



10 August 2013

## Tlaxcalteca Nation and Affiliated Tribes

Resolution No. \_\_\_\_501\_\_\_\_

WHEREAS: In 1519, Mesoamerica was invaded by Spanish explorers for the Spanish Crown and the Tlaxcaltecas, an indigenous group living in Mesoamerica, after three battles with the explorers, negotiated an alliance with the Spanish Crown.

WHEREAS: On March 14 of 1591, the Viceroy Luis de Velasco II signed a royal decree requesting that 400 Tlaxcaltecan families be taken to the mining regions of the New Spain, an area within the Great Chichimeca, and therewith, the Tlaxcaltecas negotiated as compensation from the Spanish Crown several rights and privileges, among them, the ability to own land, carry weapons, own livestock and enjoy liberties as free men.

WHEREAS: The expansion of the Northern territories of New Spain by the Spanish Colonizers and 400 Tlaxcaltecan families resulted in the founding of eight (8) North Eastern Mexican states and over one hundred towns and cities in those states, including the founding of the Mission of San Antonio and Villa of San Andres de Nava, in present day south Texas in 1718. They also established the Camino Real that gave access from these populations with the capital of the New Spain (present day Mexico City).

WHEREAS: Present day members of the Tlaxcalteca Nation and Affiliated Tribes are the descendents of the indigenous people of Tlaxcalteca, Chichimeca and Coahuilteco cultures who helped settle South Texas in the 1740's and presently live throughout South Texas.

WHEREAS: Those many of those descendents maintain a Tribal Roll and have preserved their form of self-governance thru their familial protocol and preserved their traditional language and use of their God given sacred medicine, Peyote, for their religious ceremonies thru the Rio Grande Native American Church.

LET IT THEREFORE BE RESOLVED: That the Tlaxcalteca Nation and Affiliated Tribe's members seek to be Federally Recognized and therefore request that the following statements regarding the Federal Recognition Revision Proposals be included:

1. The eliminating of the requirement for a letter of intent  
*Tlaxcalteca Nation and Affiliated Tribes (TNAT) concurs*
2. The elimination of Criteria A which required evidence from outside observers of the petitioning community's continuing existence  
*TNAT concurs*
3. The establishment of 1934 as the year from which a community must prove continued distinct existence  
*TNAT concurs*
4. The inclusion of potential "expedited positive" determinations  
*TNAT concurs*
5. The potential inclusion of the Office of Hearings and Appeals (OHA), or perhaps another objective entity in the rendering of the final determinations and/or hearing appeals...so long as that entity possesses the requisite familiarity with Indian Law, history, culture, and the history of the acknowledgment of American Indian tribes.  
*TNAT concurs*
6. The ability for tribes that had previously received negative findings be reconsidered under the new rules  
*TNAT concurs*

In addition TN&AT Recommends the following additions:

1. **A Preamble needs to be added stressing that the goal of the changes is to make the regulations more consistent with the intent of Cohen's criteria** and reflective of the way in which early petitions received favorable determinations. The Preamble should also include an analysis of why the year of the Indian Reorganization Act of 1934, which marked a new relationship between the Federal Government and American Indian tribes, is the starting point instead of a much older date relating historic "first contact." Requiring tribes to demonstrate sustained community from a starting point that is hundreds of years in the past, places an unnecessary burden on tribes. The preamble should also clearly state that the Department of Interior's aim is for the process to be predictable, policy-based instead of an overly rigorous scientific evaluation, and less unreasonably cumbersome for petitioners.
2. **A "presumption" statement should be added, clearly indicating that it should be presumed that the burden of proof is on the Department of the Interior instead of the tribe when evaluating evidence provided by the tribe. Evidence should always be viewed in the light most favorable to the petitioner,** with conclusions made on a "more likely than not" basis to the benefit of the petitioner.
3. **There should also be the stated presumption that if a tribe existed in 1934, that tribe descended from an historical tribe at the time of contact with non-Indians,** shifting the meaning of "historic" in the regulations to refer to distinct communities identified as such by 1934.
4. **In the 83.1 definitions subsection, the meaning of "historic" being a distinct community identified by 1934** and that the terms "continuous" and "continuously," as pertaining to the community's history and descent, should clearly state that it is required to be traced from 1934. Guidelines should be given to establish that if a

community is identified as distinct by 1934, it should still meet the definition as a “historic tribe” so long as that identification is deemed to have been “Indian” by 1954. The reason for this is that there are historic tribes that were identified as “distinct,” but racially misidentified, or identified with non-historic nomenclature by third parties, and then were subsequently shown to have been an American Indian tribal community in subsequent reports, studies, lists, or governmental actions within a generation (20 years) of 1934, during the “termination era.” No petitioner should suffer from historic mislabeling by third parties which may have been motivated by racist influences.

5. **The Assistant Secretary should have greater control** over the Office of Federal Acknowledgment (OFA), with OFA playing more of an advisory and supportive role and not making final determinations, leaving such final decisions to the Assistant Secretary.

6. **The new regulations should directly overrule past OFA precedents** in negative findings because they will be inconsistent with the new regulations.

7. **It should be clearly stated that the types of evidence previously used to meet the now deleted criteria (a) may be used,** when applicable, to meet criteria 83.7(b) and (c).

8. **Gaps of less than 20 years should not be negatively interpreted** when the strength of the evidence prior to and after such gaps demonstrate community continuity. Gaps of up to 25 years should be taken into consideration, with reasonable explanation, if the weight of the evidence can demonstrate community continuity.

9. **Petitions for acknowledgement should not need to exceed 50 pages,** excluding supportive documentation. Petitions should be able to be submitted in electronic format.

10. **Historic or modern third party nomenclature racially misidentifying or mislabeling a tribe should not be weighed against a tribe,** but may be considered as evidence supporting the petitioner’s claim of being a “distinct” community.

11. **Regional history that may impact the evidence a petitioner can provide should be considered when evaluating a petition** so that a petition is not penalized by the manner in which a petitioner may have been affected by such historical situations. This principal should be applied to all criteria with evidence being viewed in the light most favorable to the petitioner, with conclusions made on a “more likely than not” basis to the benefit of the petitioner.

12. **Greater weight should be given to the supportive testimony of federally recognized tribes which have viewed the petitioner as a historic tribe.** However, the lack of supportive testimony or the submission of negative testimony from any entity should not be weighed against the petitioner in the application process, as it could be politically motivated and not reflective of the history of a petitioner or worthiness of a petition. A relationship between tribal communities, whether formal or informal, should also be viewed as evidence of continuing tribal community.

13. **Greater evidentiary weight should be given to communities that have maintained their indigenous language in a continuous fashion** in proving Indian identity and continuous community.

14. **The continuance of distinct cultural patterns and practices, as defined by the petitioner, should be considered evidence of community** and potentially as a form of governance. Because of the subjective nature of such practices, they should be described and defined by the petitioner instead of having definitions imposed

by the reviewers. Such evidence of governance should also include religious, educational, political, or cultural practices or entities. Tribal control over schools, churches, clubs, or similar entities should be viewed as governance. “Bilateral” relationships in regard to internal authority or influence should be viewed as evidentiary, but not as required... as internal divisions and political struggles between clans or families still demonstrate the existence of a tribal entity, however informal. Rejecting a particular leader can be evidence of continuing community, so a bilateral relationship should not be a required characteristic.

**15. A high rate of endogamy within the petitioning group, or with other American Indian Tribes, should be viewed as a form of political control** by the community upon individual members, meeting 83.7(b)(2). Such a rate need not exceed 50% to be considered “substantial” and should be measured in a fashion favorable to the petitioner. The need to count marriages to other tribal populations must be included in order not to penalize smaller tribal populations for which a high rate of internal marriages could produce, or further enhance, genetic disorders.

**16. For criterion (e), a petitioner should be able to meet the requirement if a substantial percentage (with the measure of “substantial” not needing to exceed 50%) of their membership as submitted in the petition consists of individuals who descend from a historical Indian tribe.** The term “historic” meaning a distinct community identified by 1934 and specifically identified as an American Indian community by 1954 or from such historical Indian tribes which combined and functioned as a single autonomous political entity or functioned as closely interrelated political entities. Identifying evidence may include citation by historians, anthropologists, ethnologists, citations in government reports and correspondences, studies by agencies such as the Smithsonian and the Bureau of Ethnology and others serving as “arms of the government,” those receiving or determined eligible for government services while also being identified as a community, and actions of a colonial, state, or federal agency segregating the community from Blacks and Whites (i.e.: by designated reservations, identified geographic areas, or segregated schools). However, if a tribe could not establish identity as an Indian community by such evidence within 20 years of 1934, but could establish identity from an earlier point in time, it could choose to trace from the earlier date.

**17. Ensure that OFA staff is trained, certified, and adheres to Genealogical Proof Standards to mitigate unfair and unreasonable negative findings related to an application.** OFA staff should operate with the understanding that the “benefit of the doubt” should always be in favor of the petitioner in reviewing such material.

**18. An evidentiary list should be added to the regulations so Tribes which can produce this evidence are presumed to have met evidentiary standard to be a tribe, including but not limited to:** A community of Indians with individual members having attended federal, or closely related mission, Indian boarding schools; Attorney contract approved by DOI; Claims; Court filings and decisions.

**19. An optional standard form would only be helpful if it allowed for the expression of unique situations and circumstances** of the petitioner. If such an optional form is offered, it should be able to be submitted in electronic format as should be an option for the submission of all evidence.

**20. Expedited positive decisions should also allow for the continued presence of an identified community in an established “Indian Town,” former reservation, or similarly historically designated geographic area, even in the absence of an official state reservation.** To not allow for this historical reality is to penalize a petitioner for the action or inaction of a government. This expansion of the expedited positive category allows for colonial practices that resulted in continuing tribal communities on land previously designated for their use. When seeking such an expedited positive, demonstrating the continued presence of any portion of the petitioner’s population in its historic area or areas should be included as a qualifying characteristic.

21. **Tribes should not have to supply additional evidence after submission** if OFA does not review the application in a timely manner.

22. **Previous acknowledgement should not require a “government-to-government” relationship, but mere acknowledgment of the existence of an Indian community** through listing as a distinct Indian community in a report or study conducted by an agent or agency serving as an “arm of the government” prior to 1978, or receiving services as an Indian community or having individual members receiving services because of their connection with the Indian community, by 1978, which is when the federal acknowledgment process was established. Treaty negotiations should also suffice as proof of such acknowledgment, whether or not the treaty was ratified. A petitioner should not be penalized for the lack of action, error, or irresponsible conduct of the government. An Indian community should only have to establish continuance from the point of that identification to meet the standard for previous acknowledgment. Such proof should be sufficient to have the Assistant Secretary restore recognition or correct the error of the tribe not being listed by the BIA as a federally recognized tribe. Additionally, tribes acknowledged by an act of Congress, actions of the Executive Branch, or a Federal Court should all be considered federally acknowledged by the BIA.

23. **Third parties should not be able to derail a positive final decision** unless fraud is being alleged against the petitioner’s claims and there is evidence to substantiate the need for further investigation. Petitioners should be given the opportunity to respond to specific allegations that may jeopardize a favorable final decision.

24. **The OFA should consider incorporating a Scientific DNA approach** as an additional tool in rendering their determinations.

PASSED, APPROVED AND ADOPTED by

Principle Speaker, Teodosio Herrera  
(Petitioner #327)