

**(4310-P)**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

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

**Agency:** Bureau of Indian Affairs, Interior.

**Action:** Notice.

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**SUMMARY:** Notice is hereby given that the Associate Deputy Secretary has determined that the Schaghticoke Tribal Nation (STN) does not satisfy all seven criteria for acknowledgment as an Indian tribe in 25 CFR § 83.7. Upon the date of publication of this notice, pursuant to 25 CFR § 83.11(h)(3), the Reconsidered Final Determination (RFD) is final and effective for the Department of the Interior (Department).

**EFFECTIVE DATE:** The procedures defined by this notice are effective on [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** R. Lee Fleming, Director, Office of Federal Acknowledgment (OFA), MS: 34B-SIB, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, phone (202) 513-7650.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, February 8, 2005, as amended on August 11, 2005.

This notice is based on a determination that the Schaghticoke Tribal Nation (STN) does not satisfy all of the seven mandatory criteria for acknowledgment in 25 CFR § 83.7.

Several lawsuits filed in the Federal courts affected the history and administrative handling of the Schaghticoke Tribal Nation petition. Two of these were land claims suits under the Non-Intercourse Act, *Schaghticoke Tribal Nation v. Kent School Corp., Inc.*, Civil No. 3:98 CVO1113 (PCD) and *Schaghticoke Tribal Nation v. Connecticut Light and Power Company*, Civil No. 3:00 CV00820 (PCD). The third lawsuit is *United States of America v. 43.47 Acres of Land, et al.*, Civil No. H-85-1078(PCD), filed on December 16, 1985, in which the U.S. sought to condemn certain lands on the Schaghticoke Reservation to become part of the Appalachian Trail. All three lawsuits involve the question of whether the STN is an Indian tribe.

The Department conducted its evaluation of this petitioner under a court-approved negotiated agreement between the Department, STN, and parties to the several, concurrent lawsuits mentioned above. This scheduling order, entered May 8, 2001, and subsequently amended, established timelines for submission of materials to the Department and deadlines for submission of comments, issuance of a proposed finding (PF), and issuance of a final determination (FD) which superseded the provisions of the acknowledgment regulations, 25 CFR Part 83.

The Department published notice of the STN PF on December 11, 2002, and found against acknowledgment of STN. Following the comment and response periods and the submission of new evidence, the Department concluded, relying in part on the state relationship and a calculation of marriage rates within the Schaghticoke as carryover evidence for criterion 83.7(c), that STN met all the seven mandatory criteria for acknowledgment as an Indian tribe.

In accordance with the court-approved negotiated schedule, on January 8, 2003, the Department provided the petitioner and interested parties with a copy of the Federal Acknowledgment Information Resource (FAIR) database used for the STN PF, together with the scanned images of documents that OFA researchers added to the administrative record in the course of preparing the STN PF, including materials that OFA requested from the State and the STN.

The Department issued the STN FD acknowledging the STN as an Indian tribe on January 29, 2004, and notice of the STN FD appeared in the Federal Register on February 5, 2004 (69 FR 5570). On May 3, 2004, the State of Connecticut (State), jointly with the Kent School Corporation, Connecticut Light and Power Company, the towns of Kent, Danbury, Bethel, New Fairfield, Newton, Ridgefield, Stamford, Greenwich, Sherman, Westport, Wilton, Weston, and the Housatonic Valley Council of Elected Officials, the Coggswell family group (CG), and the Schaghticoke Indian Tribe (SIT) petitioning group filed timely requests for reconsideration of the STN FD with the Interior Board of Indian Appeals (IBIA).

On May 12, 2005, the IBIA vacated the STN FD and remanded it to the Assistant Secretary – Indian Affairs for further work and reconsideration. The IBIA decision addressed a number of issues within the context of the related Federal acknowledgment decision of the Historical Eastern Pequot FD that was also vacated and remanded to the Department on May 12, 2005. IBIA linked the two cases because of their reliance on state recognition as additional evidence for criterion 83.7(b) and 83.7(c).

In its request for reconsideration of the STN FD, the State challenged the use of the historically continuous state recognition and the state relationship as providing evidence for criterion 83.7(b) “community” and criterion 83.7(c) “political influence or authority.” Moreover,

the State argued that even if the use of the state relationship were to be upheld by IBIA in the case of the Historical Eastern Pequot, it should not be allowed for STN, since the STN FD, in the opinion of the State, “impermissibly” expanded the use of the state relationship as evidence of political influence or authority in the absence of evidence of political activity within the group (41 IBIA 34). In regard to the use of the state relationship as evidence, IBIA concluded:

Today, in Historical Eastern Pequot Tribe, the Board concludes that the State of Connecticut’s ‘implicit’ recognition of the Eastern Pequot as a distinct political body - even if a correct characterization of the relationship - is not reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within that group. The FD for STN used state recognition in the same way that we found to be impermissible in Historical Eastern Pequot Tribe. In addition, we agree with the State that the STN FD gives even greater probative value and evidentiary weight to such ‘implicit’ state recognition, and therefore it constituted a substantial portion of the evidence relied upon. Therefore, in light of our decision in Historical Eastern Pequot Tribe, the Board vacates the FD and remands it for reconsideration in accordance with that decision (41 IBIA 34).

The IBIA also evaluated other issues raised by the State and other interested parties in the requests for reconsideration that were outside of its jurisdiction and referred these issues to the Department to consider. The State challenged the STN FD’s calculations of marriage rates for the period 1801 to 1870 used for carryover evidence to satisfy criterion 83.7(c). Moreover, OFA submitted a “supplemental transmission” to IBIA regarding the calculation of marriage rates on

December 2, 2004. Based on the allegation raised by the State regarding the marriage rate calculations, and within the context of the supplemental transmission, the IBIA concluded:

Because we are already vacating and remanding the FD to the Assistant Secretary for reconsideration based on Historical Eastern Pequot Tribe, and because OFA has acknowledged problems with the FD's endogamy rate calculations - at a minimum, inadequate explanation - we conclude that this matter is best left to the Assistant Secretary on reconsideration. (41 IBIA 36)

The IBIA referred other allegations made by the State, SIT, and the CG based on the determination that it lacked jurisdiction over the issues. The first was the claim that the STN FD enrolled 42 non-STN members into the STN petitioning group. The SIT and the CG also raised the issue that the enrollment was not based on the notice, consent, or equal protection of those added to the STN rolls, that the 42 individuals in question were not sufficiently linked to STN, and the individuals were not a part of the STN social and political community. The RFD concluded that the STN FD should be reconsidered on the grounds that at least 33 of the 42 individuals on the STN list of "unenrolled members" were not members of STN because they had not consented to enroll. Under the regulations, one must consent to being a member of a petitioning group.

*Criterion 83.7(b) "community"*: The STN PF found and the STN FD affirmed that STN met criterion 83.7(b), community, from first sustained contact to 1900 (STN PF, 15-16, STN FD, 18). The STN FD did not rely on the state relationship for criterion 83.7(b), community, for this period. Therefore, the RFD reaffirmed the STN FD for this time period, first sustained contact to 1900.

The RFD reanalyzed STN marriage rates, and found that marriage rates provided evidence in combination with other evidence sufficient to satisfy criterion 83.7(b) for the period 1801-1900. The STN FD did not rely on the state relationship for criterion 83.7(b), community, for the period 1900-1920. The STN FD used a combination of evidence including residential and intermarriage patterns to conclude that STN met criterion 83.7(b), community, between 1900 and 1920. The RFD reaffirmed the STN FD for this time period.

The STN FD relied on the state relationship as additional evidence for criterion 83.7(b), community, for the periods 1920-1940 and 1940-1967. The RFD reevaluated the state relationship with the STN, and concluded that it did not provide evidence of 83.7(b), community, within STN. The RFD reevaluated the evidence for community without the state relationship for these periods, and found that there was insufficient evidence for STN to meet criterion 83.7(b), community for 1920-1967.

The STN FD did not rely on state recognition for community for the period 1967-1996. Therefore, the STN FD conclusion that STN met criterion 83.7(b), community, for these years was affirmed.

For the period after 1996, the RFD concluded that at least the 33 of 42 individuals who specifically declined to consent to be part of the STN petitioner cannot be considered members of the STN group. The STN, thus, did not represent the entire Schaghticoke community from 1997 to the present and, therefore, did not meet criterion 83.7(b). Therefore, the STN did not meet criterion 83.7(b), community.

*Criterion 83.7(c) "political influence or authority"*: The RFD affirmed the finding of the STN FD that the petitioner met the requirements of criterion 83.7(c) for political influence or authority from the colonial period to 1801. The STN FD used marriage rates for the periods 1801 to 1820 and 1841 to 1870 under criterion 83.7(b)(2)(ii) to provide carryover evidence under 83.7(c)(3). The RFD recalculated marriage rates for the period 1801 to 1900, and reversed the finding of the STN FD that marriage rates reached the 50 percent threshold to provide carryover evidence to meet 83.7(c). The RFD also reevaluated the evidence for residency rates for the period 1850 to 1902. The RFD affirmed the conclusion of the STN FD that the residency rates were not high enough to provide carryover evidence to meet criterion 83.7(c). The RFD reviewed the evidence for political influence or authority for the period 1801 to 1875, and found that there was insufficient evidence to satisfy criterion 83.7(c).

The RFD affirmed the finding of the STN FD that two Schaghticoke petitions to the State from the years 1876 and 1884 provided sufficient evidence of political influence or authority to meet criterion 83.7(c) for the years 1876-1884. The RFD reevaluated the evidence regarding an 1892 petition based on new evidence submitted to the IBIA, and found that this document did not provide evidence of the existence of political influence or authority within the Schaghticoke. Therefore, the RFD concluded that STN did not meet criterion 83.7(c) for the period 1885-1892.

The STN FD relied on the state relationship to provide sufficient evidence to meet criterion 83.7(c) for the period 1892 to 1936. The RFD reevaluated the state relationship and concluded that it did not provide additional evidence of political influence or authority within the Schaghticoke. The RFD reevaluated the remaining evidence for political influence or authority

without the state relationship and found that there was insufficient evidence to meet criterion 83.7(c) for this period.

For the period 1936-1967, the RFD reevaluated the state relationship and concluded that it did not provide additional evidence of the exercise of political influence or authority within the Schaghticoke. The RFD concluded that the remaining evidence was insufficient to meet criterion 83.7(c) for the period 1936-1967.

The STN FD conclusion that STN exercised political influence or authority between 1967 and 1996 was affirmed. No arguments or new evidence were submitted regarding this conclusion.

STN did not meet criterion 83.7(c) for the period after 1996, in light of the known continued refusal of most of the 42 individuals to be members of the STN. STN's membership list does not reflect a significant portion of the political system. STN did not meet criterion 83.7(c) for the periods 1800-1875, 1885-1967, and 1997-present. Therefore, STN did not meet criterion 83.7(c).

STN met criteria 83.7(a), petitioner was identified as an American Indian group from 1900 to present; 83.7(d), petitioner has submitted its governing documents; 83.7(e), petitioner's membership has descent from an historical tribe; 83.7(f), petitioner does not have membership with any federally recognized tribes; and 83.7(g), petitioner has no Congressional legislation prohibiting the Federal relationship. No new arguments, evidence, or analysis merited revision of the STN FD evaluations of these criteria. The conclusions of the STN FD on these criteria were affirmed.

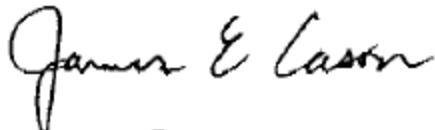
The Associate Deputy Secretary denied to acknowledge that STN was an Indian tribe as it



failed to satisfy all of the seven mandatory criteria for Federal acknowledgment under the regulations. The STN petitioner did not submit evidence sufficient to meet criteria 83.7 (b), community, and 83.7(c), political influence or authority, and, therefore, does not satisfy the requirements to be acknowledged as an Indian tribe.

Upon the date of publication of this notice, pursuant to 25 CFR § 83.11(h)(3), the RFD is final and effective for the Department.

Date: OCT 11 2005

A handwritten signature in cursive script that reads "James E. Cason".

James E. Cason  
Associate Deputy Secretary