

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Final Determination against Federal Acknowledgment of the St. Francis / Sokoki Band of Abenakis of Vermont**

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

**ACTION:** Notice of Final Determination.

**SUMMARY:** Pursuant to 25 CFR 83.10(l)(2), notice is hereby given that the Department of the Interior (Department) declines to acknowledge the group known as the St. Francis/Sokoki Band of Abenakis of Vermont (SSA), P.O. Box 276, Swanton, Vermont 05488, c/o Ms. April Merrill, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy four of the seven mandatory criteria for acknowledgment, specifically 83.7(a), 83.7(b), 83.7(c), and 83.7(e), as defined in 25 CFR part 83. Consequently, the SSA petitioner does not meet the requirements for a government-to-government relationship with the United States.

**DATES:** This determination is final and will become effective 90 days from publication of this notice in the **Federal Register** on October 1, 2007 pursuant to section 83.10(l)(4), unless a request for reconsideration is filed pursuant to section 83.11.

**ADDRESSES:** Requests for a copy of the Summary Evaluation under the Criteria should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B-SIB, Washington, DC 20240.

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

**SUPPLEMENTARY INFORMATION:** On November 9, 2005, the Department issued a proposed finding (PF) that the SSA petitioner was not an Indian tribe within the meaning of Federal law because the petitioner did not meet four of the seven mandatory criteria for Federal acknowledgment as an Indian tribe. The Department published a notice of the PF in the **Federal Register** on November 17, 2005 (70 FR 69776). Publishing notice of the PF initiated a 180-day comment period during which time the petitioner, interested and informed parties, and the general public, could submit arguments and evidence to support or rebut the PF. This initial comment period ended on May 16, 2006. The petitioner requested that the Department extend the

comment period, and the Department extended it for an additional 90 days. The comment period closed on August, 14, 2006. The petitioner again requested an extension of the comment period. In reply, the Department stated that it would consider doing so if the petitioner submitted, as soon as possible, a more thorough work plan and justification for the extension. The Department noted that pending the receipt of such a request, the 60-day response period, described in the regulations, would close on October 13, 2006. On October 13, 2006, the response period closed, without the Department receiving a response from the petitioner.

During the comment period, the petitioner, several individuals associated with the petitioner, and an informed party submitted materials to the Department. During both the original comment period and the extended comment period, the petitioner did not submit critical materials that the PF requested. In particular, the petitioner did not submit any of the materials that would help the petitioner establish descent from a historical Indian tribe. Overall, given the petition's deficiencies in meeting criteria 83.7(a), (b), (c), and (e), together with the explicit requests in the PF, the petitioner's comments were few in number and did not substantively address the PF. None of the material submitted changed the conclusions of the PF.

The SSA petitioner claims descent as a group mainly from a Western Abenaki Indian tribe, most specifically, the Missisquoi Indians. During the colonial period (approximately 1600-1800), the Missisquoi Indians lived in northwestern Vermont, near the present-day town of Swanton. The available evidence indicates that by 1800 the disruption caused by colonial wars and non-Indian settlement had forced almost all the Western Abenakis in northern New England (including Vermont) to relocate to the Saint Francis River area of Quebec, Canada, and become part of the St. Francis, or Odanak, village of Canadian Western Abenaki Indians. The petitioner, however, contends that its ancestors remained behind in northwestern Vermont after 1800, or moved to Canada until it was "safe" to return. The petitioner also maintains that its ancestors lived "underground," hiding their Indian identity to avoid drawing the attention of their non-Indian neighbors, until the 1970's. Some of the available documentation indicates that, over the course of the 19th century, a few of the group's ancestors moved from various locations in Quebec,

Canada, to the United States, but not as a group.

Of the petitioner's 1,171 members with enrollment files completed to the petitioner's satisfaction, only 8 (less than 1 percent) demonstrated descent from a Missisquoi Abenaki Indian ancestor. By 1800, most of the historical Missisquoi Abenaki Indian tribe had migrated to St. Francis, or Odanak, in Quebec, Canada. The available evidence demonstrates that these eight members descend from Simon Obomsawin, who once belonged to the St. Francis, or Odanak, Indian community, and who can be traced to the historical Missisquoi Abenaki Indian tribe through lists of Indians belonging to St. Francis, or Odanak. The available evidence does not demonstrate that these eight members were associated with the SSA petitioner before the 1990's. Furthermore, the available evidence does not demonstrate that the other remaining 1,163 members, or their claimed ancestors, descend from an earlier Missisquoi Abenaki entity in Vermont or any other historical Indian tribe. Instead, the available evidence indicates that the petitioner is a collection of individuals of claimed but mostly undemonstrated Indian ancestry with little or no social or historical connection with each other before the early 1970's.

Criterion 83.7(a) requires that external observers identify the petitioner as an American Indian entity on a substantially continuous basis since 1900. The PF found that for the period from 1900 to 1975, no external observers identified either the SSA petitioner group or a group of the petitioner's ancestors as an American Indian entity on a substantially continuous basis. From 1976 afterward, however, the PF found sufficient evidence that external observers identified the petitioning group as an American Indian entity.

The Department received three sets of comments on the PF's conclusions that pertain to criterion 83.7(a). The petitioner submitted the first set of comments using a DVD video presentation entitled "Against the Darkness" that contained two interviews discussing Indians in Vermont in the 20th century. A second set of comments came from several individuals associated with the petitioning group. A third set of comments came from an informed party who contested the PF's analysis of a document in a Vermont Eugenics Survey "Pedigree" file compiled around 1927 to 1930.

None of the comments submitted during the comment period supplied new evidence that an external observer

identified the petitioner or an antecedent group before 1975 as an American Indian entity. The two interviews on the "Against the Darkness" video provide secondhand accounts of Indian individuals living in, or at least traveling through, Vermont in the first third of the 20th century. However, they are not first-hand observations of American Indian entity, and the evidence does not demonstrate that the observed Indians were either the petitioner or an antecedent group. The second set of documents contained material that relates to the petitioner's activities after 1975. This material does not affect the FD because the PF concluded that the petitioner met criterion 83.7(a) for the period following 1975. The informed party's comments disputing the PF's interpretation of the Vermont Eugenics Survey are plausible, especially if further corroborating evidence were available. The informed party argued, without providing additional corroborating evidence, that "the St. Francis Indians" identified in the survey were a family in Vermont, as opposed to an Indian group in Canada, as the PF concluded. However, the informed party's argument does not satisfy criterion 83.7(a) because the Department does not accept references to individual Indian descendants or Indian families as satisfactory evidence for criterion 83.7(a).

The FD concludes, as the PF did, that external observers identified the petitioner as an as Indian entity only after 1975. The evidence does not demonstrate substantially continuous identification of the petitioner as an American Indian entity from 1900 to the present; therefore, the petitioner does not meet the requirements of criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The PF found, based on the available evidence, that the petitioner did not meet criterion 83.7(b) at any point in time. The PF noted that much of the available evidence from the 19th century demonstrated that the Abenakis of northern Vermont left the state by around 1800, rather than supporting the petitioner's claims about the existence of a 19th-century community. Based on the available evidence, the PF concluded that the petitioner is a collection of individuals with little or no social connection with each other before the early 1970's. The PF also concluded that these claimed ancestors did not maintain at least a minimal distinction from the population of

northwestern Vermont and the surrounding area from historical times until the present.

As comments, the petitioner submitted a video presentation entitled "Against the Darkness," four essays that are principally about 20th century material culture, four Internet essays entitled "Abenaki History," an unannotated map, membership lists from 1975 and 1983, and a collection of meeting minutes from the 1970's, 1980's, and 1990's. An informed party also submitted comments on two 18th-century document sets that are allegedly "missing," an 1835 newspaper article from the *Green Mountain Democrat*, and the Vermont Eugenics Survey of the early 20th century.

The "Against the Darkness" video presentation and the four essays on material culture argued that the existence of woven baskets, a pocket watch on which the phrase "from Abenaki tribe" was inscribed, a century-old postcard of a "chief" in a canoe, and some handmade fish-spears demonstrated the existence of an Abenaki community. The PF discussed the difficulties in inferring the existence of a community from a few pieces of material culture, and the FD concludes that these objects have unknown provenances and questionable relevancy and do not demonstrate the existence of a distinct community comprised of the petitioner or its ancestors. The available evidence does not show that the Internet essays discuss the petitioner's ancestors. The petitioner submitted an unannotated black and white map that had numbers assigned to various houses; however, the materials did not explain the meaning of the numbers, or what the numbers are supposed to indicate. The map did not provide evidence of a distinct community within Swanton consisting of the claimed ancestors of the group.

The membership lists from 1975 and 1983 and the meeting minutes from the 1970's, 1980's, and 1990's provide evidence that the group first created and organized itself in the 1970's, and established its membership rules after that period. They also show the group lacked a clear understanding of its membership or knowledge of who its members were. Generally, the petitioner was able to document some activities of the petitioner's council and the Abenaki Self-Help Association, Incorporated (ASHAI), but did not document the existence of an interacting social community composed of its members.

The informed party discussed two sets of 18th-century documents that are, at present, not locatable or do not exist. The informed party speculated that, if

found, these documents might help describe Abenaki community in northwestern Vermont. These speculations, however, cannot be verified and thus do not provide evidence for purposes of 83.7(b). The Department makes its decisions based on available evidence. The informed party also contested the PF's interpretation of an 1835 article from the *Green Mountain Democrat* newspaper. The PF noted several problems with using this article as evidence in support of criterion 83.7(b). However, the informed party's comments do not address those problems, and the comments do not help the petitioner satisfy the criterion. The informed party asserted that the Vermont Eugenics Survey identified a few of the petitioner's claimed ancestors as Abenaki Indians. No party, however, submitted any additional documentation during the comment period to support this claim.

Based on the available record, the FD concludes, as the PF did, that there is insufficient evidence to demonstrate that, at any point in time, a predominant portion of the petitioning group comprised a distinct community or has existed as a community from historical times until the present. Therefore, the petitioner does not meet criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The PF found, based on the available evidence, that the petitioner did not meet criterion 83.7(c) at any point in time.

The PF concluded that there was an Abenaki entity in or around northwestern Vermont through the late 18th century but that the available evidence did not show that the petitioner's ancestors had a historical connection to these Abenaki Indians. The petitioner did not submit evidence to demonstrate what its claimed ancestors were doing as a group from 1800 to 1875 to exercise political influence or authority. For the period from 1875 to 1900, the petitioner named an ancestor who provided food and clothes to children and another who was a midwife, arguing that these two ancestors served as informal community leaders. The PF concluded, however, that these activities did not constitute an exercise of political authority, but encouraged the petitioner to investigate the activities of these individuals further. For the period from 1900 to 1975, the PF concluded the petitioner presented little evidence demonstrating informal leadership among any group of

the petitioner's claimed ancestors. For the period since 1975, the PF noted the creation of the SSA as a political organization. However, the PF concluded that there was not sufficient evidence showing widespread participation by the group's members in these political processes; instead, the evidence suggested the "political influence is limited to the actions of a few group members pursuing an agenda with little input from the membership" (Abenaki PF 2005, 108).

In its comments on the FD, the petitioner submitted an essay about a souvenir postcard of a "chief" in a canoe, a set of photocopied treaty documents, four Internet essays entitled "Abenaki History," and a collection of meeting minutes from the 1970's, 1980's, and 1990's. Several individuals associated with the petitioner submitted several other pages of information, including two photographs and some Internet printouts. An informed party submitted several pages of comments together with some photocopies of primary sources.

The essay on the 100-year old souvenir postcard of a "chief" in a canoe does not provide evidence of political influence for the petitioner during this time, especially since the petitioner did not include a name for him or describe any actions carried out under his leadership. The treaty documents generally refer Indians in non-specific, generic terms and do not link the petitioner to any specific Abenaki Indians from northwestern Vermont. The Internet essays support the PF's conclusions that there was an Abenaki entity in or around northern Vermont before 1800 that exercised political authority. However, the available evidence does not show that the Internet essays discuss the petitioner's ancestors. The meeting minutes that the petitioner submitted show that a small number of the petitioner's members engaged in political activity and that the rest of the claimed members had little or no awareness of or participation in the council's actions. Thus, the group's leaders were not interacting bilaterally with the group's members. The submission from the individuals associated with the petitioner included a letter referring to oral tradition materials, but during an extended comment period, the individuals did not submit these materials, and their comments generally lacked supporting documentation and explanation of the political processes of the petitioner as defined under criterion 83.7(c). Comments from the informed party discussed two sets of 18th-century

documents that are, at present, either not locatable or do not exist; this party speculated that, if found, these documents might help describe Abenaki leadership in northwestern Vermont. These speculations, however, cannot be verified and thus do not provide evidence for the purposes of criterion 83.7(c). The Department makes its decisions based on available evidence. In sum, the commenting parties did not submit any evidence that allowed the petitioner to satisfy the criterion.

Criterion 83.7(d) requires that the petitioning group submit a copy of the group's present governing document that includes its membership criteria. The PF found that the petitioner satisfied criterion 83.7(d) by submitting a copy of its governing document that described the group's membership criteria and current governing procedures. The Department received no comments, from either the petitioner or any other party, on the PF's conclusions under criterion 83.7(d). Therefore, based on the available evidence, the FD affirms the PF's conclusion that the petitioner meets criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. To satisfy this criterion, the petitioner must (1) properly identify its current members, and (2) provide evidence that those members descend from a historical Indian tribe. The PF concluded that the petitioner did not properly identify its current members as required by the regulations because its membership list was incomplete and was not certified by the group's governing body. The PF also concluded that although the petitioner claimed descent from the historical "Western Abenaki" Indian tribe, the petitioner did not document descent from that historical Indian tribe or any other historical Indian tribe, except possibly for the eight members mentioned above.

On November 1, 2005, just before the November 9, 2005, issuance of the PF, the Department received a submission from the petitioner that properly certified the petitioner's 2005 membership list. The Department evaluated this list for the PF, despite its not being certified. This submission arrived too late to evaluate in the PF. Instead, the Department's FD notes that the petitioner's current membership list has been properly certified.

During the comment period, the petitioner submitted a copy of the video presentation entitled "Against the

Darkness" which makes the argument that seven generations of Abenaki Indians have survived in northern Vermont, from the late 18th century to the present. However, "Against the Darkness" does not properly attribute its alleged sources, thus effectively shielding the video's evidence from independent evaluation and verification. Furthermore, because it uses aliases and approximate birth dates for its subjects, the video presents no real genealogy that the Department can evaluate.

Several individuals associated with the petitioning group submitted an undated proposed amendment to the State of Vermont's bill regarding state recognition of the "Abenaki People." The proposed legislation states that, "[a]t least 1,700 Vermonters claim to be direct descendents of the several indigenous Native American peoples, now known as Western Abenaki tribes." The bill states that 1,700 unnamed Vermonters claim to be direct descendents of "several indigenous Native American peoples," not that 1,700 Vermonters are direct descendents of a specific Abenaki Indian tribe in northwestern Vermont. An assertion that is not supported by relevant documentation, about the ancestry of a group, by a contemporary state legislature or other source, is not a form of evidence that is acceptable to the Secretary to meet the requirements of the regulations. More specifically, the acknowledgment regulations in section 83.7(e)(1) generally expect "evidence identifying present members or ancestors of present members as being descendents of a historical Indian tribe." The assertion expressed in the Vermont bill does not identify present members or name the ancestors of the "1,700 Vermonters." It only asserts that at least 1,700 unnamed, unspecified Vermonters "claim" to descend from "several indigenous Native American peoples."

An informed party claimed that two "missing" document sets from the late 18th century might provide names of specific historical Abenaki Indians from whom the petitioner can claim descent. There is no reason to believe that the two alleged "missing" document sets from the late 18th century would demonstrate that the petitioner's membership descends from a historical Indian tribe. The informed party's speculations cannot be verified and thus do not provide evidence for the purposes of 83.7(e), and the Department makes its decisions based on available evidence.

The petitioner did certify its current membership list; however, neither the

petitioner nor any other party submitted new evidence that demonstrates that the group's membership descends from a historical Indian tribe. The FD affirms the PF's conclusion that the petitioner did not meet criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe. A review of the available documentation for the PF and the FD shows that the SSA petitioner is composed principally of persons who are not members of any acknowledged North American Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The available documentation for the PF and the FD provided no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request.

After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the **Federal Register**. The FD will become effective as provided in the regulations 90 days from the **Federal Register** publication, unless a request for reconsideration is received within that time.

Dated: June 22, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

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**BILLING CODE 4310-G1-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Special Resource Study (SRS) for Sites Related to the Civil War Battle of Franklin, Near Franklin, Tennessee

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and National Park Service policy in Director's Order 2 (Park Planning) and Director's Order 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service (NPS) will prepare an EIS for the SRS for sites related to the Civil War Battle of Franklin (BoF) located in Franklin, Tennessee. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management for sites related to the BoF.

The authority for publishing this notice is contained in 40 CFR 1506.6 which prescribes the regulations for implementing the provisions of the National Environmental Policy Act. The process by which the Secretary of the Interior will conduct SRSs is contained in 16 U.S.C. 1a-5.

New areas are typically added to the National Park System by an Act of Congress. The National Park Service is often tasked by Congress to evaluate potential new areas for compliance with the established criteria for designation. The NPS documents its findings in a SRS Report. On December 1, 2005, Congress passed the Franklin National Battlefield Study Act (Pub. L. 109-120) directing the Secretary of the Interior to conduct a SRS for certain sites in Tennessee including the cities of Brentwood, Franklin, Triune, Thompson Station, and Spring Hill, Tennessee.

The NPS is currently accepting comments from interested parties on issues, concerns, and suggestions pertinent to the BoF. Suggestions and ideas for managing the cultural and natural resources associated with the BoF are encouraged. Comments may be submitted in writing to the address listed at the end of this notice or through the NPS Planning, Environment, and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov>. The NPS will publish periodic newsletters on the PEPC Web site to present scoping issues and preliminary management concepts to the public as they are developed. Public meetings to present management concepts will be conducted in the local

area. Specific locations, dates, and times will be announced in local media and on the PEPC Web site. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Tim Bemisderfer, Battle of Franklin SRS, NPS Southeast Regional Office, Planning and Compliance Division, 100 Alabama Street, 6th Floor 1924 Building, Atlanta, Georgia 30303. You may also comment via the Internet to <http://parkplanning.nps.gov/sero>. Please submit Internet comments as a plain text file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 404-562-3124, extension 693.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Locations, dates, and times of public meetings will be published in local newspapers and may also be obtained by contracting the NPS Southeast Regional Office, Planning and Compliance Division. This information will also be published on the PEPC Web site.

**ADDRESSES:** Tim Bemisderfer, Battle of Franklin SRS, NPS Southeast Regional Office, Planning and Compliance Division, 100 Alabama Street, 6th Floor 1924 Building, Atlanta, Georgia 30303. Telephone: 404-562-3124 extension 693.

**FOR FURTHER INFORMATION CONTACT:** Tim Bemisderfer, Battle of Franklin SRS, NPS Southeast Regional Office, Planning and Compliance Division, 100 Alabama Street, 6th Floor 1924 Building, Atlanta, Georgia 30303. Telephone: 404-562-3124 extension 693.

**SUPPLEMENTARY INFORMATION:** The Draft and Final SRS and EIS will be made available to all known interested parties