UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
Interior Board of Indian Appeals
801 North Quincy Street Suite 300
Arlington, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT OF THE SHINNECOCK INDIAN NATION	Brief of Assistant Secretary – Indian Affairs on Interested Party Status Docket Nos. IBIA 10-112, 10-116 Date: September 13, 2010

In response to the Order dated July 22, 2010, the Office of the Assistant Secretary – Indian Affairs,[1] files the following brief on the question of whether either the Connecticut Coalition for Gaming Jobs or Petitioner #188, the Montaukett Tribe of Long Island (aka Montauk Tribe of Long Island), is an interested party within the definition provided in the acknowledgment regulations, 25 C.F.R. Part 83. The definition provides:

> *Interested party* means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

25 C.F.R. § 83.1.

The preamble to the regulations notes that in comments to the proposed rule "[p]articular concern was expressed that interested parties might be able to delay the effective date of an acknowledgment determination without sufficient reason." 59 *Fed.*

[1] The Assistant Secretary – Indian Affairs, Larry Echo Hawk, is recused from this matter.

Reg. 9,280, 9,283 (Feb. 25, 1994). In response, the proposed rule's definition was "revised to refer to third parties with a significant property or legal interest."[2]

The Interior Board of Indian Appeals ("IBIA" or "Board") ruled previously that, for purposes of proceeding before it, an interested party need not have participated in the acknowledgment proceedings before the Office of Federal Acknowledgment ("OFA"). *In re Federal Acknowledgment of the Golden Hill Paugussett Tribe,* 32 IBIA 216, 219 (1998)("*Golden Hill*"). Further, this Board and the Secretary may determine for themselves whether a party is an "interested party" for purposes of the matter pending before it. *Id., In re Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation,* 36 IBIA 245, 246 (2001)("*Chinook*"), 59 *Fed. Reg.* at 9,283.

To date, neither OFA nor this Board has allowed a speculative economic interest to be sufficient for status as an interested party. Further, this Board specifically declined to rule on interested party status when confronted with only an economic interest by the Columbia River Crab Fisherman's Association and Michels Development Company (card room).[3] *Chinook,* 36 IBIA at 246.

Connecticut Coalition for Gaming Jobs

The Connecticut Coalition for Gaming Jobs ("Coalition" or "CCGJ") argues that, for purposes of a request for reconsideration, an interested party is one with "a stake in the outcome" of an acknowledgment determination, and that it satisfies this standard

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[2] The proposed rule, 56 *Fed. Reg.* 47,320, 47,325 (Sept. 18, 1991), provided:

> *Interested party* means any person or organization who has requested that they be informed of general actions pursuant to these regulations that are initiated by the Assistant Secretary and/or petitioners, and any person or organization who submits comments or evidence in support of or in opposition to a petitioner's request for acknowledgment as an Indian tribe. Interested party includes the governor and attorney general of the state in which a petitioner is located.

[3] These two groups did not request interested party status before OFA.

because it alleges an economic stake, citing *In re Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan,* 33 IBIA 291 (1999)("*MBPI*") and *In re Federal Acknowledgment of the Nipmuc Nation,* 41 IBIA 96, 101 (2005) [sic].[4]

The Coalition equates interested party status with judicial standing, although the Part 83 regulations do not use that term. In its opening brief, dated July 13, 2010, it alleges harm as a group of taxpayers: "[o]f specific concern to CCGJ are the negative tax ramifications in the State of Connecticut if this recognition is to move forward." ("Coalition Brief 1" at 1). In its supplemental brief on standing, dated August 16, 2010, it again asserts this generalized grievance and declines to provide any specificity that it has "a tremendous economic stake in the outcome." ("Coalition Brief 2" at 3). It asserts that it is a coalition of businesses and individuals who pay taxes in Connecticut, and asserts that "every single taxpayer in Connecticut will feel the financial burden of the acknowledgment decision," which includes itself "as a [newly-formed] limited liability company paying taxes in Connecticut." Coalition Brief 2 at 3-4. Without support, it asserts that the "immediate harm to CCGJ and its members" is "lost jobs to casino employees, lost contracts to casino contractors and lost revenue to the State of Connecticut." *Id.* at 4-5. In its third brief, Supplemental Brief on Request for Reconsideration dated August 16, 2010, the Coalition again reiterates its general taxpayer concern: "of specific concern to CCGJ are the negative tax ramifications in the State of Connecticut." ("Coalition Brief 3" at 5).

[4] The Coalition merges two citations, *In re Federal Acknowledgment of the Nipmuc Nation,* 41 IBIA 96 (2005) and *In re Federal Acknowledgment of the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians,* 41 IBIA 100 (2005).

Although this Board specifically requested a brief on interested party status, the Coalition does not provide any specificity in defining its membership or the number of its members, or the number, if any, of its casino contractor members. It does not allege that it has its own contracts that might be impacted or any limitation on it or its members doing business in New York at, or with, any future casino in that state. If this Board equates "interested party" with a person who has judicial standing, it is questionable whether the Coalition has such standing.[5]

The Office of Federal Acknowledgment does not analyze interested party status in terms of judicial standing. The OFA, further, has not interpreted "legal, factual, or property interest *in* an acknowledgment determination" as encompassing speculative and unspecified economic interests alone as grounds to grant interested party status before the OFA. (Emphasis added).[6] For instance, during the review of the Juaneño petitions for acknowledgment, OFA originally denied interested party status to the California Cities for Self-Reliance Joint Powers Authority (JPA), noting that "[t]he potential for competition and gaming does not raise the interests of a private party to those of an interested party or state or local government." (Letter dated April 21, 2008, Exhibit 1). By letter dated July 28, 2008, OFA opined further that it was unclear how JPA, a

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[5] *See DaimlerChrylser Corp. v. Cuno,* 547 U.S. 332, 344-45 (2006)(state taxpayers did not have standing to challenge state franchise tax credit). A generalized grievance against allegedly illegal governmental conduct is not sufficient for standing in federal court. *United States v. Hayes,* 515 U.S. 737, 743 (1995). In a lawsuit premised on state taxpayer standing, the only possible injury in fact is the person's payment of state taxes. Since federal law does not impose a requirement that states levy taxes, only an action against the State can redress the harm. *See, Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 107 (1998)("relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement."). Further, the defendant must have caused the injury, to provide standing. *Warth v. Seldin,* 422 U.S. 490, 498 (1975). *See also, Lingle v. Arakaki,* 547 U.S. 1189 (2006)(granting certiorari and vacating decision in light of *DaimlerChrylser*), and subsequent proceeding *Arakaki v. Lingle,* 477 F.3d 1048 (9th Cir. 2007)(state taxpayer did not have standing to sue United States or State challenging the constitutionality of state programs benefitting native Hawaiians). Here the Coalition's asserted injury concerns state taxes, not a federal decision to acknowledge a group as a tribe.

[6] The Coalition did not request interested party status before OFA.

consortium, could have an interest independent of its member cities, but that if such cities designate the JPA as its representative and agree to be bound by JPA as a representative, it could gain interested party status. (Exhibit 2). JPA was granted interested party status when such authorization was received. (Letter dated September 5, 2008, Exhibit 3).

Similarly, before this Board in *MBPI*, the Bureau of Indian Affairs ("BIA") took the position that the City of Detroit was not an interested party within the meaning of the regulations since the City's concern was "based on future speculation."[7] Disagreeing with the BIA, this Board held, for its purposes, that the City of Detroit was an interested party. It found that the MBPI had expressed an interest in acquiring land in trust near the City, noting not only "the possibility," but "indeed the likelihood – that land would be taken into trust for the tribe, thus removing it from the tax rolls and from the jurisdiction of the affected local government." *Id.* at 299. The Board "conclude[d] that, where the Band has voiced an interest in seeking to have land in the Detroit Metropolitan Area taken into trust for it, the City has 'interested party' status for the purpose of seeking reconsideration." *Id.* As thus framed by the Board, the City's jurisdiction and tax interests are more concrete and non-speculative than, and distinguishable from, the Coalition's taxpayer interest or non-particularized economic interest to avoid competition. Further, the regulations expressly identify state and "local governmental units" in the second sentence of the definition as potential interested parties, an additional

[7] The position of the BIA was that the possibility that the Department might be asked by the MBPI to take land into trust for it in a location distant from its aboriginal territory was too attenuated to be considered a property interest. Further, any such interest could be addressed in the procedures under 25 C.F.R. Part 151. The IBIA found that the opportunity to participate in a trust acquisition proceeding did not deprive it of the opportunity to be an interested party in an acknowledgment proceeding. *Id.* at 299 n.5. Subsequent to that 1999 decision, the Department adopted 25 C.F.R. Part 292, "Gaming on Trust Lands Acquired after October 17, 1988," which defines a consultation process between the BIA and "appropriate State and local officials" as including local government officials within a 25-mile radius of the proposed gaming establishment. 25 C.F.R. § 292.2.

distinction between the City of Detroit and the Coalition. Thus, it would appear that the Board's decision in MBPI is not relevant to the inquiry here.

The first sentence of the definition of interested party requires "a legal, factual or property interest in the acknowledgment determination." The second sentence of the definition clarifies that the governor and attorney general of the state are interested parties, and an interested party "may include, but is not limited to, local governmental units and any recognized and unrecognized Indian groups that might be affected by the acknowledgment determination."

The OFA and this Board may interpret the last clause of the definition differently. The OFA, in applying this definition for purposes of its proceedings, interprets the phrase "that may be impacted by the acknowledgment determination" as modifying only "any recognized tribes and unrecognized Indian groups." Thus, the BIA in its briefs to this Board, tried to articulate a legal, factual, or property interest *in* the acknowledgment determination by the City of Detroit, a distant City. [8] In contrast, when this Board ruled in *MBPI* that the City of Detroit was an interested party before it, it apparently applied the phrase "might be affected by the acknowledgment determination" as modifying either local governmental units, or as a shorthand definition of interested party, rather than articulate a "legal, factual or property interest in the acknowledgment determination." 33 IBIA at 298.[9] Nonetheless, the Coalition's alleged general taxpayer interest does not

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[8] *Compare MBPI with State of Iowa and Board of Supervisors of Pottawattamie County, Iowa v. Great Plains Regional Director,* 38 IBIA 42, 52 (2002)(dismissing as too speculative the possibility of gaming on a specific parcel of property based on memorandum by tribal attorney and newspaper articles).

[9] The IBIA provided that "arguably only the group seeking acknowledgment" would have a legal, factual or property interest in the acknowledgment decision. 33 IBIA at 298. OFA, however, considers for its purposes that recognized tribes may have a "legal, factual or property interest" in an acknowledgment decision as the decision might impact treaty fishing rights or rights to a reservation, or define territory occupied by a petitioner in conflict with that of a recognized tribe, all of which might be characterized as a

compare to the jurisdiction interest of the City of Detroit, a governmental entity referenced in the definition.

The Coalition also cites *In re Federal Acknowledgment of the Nipmuc Nation,* 41 IBIA 96 (2005), for its proposed standard of "interested party" as having "a stake in the outcome of an acknowledgment determination." 41 IBIA at 98. The Coalition ignores that the Board there held that individual members of the petitioner, although sharing in the acknowledgment decision, had no personal rights that allowed them status as interested parties. Here too, the Coalition articulates no particularized personal interest in the acknowledgment decision.

Montaukett Tribe of Long Island, (aka Montauk Tribe of Long Island)

The Montauk Tribe of Long Island ("Montauk" or "Montaukett"), Petitioner #188, simply asserts in its "Opening Brief for Reconsideration" that it is an interested party "as defined at 25 CFR 83.1 and has standing to request reconsideration." ("Montauk Brief" at 1). Gleaning from the arguments presented by Montauk, it appears to argue that the "Indian population was not distinct tribes but a confederacy of groups located at various places on Long Island," once united under Chief Wyandanch, such that

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legal, factual, or property interest in the decision. *See,* for instance, 62 FR 45864 (Aug. 29, 1997)(conclusion that Snoqualmie Tribal Organization had last date of unambiguous federal acknowledgment based on treaty "not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights"), *In re Federal Acknowledgment of the Snoqualmie Tribal Organization,* 34 IBIA 22, 26 (1999)(Tulalip Tribes claim to be the sole adjudicated successor to the historical Snoqualmie tribe). The Quinault Indian Nation similarly had a concern over the impact of an acknowledgment decision on property rights or jurisdiction over its reservation. *See* discussion of Quinault Reservation in Chinook Reconsidered Final Determination (2002), at 16-21. A property interest in the acknowledgment determination is apparent also when two petitioners both claim the same state reservation, as in Schaghticoke Tribal Nation and the Schaghticoke Indian Tribe, and Eastern Pequot and Paucatuck Eastern Pequot.

Shinnecock could not be acknowledged separately and "cannot independently claim the ancestors" to which Montauk claims a "superior" right. *Id.* at 5, 6.[10]

The Montauk filed a letter of intent to petition for federal acknowledgment in March 1998,[11] and first contacted the Director of OFA concerning the Shinnecock petition over eleven years later on November 11, 2009. Montauk Brief at 2. Its petition is not ready for active consideration. (Exhibit 4, ¶ 8, Declaration OFA Genealogist). The OFA added the Montauk to the list of interested parties on December 31, 2009, as it "may be able to establish a 'legal, factual, or property interest' in this acknowledgment determination." (Letter dated December 31, 2009, Exhibit 5). Such status is not binding on this Board. *Golden Hill,* 32 IBIA at 219, 220.

As illustrated by letter dated March 24, 2010, from the Director of OFA to Montauk, Montauk documentation submitted to OFA "supports the Federal acknowledgment of the Shinnecock Petitioner." *See* Montauk Brief Appendix A. Further, Montauk believes that the Shinnecock "cannot independently" be acknowledged. Montauk Brief at 4. As such, it appears that Montauk is situated as was the Snoqualmoo, which felt that "all Snoqualmoo and Snoqualmie people should be recognized." The Snoqualmoo made allegations parallel to those of Montauk, alleging past unity under Chief Pat Kanim's authority, and that "not just a select few" should be acknowledged, because under the Point Elliott Treaty "we were all called Snoqualmoo Indians." This

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[10] Montauk asserts that the names of the ancestors that are used to "make up the base roll" of the Shinnecock also "form the base roll" of the Montauk. (Montauk Brief at 3). Montauk's use of the terminology "base roll" is mistaken in this acknowledgment context. Under the regulations, the base roll of a petitioner that is acknowledged is its most current membership list used during the evaluation of the petition. 25 C.F.R. § 83.12(b).

[11] "List of Petitioners by State," at 33, on OFA website, www.bia.gov. Petitioner #188 filed its letter of intent 3/16/98. In addition, petitioner #162 is the Montauk Indian *Nation*, aka Montaukett Indian *Nation,* letter of intent filed 7/31/1995.

Board found that the request for reconsideration objected "either to the membership of the Snoqualmie Tribal Organization or to the fact that the Snoqualmoo Tribe has not been acknowledged." *Id.* at 261, 262. The Board dismissed the request for reconsideration, similar to Montauk's here, and referred no grounds to the Secretary.

Similarly, where Tulalip Tribes argued that it demonstrated that "most of the descendants of the historical Snoqualmie tribe became members of the Tulalip Tribes," the Board noted that the question of whether the petitioner was a splinter group "must be answered by reference to political organization rather than genealogy," and did not rely on this argument to support interested party status, nor did it refer this issue to the Secretary. *In re Federal Acknowledgment of the Snoqualmie Tribal Organization,* 34 IBIA 22, 27- 29 (1999).

The Montauk does not specify directly a legal, factual or property interest in the final determination. It may be indirectly making such a claim when it states that, since it allegedly claims the same ancestors as Shinnecock, Shinnecock is precluded from independently meeting the requirement of being descendant from a historical Indian tribe. Montauk Brief at 4. There is, however, no factual support for its claim. Prior acknowledgment precedent expressly provides otherwise - more than one petitioner can descend from the same historical tribe. *See* Reconsidered Final Determination: Eastern Pequot and Paucatuck Eastern Pequot, "The Secretary's Authority to Acknowledge More than One Group Derived from a Single Historical Tribe," at 78-80 (2005).[12] Montauk's

[12] If Montauk is disagreeing with the analysis under 83.7(b) or (c), such is not a ground for reconsideration. *In Re Federal Acknowledgment of the Nipmuc Nation,* 45 IBIA 231, 247(2007), and cases cited therein. Further, in alleging new evidence, the petitioner must demonstrate that the "new" evidence could affect the determination. *Id.* at 248 and cases cited therein, 25 CFR 83.11(d)(1). *See Proposed Finding, Shinnecock,* at 48-53, 58-59. If alleging that the final determination is inadequate or incomplete, it must cite to specific evidence to demonstrate how it bears on the research for the final determination in material respect, and an allegation that the evidence should have been analyzed in accord with another petition, is not a ground for

mistaken belief, thus, does not establish a legal, factual or property interest in the determination. Of note, Montauk identifies nothing in the final determination that impacts it negatively.

In regard to Montauk's references to membership, an issue also raised by Snoqualmoo, the OFA compared the membership list that the Montauk submitted on March 11, 2010, to the four membership lists submitted by the Shinnecock petitioner. The Montauk petitioner's membership list does not include any individual who was, or is considered to be, a member of the Shinnecock petitioner since 1998. Exhibit 4, ¶ 14. Further, the Montauk membership list does not include any individual who appears in the Shinnecock petitioner's genealogical database at all (i.e., as either a near or distant relative of any past or current Shinnecock member or as a modern-day descendant of historical Shinnecock Reservation residents in the database from the 1865, 1900, and 1910 censuses of Southampton, NY). Exhibit 4, ¶ 15.[13]

This lack of overlap between the Montauk and the Shinnecock memberships contrasts with the overlap in membership, and residence on the same reservation, existing in Eastern and Paucatuck Eastern Pequot, and in Schaghticoke Tribal Nation (STN) and Schaghticoke Indian Tribe (SIT), where members of the petitioner SIT recently had been members of the STN and claimed the same reservation.[14] *In re Federal Acknowledgment of the Schaghticoke Tribal Nation,* 41 IBIA 30, 38 (2005); *see also, In Re Federal*

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reconsideration within this Board's jurisdiction. *In re Federal Acknowledgment of the Schaghticoke Tribal Nation,* 41 IBIA 30, 39 (2005).

[13] The membership lists of the Shinnecock and Montauk contain privacy information, but are available to the Board on request. 25 C.F.R. § 83.11(e)(8).

[14] *See also,* Reconsidered Final Determination on the Schaghticoke Tribal Nation, 2005, at 61-62, declining to reconsider the final determination on grounds of "Failure to Simultaneously Consider the Schaghticoke Indian Tribe's Petition." The RFD also determined that to be a member of the petitioner, there must be consent by the group as well as the individual. *Id.*

Acknowledgment of the Nipmuc Nation, 41 IBIA 96, 97- 98 (2005)(denying interested party status based on an alleged "factual interest" in the acknowledgment determination, for a "complete tribal roll," where the party alleged a role "akin to scholars" with expertise in Nipmuc genealogy). Thus, Montauk's alleged interest is distinguishable from that which made Eastern and Paucatuck Eastern Pequot interested parties in each other's acknowledgment petition, and the STN and SIT interested parties in each other's petition.

Montauk cites nothing in the acknowledgment decision that may impact it adversely.

Dated September 13, 2010

Respectfully submitted,

Barbara N. Coen, Esq.
Division of Indian Affairs, MS 6513
Office of the Solicitor
1849 C. Street N.W.
Washington, D.C. 20240

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

APR 21 2008

Mr. Pedro Acietuno
6055 E. Washington Blvd., Suite 905
Commerce, California 90040

Dear Mr. Acietuno:

Thank you for your letter of February 29, 2008, to the Assistant Secretary – Indian Affairs, Carl J. Artman, requesting a 90-day extension to the comment period for the proposed findings on the Juaneno petitions #84A and #84B. The comment period is scheduled to close on June 2, 2008. Your letter was referred to the Office of Federal Acknowledgment (OFA), within the Office of the Assistant Secretary – Indian Affairs for a response.

By letter of November 7, 2006, Mr. Leonard Chaidez, who represented the California Cities for Self-Reliance Joint Powers Authority, requested "'Informed Party' and/or 'Interested Party' – Juaneno Petitioning Groups 84A and 84B" (copy enclosed). By letter of December 14, 2006, the Department provided Mr. Chaidez with the regulatory definitions of "Interested Party" and "Informed Party" and notified him that your group only met the requirements for being an informed party (copy enclosed). The potential for competition and gaming does not raise the interests of a private party to those of an interested party or state or local government. Informed parties and the general public do not have standing to request extensions. Only petitioners and interested parties may request extensions.

The Assistant Secretary has the discretion to extend the comment period upon a finding of good cause by the petitioner or interested party. Your reasons for having undertaken a "thorough review of the historical record" and the purpose "to provide further evidence in support of BIA's proposed findings on the Juaneno petitions" are not sufficient to establish a finding of good cause to otherwise extend the comment period. Therefore, your request for an extension of the comment period which ends June 2, 2008, is denied.

We will inform you if the closing date is extended based on any request granted to the petitioner or interested parties. As you are aware, if you would like to submit any arguments and evidence to the Assistant Secretary – Indian Affairs, you must provide also to the petitioners (see 25 CFR § 83.10(2)).

Sincerely,

Director, Office of Federal Acknowledgment

Enclosures

EXHIBIT 1

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 2 8 2008

Mr. Pedro Aceituno
California Cities for Self Reliance
Joint Powers Authority
7100 S. Garfield Avenue
Bell Gardens, California 90201

Dear Mr. Aceituno:

Thank you for your letter of May 13, 2008, to former Assistant Secretary – Indian Affairs Carl J. Artman requesting a 90-day extension of time to the comment period on the proposed findings and requesting a change in status to interested party on behalf of the California Cities for Self Reliance Joint Powers Authority (JPA). Your letter was referred to me for response.

By letters of May 12, 2008, and June 3, 2008, the Department notified all parties of a 90-day extension of the comment period on the proposed findings for the groups known as the Juaneno Band of Mission Indians – Acjachemen Nation (Petitioner #84A), and the Juaneno Band of Mission Indians (Petitioner #84B). The comment periods for both groups end simultaneously on September 2, 2008. Please be aware that any comments that you submit to the Assistant Secretary – Indian Affairs must be provided also to the petitioners (see 25 CFR § 83.10(2)).

The Department appreciates how Federal acknowledgment decisions may affect States, counties, local governments, Indian tribes, tribal members, and citizens. It is less clear, however, that a consortium such as the JPA, has an interest in acknowledgment decisions independent of the interests of its members such that would entitle it to the status of an "interested party" rather than an informed party. Nonetheless, if the members of JPA (Bell Garden, Commerce, Compton, Gardena, Hawaiian Gardens, and Inglewood), or any of them, sends us a letter designating JPA as its representative, we will accept and deal with JPA as the representative of an interested party. The letters from each of the cities must state clearly that the city has authorized JPA to represent it and agrees to be bound by JPA's representation.

Should you have further questions, please direct them to the Mr. Scott Keep, Office of the Solicitor (202-208-5311) or Mr. R. Lee Fleming, Office of Federal Acknowledgment (202-513-7650).

Sincerely,

George T. Skibine
Acting Deputy Assistant Secretary
for Policy and Economic Development

cc: Cities of: Bell Garden, Commerce, Compton,
Gardena, Hawaiian Gardens, and Inglewood
Mr. Scott Keep, SOL
Mr. R. Lee Fleming, OFA

EXHIBIT
2

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

SEP 05 2008

Mr. Jimmy L. Gutierrez
California Cities for Self-Reliance
Joint Powers Authority
12616 Central Avenue
Chino, California 91710

Dear Mr. Gutierrez:

Thank you for your letter of August 11, 2008, on behalf of the California Cities for Self-Reliance Joint Powers Authority (JPA), further clarifying its request for interested party status in the acknowledgment process for the groups known as the Juaneño Band of Mission Indians, Acjachemen Nation (Petitioner #84A) and Juaneño Band of Mission Indians (Petitioner #84B). We requested additional clarification in our letter dated July 28, 2008.

By your letter of August 11, 2008, JPA clarified its status and authority to act on behalf of the cities of Bell Gardens, Commerce, Compton, Gardena, Hawaiian Gardens and Inglewood. Your letter indicated further that all the statutory requirements for creation and formation under a joint powers agreement under California law have been completed. Although Exhibit B to your letter provided documentation for only four of the six cities, you sent copies of your correspondence to all six. In addition, your letterhead reflects participation by all six cities. Finally, none of those cities has individually stated its position on the acknowledgment petition.

Based on the foregoing, for purposes of the acknowledgment process before the Office of Federal Acknowledgment, JPA is granted interested party status for Petitioners #84A and #84B.

Should you have further questions, please direct them to the Office of Federal Acknowledgment, 1951 Constitution Avenue, N.W., MS 34B SIB, Washington, D.C. 20240.

Sincerely,

R. Bee Bleeny

Director, Office of Federal Acknowledgment

cc: Mr. George T. Skibine, Office of the Assistant Secretary Indian Affairs
Mr. Scott Keep, Office of the Solicitor

EXHIBIT 13

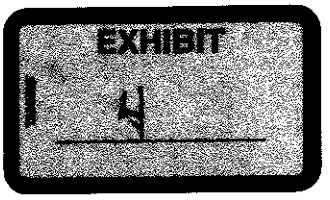
UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
Interior Board of Indian Appeals
801 North Quincy Street Suite 300
Arlington, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT OF THE SHINNECOCK INDIAN NATION	Declaration Alycon T. Pierce, Genealogist Docket Nos. IBIA 10-112, 10-116 Date: September 15, 2010

I, Alycon T. Pierce, declare:

1. I am a Genealogical Researcher in the Office of Federal Acknowledgment (OFA), Office of the Assistant Secretary – Indian Affairs, within the U.S. Department of the Interior. I have held this position since 2000. My current work address is U.S. Department of the Interior, Office of Federal Acknowledgment, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. Since 1989, I have maintained "Certified Genealogist" (CG^{SM}) credentials awarded by the Board for Certification of Genealogists.
2. I served as the primary genealogist responsible for the genealogical evaluation of the Federal acknowledgment petition of the "Shinnecock Indian Nation" (Petitioner #4, "Shinnecock Petitioner") from August 2008 to June 2010, and as a result, have reviewed and analyzed all the genealogy data related to the Shinnecock submitted to or obtained by OFA during the review of the petition.
3. The Shinnecock Petitioner submitted a genealogical database in 2008 that identifies and links its current and past members to their claimed lineal ancestors and the collateral relatives of these ancestors back to the 1700s.



4. The Shinnecock documented petition included a total of four membership lists, dated 1998, 2003, 2008, and 2009.

5. I annotated the entry for every individual in the genealogical database with the year of the membership list or lists on which he or she appeared (1998, 2003, 2008, and 2009).

6. From records within the OFA available to me, I am aware that the "Montaukett Tribe of Long Island" has been a petitioner for Federal acknowledgment as an Indian tribe since 1998 (Petitioner #188, "Montaukett Petitioner").

7. The Montaukett Petitioner submitted partial petition documentation that OFA received on January 14, 1998; December 11, 2009; March 11, 2010; and March 18, 2010.

8. The Montaukett petition has not received a technical assistance review and is not on the "Ready, Waiting for Active Consideration" list. Therefore, the Department does not consider the petition complete at this time.

9. OFA received a membership list from the Montaukett Petitioner, along with other petition documentation, on March 11, 2010.

10. To assist the Department in preparing its brief on whether the Montaukett Petitioner might be considered an interested party before the Interior Board of Indian Appeals ("IBIA"), I endeavored to determine if there exists any overlap between the membership of the Shinnecock, based on Shinnecock's four membership lists, and the membership of the Montaukett Petitioner.

11. The Montaukett Petitioner's governing body separately certified its six-page membership list as a complete and "current living members list of 295 members," as of January 11, 2010.

12. I reviewed the six-page membership list and found it to identify 277 individuals rather than 295.
13. I searched the Shinnecock genealogical database to see if any of the 277 names on the Montaukett Petitioner's membership list were annotated therein as Shinnecock members in 1998, 2003, 2008, or 2009.
14. The Montaukett Petitioner's membership list does not include any individual who was or is considered a member of the Shinnecock petitioner since 1998.
15. The Montaukett Petitioner's membership list does not include any individual who appears in the Shinnecock Petitioner's genealogical database at all, either as a near or distant relative of any past or current Shinnecock member or as a modern-day descendant of historical Shinnecock Reservation residents in the database from the 1865, 1900, and 1910 censuses of Southampton, NY (see Shinnecock Proposed Finding, 112-113, for the significance of these enumerations).
16. The materials in the Montaukett partial petition documentation do not link their present members to the historical individuals referenced in the materials submitted to the IBIA, where the most current birth date is 1915.

Executed on September 9, 2010.

Alycon T. Pierce, CG[SM]
Genealogical Researcher
Office of Federal Acknowledgment
Department of the Interior
1951 Constitution Ave. N.W.
Washington, D.C. 20240

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

DEC 31 2009

Mr. Robert L. Stevenson
Rev. Kenneth Nelson
Ms. Ernestine Thompson
P. O. Box 126, Austin Drive
East Hampton, New York 11937-0126

Dear Petitioner:

Thank you for your overnight mailing of December 10, 2009, that the Office of Federal Acknowledgment (OFA) received on December 11, 2009. The mailing included a cover letter signed on November 23, 2009, by members of the governing body of a group known as the "Montaukett Tribe of Long Island, NY" (Petitioner #188).

The cover letter contained two requests. First, Petitioner #188 requested "interested party" status during the evaluation of the "Shinnecock Indian Nation" (Petitioner #4) petition for Federal acknowledgment as an Indian tribe. Based on your request, we believe you may be able to establish "a legal, factual, or property interest" in this acknowledgment determination. Petitioner #188 will be added to the list of contacts as an interested party. The Department will keep Petitioner #188 informed of general actions regarding Petitioner #4 along with all other interested and informed parties.

The processing of the Shinnecock petition is being conducted under a negotiated Agreement approved by the District Court in *Shinnecock v. Salazar*, a copy of which is enclosed. Please note that there are differences between this schedule and the regulatory time-lines. The negotiated Agreement is controlling. Note in particular, the Agreement provides for a 90-day, rather than a 180-day, period in which to submit comments on the proposed finding. Please review the Agreement for further details, and note that under both the regulations and Agreement, any comments on the proposed finding must be provided to the petitioner as well as the Department.

Petitioner #188's letter, received two work days before the proposed finding on the Shinnecock was signed, also requested that OFA evaluate Petitioner #188 concurrently with Petitioner #4, and enclosed documents pertaining to Petitioner #188 in the same mailing. The Department of the Interior cannot grant the request for Petitioner #188 to be evaluated concurrently with Petitioner #4. First, petitioner #188 has not yet submitted a fully documented petition for consideration. Second, the materials submitted in the December 10, 2009, mailing were not certified as part of your petition. Your group needs to send OFA a letter certifying these materials as petition materials, signed by all members of the governing body. We enclose a sample format you may wish to use as a guide if such a letter is necessary. Lastly, the evaluation

EXHIBIT
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of the Shinnecock petition for purposes of the proposed finding was all but signed by the time you made your request.

If you have any questions concerning the Federal acknowledgment process, please contact the Office of Federal Acknowledgment, 1951 Constitution Avenue, N.W., MS-34B-SIB, Washington, D.C. 20240 or call (202) 513-7650.

Sincerely,

R. Lee Fleming

Director, Office of Federal Acknowledgment

Enclosure: Form Sample C
Court approved Agreement

cc: Shinnecock petitioner
Interested parties

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
Interior Board of Indian Appeals
801 North Quincy Street Suite 300
Arlington, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT OF THE SHINNECOCK INDIAN NATION	:	Certificate of Service Docket Nos. IBIA 10-112, 10-116 Date: September 13, 2010

Certificate of Service

I hereby certify that on the 13th day of September 2010, a copy of the foregoing Brief of Assistant Secretary – Indian Affairs on Interested Party Status, was served by US mail upon the IBIA and the following:

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