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# Tribal Recognition in Vermont: The Role of Federal Standards

by Kesha Ram, Vermont State Representative

During 2010, Vermont held an extensive quadricentennial celebration of Lake Champlain, recognizing the 400<sup>th</sup> anniversary of Samuel de Champlain’s “discovery” of our beloved body of water to the west. Although generally centered on community building and revelry, the festivities renewed conversations about the rights and recognition of the indigenous people that predated Europeans in the region.<sup>1</sup> This was not only because of the fact that the land was inhabited much earlier than four centuries ago, but also because Vermonters who identify as Abenaki were still unable to sell their crafts as authentically Native American work.

Archaeological evidence suggests that the Abenaki are native to southern Quebec and parts of several New England states, including Vermont, settling here in the 12<sup>th</sup> century or earlier. The region is also part of the historical homelands of the Odanak—who have Canadian First Nation recognition and consider themselves a part

of the larger Abenaki Nation—as well as the Mohegan people, who gained federal recognition in 1994 and are now based mostly in Connecticut.

There are many tribes and bands in Vermont that claim Abenaki heritage, as well as those who do not appear on any tribal rolls, totaling at least a few thousand Vermont residents. Traditionally, the Abenaki organized in family bands and congregated in particular regions—especially the Connecticut River Valley, the Burlington and Winooski area, and Missisquoi territory in Franklin County.<sup>2</sup> There are groups of family bands that have ties through kinship and a connection to the land, and have formed larger bands or tribes.

When a state recognizes that type of group, whether it is known as a band or tribe, they confer tribal recognition on them, making them an official state-recognized tribe. Without state recognition, they cannot apply for many scholarships or the cultural and lingual preservation

grants set aside for Native Americans. They are also unable to label their arts and crafts as authentic Indian handiwork or even to dance in certain powwows.

Of the benefits bestowed upon state-recognized tribes, arts and crafts designation often constitutes the greatest economic impact to a Native American community. An individual artisan cannot receive authentic craft designation, but tribes that receive such designation have the authority to grant it to artisans who may be only loosely affiliated with their tribe. The Indian Arts and Crafts Act of 1990 and the federal Indian Arts and Crafts Board of the Bureau of Indian Affairs set very stringent standards for designating Indian handiwork as authentic, requiring either state or federal recognition as part of the criteria.<sup>3</sup> Such recognition is a seal of approval that often means artisans are able to charge a fairer, more lucrative price for their wares. Without such approval, artisans and galleries expose themselves to thousands of dollars of potential fines.

In 2006, the Vermont Legislature put forth legislation with the intent of recognizing the Missisquoi Abenaki. It established the Vermont Commission on Native American Affairs (VCNAA) to assist Native American tribes in garnering recognition and authentic craft designation.<sup>4</sup> Unfortunately, the effort did not produce the intended results. The language of the law recognized the Missisquoi Abenaki only as a Native American minority group and not a quasipolitical tribal entity that could meet the standards of the Indian Arts and Crafts Board.

This year, the legislature passed and the governor signed into law S.222, an Act Relating to State Tribal Recognition. The original Senate version would have conferred state recognition to four Abenaki bands. The VCNAA would also have been reconstituted to give each of these Vermont-recognized tribes a seat with some at-large members.

In the House, some members expressed concerns about the design. Their reasoning had to do with the experience of other states. Most of the 15 states that engage in state tribal recognition have an objective process and a uniform set of criteria for recognizing state tribes, with the legislature maintaining the authority to confer recognition. Members pointed to studies showing that states that did not have their process and criteria set in statute but instead recognized tribes as they came forward were plagued with lawsuits delegitimizing the tribal recognition.<sup>5</sup> They were concerned that being a party to, or implicated in, such lawsuits would be costly for Vermont.

Likewise, they wanted to steer clear of one state's mistake vesting the authority to recognize tribes with a commission made up of tribes already state-recognized. Because any new recognition would have meant having to share finite resources, it was not surprising that after the establishment of the state's commission, none of the tribes coming forward in that state received recognition.

The direction of the Vermont House was to remove automatic recognition for any band and set forth equitable, inclusive, and standardized criteria and a recognition process, holding all tribes accountable to the same standard.<sup>6</sup> The committee studying the Senate bill decided that it would be important to have criteria in statute that tribes would have to meet before recognition. The goal was to level the playing field and demonstrate to the Indian Arts and

Crafts Board and other federal entities that the tribes had been recognized through a clear and consistent process.

The law that was ultimately passed was a step forward in honoring and acknowledging the history and future of the Abenaki people residing in Vermont. It reflects best practices in other states but is also sensitive to the unique qualities of our traditional Native American bands. The criteria include kinship relationships among members and documented genealogy connecting applicants to bands and tribes that historically existed in what is now Vermont prior to European settlement. It also includes trib-

## Among state-recognized tribes' benefits, arts and crafts designation often creates the most economic impact for a Native community.

al rolls identifying a majority of members within Vermont, an enduring community presence, documented customs and oral history, and other indicators of the history and future of the tribe.

The state believes that the process for recognition, which is as important as the criteria, is multifaceted and democratic. The process is intended to give the legislature a solid foundation of information and provide for public scrutiny. It includes verification of archaeological and historical evidence by a three-member expert panel, at least one public hearing, thorough review of the recognition petition by the Vermont Commission on Native American Affairs, and a detailed report to the legislature recommending the tribe for recognition if the criteria are met. If the commission denies a recommendation to confer recognition, the legislature receives a report documenting the reasons. The vested authority to confer recognition, however, remains with the legislature.

Although some people see state recognition as another version of federal recognition, it does not get a tribe closer to much-coveted federal benefits. Nevertheless, to allay some Vermonters' fear that state tribal recognition could mean sovereignty

from state regulation, the law spells out that state recognition cannot be construed to give any tribe the right to be exempt from any state or federal law (including gambling laws) or any type of tax-exempt status. And it cannot be the basis for land claims.

The new law sets strong but attainable standards and a fair process for tribes to seek recognition in Vermont. It should help Vermonters receive recognition of their heritage and garner the meaningful if modest benefits afforded to state-recognized tribes and bands. This approach is an equitable step forward and lays the foundation for Vermont tribal law.

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### Endnotes

- <sup>1</sup> For more understanding of the Abenakis' long-standing challenges, see "Improving Opportunities for Abenaki Youth," *Communities & Banking* 19, no. 1 (winter 2008), p. 14.
- <sup>2</sup> Lisa Brooks, assistant professor of history and folklore, Harvard University, giving testimony to the Vermont Legislature, House Committee on General, Housing, and Military Affairs, on April 2010.
- <sup>3</sup> *The Indian Arts and Crafts Act of 1990*, public law 101-644, U.S. Department of the Interior, Bureau of Indian Affairs (November 29, 1990), <http://www.doi.gov/iacb/act.html>.
- <sup>4</sup> An Act Relating to State Recognition of the Abenaki People, 1 V.S.A. chapter 23. Vermont Legislature. 2006, <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/bills/passed/S-117.HTM>.
- <sup>5</sup> 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," *Santa Clara Law Review* 48 (2008).
- <sup>6</sup> For comments from some affected groups, see the *Burlington Free Press*, "Against all odds, new law advances Abenaki recognition," May 15, 2010: "We have a very bright and positive future ahead," said Nancy Millette Doucet, chief of the Koasek Traditional Band of the Koas in Newbury, even as she and fellow Abenaki acknowledged the bill was not quite what they had hoped for. 'It's not what we wanted,' said Fred Wiseman of Swanton, tribal historian for the Missisquoi band of the Abenaki who helped negotiate the bill, but he added, "We're satisfied."

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