



COMMONWEALTH of VIRGINIA
Office of the Governor

Doug Domenech
Secretary of Natural Resources

January 6, 2014

TO: Speaker Howell, Chairman, House Rules Committee
Senator Ryan McDougale, Chairman, Senate Rules Committee

CC: Senator Jill Vogel
Senator Kenneth Alexander
Senator Steve Newman
Delegate Matt Fariss

RE: **REPORT ON RECOGNITION OF VIRGINIA INDIAN TRIBES**

Dear General Assembly Members,

Enclosed please find a report on Recognition of Virginia Indian Tribes.

You will recall in the 2013 Session you considered HJR 744 and SJR 300. You set aside both resolutions at the request of the Administration and at the request of a number of current Virginia Indian Chiefs.

Tribal recognition is often controversial, even among Virginia's current eleven state recognized tribes. While we had input from Virginia tribes on this report, there is likely to be various conflicting opinions as to the best way to move forward.

In this report we attempt to propose a new way for Virginia to recognize tribes that upholds the highest historic integrity, that is consistent, and that relies on established criteria and standards of documentation consistent with the federal process.

We propose a process that includes scholarly review and input from appropriate executive branch agencies as well as input from state recognized tribes and from federally recognized tribes in cases where the petitioners are claiming descent from a tribe that has been recognized by the federal government.

Speaker Howell, Senator McDougle
January 6, 2014
RE: Report on Recognition of Virginia Indian Tribes
Page 2

Finally, we propose that for full tribal state recognition a bill with the governor's signature be required, rather than a resolution.

This report was prepared by current and former staff at the Department of Historic Resource, especially Catherine Slusser. I recommend you consult with them as your primary contact for questions on the report.

I hope this is of value to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Domenech". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Doug Domenech

RECOGNITION OF VIRGINIA INDIAN TRIBES

**A REPORT TO THE GENERAL ASSEMBLY HOUSE
RULES AND SENATE RULES COMMITTEES**



OFFICE OF THE SECRETARY OF NATURAL RESOURCES

Commonwealth of Virginia

January 2014

RECOGNITION OF VIRGINIA INDIAN TRIBES:

A REPORT TO THE GENERAL ASSEMBLY HOUSE RULES AND SENATE RULES COMMITTEES

Introduction

The Virginia Council on Indians, which had been charged with evaluating all petitions for recognition as a Virginia Indian Tribe, was eliminated in 2012, at the written request of a majority of chiefs, through item 32 of HJR 49 approving the Governor's reorganization recommendations. During the following Session in January 2013, the General Assembly was confronted with several resolutions from groups with possible, but unevaluated, associations with the historical Cherokee habitation of southwest Virginia requesting recognition by the Commonwealth as Virginia Indian tribes. In the absence of an established procedure or criteria for evaluating such requests, the Senate Rules committee set those resolutions aside and asked that the Secretary of Natural Resources investigate the issue and make recommendations for future sessions.

Over the past year the Office of the Secretary of Natural Resources and the Department of Historic Resources has examined the broad context of Virginia Indian history and issues underlying recognition of tribes both in Virginia and in the other states with state-recognized tribes, and listened to the observations of Virginia Indian chiefs. What we have found is that in order for state tribal recognition to be meaningful, particularly when it applies to access to federal programs, there must be a consistent and rigorous process by which those tribes are recognized.

The criteria should be based on a continuity of community cohesion, descent from known historical tribes within Virginia as well as a continuity of identity as Indians through the centuries. These are broad criteria that not all groups seeking recognition will be able to meet. Some will claim that they cannot be met given Virginia's history of denying Indian identity in key public records particularly during the early 20th century. That said, there is a difference between acknowledging the possible or even likely descent of individuals and families from Virginia Indian roots, and recognizing those individuals and families as a formal "tribe." For this reason, we are suggesting a new second option that would acknowledge Indian heritage and honor groups that wish to revive that heritage through a commending resolution rather than full tribal recognition.

Summary of Recommendations:

1. That the General Assembly establish a Joint Commission on Virginia Indian Recognition comprised of both legislative and non-legislative members and that future requests for recognition be handled by the Joint Commission through a two-stage process.

2. That this process should:
 - a) Be consistent and non-political;
 - b) Rely on established criteria and standards of documentation consistent with the federal process;
 - c) Include scholarly review and input from appropriate executive branch agencies as well as input from state recognized tribes and from federally recognized tribes in cases where the petitioners are claiming descent from a tribe that has been recognized by the federal government;
 - d) Require a full bill with the governor's signature rather than a resolution for full tribal recognition; and
 - e) Include a new second option for less rigorous acknowledgement and commendation of groups that may not meet the criteria for recognition as tribes, but that can demonstrate an ongoing identification with Virginia Indian cultural roots and heritage.

Such commending resolutions can be used as they are now to honor the actions and events relating to individuals as well as organized groups. Such resolutions could address groups that may not meet the criteria for full state recognition, and also activities and events associated with tribes recognized by the Commonwealth or the federal government as well as non-tribal or multi-tribal organizations. Preliminary criteria for these commending resolutions are also provided. Applications and language for commending resolutions would also be reviewed by the newly created Joint Commission on Virginia Indian Recognition prior to adoption.

Note that within the context of this report the term "tribe" is reserved for historical tribes and those that have already been recognized by either the Commonwealth or the federal government. All other collections of people claiming Indian descent or heritage are referred to as "groups", or "organizations" so as not to prejudice any future requests for recognition. These latter terms may also refer to peoples prior to their formal recognition or to aggregates larger than tribes.

Historical Context

History and identity of the native peoples of Virginia and the surrounding states is both complex and somewhat fluid. Through a combination of historical records and archaeological studies, it is possible to see the patterns of movement and change, but it is far more difficult to trace a consistent thread of identity that will link people living today with specific tribes in the past.

This overview is not intended to be a final word on any of the questions about specific claims of Indian tribal or ethnic identity (and the two are not the same) but simply to put those discussions in a broad context.

People have been living in what we call Virginia (and in formerly dry lands miles off today's coastline) for as much as 22,000 years. Artifacts have been discovered off the coastline and from one well-documented site in southeastern Virginia (Cactus Hill, ca 16,000 BC) that contribute to the most recent hypothesis that at least some of America's First Peoples followed the edge of the Arctic ice shelf from western Europe long before the migrations from Asia. For thousands of years, populations grew and shifted. Languages and cultures grew apart. Words and cultural practices were borrowed from other groups. The American continents became a patchwork of thousands of different groups speaking roughly 296 documented languages in 29 distinct linguistic families in North America north of Mexico alone.

When the English settled at Jamestown and Virginia's documented written history began, the area was occupied by people speaking language representing at least three different families:

- The Algonquian speaking tribes along the coastal plains including the present day Chickahominy, Eastern Chickahominy, Mattaponi, Nansemond, Pamunkey, Patowomeke, Rappahannock, and Upper Mattaponi. Roughly 30 of these tribes were within the Powhatan chiefdom or sphere of influence.
- Siouan speakers in central and western Virginia from the fall line west into the Blue Ridge and the Roanoke area (Monacan, Manahoac, Saponi, Occaneechi, Tutelo). Of these only the Monacan remain in Virginia today.
- Iroquoian speaking groups in south central Virginia from the southwestern coastal plains along the fall line and in southwest Virginia (Nottoway, Meherrin, Cherokee). The present day Cheroenhaka/Nottoway and the Nottoway Indian Tribe of Virginia are the only Iroquoian tribes currently recognized in Virginia.

Meherrin, Saponi, Occaneechi, and Cherokee are among the tribes recognized in North Carolina. These and other North Carolina tribes include populations who migrated from Virginia tribal areas.

Relations among pre-1607 tribes were not always peaceful. The Algonquian tribes were sometimes trading partners and sometimes bitter enemies both of the Monacans and Mannahoacs to the west and the Nottoway and Meherrin to the southwest. Within the Algonquian area, Paramount Chief Powhatan's power was extended through a combination of marriages, other alliances, and conquest. The Algonquian tribes under Powhatan's influence appear to have warred with the Algonquian tribes who lived in the southernmost areas of what is now Virginia, but whose ties were centered on tribes around the Albemarle Sound and its tributaries. Each tribe's territory centered on one or more related settlements. The boundaries were often indistinct and changeable.

Contact and Exploration

While recognizing that the native peoples of Virginia have a long history in the area, pragmatically the documentary historical record begins with coming of Europeans particularly the English to what is now Virginia and North Carolina. It is through early maps and written descriptions of expeditions such as John Smith's exploration of the Chesapeake in 1607 and 1608, Edward Bland's journey from the James River south to the Meherrin and back in 1650, and the Batts and Fallam expedition from Petersburg through southern and southwestern Virginia, and possibly as far as the falls of the Kanawha in what is now West Virginia in 1671 that we begin to get a sense of native communities and their locations. But even these sources leave many gaps.

In some cases, archaeologists have been able to pinpoint sites associated with specific Indian settlements (villages, towns, and ceremonial sites) documented on the early colonial maps. These sites can occasionally be associated with specific tribes, or at least cultural groups such as the sites of Werowocomoco, Kiskiak, Nanzatico, and Paspaghegh from John Smith's map, possibly a Totero Town (in Salem) from the Batts and Fallam expedition, and possibly the Nottoway villages of Chounteroute and Rowanty mentioned by Edward Bland. However, unless the location of an Indian town was fairly specifically identified in a historical record and the features of the site (such as the "double D" ditches found at Werowocomoco) or early contact period European trade goods (such as glass beads or items made of iron or European copper) are found at the site it is difficult to impossible to associate a site with a specific town or Indian group. Just because a village is in an area generally claimed by modern Indian descendants does not necessarily mean that site was occupied by their "tribe" in the past. The boundaries between various groups were both vague and fluid. Archaeological studies indicate that many sites showed influences from different groups through time – or even at about the same time.

Population Loss and Movement

Disease and warfare (both among the tribes and with the growing European population) decimated native populations. Whole tribes vanished. Tribes moved away from pressures and/ or merged with other groups—both former allies and enemies. Other groups were relocated by force. Individuals and families were sometimes left behind staying hidden in the backwaters or joined other groups.

Pressure from English settlement began to reshape the map of Virginia Indian territories almost immediately. For example, Jamestown Fort was established in the territory of the Paspaghegh. By 1612, after both friendly gestures and hostilities on both sides, the English had burned several Paspaghegh villages, killed the chief, and the people dispersed to join other tribes.

Following the death of Powhatan, his brother Opecancanough tried to resist English expansion. The 3rd Anglo-Powhatan war ended with his death and resulted in a treaty in 1646 that pushed tribes out of the areas along the James and south of the York. Among these, the Chickahominy were relocated to “Pamunkey Neck”—the area between the Pamunkey and Mattaponi rivers. Later, they held lands north of the Mattaponi, then moved back to the Pamunkey Neck with many eventually migrating back to their traditional areas along the Chickahominy River basin. Chickahominy families that remained in the Pamunkey Neck area intermarried and merged with the closely related Pamunkey, Mattaponi, Rappahannock and Upper Mattaponi. The Rappahannocks too were forcibly relocated at least twice before returning to the area around their traditional home villages. Even today, the family ties among all of these tribes remain closely interwoven.

As early as 1650, the Algonquian speaking Weanock (Weyanoke) had left their villages along the James River and fled south along the Blackwater, Nottoway and Chowan Rivers to settle on the borders between Iroquoian Tuscarora in the west and other Algonquian tribes to the east—deep in what is now North Carolina. Yet, enough Weanock remained in Virginia that their leader was among the named signatories of the 1677 Treaty of Middle Plantation.

The Nottoway peoples moved slowly downstream along the Nottoway River. By 1705 they were granted reservation lands near the present city of Courtland in Southampton County. The last remaining Nottoway reservation lands were divided among five remaining families in 1877.

By the time serious Euro-American settlement of the western mountains was underway, most of the indigenous population had vanished from that region and their villages had been abandoned. Archaeological studies have found many large settlements along the upper reaches of the Roanoke, James and Shenandoah Rivers and their tributaries but little evidence of Euro-American contact. Between disease and hostilities, what had been a well-populated region of towns (many with nearby burial mounds) had become a hunting ground and pathway for Iroquois coming from the north.

In short, the first hundred years of English occupation was turbulent and devastating for the native population and social organization. Through the 19th century there are only a handful of relatively small remnant populations recorded.

The Plecker Years

During the early 20th century the official position of the Commonwealth of Virginia, carried out particularly by the Bureau of Vital Statistics under Dr. Walter Plecker, was that there were no longer any Indians in Virginia. Anyone with a “trace” of non-white “blood” was deemed to be “colored” and prohibited from marrying whites or attending white schools, etc. Indians were classified as “colored” regardless of biological or cultural heritage.

These policies had a devastating effect on the Indian communities. They created obstacles for Native American identity and made it more difficult for individuals to be recognized as Indians in the public record.

At the same time, they gave the Indian community something to struggle against that, in some cases, actually helped solidify that identity. Tribal members frequently moved out of state to marry and give birth. Several tribes fought the policies of Plecker and the eugenics movement in court—refusing to serve in the military in what were then termed “negro” units and promptly volunteering when the right to enlist as Indians was won, fighting for and funding their own schools, and fighting in courts for the right to be listed in the census as Indian. One outcome has been that the communities that stood up against the Racial Integrity Act and policies implemented by Plecker and others are the ones that have—as a group—a continuing thread of legal documentation through the early and mid-20th century.

Other clusters of Indian descendants remained quietly in the background. These are the communities most affected by the “paper genocide” of the Plecker years. Without the Indian schools and churches that show community identity, these groups must rely more heavily on standard genealogical research using court records, land transactions, etc. to document descent from people who were recorded as Indian prior to the Plecker years. Private records, such as personal correspondence, attendance records at Indian schools out of state, birth and marriage records from out of state for those who chose to leave in order to maintain Indian identity, church records, and other sources, can also help illuminate both descent and a history of community cohesion.

Virginia Indian Continuity and Revitalization

Only the Pamunkey and Mattaponi have held on to the core of once much larger reservation lands through the centuries.

The Chickahominy, Nansemond, Nottoway, and Rappahannock were once granted reservation lands, but these were lost by the mid-19th century. In the early 20th century Smithsonian anthropologists Frank Speck, James Mooney, and William Gilbert studied the Chickahominy (which later split into Chickahominy and Eastern Chickahominy), Nansemond, Rappahannock, and Upper Mattaponi communities (as well as Mattaponi and Pamunkey) as they revitalized themselves as Indian tribes. All of these groups can document continuity as loosely knit communities with organized centers (including tribal schools and churches) appearing in the records through the 20th century.

Yet another Algonquian tribe, the Patowomeck/Potomac, along the northern edge of Powhatan’s sphere of influence, at times allied with the Powhatan tribes, at other times with the English. In

1666, Anglo-Patawomeck relations had deteriorated to the point that the Governor decreed that the tribe be annihilated. At that point, the Patawomeck disappear from the public record. In 1928, Speck identified possible Indian descendants in the area of a former Patawomeck town in what is now Stafford County, and considered them Patawomeck/Potomac descendants as did Gilbert in 1938.

The Siouan-speaking Monacan and related Mannahoac occupied the Virginia Piedmont from the fall line into areas of the Blue Ridge Mountains with the related Saponi and Tutelo occupying areas to the south and west. These groups had roots in Ohio bringing with them the cultural trait of burial mounds—a trait which is now used by the Monacan to define the extent of their historical sphere of influence. Sometimes trading partners, sometimes enemies, of the Algonquian tribes to the east, the Monacan and Mannahoac are less well documented than the groups closer to Jamestown. But they are none-the-less, part of the historical record. Monacan and Mannahoac towns appear on early maps. A Monacan chief signed the 1677 Treaty of Middle Plantation, Monacans were among the tribes “protected” at Fort Christanna, and Thomas Jefferson wrote of seeing probable Monacan visitors to a burial mound near Monticello. The modern-day Monacan can trace their presence to the Bear Creek Indian community in Amherst County through the 18th, 19th, and 20th centuries. Like several of the Algonquian tribes, they had a separate school and church providing a center for the community. Their presence was noted but not investigated by Gilbert in 1928.

Like their Algonquian neighbors, the Nottoway people are fairly well documented as a cohesive community through the 17th century. They held reservation lands well into the 19th century. Unlike the Powhatan core tribes and the Monacan, they virtually disappear from the public record from 1877 until remnant descendant groups organized in the 21st century. In his 1938 report to the Smithsonian, Gilbert noted that “West of the Nansemond in Southampton County near Sebrell and Courtland, there are asserted to be still remaining remnants of the Nottoway Tribe.” Unlike their Algonquian and Monacan neighbors there is no documented community center (such as separately recognized Indian schools or churches) or courts records asserting their Indian identity. Instead, Nottoway descendants lived quietly within the surrounding community until they reorganized as the Cheroenhaka/Nottoway (2002), and the Nottoway Indian Tribe of Virginia (2006).

On a side note, Gilbert also mentions remnant populations of possible Wicomico in Northumberland County; he identifies another group as possibly related to Werowocomoco in the Gloucester area along the York River, along with possible remnants of the Accohannock on Eastern Shore, a cluster of families in the Irish Creek area of Rockbridge County, and the Melungeons of southwest Virginia, West Virginia, Tennessee, and Kentucky.

Formal Recognition by the Commonwealth

After more than 400 years of interaction first with Virginia's colonial government and then with the Commonwealth, the remaining populations of Indians native to Virginia have endured population loss, forced relocation, and racial policies that have denied their identity as Indians from the early 1800s with outright "paper genocide" resulting from the racial integrity laws of the early 20th century. Some of these communities have fought to retain their identity over the centuries—retaining reservation lands, or focusing on Indian schools and churches as community centers, or while others have quietly lived within the larger population in rural counties around the state.

In 1982-83 the General Assembly acknowledged that it was time to recognize tribal communities beyond the two (Pamunkey and Mattaponi) who retained (and had continued to pay tribute for) tribal reservation lands to the present day. That year the Joint Subcommittee Studying Relationship Between the Commonwealth and Native Indian Tribes reviewed testimony and documentation from several closely related tribes and concluded that they had "continued to reside roughly in the same area as their ancestral groups, retain a tribal identity, and operate social and religious institutions" and that "...since the early twentieth century the tribes have maintained an organized tribal government." The recommendations from this subcommittee became the basis for recognizing tribes in the modern era.

Currently the Commonwealth recognizes 11 Indian populations as organized tribes. With the dissolution of the Virginia Council on Indians, there is no longer a process to evaluate petitions from groups wishing to affirm their Indian heritage by seeking recognition.

What does "recognition" mean?

For the purposes of recognition, the questions become 1) "what is being recognized"—identity as "an Indian" which is a matter of descent that is traceable to some extent in spite of early 20th century recording practices or identity as a "tribe" which requires some sense of continuous community cohesion over time. At what point have the descendants of a former, documented tribe merged with the surrounding community so well, and even hidden their Indian identity so long, that they can no longer, realistically be considered a tribe? And 2) "what does it mean to be recognized?" In the absence of federal recognition for Virginia Indian communities, the answers to these two questions weigh heavily on the credibility and meaningfulness of state recognition.

Being a "tribe" is not the same as having Indian/Native American descent as individuals. The Oxford Dictionary defines "tribe" as "a social division in a traditional society consisting of families or communities linked by social, economic, religious, or blood ties, with a common culture and dialect, typically having a recognized leader," and gives as an example indigenous Indian Tribes. Virtually all definitions of Indian/Native American tribes include the concept of a

cohesive unit that retained that identity through time. Many people may share Indian ancestry; that alone does not mean they were or are a tribe.

This concept of shared identity and community has been a critical element of both federal and Virginia state recognition.

At a national level, recognition acknowledges that tribes have a sovereign status and a right to government-to-government relationship with the federal government. This translates to special status for the tribes and their members under a wide range of laws, certain lands rights, a certain amount of autonomy, and also priority treatment in many federal programs – environmental review, resource protection, grave protection, access to economic and health and human services programs—that are not available to individuals or to groups that may identify themselves as Indian, but that have not been formally recognized as tribes.

The 1982-83 Joint Subcommittee Report indicates that the commission members believed state recognition would help Virginia tribes gain access to some of the programs and privileges reserved for federally recognized tribes. The Sub-committee recommended creating a Commission on Indians under the Secretary of Human Resources and with a mission that include suggesting “ways in which Indians may reach their potential and make their full contribution, as wage earners and citizens, to society and this Commonwealth.”

State recognition essentially acknowledges the identity of an organized Indian community as having a special relationship with the Commonwealth. While there are no specific social/economic benefits in law or in state programs, this relationship gives the tribes greater visibility in dealing with state agencies. Over the three decades since state tribes were first recognized, the greatest strides have been made working with the Department of Education to improve SOLs and teaching tools that tell the stories of Virginia Indians more effectively, and with the Department of Historic Resources on a combination of educational programming, listing Virginia Indian sites on the Virginia Landmarks Register and National Register of Historic Places, and developing historical highway markers that tell the Virginia Indian story as well as pushing for federal agencies to consult with Virginia tribes during federally mandated environmental reviews. The Department of Game and Inland Fisheries worked closely with the Council, while it existed, and the tribes on with hunting and fishing issues.

The Virginia Council on Indians also became a way for both government and non-government entities to reach out to the recognized tribes and to gain attention and input from the Virginia Indian community. For example, the Virginia Foundation for the Humanities has worked with state-recognized tribes for more than 20 years to develop educational resources and create public programs that redress the historical exclusion and misrepresentation of Virginia’s native peoples. The General Assembly provided the initial funding to create the Virginia Indian Heritage Program at VFH, which continues to create new resources and add native perspectives to our

shared story as Virginians. Recognition of individual tribes gave them a leg up in consultation with the organizers of the Jamestown 2007 commemoration—and gave the organizers a more formal path to seek out Virginia Indian involvement.

In particular, the Department of Historic Resources has worked proactively to encourage federal agencies to include state-recognized tribes in Virginia as consulting parties in environmental/historical review processes for projects that potentially affect Virginia Indian historical sites and/or traditional land uses. State recognition helped the Monacan, working with DHR, to claim and repatriate ancestral remains from the Rapidan Mound (possible site of Stegara Town shown on early colonial maps), through the federal Native American Graves Protection and Repatriation Act (NAGPRA) Committee. State recognition has been a key factor in dozens of highway and other projects reviewed under Section 106 of the National Historic Preservation Act.

The strongest claim for that consultation has always been that formal recognition by the Commonwealth was achieved through a rigorous process consistent with (though not identical with) the federal process. The presumption of a rigorous process and criteria that are parallel to federal recognition criteria has given those tribes a level of credibility as consulting parties in federal environmental review and repatriation of human remains from prehistoric Indian grave sites—credibility and respect that is not given by federal agencies to state-recognized tribes in states without a comparable process.

Tribal Recognition in Other States

A 2008 Santa Clara Law Review article on “Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States” by Alexa Koenig and Jonathan Stein showcased the struggles of Virginia tribes as one of several examples of the roughly 200 tribes seeking federal recognition. (Alexa Koenig and Jonathan Stein, *Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States*, 48 Santa Clara L. Rev. 79 (2008). Available at:

<http://digitalcommons.law.scu.edu/lawreview/vol48/iss1/2>)

They also showcase Virginia as one of a handful of states which, at that time (2007) had a formal and rigorous process for tribal recognition.

Koenig and Stein identified 16 states that had by 2007 recognized 62 tribes that were not federally recognized. These states include: Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Louisiana, Massachusetts, Montana, New Jersey, New York, North Carolina, Ohio, South Carolina, Vermont and Virginia. They also identify an additional five states with strategies for acknowledging Indian heritage short of full tribal recognition including: Kansas,

Kentucky, Michigan, Missouri and Oklahoma.

According to this survey, state-recognition provides primarily a means of acknowledging long-standing relationships between tribal groups and the state government as well as a means of accessing limited federal benefits that have been made available to tribes or other groups that are not formally recognized by the federal government.

Most of the states reviewed by Koenig and Stein have simply recognized one or two tribes by legislation with no specific provision for further recognition. Alabama, Maryland, Massachusetts, and South Carolina have administrative processes with Commissions roughly similar to the former Virginia Council on Indians, though it should be noted that South Carolina creates three different categories of "recognition"—tribes, groups, and organizations with different criteria for each. Other states, including Georgia, Louisiana, New Jersey, and Ohio recognize tribes through joint resolutions much as Virginia does currently.

In those states with written criteria for recognition, all use the principles of community cohesion and continuity through the centuries from historical tribes indigenous to that particular state and that membership should be able to document descent from the historical tribe in question.

Maryland requires that the petitioning group establish that: the group has been identified as Native American from before 1790 and can demonstrate that it has been part of a continuous Native American community from before 1790 until the present. The Maryland criteria also stipulate that the members of the group must be descendants from a tribe that is indigenous to Maryland, and inhabited a specific area in Maryland before 1790 and that the membership of the group must be composed principally of persons who are not members of any other acknowledged or recognized Native American tribe, band, group, or clan. The criteria allow the process to take into account the special circumstances of Native Americans indigenous to Maryland,

Alabama began recognizing state tribes through legislation in the 1970s. In 2000, Alabama confirmed nine tribes that had been recognized and adopted criteria and an administrative process (through a Commission) for any further petitions for recognition. According to Alabama law a petitioning group must provide a list of at least five hundred (500) members who reside in the state of Alabama along with evidence that each of its members is a descendent of individuals recognized as Indian members of an historical Alabama tribe, band, or group found on rolls compiled by the federal government or otherwise identified on other official records or documents. In addition the petitioner must demonstrate that its members form a kinship group whose Indian ancestors were related by blood and such ancestors were members of a tribe, band or group indigenous to Alabama. Members may not be members (or be eligible for membership) in a federally recognized tribe. The petitioning group must also provide evidence that it has been identified with a tribe, band, or group, or Indian community from historical times (200 years) until the present as "American Indian" and has a currently functioning governing body. It

requires that genealogical evidence be verified and approved in writing by a Certified Genealogist (CSL) who is not a member of the petitioning group or Indian community. The criteria require a tribal history that must be validated by a certified historian and/or anthropologist.

North Carolina has recognized seven state tribes by state statute. Currently, North Carolina's Department of Administration's Commission on Indian Affairs sets domestic Indian tribe recognition criteria for any further recognition requests. Accordingly petitioning groups must be able to "trace their historic origins to indigenous American Indian tribes prior to 1790. They can show this continuity of community and Indian identity through a number of different types of documentation including: official records, such as birth, medical, military or local or county government records; documents that demonstrate any historic government-to-government relationships between the petitioner and the state or federal governments, anthropological, historical, or genealogical documents, documentation of kinship/intermarriage or other ongoing relationships with other state/federal recognized tribes, and documentation of traditions, customs, legends, etc., that are uniquely American Indian, and documents showing grant participation in programs designed for American Indians.

Initially, South Carolina recognized tribes by statute without a formal review process. Since 2003, however, it charged the State Commission for Minority Affairs to develop regulations to certify tribes for state recognition. The process that has been developed grants state recognition to three different kinds of tribal entities. These include the traditional "Native American Indian Tribe," the "Native American Indian Group," and the "Native American Special Interest Organization" each with specific criteria. For full tribal recognition, petitioning groups must demonstrate a historical presence for at least the past 100 years and meet all of the characteristics of a "tribe" in the South Carolina regulations. Among these requirements are that the tribal purpose in its bylaws and commitments to meet specific tribal needs. Claims must be supported by a combination of official records such as birth certificates, church records, school records, U.S. Bureau of the Census records; documented kinship relationships with other Indian tribes in and outside the State; anthropological or historical accounts tied to the group's Indian ancestry; lineal genealogy charts for tribal members; documented traditions, customs, legends, etc., that signify the specific group's Indian heritage; letters, statements, and documents from state or federal authorities, that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs; and letters, statements, and documents from tribes in and outside of South Carolina which attest to the Indian heritage of the group.

The importance of criteria

In part because of the overall lack of criteria and rigorous review processes, and because of the proliferation of state recognition beginning in the 1950s, state-recognized tribes are often viewed

with varying degrees of skepticism by federally-recognized tribes and by many federal agencies. Federal tribes also question the credibility of groups recognized by the states—often viewing them as Indian “wannabes”. For example, the federally-recognized Cherokee have gone so far as to establish a “Cherokee Identity Protection Committee” in 2011. The Cherokee Indian Nation based in Oklahoma created a list of 212 groups in states across the nation whose claims to be Cherokee “tribes” are considered “fabricated” by the federally-recognized Cherokee. Many of these groups are recognized by other states. Ten of these groups are in Virginia (none recognized at this date).

The tension within the “established” (primarily federally recognized) Indian community over what is sometimes seen as an attempt to misrepresent Native American heritage and the fear that state-tribes will compete for limited federal resources and rights claimed by federal tribes is very real and highly emotional. It can leave groups with genuine, but poorly documented, claims of an Indian heritage caught in the cross-hairs. The proliferation of state-recognized tribes over the past few decades, often with little to no critical review, makes the problem worse. As cited by Koenig and Stein, Alabama Waccamaw Chief Harold Hatcher put his finger on the problem when he noted (in reference to state processes without firm standards), “[s]ubjective decisions foster a process open to every prejudice imaginable, and one where fraud will inevitably abound.”

Conclusion and Recommendations

The 1983 recommendations of Virginia’s original Joint Subcommittee Studying Relationships Between the Commonwealth and Native Indian Tribes to recognize tribes were based on the same concepts as the federal process—

- Continuity – descent along with community cohesion and identity over the generations
- Strong documentation
- Consistent scholarly review

These are the same principles that appear over and over in both federal recognition and in the procedures developed by those state that have written procedures and criteria. It is within this larger context of and keeping the importance of credibility for Virginia tribes in a variety of situations, not least of which is their relationship with both state and federal agencies and the larger Native American community, that this report recommends adopting a more formal and rigorous review process and criteria such as those suggested in Appendix A and Appendix B.

It is, therefore, recommended that a Joint Commission on Virginia Indian Recognition be established as a standing commission within the Legislative Branch with the responsibility of creating and managing a process both for tribal recognition and for affirmation of Indian identity for groups that may not meet the criteria for formal recognition as tribes with advisory involvement by the Executive Branch. This process should:

1. Be consistent and non-political;
2. Rely on established criteria and standards of documentation consistent with the federal process;
3. Include scholarly review and input from appropriate executive branch agencies as well as input from state recognized tribes and from federally recognized tribes in cases where the petitioners are claiming descent from a federally recognized tribe; and
4. Include an option for less rigorous commendation for groups that do not necessarily meet the criteria for recognition as tribes, but that can demonstrate an ongoing identification with Virginia Indian cultural roots and heritage.

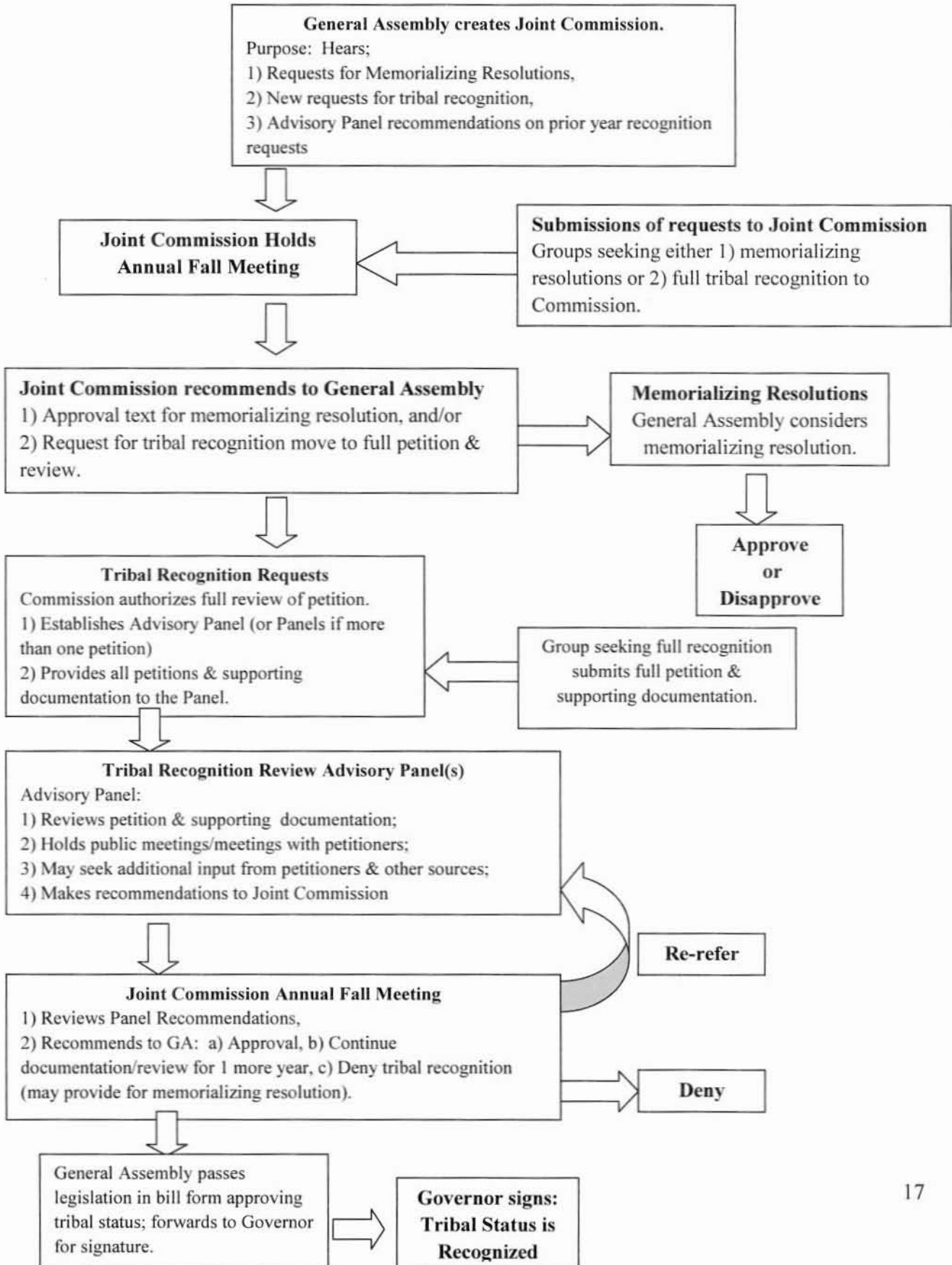
Such a Joint Commission on Virginia Indian Recognition should:

1. Be composed of legislative and non-legislative members including voting representation by the Library of Virginia, Department of Historic Resources, and Department of Education.
2. Be charged with review of all petitions from groups seeking formal recognition as tribes, or less formal affirmation of Indian heritage through commending resolutions.
3. Be charged with adopting formal criteria and procedures for careful review of such petitions including examples of the types of documentation that would address each criterion.
4. Be charged with creating and managing a non-legislative Advisory Panel with representation from the scholarly expertise needed to review and analyze submitted documentation and advise the Commission on the factual nature of claims made and whether or not the documentation showed that those criteria had been met.
5. The Commission and Advisory Panel will take testimony from experts, as well as current state recognized tribes.
6. Be given a sunset clause of 10 years on the probability that if a group has not come forward within that time (more than 40 years after the initial joint committee met), it would be highly improbable that it could demonstrate that it had continued as a tribal community over the past four centuries. By the year 2024, all recognition of Virginia tribes should be closed. And if it were reopened for any reason later, it should retain the same rigorous process and criteria to maintain the credibility of both the process and of the tribes that have been recognized.

The procedure for full recognition should follow the following basic steps:

1. That future requests for recognition be handled through a two-stage process in which a group seeking recognition submits a summary proposal to the Joint Commission on Virginia Indian Recognition for evaluation.

Proposed Recognition Procedure



ATTACHMENT A

PROPOSED PROCEDURE FOR PETITIONING

Step 1. Letter of Intent to Petition

Petitioners file a “letter of intent” to petition. The letter of intent should consist of a statement, signed by all the members of the group’s governing body, declaring that the group plans to apply for recognition as a tribe by the Commonwealth of Virginia and intends to submit a petition to the Joint Commission on Virginia Indian Recognition or, alternatively seeks less formal affirmation of identification with an Indian Heritage. It should include supporting documentation providing background and summarizing the rationale for either. The letter of intent should be sent by mail to the:

Chair of the Joint Commission on Indian Recognition
Virginia General Assembly
Richmond, VA

Letters of intent may be filed at any time, but must be received by the Commission no later than 120 days before its annual fall meeting in order to be considered at the upcoming General Assembly session.

Upon receipt of the letter of intent, the Commission will record its receipt, send an acknowledgment to the group, notify in writing the group’s state Senator and Delegate, post a notice of the group’s letter of intent on the Commission’s (or other appropriate) website and bring the request before the Commission at its fall meeting.

Commission members will be provided an opportunity before the meeting to review the preliminary proposal and any supporting documentation, ask for addition documentation from the petitioner, and/or consult with scholars and/or tribal advisors.

Step 2. Preliminary Resolution by the General Assembly

At its annual fall meeting the Commission will consider all requests and prepare recommendations for the upcoming General Assembly Session. Such recommendations may be to 1) support moving forward to a full petition; 2) support a memorializing resolution honoring the petitioners’ Indian cultural heritage but not supporting full recognition; or 3) recommending denial of either full recognition or a memorializing resolution. Recommendations for either moving forward to the second stage of a petition or for a memorializing resolution should include language for the appropriate joint resolution—memorializing Indian heritage or encouraging the petitioner to provide full documentation for review of potential recognition.

The Commission shall include a summary of all requests and recommendations in an annual report to the General Assembly. The report shall also include draft language for joint resolutions approving for full recognition and any memorializing resolutions recommended by the Commission. All resolutions recommended by the Commission will be introduced by the Chair and co-patroned by other legislative members of the Commission as appropriate. Approval by both Houses of the General Assembly of a joint resolution memorializing a group's Indian cultural heritage will complete the process for those honorific actions.

Step 3: Submitting the Full Petition for Recognition

Once the General Assembly agrees (via joint resolution) that a request should move forward, a group may submit to the Commission a full petition for tribal recognition. The petition should consist of (a) a resolution from their governing body, (b) an overview and justification, and (c) supporting documentation. The petition and all supporting documentation should be submitted in electronic format (such as a combination of Word documents, Excel spreadsheets, pdf files or readily readable image formats for photographs, maps or scanned records and supporting documents). It may be submitted via email directly to the Commission chair or the assigned legislative staff.

(a) The resolution, signed by all members of the group's governing body and identifying the group's lawyer (if any), should state that recognition is being sought.

(b) The overview should explain briefly (Criterion by Criterion) why the group should be recognized as an Indian tribe by the Commonwealth of Virginia.

(c) Within the overview should be references to the "supporting documentation" contained within the petition. The supporting documentation should be grouped by the criterion those documents support. When one group of records speaks to more than one criterion, they should be placed with the records for the lower-numbered criterion and cross-referenced in the overview to other relevant criterion.

All petitions and supporting documentation should be submitted in readily readable electronic format. For any documents that cannot feasibly be scanned or otherwise included in an electronic submission, these should be noted in the index and the petition should include a minimum of six complete, identical copies of those documents.

Any group petitioning the Commission is responsible for scanning and/or duplicating all the papers it submits and also for insuring all documents are complete and properly labeled. "Properly labeled" means that each electronic or photocopied record has a full reference written or typed on it (e.g., U.S. Census 1850, Virginia, X County, Y District/Township, page ___, or for

multi-paged accounts, e.g., Gilbert 1948, p. ____). The Commission or the Advisory Panel may ask the petitioners for, or accept, additional documents at any time during the evaluation process.

A petition for tribal recognition may be submitted at any time but should be submitted at least six months prior to the annual fall meeting of the Commission in order for the final recommendation to be considered by the following General Assembly session. If the petition is incomplete, submitted late, or if either the Commission or Advisory Panel requires additional documentation to complete their review and recommendations the review process may be tabled until the next year. If the additional documentation is not provided in the time frame indicated by the Commission the Commission will make a recommendation no later than the second year after the General Assembly has approved the process to move forward with the understanding that the outcome will be influenced by the lack of supporting documentation that was requested.

If the Commission makes a positive recommendation for the petition for tribal recognition in its annual report to the General Assembly, the General Assembly will act upon it in due course. Petitioners wishing for recognition in a certain session of the General Assembly are advised to allow ample lead-time for the evaluation process.

A group may withdraw its petition, without prejudice, at any time. To do so, a resolution signed by all members of their governing body must be sent to the Commission by certified mail with return receipt requested. Upon receipt of that resolution, the petition will be considered withdrawn.

Step 4. The Advisory Panel

Once the General Assembly approves that a request for recognition move forward to a full petition and review, the Chair of the Commission will appoint an ad hoc Advisory Panel (Panel) (or Panels if there are more than one petitions in a given year) to evaluate the petition for recognition and make recommendations to the Commission at its annual meeting. The composition of the Panel will be determined by the Commission as appropriate to the particular petition. It will have a minimum of seven members and must include at minimum a certified genealogist, at least two scholars with recognized familiarity with Virginia tribes and history, plus representation from the State Library and Department of Historic Resources. Representatives should have institutional knowledge of the histories and struggles of the Virginia tribes, along with a working knowledge of Indian law. None of the Advisory Panel members may be associated in any way with the petitioning group. These persons will be nominated by the Chair and ratified by the Commission. No person with a known bias for or against a petitioning organization shall serve on the Panel. Upon appointment, each Panel member will sign a conflict-of-interest statement, to that effect. If Panel members identify a fellow member having a conflict of interest in the recognition case currently being studied, that Panel member must resign or may be removed by the Chair or a majority of the Commission members. A replacement will

be nominated by the Chair and ratified by the Commission. Panel members should be fairly compensated for their time.

With the exception of working papers of the General Assembly members and staff, all meetings and records, including the original petition and subsequent supporting documentation, are subject to the *Virginia Freedom of Information Act*; as such, they are open to the public and are available for inspection and copying upon request. *Code of Virginia § 2.2-3700 et seq.* However, certain information may be included in Petitions, which will be held confidential by the Commission and the Panel, when permitted and specifically excluded from the provisions of the *Freedom of Information Act* or by other federal or state statutes. *See generally, Code of Virginia § 2.2-3705.1 et seq. § 32.1-1 et seq.*

The Panel may engage experts, who may aid in the evaluation, but have no vote in recognition cases. Either the petitioning group or the Panel may request a meeting to discuss progress of the petition and any questions the Panel may have. The Advisory Panel will normally review the petition and make a recommendation to the Commission at least 30 days prior to the scheduled fall meeting of the full Commission. The Panel may recommend, by simple majority: (a) acceptance, (b) rejection, or (c) tabling without prejudice.

Step 5. Panel Recommendation to the Commission

The Panel will provide to the Commission a written report on the recommendation. This report will be sent to all members of the Commission, electronically or via mail, with notice to the petitioning group, at least thirty (30) days prior to the Commission meeting at which the recommendation will be presented. The Advisory Panel will choose a spokesperson to make an oral presentation and answer questions of the written report at the Commission meeting.

Step 6. Voting by the Commission

After it reaches a decision, the Panel will present its recommendation to the Commission at the fall Commission meeting. The Commission will notify the group seeking recognition when its Petition will be discussed.

The Commission may agree or disagree with the recommendation of the Panel. The Commission may vote to recommend, to reject, or to table the petition without prejudice. Within ten (10) workdays of the Commission's vote on a petition: (1) the petitioners will be sent a notification in writing, of the outcome of the vote and (2) the Delegate and the Senator, from the petitioners' districts, will each be sent a copy of the notification. The recommendation shall be included in the annual report of the Commission to the General Assembly.

Should the Commission vote to reject a petition for recognition, that information will also be included in the annual report. In such a case the petitioners will be granted one more cycle to revise the current petition for reconsideration.

If the Commission votes to reject a petition a second time, the petitioning group may submit a new petition only if new and substantively different documentation has been discovered. There is no deadline on such a resubmission, but the process will begin anew. In such a case the petitioning group must submit a proposal summarizing the new documentation and justification at least 120 days prior to the fall meeting of the Commission which will consider the new request, and each of the steps be repeated requiring a second authorizing resolution from the General Assembly followed by resubmission of documentation, Panel review, and consideration by the full Commission.

After any petition has been voted upon, the petition and supporting documents will remain on file with the Commission for future reference or resubmission.

Step 7: Confirmation by the General Assembly and the Governor

Each year the Commission will submit its annual report with any recommendations to the General Assembly. Recommendations to confirm a tribe to be formally recognized by the Commonwealth will include draft legislation which will be introduced by the Chair and Co-patroned by a Commission member in the opposite House and other Commission members as appropriate. A tribe shall be considered "recognized" once that bill is passed by both Houses of the General Assembly and signed by the Governor.

ATTACHMENT B

PROPOSED CRITERIA FOR TRIBAL RECOGNITION AND FOR MEMORIALIZING RESOLUTIONS

I. TRIBAL RECOGNITION CRITERIA

The following criteria provide a thoughtful and well-considered set of standards and guidelines for evaluating whether or not a group of people claiming to be descended from historic Virginia Indian tribes can be considered as “tribes” rather than as remnant descendants who, while honoring their Indian heritage, may not be able to demonstrate that descent or, more importantly, cohesive tribal relations through the centuries that are essential for formal recognition as a tribe.

These criteria are consistent with the criteria for recognizing federal tribes as developed in consultation with the National Congress of American Indians. They parallel and are consistent with criteria used by several other states that maintain a systematic recognition process. They are also consistent with the principles used by the General Assembly to recognize tribes in the past, and are based on the criteria, and guidance developed to help petitioners to build strong documentation, ratified by the former Virginia Council on Indians in May 2006.

The criteria are based on the principles that a tribe must be defined by cohesion and continuity through time, and must be supported by documentable evidence. This evidence is not restricted to the public record, but must be able to stand the test of close objective, scholarly scrutiny.

These criteria address formal recognition of Virginia Indian Tribes and do not address:

- Individual persons
- Tribes already recognized by another state
- Groups whose members have not consistently acknowledged their Indian heritage and who have identified with other cultural groups
- Groups whose members, having ancestry in historically unconnected Indian tribes, have recently come together for mutual support
- Members of a splinter group or individuals eligible for membership in a Virginia-recognized tribe.

The burden of proof shall be on the petitioning group, not the evaluators. Petitioners must do their own research. However, qualified professionals in anthropology or history may be

available to assist with research or other helpful ways. Grant funds for such projects may be available from the Federal Administration for Native Americans and other entities.

All criteria must be satisfied before the Virginia Commission on Indian Recognition will offer its recommendation to the General Assembly. Incomplete petitions will not be considered.

CRITERIA FOR TRIBAL RECOGNITION

Criterion 1. Show that the group's members have retained a specifically Indian identity through time.

Virginia state recognition of Indian tribes is the Commonwealth's method of endorsing the Indian identity of tribal groups whose members have consistently declared their ancestry among themselves and in public. Petitioning groups must submit evidence supporting their long-time sustained practice of identifying as "Indians" within their group, as well as evidence of identifying themselves as "Indians" in public.

Documents that will be considered include:

- Affidavits from elderly group members (showing the date collected and the age of the person attesting) that the group has identified internally as "Indian"
- Current and historic affidavits by local "non-Indians" testifying that the group or individual members of it were considered "Indians" by numerous people in the area
- Local, state, or federal records that show opposition to group members identifying themselves as "Indians"
- Documentary evidence of group members identifying themselves as "Indians" among themselves, such as correspondence, diaries, family Bible entries, birth certificates showing a significant number of babies were given traditional "Indian" names
- Correspondence or photographs of group members showing that they visited with members of other tribes
- Accounts by anthropologists that mention or describe the group
- Colonial, local, state, or federal records that show that the group, or individual members of it, were identified as Indian or as their ancestral tribe; ideally, this

kind of identification should be continuous from early historical times to the present

- Documents relative to the formal organization by the group of a group corporation, school, church, or other such institution, if the institution included the word “Indian” or a tribal name.

Records submitted must be photocopies of the originals (i.e., primary sources). Later scholars’ summaries (i.e., secondary sources) will be considered if the original documents have been lost.

Criterion 2. Demonstrate descent from an historical Indian group(s) that lived within Virginia’s current boundaries at the time of that group’s first contact with Europeans.

The tribe from which petitioners claim descent should have lived in an area within the current boundaries of the Commonwealth of Virginia at the time of that tribe’s first sustained, documented contact with Europeans.

Documents that will be considered include:

- Historical accounts written by early explorers who encountered the tribe
- Letters or diaries from government surveyors, Indian agents, and the like, who were sent out to negotiate with the group either before or soon after Europeans began arriving; also the governmental instructions (if they name the group) given to such surveyors or agents
- Letters, reports, diaries, or other documents from the early historic period in the group’s area
- Early cartographers’ maps of the region, showing the location of the group’s towns or villages

These accounts and maps must be photocopies of the originals (i.e., primary sources). Later scholars’ summaries and composite maps (i.e., secondary sources) will be considered if the original documents have been lost.

Criterion 3. Trace the group's continued existence within Virginia from first contact to the present.

The petitioners should be able to document their group's history within Virginia from their first Colonial encounter. If there has been movement from the originally recorded location to other places within Virginia, then records documenting the group's existence along the route of movement will be considered. A geographical clustering of families should be demonstrated at least until the early twentieth century.

Petitioning groups should show that they have had a community existing within Virginia from historic times to the present. Any group of descendants that may have organized out of state will not be considered for state recognition. If the tribal group in Virginia has already obtained recognition from another state, its Petition will not be considered for Virginia state recognition.

Documents that will be considered include:

- Maps from primary sources showing the relevant Indian town(s)
- Colonial, local, state, or federal census records showing named Indian town(s) in the location(s) inhabited by the group
- Relevant treaties, resolutions or agreements
- Governmental records or correspondence pertaining to the group's land or activities
- Governmental records pertaining to encroachments on the group's land
- Group records in government, local, or personal document collections that mention an Indian community in their vicinity. This may include deeds and land patents mentioning the group's land being nearby, and later deeds, plat books, and processioners' returns showing group members tending to live adjacent to one another
- Census records indicating the group's structure.

These maps and records should be photocopies of the original versions (i.e., primary documents), many of which have been published. Later scholars' summaries and composite maps (i.e., secondary sources) will be considered if the original documents have been lost.

Criterion 4. Provide a complete genealogy of current group members, traced as far back as possible.

The present members of the petitioner's group should be shown, as far back as records permit, to descend directly from members of the original historical tribe(s). The petitioners should trace their tribal genealogies to at least the mid-nineteenth century.

Documents that will be considered include:

- A documented genealogy of all the current members, highlighting of any lines descending to current members from ancestors appearing in public records as "Indian" or "group name"
- Membership rolls from the past, with current members' ancestors among the enrolled people highlighted.

Criterion 5. Show that the group has been socially distinct from other cultural groups, at least through the twentieth century and farther back if possible, by organizing separate churches, schools, political organizations or the like.

Among the recognized tribes, three hallmarks of cultural cohesion in the twentieth century were organized tribal governments, tribal churches, and, until desegregation, separate "Indian" schools. Any group petitioning for Virginia state recognition should present similar documentary evidence of being a culturally distinct, cohesive community.

Documents that will be considered include:

- Records (internal and/or external) showing political cohesion among the people, even if incorporation and official leadership were not established until later
- All group membership rolls compiled either by the group or others
- Records from the segregation era showing a separate school for the group (as opposed to "white" and "colored" schools), whether that school was public or private
- Records (internal and/or external) showing one or more separate, "Indian" religious congregations, with a majority of their members belonging to the petitioning group. Cemetery records, in which the majority of burials are group members

- Documents showing that group members married within the group, at least until the twentieth century
- Records showing group members doing business more frequently with one another than with non-Indians
- Marriage records, deeds of trust, wills and guardian accounts, local business and personal records showing group members relied upon one another when there was need to provide security for bonds or debts, to execute wills, to rear orphaned children and the like
- Records such as travel accounts, correspondence, or diaries completed by non-Indians mentioning the group being “tight -knit,” “in-marrying,” “close,” or “familiar.”

The records must be photocopies of the original, eyewitness accounts or reports (i.e., primary sources).

Criterion 6. Provide evidence of contemporary formal organization, with full membership restricted to people genealogically descended from the historic tribe(s).

The petitioning group should currently have a formally organized government, with established bylaws and with membership criteria restricting full membership to people proving their genealogical descent either from the historic tribe or from a historic membership roll.

Documents that will be considered include:

- Current roll of members
- Bylaws
- Organizational structure
- Certificate of incorporation, if the group is incorporated
- The historical membership roll, if one exists, from which members descend.

II. CRITERIA FOR RESOLUTIONS COMMENDING GROUPS THAT PROMOTE VIRGINIA INDIAN HERITAGE

Criterion 1. Show that the group has been organized and operating for at least ten years; and

Criterion 2. Provide evidence that, during the time of its operation, the group has conducted activities to educate the public such as holding powwows attended by the public, setting up a museum, hosting educational events or exhibits; and

Criterion 3. Demonstrate significant accomplishments on behalf of its members, such as self-help programs or other activities.

ATTACHMENT C

DRAFT LEGISLATIVE LANGUAGE

Title 30

Chapter 45

§ 30-348. Joint Commission on Virginia Indian Recognition; purpose.

The Joint Commission on Virginia Indian Recognition (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to review applications and make recommendations to the General Assembly regarding applications of groups seeking recognition as Virginia Indian Tribes.

§ 30-349. Membership; terms.

The Commission shall have a total membership of 13 members that shall consist of seven legislative members, three non-legislative citizen members, and three ex officio voting members. Members shall be appointed as follows: four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate, to be appointed by the Senate Committee on Rules; at least one non-legislative citizen member who shall represent the Virginia Indian community, to be appointed by the Speaker of the House of Delegates; and at least one non-legislative citizen member who shall represent Virginia's scholarly community, to be appointed by the Senate Committee on Rules. The Librarian of Virginia or designee, the Director of the Department of Historic Resources or designee, and the Superintendent of Public Instruction or designee shall serve ex officio with voting privileges. Non-legislative citizen members of the Commission shall be citizens of the Commonwealth. Unless otherwise approved in writing by the chairman of the Commission and the respective Clerk, non-legislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth for the purpose of attending meetings.

Legislative members and ex officio members of the Commission shall serve terms coincident with their terms of office, except that in years when there is an active petition for full recognition, no member may serve on the Commission who is the elected representative of the district(s) in which the petitioning organization is based. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

Non-legislative citizen members shall be appointed for a term of two years. No non-legislative citizen member shall serve more than four consecutive two-year terms. The remainder of any

term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The Commission shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

§ 30-350. Quorum; meetings; voting on recommendations.

A majority of the members shall constitute a quorum. The Commission shall meet at least once each year not earlier than September 1 or later than November 30 in order to review both preliminary and final submissions for tribal recognition or commendation by resolution. In the absence of any submissions, this meeting may be waived. Other meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 30-351. Compensation; expenses; grants.

Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and non-legislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members of the Commission shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expenses shall be paid from existing appropriations to the Commission, or, if unfunded, shall be approved by the Joint Rules Committee.

The Commission may solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the Commission. In accordance with the appropriation act, the Commission may procure supplies, services, and property, and make or enter into contracts, leases, or other legal agreements as it may deem necessary to carry out its duties as set forth in this chapter. No contract, lease, or other legal agreement shall be entered into by the Commission that extends beyond the date of expiration of the Commission.

§ 30-352 Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Establish guidance of documentation required to meet the criteria for full recognition of Virginia Indian Tribes that is consistent with the principles and requirements of the federal tribal recognition, and for otherwise honoring individuals and groups who can show Indian descent and active identification with their Indian heritage but that may not meet criteria for full tribal recognition

2. Establish a process for accepting and reviewing all applications for either full recognition or commending resolutions.

3. Appoint and establish an Advisory Panel or Panels on Tribal Recognition composed of non-legislative citizens at large who have a knowledge of Virginia Indian history and current status. Such panels may be activated in any year in which a submission for full recognition has been requested, and in other years as deemed appropriate by the Commission. Such a panel must include at minimum a certified genealogist, at least two scholars with recognized familiarity with Virginia tribes and history, plus representation from the State Library and Department of Historic Resources. At least one of the tribal representatives should have institutional knowledge of the histories and struggles of the Virginia tribes, along with a working knowledge of Indian law. None of the Advisory Panel members may be associated in any way with the petitioning group. Members of the Advisory Panel shall be given fair compensation for their time and reimbursed for travel in accordance with §§ 2.2-2813 and 2.2-2825.

4. Make recommendations to the General Assembly for full recognition or commending resolutions based on the findings of the Advisory Panel and the full Commission.

5. Submit to the General Assembly and the Governor an annual report for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman of the Commission shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

6. Perform such other duties, functions, and activities as may be necessary to facilitate and implement the objectives of this chapter.

§ 30-353. Procedure for tribal recognition

The Commission shall develop the details for and implement a procedure based on the following steps:

1. Future requests for recognition be handled through a two-stage process in which a group seeking recognition first submits a summary proposal to the Joint Commission on Virginia Indian Recognition for evaluation.
2. If the preliminary petition appears promising, the Joint Commission will make that recommendation to the General Assembly which would then by resolution authorize the process to move forward to a full petition for recognition. Concurrent with authorization to move forward, the General Assembly will approve a budget amendment to cover costs associated with the work of an Advisory Panel.
3. Following General Assembly authorization to proceed, the Joint Commission will establish an Advisory Panel, which includes tribal representation (state and federally-recognized tribes as appropriate) and strong scholarly expertise; and
4. The group seeking recognition will submit a full petition with supporting documentation and will provide additional information and documentation at the request of the Advisory Panel;
5. The Advisory Panel will review the petition and supporting documentation, holding public meetings as deemed appropriate and report its findings and recommendations to the Joint Commission at an annual fall meeting; then
6. The Joint Commission will make its recommendation to the General Assembly for either: a) approval for full recognition; b) passage of a commending resolution instead of recognition; c) that the process be continued into the following year to allow the group to submit new evidence; or d) that the evidence did not support either full recognition or an honorific commending resolution.
7. A recommendation that full recognition as a Virginia Indian Tribe will be accompanied by draft legislation in bill form requiring review and signature by the Governor as well as by the General Assembly.

Further, as an alternative to full recognition, groups that identify themselves as Indians, either with roots in the historical tribes of Virginia or federally recognized tribes outside Virginia, may apply for commending resolutions that would honor the group's educational and assistance programs without conferring formal tribal recognition. This alternative may either be a separate and shortened review process that essentially parallels steps 1 and 2 above for recognition, or may be an alternative outcome of a full two-year review for groups unable to document descent, community cohesion and/or continuity from the 17th century to the present.

§ 30-354. Criteria for tribal recognition

1. Show that the group's members have retained a specifically Indian identity through time.

2. Demonstrate descent from an historical Indian group(s) that lived within Virginia's current boundaries at the time of that group's first contact with Europeans.
3. Trace the group's continued existence within Virginia from first contact to the present.
4. Provide a complete genealogy of current group members, traced as far back as possible.
5. Show that the group has been socially distinct from other cultural groups, at least through the twentieth century and farther back if possible, by organizing separate churches, schools, political organizations or the like.
6. Provide evidence of contemporary formal organization, with full membership restricted to people genealogically descended from the historic tribe(s).

§ 30-355. Staffing.

Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis, and other services as requested by the Commission. Technical assistance shall be provided by the Library of Virginia and the Department of Historic Resources. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

§ 30-356. Sunset.

This chapter shall expire on July 1, 2024.