



# COMMONWEALTH of VIRGINIA

## Virginia Council on Indians

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### **TRIBAL RECOGNITION CRITERIA** **Ratified by the Virginia Council on Indians - May 16, 2006**

According to the *Code of Virginia*, § 2.2-2629, the Virginia Council on Indians “shall establish criteria for tribal recognition and shall recommend to the General Assembly and the Governor in its biennial report those tribes meeting the criteria that should be given official state recognition.” The Council is to “report its findings and recommendations to the Governor and the General Assembly not less than 60 days prior to the convening of the session of the General Assembly held in each even-numbered year.” If the Commonwealth of Virginia extends “tribal recognition,” by an Act of the General Assembly, the recipient is then known as a tribe, that is, an Indian-descended group that has functioned in specific ways over time.

#### **CRITERIA**

**In carrying out its mandate from the General Assembly, the Virginia Council on Indians will utilize the following criteria.**

The Council will receive documents comprising a petition for recognition to carry out this function. However, the Council will not consider a recognition petition from any of the following:

- 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 is 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 Council on Indians will offer its recommendation to the Governor and the General Assembly. Incomplete petitions will not be considered.

**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 for 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.

## 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 by the Commonwealth of Virginia and intends to submit a petition to the Virginia Council on Indians. The letter of intent should be sent by mail to the:

Chair of the Virginia Council on Indians  
P.O. Box 1475  
Richmond, VA 23218

Upon receipt of the letter of intent, the Council will record its receipt in the minutes of the next Council meeting, send an acknowledgment to the group, notify in writing the group’s state Senator and Delegate, and post a notice of the group’s letter of intent on the Council’s website.

### Step 2. Submitting the Petition

The petition should consist of **(a)** a resolution, **(b)** an overview, and **(c)** supporting documentation.

**(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. The resolution should be sent to the Virginia Council on Indians by certified mail with return receipt requested. A copy of the resolution should be included with the petition.

**(b)** The overview should be approximately ten pages, explaining (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 they 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.

Six complete, identical copies (an original and five photocopies) of the petition including the resolution, the overview, and supporting documentation, should be submitted to the Virginia Council on Indians, State Capitol, Richmond, Virginia. Five copies are for the members of the Recognition Committee to study. The original copy will be kept at the office of the Virginia Council on Indians in Richmond.

Any group petitioning the Virginia Council on Indians is responsible for duplicating all the papers they submit and also for insuring they are complete and properly labeled. “Properly labeled” means that each 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 Council or the Recognition Committee 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. The review process may take a year or more. If the Virginia Council on Indians makes a positive recommendation in its report to the Governor and 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 Virginia Council on Indians by certified mail with return receipt requested. Upon receipt of that resolution, the petition will be considered withdrawn.

### **Step 3. The Recognition Committee**

The Chair of the Council will appoint an ad hoc committee, the Council on Indians' Recognition Committee (Committee), to evaluate the petition for recognition. The Committee will be composed of five members, at least three of whom are Virginia Indians and are or have been members of the Council. These persons will be nominated by the Chair and ratified by the Council. Upon appointment, each Committee member will sign a conflict-of-interest statement, to the effect that he or she will not serve in a recognition case if he or she has a bias for or against the petitioning organization. If Committee members identify a fellow member having a conflict of interest in the recognition case currently being studied, that Committee member must resign or may be removed by the Chair or a majority of the Council. A replacement will be nominated by the Chair and ratified by the Council.

All Council members and all members of the Recognition Committee will sign a confidentiality agreement at the time a petition is submitted. The contents of a petition will not be discussed outside of the committee until the committee recommendation goes to the Council. The Committee may engage experts, who may aid in the evaluation, but have no vote in recognition cases. In reviewing petitions, such consultants must agree in writing they will keep all material reviewed and reports rendered to the Committee strictly confidential. Petitions 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 Council and the Committee, 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 Recognition Committee will normally evaluate only one petition at a time, unless competing petitions have been presented. Newly received non-competing Petitions will be put into a queue, and the petitioners will be notified of their standing in the queue by notice of receipt. Petitions will be numbered, examined, and voted upon in the order in which they are received. If another petition is already in the review process, subsequent petitions will be put "on hold," until the Committee completes its review of the earlier petition. When the Recognition Committee begins evaluating the subsequent petition, it will notify those petitioners.

If a subsequent, competitive petition is submitted from another group claiming to represent the same Indian community, during the time the Committee is reviewing a petition, the Recognition Committee may table both petitions and request the Virginia Council on Indians notify the two groups and ask they resolve their differences and reach an accord and submit one

petition. If the matter is settled resulting in a new petition, or if one group withdraws its petition, the new or remaining petition will become active and be placed at the end of the queue and the petitioning group will be so notified. If the competing groups cannot resolve their differences and reach an accord, the Recognition Committee may consider both petitions simultaneously. When evaluation of its petition begins anew, the groups will be so notified by the Committee.

After ninety (90) days from the start of evaluation of a petition, the petitioning group may request a meeting with the Committee to discuss the progress of their petition. The Recognition Committee will normally review the petition and make a recommendation to the Virginia Council on Indians within 360 days from the time the Committee convenes. The vote will be decided by a simple majority of the Committee members. The Committee may recommend: (a) acceptance, (b) rejection, or (c) tabling without prejudice.

#### **Step 4. Committee Recommendation to the Council**

A detailed written report on the recommendation will be prepared by the Committee. This report will be sent to all members of the Council, with notice to the petitioning group, at least thirty (30) days prior to the Council meeting at which the recommendation will be presented. The Recognition Committee will choose a spokesperson, who will make an oral presentation and answer questions of the written report at the Council meeting.

#### **Step 5. Voting by the Council on Indians**

After it reaches a decision, the Recognition Committee will present its recommendation to the Virginia Council on Indians at the next Council meeting. The Council will notify the group seeking recognition when its Petition will be discussed. Discussion of the petition and recommendation may extend to two or more Council meetings. In addition, advice from the Office of the Attorney General may be sought before a vote is taken.

The Council may agree or disagree with the recommendation of the Recognition Committee. The Council may vote to recommend, to reject, or to table the petition without prejudice. Within ten (10) workdays of the Council's vote on a petition: (1) the petitioners will be sent a notification in writing by certified mail, with return receipt, of the outcome of the vote and (2) the Delegate and the Senator, from the petitioners' district, will each be sent a copy of the notification.

After any petition has been voted upon, the original copy of the petition will remain on file at the Virginia Council on Indians office in Richmond. The petitioners, upon payment of the necessary postage, may have the remaining copies of their petition mailed to them.

#### **Resubmission**

If the vote for recognition by the Council is negative, the petitioning group may submit a new petition, if new and substantively different documentation has been discovered. There is no deadline on such a resubmission.