Schaghticoke, resident off-reservation, maintained social ties as part of the group, had been born on and/or lived on the reservation, and were close relatives of the reservation residents. Additional analysis of residential and intermarriage patterns for the 19th century, which provided sufficient evidence for community until 1870 and strong evidence for community for the balance of the 19th century, provides supporting evidence for the existence of a community in the first two decades of the 20th century. Additional documentary sources were provided which identified a community on the reservation and recognized the connection between reservation and non-reservation residents. These forms of evidence combined provide sufficient evidence to demonstrate that criterion 83.7(b) is met from 1900 to 1920.

For 1920 to 1940 there was less specific evidence concerning community, but the reservation continued to be occupied during these decades. Interview evidence demonstrated social ties between the three major Schaghticoke family lines. The State made appropriations in both decades for the Schaghticoke and passed legislation transferring supervision of the Schaghticoke from one state agency to another. Documentary evidence from this period includes references to the Schaghticoke as an existing group. Continuous state recognition with a reservation provides additional evidence here, where specific evidence of community exists. Therefore, the STN meets criterion 83.7(b) from 1920 to 1940.

A thorough review of the existing data together with the new data submitted in response to the PF demonstrates that community existed among the Schaghticoke between 1940 and 1967. A review of the oral histories, including new information added to the record in response to the PF, demonstrates that significant social relationships existed between, as well as within, the three main family lines during this time period.

The documents and oral histories of the 1936 to 1967 era concerning political activities demonstrate social and political contact, as does the oral history of reservation meetings during that period. Additional evidence is that the enrollments in 1949 and 1954 generally correspond with the families of Schaghticoke who enrolled between 1967 and 1973, indicating the continuity of the Schaghticoke's definition of their community.

Continuous state recognition provides additional evidence here, where specific evidence of community exists. Based on the new evidence and the analysis and reevaluation of the evidence already in the record, this FD concludes that criterion 83.7(b) is met between 1949 and 1967.

The evidence for community and political processes for 1967 to 1996 was based on the the political processes in the internal conflicts in this period, as well as the nature of the membership. Supportive evidence for community from 1967 to 1996 for the PF and for this FD was that enrollment in the Schaghticoke organization beginning in 1970 was almost entirely drawn from a select subset of the much larger pool of all Schaghticoke descendants, those who were from families that had remained in social contact since the petitions of 1876 and 1889. This FD confirms the conclusion of the PF that there is sufficient evidence for political processes for 1967 to 1996. This FD adds additional evidence and analysis of conflicts which mobilized substantial number of members and showed contact between members, providing additional evidence to demonstrate community. Therefore, this FD confirms that criterion 83.7(b) is met from 1967 to 1996.

The evidence for community and political processes for 1967 to 1996 and the nature of membership and the political processes in the internal conflicts exist for 1996 to the present as well. The conflicts have continued up until the present, and social contacts have continued between the enrolled and unenrolled portions of the Schaghticoke community.

The evidence demonstrates that the Schaghticoke have existed as a community from first sustained contact until the present. The most recent STN membership list is incomplete and does not include a substantial portion of the present Schaghticoke community. This FD concludes that

the STN, including the presently unenrolled portion of the community, meets the requirements of 83.7(b).

The State of Connecticut has, since colonial times, continuously recognized the Schaghticoke as a distinct tribe with a separate land base provided by and maintained by the State. The continuous state relationship manifested itself in the distinct, non-citizen status of the tribe's members until 1973. There is implicit in the relationship between the State and the Schaghticoke a recognition of a distinct political body, in part because the relationship originates with and derives from the Colony's relationship with a distinct political body at the time the relationship was first established. Colonial and state laws and policies directly reflected this political relationship until the early 1800's. The distinct political underpinning of the laws is less explicit from the early 1800's until the 1970's, but the Schaghticoke remained non-citizens of the State until 1973. The State continued the main elements of the earlier relationship (legislation that determined oversight, established and protected land holdings, and exempted tribal lands from taxation) essentially without change or substantial questioning throughout this time period.

The state relationship is documented to be continuously active throughout the history of the Schaghticoke, as demonstrated by state overseer actions, state statutes, and other actions of the executive, judicial and legislative branches of Connecticut's colonial and state governments. There are such state actions throughout the periods where there is little or no direct evidence of political influence within the group, 1820 to 1840 and 1892 to 1936.

In making this FD, the Department has reevaluated the evidentiary weight that was given to continuous state recognition with a reservation from colonial times until the present in the STN PF and in the Historical Eastern Pequot (HEP) PF and FD decisions. The position in those decisions was that the state relationship was not a substitute for direct evidence of political processes in a given period of time and could only add evidence where there was some, though insufficient, direct evidence of political processes.

The Department's reevaluated position is that 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(b), and because of the specific nature of their continuous relationship with the State. Further, political influence was demonstrated by direct evidence for very substantial historical periods before and after the two historical periods. Finally, there is no evidence to indicate that the tribe ceased to exist as a political entity during these periods.

For this FD, the historical periods in which there is insufficient direct evidence of political processes are substantially reduced from the PF. These periods are 1820 to 1840 and 1892 to 1936. Within the first period, evidence of community is strongly established. During the decade 1821-1830, there was an overall endogamy rate of 40 percent. During the decade 1831-1840, there was an overall endogamy rate of 35 percent. The rates for these two decades were substantial and provide strong evidence for the existence of community. However, they are below the 50 percent level required to provide carryover by themselves to demonstrate political influence or authority for the petitioner under 83.7(c)(3) for the two decades 1821-1840.

The conclusion of the FD is that the antecedents to this petitioner, the Weantinock (which were centered at New Milford) and Potatuck (which were centered at Newtown), existed as tribes at the time of first sustained contact. The Schaghticoke did not, as the third parties argue, begin as a "group of individual Indians and families" who in the mid-1700s "coalesced from diverse locations and tribes long after there was a sustained presence of Europeans in western Connecticut." This FD does not accept the third parties' argument that the Schaghticoke did not exist at the time of first sustained contact with non-Indians nor the second argument that they do not derive from nor are a successor to any tribe or tribes that existed at the time of first sustained contact.

This FD rejects the third party argument that there must be evidence in the record of continuity of tribal political and social processes and conscious acts of amalgamation to create a Schaghticoke Tribe from the antecedent Weantinock and Potatuck. Neither the 25 CFR Part 83 regulations nor precedent require an express decision when two tribes amalgamate.

Amalgamation can occur over time. In this case, a specific early example of such common action is the May 13, 1742, petition directed to the General Assembly in which, "Mowchu Cherry and others hereunto subscribing Being Indian Natives of this Land Humbly Sheweth, that there are at New Milford, and Potatuck the Places where we Dwell about Seventy Souls of us" and requested missionaries.

For the time period 1736-1801, the PF found the petitioner met criterion 83.7(c) for political authority or influence within the group from the appearance of a distinct group at Schaghticoke, where the Connecticut General Assembly assigned it land in 1736 and where there was a Moravian mission from 1743 until 1771, until about 1801. The FD confirms this conclusion.

The PF found that there was insufficient evidence to demonstrate that the Schaghticoke met criterion 83.7(c) for the period from 1801 to 1875. There remains little direct evidence concerning political authority or influence among the Schaghticoke for this time period. However, criterion 83.7(c)(3) provides: "A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time." For the FD, taking into account submissions by the petitioner and third parties, a detailed, decade-by-decade, analysis was made to determine whether petitioner meets 83.7(b)(2): "At least 50 percent of the marriages in the group are between members of the group." On the basis of these calculations, the endogamy rate was sufficient that the STN meets criterion 83.7(c) from 1801-1820 and 1841-1870 under 83.7(c)(3).

The PF concluded that two petitions submitted in 1876 and 1884, signed by a number of Schaghticoke Indians living on the reservation and some living off the reservation, provided sufficient evidence that the group exercised some political influence or authority for that limited



time period. For the FD, there is limited additional context for the two above petitions, which strengthens the conclusion of the PF that they show political influence and authority within the group at these dates. Both the 1876 and 1884 Schaghticoke petitions for appointment of an overseer were presented shortly after the passage by the Connecticut legislature of legislation that affected the Schaghticoke tribe. The evidence submitted for the FD also documented a third petition, which requested an audit of the tribe's funds. It was submitted in 1892 on behalf of the tribe by a member who had signed both the 1876 and 1884 petitions and was acted upon by the court, which appointed the auditors requested by the tribe. The auditors were paid from tribal funds.

The residency rate on the reservation in 1870 was 48 percent and in 1880 it was 40 percent. This is strong evidence for community for the period 1870-1880, which is supporting evidence for political influence, under section 83.7(c)(1)(iv).

On the basis of the additional evidence provided by the 1892 petition, the strong evidence of community in combination with the direct evidence for political influence demonstrates that the STN meets criterion 83.7(c) from 1870 through 1892.

This FD concludes there is little direct evidence to demonstrate political influence within the Schaghticoke between 1892 and 1936. This FD rejects many of the specific arguments presented by the petitioner to demonstrate significant political influence within the Schaghticoke between 1892 and 1936.

There was no evidence to demonstrate the political influence did not exist within the Schaghticoke from 1892 to 1934. There are several individuals who were well-known to non-Indians and were of some stature, but no contemporary evidence to demonstrate that they were identified as leaders by Schaghticoke or outsiders. Oral histories collected substantially later identify several individuals as leaders. The lack of evidence of overt political activity may have been influenced by demographic trends, which resulted in the relatively early deaths of many of the children of the petition signers of 1876 and 1884, limiting potential leaders in this time period. Two reports, one in 1934 and one in 1936, denied that the Schaghticoke at that time or

"in recent years," had leaders. The first report does not provide definitive evidence by itself, and the second, in 1936, is at the point in time when there is specific evidence of Schaghticoke leaders.

A well defined community of on and off-reservation residents existed throughout the 1892 to 1936 time period. Community, when it is demonstrated to exist at more than a minimal level, which has been done here, provides supporting evidence for direct evidence of political processes (83.7(b)(1)(iv)).

Although there is insufficient direct evidence to demonstrate criterion 83.7(c) between 1892 and 1936, this FD concludes that overall, based on the continuous state relationship with a state-provided reservation, and the demonstration of continuous community under 83.7(b), there is sufficient evidence of political continuity throughout the Schaghticoke history that the STN meets the requirements of 83.7(c) between 1892 and 1936.

For this FD, the evidence is significantly greater than for the PF concerning political processes within the Schaghticoke from 1936 to 1967. The evidence is that the organization that Franklin Bearce helped initiate, and the activities of named leaders, lasted for a substantially longer period of time, from 1936 to the mid-1960's, than was demonstrated for the PF. There is better evidence that the organization and office holders dealt with issues of significance to the group and that there was continuity of concern with the issue of protecting the reservation throughout this period, beginning with a possible Court of Claims suit in 1936, letters to the State in 1939, a 1943 letter to the U.S. Indian Service, a 1950 claim before the Indian Claims Commission (ICC) and a renewed land claims lawsuit in 1963, after the rejection of the ICC claim. There is also evidence of continued internal conflicts and involvement of individuals from each the three major family lines throughout the entire time period, indicating that the conflicts involved the entire community. The years between 1959 and 1969 were a period of political division, rather than there being a hiatus, as had appeared based on the analysis and evidence for the PF.

For the PF, there was not sufficient evidence to demonstrate that community had been demonstrated for the time period from 1940 to 1967. For this FD, community has been demonstrated for 1940 to 1967. For this FD, for the period from 1936 to 1967, where there is more evidence in the record than for the PF, the state relationship in combination with the specific evidence in the record for this period adds sufficient evidence that criterion 83.7(c) is met from 1936 to 1967.

This FD confirms the PF conclusion that there is ample evidence for political processes for 1967 to 1996. No information was submitted which demonstrated that the conflicts, described in some detail in the PF, had not occurred or not mobilized most of the membership. For this FD, there is additional evidence and analysis of the conflicts between 1967 and 1974 which mobilized substantial number of members and show contact between members. This provides additional evidence for criterion 83.7(c) for this time period.

The same evidence for political influence for 1967 to 1996, based on the political processes in the internal conflicts, exists for 1996 to the present as well. The conflicts have continued up until the present, especially, but not entirely, between the enrolled and unenrolled portions of the Schaghticoke community. This FD concludes that a single political body continues to exist, notwithstanding the absence from the certified membership list of an important segment of those involved in STN political processes from the 1960's to the present. This FD acknowledges the entirety of this political body.

There has been a continuous, active relationship from colonial times to the present between the State and the Schaghticoke in which the State treated them as a distinct political community. The historical continuity of the group has been demonstrated. This state relationship provides sufficient evidence to conclude that political influence existed continuously within the Schaghticoke, including two specific historical periods during where there is almost no direct evidence of political influence, but during which community has been demonstrated. The Schaghticoke therefore meet criterion 83.7(c) throughout their history.

The STN meets the requirements of criterion 83.7(d) because it submitted a copy of its governing document: a constitution adopted in 1997 which included a description of its membership criteria.

The regulations require, under criterion 83.7(e), that a petitioner submit a complete list of its membership. In this instance, the petitioner has identified its most current certified list as not complete. It submitted two lists, the certified membership list and a list of the "Unenrolled Schaghticoke Community." This FD acknowledges the tribe as defined by the STN's 2003 membership list, 273 members, and its additional list of 42 individuals, identified by the STN as part of its community and meeting its membership requirements. Together these two lists comprise the STN's base membership roll and its present membership for Federal purposes.

The STN provided sufficient evidence to show that all 273 individuals on the September 28, 2003, certified membership list and the 42 individuals listed on the September 28, 2003, amendment to the constitution who are "unenrolled tribal community members" descend from the historical tribe.

One hundred percent of the STN membership descends from the historical Schaghticoke tribe. Therefore the conclusion in the PF that the STN meets criterion 83.7(e) is confirmed.

No members of the STN are known to be dually enrolled with any federally acknowledged American Indian tribe. Neither the petitioner nor any of the interested parties addressed this criterion. Therefore, the conclusion in the PF that the STN meets criterion 83.7(f) is confirmed.

There has been no Federal termination legislation in regard to the STN. Neither the STN nor any interested parties addressed this criterion. Therefore, the conclusion in the PF that the STN meets criterion 83.7(g) is confirmed.

The Schaghticoke Tribal Nation, as defined by its 2003 membership list and its 2003 list of unenrolled community members meets all of the criteria for Federal acknowledgment as a tribe stated in 25 CFR § 83.7 and, therefore, meets the requirements to be acknowledged as tribe with a government-to-government relationship with the United States.

This determination is final and will become effective [Insert date 90 days after date of publication in the FEDERAL REGISTER], unless a request for reconsideration is filed before the Interior Board of Indian Appeals (IBIA) pursuant to 25 CFR § 83.11 or unless any party or *amici* in the litigation files for Administrative Procedures Act (APA) review with the district court. In addition, the court approved negotiated agreement calls for negotiation as to whether a request for reconsideration may be filed before the IBIA or whether judicial review under the APA is the only review. The on-going negotiation will continue until no later than 30 days after publication of this Notice. This negotiation may impact the ability of interested parties, whether parties to the litigation or not, to seek reconsideration before IBIA. Inquiries by interested parties concerning the availability of the IBIA review should be directed to the Office of the Solicitor, Branch of Tribal Government and Alaska, 202-208-6526, Attention: Scott Keep or Barbara Coen.

Dated:

January 29, 2008<sup>4 ref</sup>

Aurene M. Martin

Principal Deputy Assistant Secretary - Indian Affairs