

Executive Summary and Background
Response to the Vermont Abenaki Petition For Acknowledgment as an Indian Tribe
December 2002

In 1995 the St. Francis/Sokoki Band of Abenaki of Vermont asked the Bureau of Indian Affairs to grant them federal recognition or “acknowledgment” as an American Indian tribe. (A related group filed a similar petition in 1982, but withdrew it from consideration in 1989.) The federal rules on tribal recognition designate the State of Vermont as a party to the legal process that will decide the petition. Under the rules, the Bureau invites states to comment on petitions and to participate in the recognition process.

Federal recognition acknowledges the continuing existence of an Indian tribe and establishes a permanent government-to-government relationship between the United States and the tribe. When a group obtains federal tribal status, it becomes entitled to unique rights, unlike any other group of citizens in America. Recognized tribes have the power to run their own courts, tax their own people and govern themselves. The surrounding state and local governments lose the power to tax tribal members’ land and businesses, to enforce local and state zoning rules and to enforce civil or criminal jurisdiction without tribal consent. Recognition of a tribe limits the ability of a state to regulate hunting, fishing and gambling activities. Recognized tribes have legal standing to assert land claims and to purchase land and have it designated as tribal land.

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The federal criteria for tribal acknowledgment stem from a decision of the United States Supreme Court. The Court defined “tribe” to mean “a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory.” Montoya v. United States, 180 U.S. 261

(1901). In another case the Court observed that recognition as a tribe is “granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities.”

Morton v. Mancari, 417 U.S. 535, 554 (1974). The federal rules explain that recognition will be granted only “to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.”²⁵ C.F.R. § 83.3 (a). The group must be “indigenous to the continental United States.”

A group seeking federal tribal status must satisfy seven legal criteria. The Vermont Abenaki group fails at least four of these criteria. Their petition lacks:

- (1) proof that the group has been identified as an American Indian entity on a substantially continuous basis by outsiders, such as anthropologists and historians, or in newspapers and books written by non-Indians;
- (2) proof that the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (3) proof that the group has maintained political influence or authority over its members from historical times until the present; and
- (4) proof that the group’s membership consists of individuals who descend from a historical Indian tribe.

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The State reviewed the petition and other materials that the Vermont Abenaki filed with the Bureau of Indian Affairs and did extensive independent research into the historical and genealogical claims made in the petition. The purpose of this research was to determine the strength of the petition in light of the legal criteria established by federal law.

The State's research was conducted by an assistant attorney general. She obtained guidance from a genealogist who has specialized in tribal recognition work and from a historian with expertise in the history of New France. The research covered standard references and public records as well as special collections maintained in libraries, archives, museums and churches in the United States and Canada. A list of these libraries and other sources of information is attached to this Summary.

The State compiled the results of its research into a 200-page response to the petition. The State's response, supported by 159 exhibits, has been filed with the Bureau of Indian Affairs. The response includes a complete bibliography.

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The State's response to the petition traces the history of an Indian group that resided in northwestern Vermont for extended periods during the seventeenth and eighteenth centuries. In the late 1700s, around the time of the American Revolution, this group retreated to its home base in Quebec. Then, over the next two hundred years, there were very few observations of Indians in Vermont, and these were mostly sightings of visiting Indians.

Missionaries and anthropologists searched for Indians in Vermont and in surrounding areas on several occasions in the nineteenth and twentieth centuries. These observers were able to find and identify the Canadian Abenaki Tribe at Odanak/St. Francis, Quebec. They also identified quite small tribes elsewhere in New England. However, they did not find any Indian tribe in Vermont.

The State's response to the petition also discusses the absence of an Indian community and an Indian political authority in Vermont after 1800. There was no Indian church or Indian school in Franklin County. There is an historic Indian burial ground in

Swanton, but recent generations of petitioner's ancestors have not used an Indian cemetery. This evidence is significant because the Bureau of Indian Affairs has cited the continuation of Indian churches, schools and cemeteries in cases when it has acknowledged a petitioning group as a tribe.

Most of petitioner's ancestors were members of a French-Canadian Catholic church and they were buried in a Catholic Cemetery. They did not speak the Abenaki language. In several instances, in the early twentieth century, they were involved in European-American social clubs and active in Vermont's state and local governments. They were indistinguishable from the general population in Vermont.

Petitioner's claim of tribal ancestry is also contradicted by federal censuses and other genealogical evidence. For example, petitioner's ancestors appear in the census records, but they are not listed as Indian. The census records do identify a few individuals as Indian, including some who can be traced to the Canadian Abenaki tribe, but these individuals were not related to members of the petitioning group. One of the more striking aspects of the historical record is the lack of any demonstrated interaction between petitioner's ancestors and the few individuals who were identified as Indian in the census records.

These and other related matters are discussed at length in the State's Response to the Vermont Abenaki Petition for Acknowledgment as an Indian Tribe.

Institutions visited or collections consulted by the State

American Philosophical Society, Philadelphia, PA

Bibliothèque de Montreal, Salle Gagnon, Montreal, Quebec, Canada

Canadian Museum of Civilization, Hull, Quebec, Canada

Catholic Diocese of Vermont, Archives, Burlington, VT

Church of the Nativity, Swanton, VT

Henry Sheldon Museum of Vermont, Middlebury, VT

National Archives, Washington, DC

National Archives of Canada, Ottawa, Ontario, Canada

New York State Library, Albany, NY

Public Records, Records Center, Middlesex, VT

Public Records, Reference and Research (Vital Records), Middlesex, VT

Rauner Special Collections, Dartmouth College Libraries, Hanover, NH

Rokeby Museum, Ferrisburgh, VT

Swanton Town Clerk's Office, Swanton, VT

Vermont Department of Libraries, Montpelier, VT

Vermont French-Canadian Genealogical Society, Winooski, VT

Vermont Historical Society, Montpelier and Barre, VT

Vermont State Archives, Montpelier, VT

Wilbur Special Collections, University of Vermont Libraries, Burlington, VT