Summary under the Criteria for the

Proposed Finding

on the

Mashpee Wampanoag Indian Tribal Council, Inc.

Prepared in response to a petition submitted to the Associate Deputy Secretary for Federal Acknowledgment that this group does exist as an Indian tribe.

Approved:

(date) 3/31/06

James E Cason

Associate Deputy Secretary of the Interior

Proposed Finding

on the

Mashpee Wampanoag Indian Tribal Council, Inc.

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ACRONYMS AND ABBREVIATIONS

ADS	Associate Deputy Secretary
AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research
BIA	Bureau of Indian Affairs
CFR	*Code of Federal Regulations*
FAIR	Federal Acknowledgment Information Resource
FD	Final Determination
FR	*Federal Register*
FTM™	Family Tree Maker
MWT	Mashpee Wampanoag Tribal Council, Incorporated.
OD	Obvious Deficiency Letter
OFA	Office of Federal Acknowledgment
PF	Proposed Finding
TA	Technical Assistance Review Letter
U.S.	United States

Summary under the Criteria for the Proposed Finding

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Mashpee Wampanoag Indian Tribal Council, Inc.

INTRODUCTION

The Office of the Assistant Secretary-Indian Affairs (Assistant Secretary or AS-IA) within the Department of the Interior (Department or DOI) issues this proposed finding (PF) in response to the petition received from a group known as the Mashpee Wampanoag Tribal Council, Incorporated (MWT or Mashpee, Petitioner #15) located in the town of Mashpee, Massachusetts. The MWT seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), Procedures for Establishing that an American Indian group Exists as an Indian tribe. By the Secretary of the Interior's Order 3259, dated February 8, 2005, and amended on August 11, 2005, the Secretary re-delegated to the Associate Deputy Secretary (ADS) most of the duties formerly delegated to the Assistant Secretary. Among the re-delegated authorities is the authority to "execute all documents, including regulations and other *Federal Register* notices, and perform all other duties relating to Federal recognition of Native American Tribes."

The acknowledgment regulations under 25 CFR Part 83 establish the procedures by which non-recognized groups may seek Federal acknowledgment as Indian tribes with government-to-government relationships with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit documentary evidence that the group meets all seven mandatory criteria set forth in section 83.7 of the regulations. Failure to meet any one of the mandatory criteria will result in a determination the group is not an Indian tribe within the meaning of Federal law. The Office of Federal Acknowledgment (OFA) within the Office of the AS-IA has responsibility for petition review and analysis.[1] This PF concludes that the MWT meets all seven mandatory criteria and exists as an American Indian tribe.

The time periods for the evaluation of documented petitions are set forth in the acknowledgment regulations in section 83.10. In this case, however, a July 22, 2005, Joint Settlement Agreement and Stipulated Dismissal (Agreement) entered into by the petitioner and the Department in the United States District Court for the District of Columbia supersedes some of those time periods (District Court 2005.00.00). The Agreement stated the Department would place the Mashpee petition on active consideration by October 1, 2005, and issue a PF on it by March 31, 2006. The

[1]The Branch of Acknowledgment and Research (BAR), within the Bureau of Indian Affairs (BIA), was previously charged with the responsibility of petition analysis. Effective July 27, 2003, this office was renamed the OFA and relocated administratively under the Office of the AS-IA.

Agreement also stipulated the Department exercise due diligence to publish notice of the PF on the MWT petition in the *Federal Register* within five business days of it being issued.

Publishing notice of the PF in the *Federal Register* initiates a 180-day comment period during which the petitioner, interested and informed parties, and the public may submit arguments and evidence to support or rebut the evidence used in the PF. Such comments should be submitted in writing to the Office of the Assistant Secretary-Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Attention: Office of Federal Acknowledgment, Mail Stop 34B-SIB. Interested or informed parties must provide copies of their submissions to the petitioner.

The regulations, 25 CFR 83.10(k), provides the petitioner a minimum of 60 days to respond to any submissions by interested and informed parties on the PF during the comment period. The agreement modifies this time-frame, providing the MWT a 30-day response period. If the MWT wants the 60-day response period, it must notify the Department in writing prior to the expiration of the 30-day response period. If the interested or informed parties do not provide submissions during the 180-day comment period, the MWT may submit a written waiver of its response period to the Department.

As provided in the Agreement, the Department will issue a FD on the MWT petition on or before March 30, 2007. If the Mashpee petitioner does not request the full 60-day response period, the Department will work to issue the FD before March 30, 2007. The Department, as per the Agreement, will exercise due diligence to publish notice of the FD in the *Federal Register* within five business days of being issued.

After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. This request must be received by Board no later than 90 days after the publication of the FD in the *Federal Register*. The FD will become effective as provided in the regulations 90 days from the *Federal Register* publication unless a request for reconsideration is filed within that time period.

Administrative History of the Petition

On July 7, 1975, the Department received a letter from the MWT requesting information on the procedures to become eligible for Federal acknowledgment as an Indian tribe. On June 6, 1977, the petitioner's attorney, at that time Barry A. Margolin of the Native American Rights Fund (NARF), wrote then Department Solicitor, Leo M. Krulitz, requesting the United States institute land-claim litigation under the Non-Intercourse Act claims for the group. The Department declined to bring or participate in the litigation.

The Mashpee group litigated its land-claim suit without the United States involvement. In January 1978, after a 40-day trial, a Federal jury determined that the Mashpee did not meet certain the threshold requirements for being an Indian tribe within the meaning of the Indian Non-Intercourse Act (*Mashpee Tribe v. the Town of Mashpee*, 447 F. Supp. 940, 942-43 (D. Mass. 1978) and *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir. 1979). Both the

plaintiff and the defendant presented expert testimony on whether the group had been and still was an Indian tribe. In response to several interrogatories, the jury found that the Mashpee did not constitute an Indian tribe on the July 22, 1790, but did constitute one on March 31, 1834 and March 3, 1842. It concluded also the group did not constitute a tribe on June 23, 1869, May 28, 1870, and August 26, 1976. When asked if it found "that people living in Mashpee constituted an Indian tribe or nation on any of the dates prior to August 26, 1976 [and] . . . did they continuously exist as such a tribe or nation from such date or dates up to and including August 26, 1976," the jury answered in the negative.

The Federal Government declined to be a party to this suit and, at the time of the trial, the Federal acknowledgment regulations had not yet been promulgated in final form. In contemporaneous and subsequent correspondence related to the land claim suit, the Department reserved the right to determine whether the MWT constituted a tribe within the meaning of the Federal acknowledgment regulations, which were issued in 1978, since it had not been a party to the suit and was not bound by its decision (see Walker 1977.09.15 and 1980.01.16).[2] The Federal acknowledgment regulations employ different standards of evidence to determine whether an Indian group exists an Indian tribe than those used in the land-claim suit of 1976. This proposed finding is also based on considerably more evidence than was available to the jury in that case. All the daily transcripts of the land-claim suit and many of the depositions submitted as evidence were fully examined for the proposed finding.

After an exchange of correspondence, the Department proposed, and the petitioner's attorney agreed, that the Margolin's letter of June 6, 1977, be regarded as the Mashpee petitioner's request for Federal acknowledgment of tribal existence under the standards set forth in the then proposed regulations. When the regulations were promulgated in 1978, the Department published notice in the *Federal Register* that the Mashpee petitioner, along with 39 other groups, was petitioning for Federal acknowledgment under the regulations. The Department, however, used July 7, 1975, as the date for the Mashpee's "Letter of Intent" in the notice.

On August 16, 1990, the Department received a historical narrative, analyses of the acknowledgment criteria, and ancestry charts from the petitioner. On September 5, 1990, it received a series of historical documents, newspaper and magazine articles, board-of-directors' minutes, council minutes, and parish records from the Mashpee petitioner.

The acknowledgment regulations require that prior to "active consideration" of a documented petition, a preliminary review be made for providing the petitioner with technical assistance and an opportunity to supplement or revise its documented petition (83.10(b)). The Department provided the petitioner with formal technical assistance (TA) review letters on July 30, 1991, and March 21, 1995. The first TA letter, then known as an "Obvious Deficiency" (OD), covered petition materials submitted through September 5, 1990. The second TA letter responded to the petitioner's February 16, 1995, request for a reevaluation of the 1991 OD letter, and included a review of the same material.

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[2]Citations are the same as those used to identify documents in the FAIR database under the Short Cite Heading. For a discussion of the FAIR system see the final paragraph of the Administrative History. For sources referenced in this proposed finding not included in the FAIR database, see the accompanying bibliography.

Between July 1991 and February 1995, Department staff also met with the group's representatives. The staff met with representatives in 1991 and 1994 to discuss the OD letter, and to offer advice on the necessary research. The staff held a third meeting on February 16, 1995, during which the petitioner requested the Department reevaluate the 1991 OD letter under the revised acknowledgment regulations that became effective March 28, 1994.

On January 22, 1996, the petitioner forwarded to the Department its response to the OD letter dated July 30, 1991, as modified by letter dated March 21, 1995. This submission consisted of four bound folders of various supporting documents. On March 8, 1996, the Department acknowledged receipt of these materials and advised the petitioner that it had placed the group on the "ready for active consideration" list, as of February 14, 1996. On July 11, 2000, the Department received a petition supplement of four three-ring binders that included an overview of research methodology, an analysis of *Mashpee v. New Seabury*, 31 exhibits, and a zip disk containing a membership list for 1995 and an updated Roots IV genealogy database. On September 27, 2000, the Department received another petitioner submission. This material included a further response to the letter of "Obvious Deficiency," burial ground records, funeral attendance data, an interview, and maps.

On January 19, 2001, the MWT filed a motion for summary judgment in Federal court, *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, to compel the Department to finish consideration of its petition for acknowledgment within one year, which would jump the MWT ahead of 15 other petitioning groups. On December 21, 2001, the District Court issued an order granting judgment for the petitioner and ordering its petition be immediately placed on "active consideration." The Court's order required the Department to publish a PF on the Mashpee petition in the *Federal Register* by June 21, 2002, and an FD by December 2002.

On April 10, 2002, the Department of Justice filed a notice of appeal and a motion to stay the district court's decision pending appeal. The district court denied the motion to stay on April 16 and Justice filed the Department's appeal of this denial on May 1, 2002.

While awaiting the Circuit Court of Appeals decision, the Department took several measures to comply with the district court's order. It immediately transferred the Mashpee petitioner from the ready list to active consideration and began processing the group's petition. To do so, the Department moved the Mashpee ahead of two other petitioners on the ready list and other petitions on active consideration that were waiting processing once a research team became available. The Department assigned a genealogist and historian to process the Mashpee petition. Due to limited resources, regulatory deadlines, and other negotiated court-ordered commitments, the Department was unable to assign an anthropologist to evaluate the Mashpee petition at that time. The Mashpee petition, however, received input from staff anthropologists during OFA's initial peer review of the petition.

On June 10, 2002, the D.C. Circuit Court of Appeals granted the Department's motion for a stay of the district court's December 21, 2001, order. In response to the appellate court's decision, the Department halted its work on the MWT petition. While working on the PF, however, the Department identified certain issues that suggested weak areas in the petition. In a letter dated

August 8, 2002, the Department informed the Mashpee petitioner about these issues and provided the group an opportunity to clarify, revise, or supplement its petition before resumption of active consideration.

The letter described the deficiencies, omissions, and unresolved questions in the Mashpee petition. It did not, however, constitute the Department's determination that the Mashpee petitioner was or was not entitled to be federally acknowledged. The OFA returned to processing the petitions ahead of the MWT and this workload precluded its staff members from providing any further technical assistance or answering questions raised by the letter.

In response to the August 8, 2002, letter, the MWT submitted additional materials to the Department on December 20, 2002, March 7 and 24, 2003, and July 22, 2004. The Department cataloged these materials, informed the petitioner of their receipt, and provided inventories. Following cataloging, the Department deposited the materials with the Office of the Solicitor where they remained until the MWT petition was placed on active consideration again.

On August 1, 2003, the D.C. Circuit Court of Appeals ruled that the District Court misapplied the law of agency delay and remanded the case. On remand, the District Court permitted the MWT to conduct extensive depositions and discovery over the Department's objections. The Department responded with depositions and discovery. Following discovery, the parties filed cross-motions concerning the alleged undue delay.

On April 1, 2005, the Court denied the Department's motion. The Court did not rule on the Mashpee plaintiff's cross-motion, stating that it would be decided in due course. The MWT initiated settlement discussions shortly thereafter. In a June 3, 2005, response to a MWT status report to the Court, the Department proposed an updated schedule for processing the MWT's acknowledgment petition in accordance with the priority provisions of the acknowledgment regulations. Without jumping the Mashpee petition over other petitioners, the schedule, as detailed in an attached 8th Declaration, projected starting the evaluation of the MWT's petition by October 2005, issuing a PF by April 2006, and completing a FD by March 2007. In July 2005, the MWT and the Department reached an Agreement, which the Court accepted.

Following the Agreement, the Department informed the MWT on September 28, 2005, that it had assigned a research team, consisting of an anthropologist, a genealogist, and a historian, to begin active consideration of its petition on October 1, 2005. As provided in the Department's *Federal Register* notice, entitled "Office of Federal Acknowledgment; Reports and Guidance Documents; Availability, etc." dated March 31, 2005, the Department also notified the petitioner and third parties through this letter of a date by which additional material for the PF needed to be submitted for consideration if desired. The Department provided a 60-day period for these submissions and informed the petitioner and third parties that unsolicited submissions received after that date would be reviewed for the final determination and not for the proposed finding. The 60-day period for the petitioner and interested parties began on October 2, 2005, and ended December 1, 2005. The Department also informed the Mashpee petitioner that if it had materials such as an updated membership list, an amended constitution, meeting minutes, newsletters, or

any materials created since the last submission, they should be submitted and postmarked by December 1, 2005.

On November 1, 2005, the MWT submitted a supplemental submission to its petition for Federal acknowledgment as permitted. Six days later, the Department catalogued this submission, informed the petitioner of its receipt, and supplied MWT with an inventory of the materials. On December 7, 2005, the Department notified the Mashpee petitioner of a staffing change for the anthropologist on the research team assigned to work on its petition and of a possible site visit in January 2006. The letter also requested the petitioner supply some documents that were incomplete as submitted and other information the petitioner possessed but had not made available. These materials included current residential addresses missing from the most recent membership list, tapes and transcripts of referenced interviews,[3] and minutes which should have been submitted along with sign-in-sheets from meetings of the petitioner's governing body.

On January 6, 2006, the Department received a submission to its request containing transcripts of 4 interviews, a list of residential addresses for 214 members having post office box numbers, 2 revised residence maps based on these residential addresses, and council minutes from 1993 to 2005. On March 2, 2006, the Department received a letter of certification from the petitioner's governing body for its most recent membership list dated November 15, 2002.

In processing this petition, the Department used a database system incorporating all data from the petition record employed in the decision-making process. The database system is named FAIR, for "Federal Acknowledgment Information Resource system." It runs on Access 2000™ software, a relational database capable of being operated on personal computers. The system provides on-screen access to the images of documents in the record, which are, in some cases, linked to entries of information extracted from the documents. The system information includes some of the genealogical relationships between individuals, as well as the group's membership lists and reports. The genealogical information may be exported to a separate genealogical software program, FTM™, for preparation of genealogical charts. The documentary record considered for this PF will be included and provided to the petitioner, subject to any privileges.

[3]In 2000, petitioner researchers indicated that 62 recorded interviews, many fully transcribed, were source material for a study of the group's modern community. As of December 2005, the petition record contained only 30 transcripts of petitioner interviews. In response to an OFA request, transcripts of four of these interviews were submitted on January 6 2006. The petitioner may wish to provide copies of any remaining recordings and transcripts, if necessary, during the comment period.

FIGURE 1: MAP OF CAPE COD

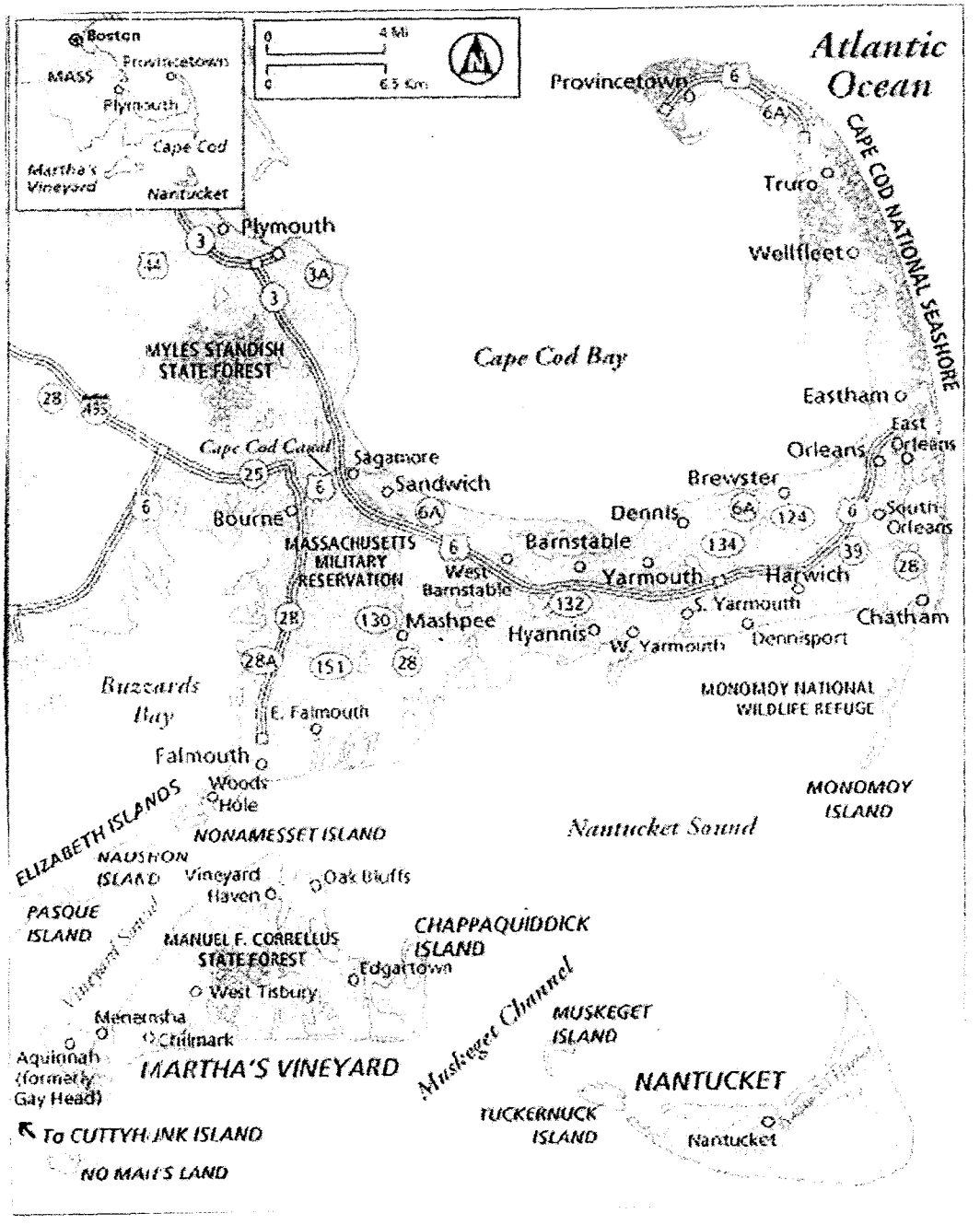
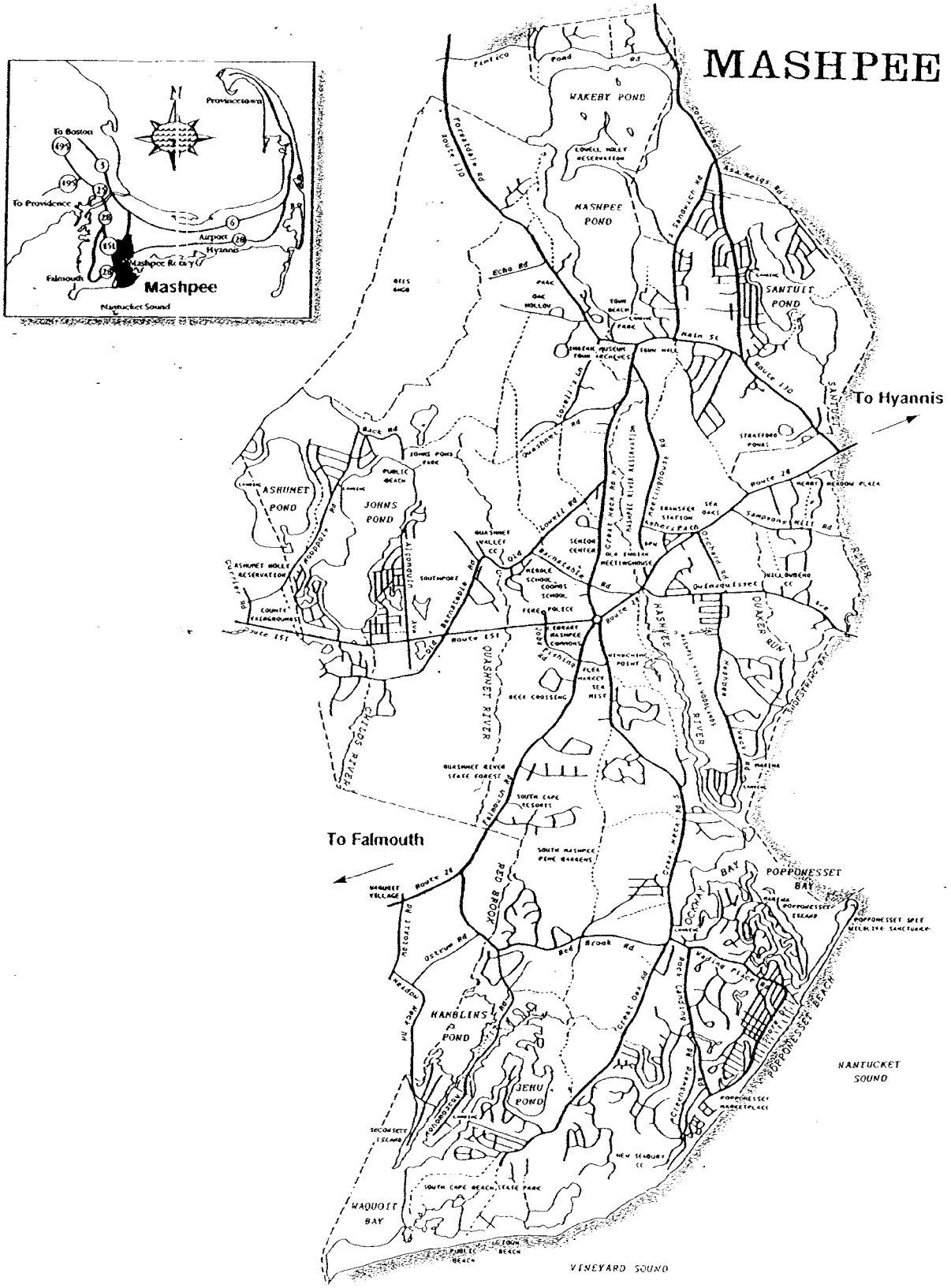


FIGURE 2: MAP OF MASHPEE, MASSACHUSETTS



Historical Overview of the Historical Tribe and the Petitioner

The Mashpee have historically resided in and around the town of present-day Mashpee, Massachusetts, on Cape Cod.[4] During the 1620's, the Wampanoag of southeastern Massachusetts on Cape Cod along Nantucket Sound, called "South Sea Indians" by the Pilgrims and Puritans, had a number of sachems in charge of one or more villages probably joined in a loose alliance underneath one chief sachem. Included among the villages of the South Sea Indians were the adjoining settlements of Massipee (later Marshpee and then Mashpee), Cotuit, and Santuit. The arrival of English settlers, and the resulting diseases and wars, reduced the population of these villages. After the 1650's, the colonists established several praying towns, as the Puritans called them at the time, among the Wampanoag on Cape Cod and other tribes in Massachusetts. These praying towns were designed to convert their Indian inhabitants to Christianity.

Puritan minister Richard Bourne began preaching to the Wampanoag in the village of Mashpee and the nearby area in 1658. In 1665, Bourne established one of these praying towns after acquiring 25 square miles of tribal land in Mashpee from two local Wampanoag sachems, Wequish and Tookenchosen. One year later the Sachem of Manomet (Plymouth) confirmed the deed, and granted additional contiguous land (which is in the present town of Mashpee). Then in 1685, the General Court of Plymouth Colony officially recognized these grants of land in perpetuity. This community was the largest praying town in Massachusetts, and over a period of years Bourne converted most of its Wampanoag inhabitants to Christianity.

At first, the population of the praying town of Mashpee was drawn primarily from the remaining groups of South Sea Indians, as the number of English settlers on the southwestern portion of the Cape increased and forced many natives from the area to relocate. Later, after King Phillip's War in the early 1670's, some other Wampanoag Indians and a few Narragansett and Long Island Indians were also absorbed into the town. Thus the praying town was a continuation of the Mashpee village and other South Sea Indian villages in the immediate area.

In the 1670's, the population of this praying town was about 100 adults. Until the early 1690's, the town's government consisted of a six-person council, run by the Mashpee serving with the advice of the pastor. By 1698, the praying town contained 263 Mashpee in 57 families.

Within the praying town, the Mashpee governed themselves, without the full rights of Englishmen, and held shared title to the land. In the early 18th century, the Mashpee engaged in a series of land disputes with nearby towns to prevent outsiders from settling the area. During the 1720's, the Massachusetts colony created a proprietary system in the town in which the Mashpee continued to have considerable local control. Under this arrangement, the Mashpee became proprietors, collective owners of the land, who could sell land to other Mashpee or their descendants. Individuals could sell land to outsiders only with the approval of all the Mashpee

[4]For a detailed description, with citations, of the social and political history of the Mashpee Wampanoag please see criteria 83.7(b) and (c) The town of Mashpee on the southwestern shore of Cape Cod has a total area of 27.2 square miles, 23.5 of which is land. It is approximately eight and a half miles in length from north to south and four miles in width east to west.

proprietors. They also elected their own local officials, such as the magistrate and constable. In 1746, the colonial legislature limited this self-rule by assigning three guardians to the Mashpee proprietors. For the next 16 years, the Mashpee frequently petitioned the legislature with complaints about the guardians. By 1762, the town of Mashpee had an estimated 250 Mashpee in 75 families. The next year the colony made the town a self-governing "Indian" district, with five elected overseers, three of whom were Mashpee. This political structure remained until after the American Revolution.

In 1776, the Mashpee numbered about 350 people. During the Revolution, the town of Mashpee lost about half its adult male population, fighting for the colonists. At the same time, some women in the group married non-Indians. These non-Indian spouses became proprietors, but obtained no legal right to land in the town as individuals. In addition, several squatters moved to the town, none being entitled to land ownership.

In 1788, Gideon Hawley, a non-Indian pastor serving the Mashpee, petitioned the legislature to reinstate guardians for the Mashpee, supposedly to prevent his charges from losing land to squatters. That same year the State responded by appointing non-Indian overseers to supervise the Mashpee proprietors.

During the next 45 years, the Mashpee retained considerable self-government, despite the overseers' presence. The Mashpee petitioned the State several times between 1807 and 1827 to obtain more control of the government, and an 1827 legislative report revealed it was running town business without oversight. In 1834, the State, acting in response to petitions and acts of civil disobedience from the Mashpee, made the town of Mashpee a self-governing "Indian" district. Under this government form, the Mashpee completely controlled the social, economic, and political affairs of the district, although without the right to vote in state elections or to send representatives to the legislature. In 1840, the State legislature also gave the district of Mashpee parish status, which allowed the Mashpee to control their church meeting house, lands, and parsonage. In 1849, a legislative report put the Mashpee's population at 305, with 26 "foreigners," while describing its management of the district's land, economy, education, and parish.

In 1859, John Milton Earle surveyed the Mashpee along with other Indian entities in the state. Earle recorded the Mashpee population as 403, including 32 people of non-Indian or mixed ancestry, married to Mashpee. Earle also reported the inhabitants held elections, supervised the sick and poor, maintained roads, and provided for the local school.

In 1870, the State government, after giving the Mashpee full citizenship, ended the ban on land sales and incorporated the district of Mashpee as a town. The State did so despite substantial resistance from many Mashpee. Although much of the land soon passed out of their hands, the Mashpee dominated the town government for the next 100 years. They operated the schools, supported the poor, maintained roads, and passed myriad laws for a town overwhelmingly composed of Mashpee or their spouses. In 1880, the group's population was between 300 and 350, almost all in the town of Mashpee.

In the 1920's, under the leadership of Nelson D. Simons and Eben Queppish, the Mashpee rededicated their Old Indian Meeting House, established a "traditional" council to handle social, cultural, and ceremonial affairs, and began holding annual powwows. In the 1930's, there were about 300 Mashpee, almost all of whom lived in the town of Mashpee. Those who lived elsewhere generally resided in surrounding towns. The town of Mashpee remained rural and isolated, with a school, library, church, village store, post office, and town hall centered along two roads in the northern section of the village. The town was largely populated by the Mashpee until the early 1960's. By that time, non-Indians, formerly restricted to vacationers or seasonal residents, increasingly took up permanent residence mainly in the southern section of the town and became eligible to vote in elections. The Mashpee population, relatively stable during the 20th century, had by then become increasingly concentrated in a small area along two roads in the northern portion of the town. Yet despite the changing demographics, the Mashpee controlled the town government until the early 1970's. By the middle 1970's, the Mashpee population in the town was between 450 and 500 out of 2,500 residents.

In 1974, the Mashpee lost control of the local government as the electorate changed. The group established an incorporated council, the "Mashpee Wampanoag Tribal Council," in 1974. In August 1976, the incorporated council initiated an unsuccessful land claim suit in Federal court against the town of Mashpee and several local developers.

Over the last 20 years, the Mashpee incorporated council operated many programs for its members including employment training, fuel and home insulation assistance, health services, aqua farming, and low-income housing financing and placement. In addition, it created education programs for member children and adults, a cultural center, and a language reclamation project.

Previous Unambiguous Federal Acknowledgment

The definition of unambiguous previous Federal acknowledgment in section 83.1 has two essential elements: (1) the action by the Federal Government was clearly premised on identification of a tribal political entity, and (2) the action indicated clearly the recognition of a relationship between that entity and the United States. For section 83.8 to apply, it must also be established that the petitioner is the same as the previously acknowledged tribe or is a portion that has evolved from the tribe as it existed at the last time of Federal acknowledgment (83.8(d)(1)).

According to the regulations, unambiguous previous Federal acknowledgment

> is acceptable evidence of the tribal character of a petitioner to the date of such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of 83.7 to the extent required by this section. (83.8(a))

In its March 21, 2003, submission the MWT claimed to have been previously acknowledged by the Federal government as an Indian tribe. This submission was not certified by members of the petitioner's governing body as required by the regulations, but is being reviewed due to its significance. Only the president of the group signed the transmittal letter for the materials. The governing body will need to certify the submission during the comment period following the PF's issuance. The Mashpee petitioner's attorney of record also submitted other materials regarding unambiguous previous Federal acknowledgment on October 13, 2003, prepared by a Mr. Floyd Gallegos. These materials will also require certification by the governing body. An examination of these latter documents indicates they do not constitute evidence of previous unambiguous Federal acknowledgment. They can be divided into two categories. One is a set of documents regarding actions by the State of Massachusetts, which are not evidence of action by the Federal government. The other is a set of Federal documents that reference the Mashpee in several ways but which do not provide evidence of an action by the Federal Government clearly premised on identification of a tribal political entity or recognition of a relationship between that entity and the United States at the time of the action.

The petitioner claimed in its March 2003 submission that a 1979 judgment in a case in the United States District Court for the District of Massachusetts, *United States v. 79.31 Acres of Land*, Civ. No. 74-61-T (Tract No. 19-5125) (D. Massachusetts, May 14, 1979), was evidence of unambiguous previous Federal acknowledgment. This case evolved from a 1974 land condemnation proceeding initiated by the Department. The Department was seeking to condemn and acquire some land in Wellfleet, Massachusetts, for the Cape Cod National Seashore.[5] During the process, the Mashpee challenged Wellfleet's title to a tract by contending that a former owner of the property, Delilah Gibbs, had been a member of the Nauset or Billingsgate Indians who had merged with the Mashpee (Marshall 2003.03.21, 2). Documents supplied by the town of

[5]Wellfleet is on the northeastern portion of the Cape about 40 miles driving distance from the town of Mashpee.

Wellfleet during the case show that Elisha Freeman of Wellfleet purchased the land in 1839 from Gibbs, whom the deed described as the "widow and only surviving heir of the Billingsgate tribe of Native Indians." Wellfleet acquired the land from Freeman the following year.

As part of its court challenge, the Mashpee claimed that title of the land had been conveyed to the town of Wellfleet in violation of the Non-Intercourse Act. In 1979, the court reached a judgment, following negotiations between lawyers for the claimants, that both the town and the Mashpee were entitled to compensation for condemnation of the land, which was duly transferred to the Department. The petitioner now claims that in "both the court proceedings leading up to the distribution of money to Mashpee and again in the distribution of funds to Mashpee, the United States treated the Mashpee Wampanoag Indian Tribal Council, Inc. as having collective rights in tribal lands or funds" (Marshall 2003.03.21, 2).

A Department examination of documents from the condemnation case does not demonstrate that it constituted unambiguous previous Federal acknowledgment as required by the regulations. None of the documents show the U.S. acknowledged the Mashpee as a tribal entity or as having collective rights to the land in question. In fact, the Federal court never ruled on such issues because the two claimants to the disputed tract reached a negotiated settlement, apparently with the approval of the Assistant U.S. Attorney, in which they agreed to split the compensation for the condemned land. The documents indicated the Federal attorneys' involvement in this settlement was minimal and there is no evidence that the Federal Government stipulated to tribal status.

Indeed, the Federal government would not have agreed to this arrangement involving partial compensation for the town of Wellfleet if it had recognized the tribal status of the Mashpee and their collective right to the land because such recognition would have prevented the condemnation of the land and rendered the agreement invalid. There was also no discussion in the record by either the court or the Federal attorneys that the land had been obtained in violation of the Non-Intercourse Act. In the end, the court simply disposed of the tract as fee simple property.

Most importantly, while the land condemnation case was advancing through the district court (1974-1979), the Mashpee were also involved in a highly publicized land-claim suit (1976-1978) against the town of Mashpee and several developers in the very same court. In that case, a Federal jury found the group did not meet certain threshold requirements as an Indian tribe within the meaning of the Indian Non-Intercourse Act. If the Federal government had acknowledged the tribal status of Mashpee in the land condemnation case, this fact would likely have played a key part in the land-claim suit, given that some of the Mashpee's attorneys were involved in both actions. The available evidence demonstrates it was not a factor. Indeed, it is important to emphasize that the Federal government ultimately declined to be a party in the land-claim suit.[6]

The petitioner's claim of unambiguous previous Federal acknowledgment interprets the meaning

[6]The town of Mashpee knew of the condemnation case and attempted to persuade the Wellfleet selectmen from settling with the Mashpee (Mazer 1980.0.00., 176, 361).

of "recognition of a relationship with the United States" much more broadly than is intended by the regulations. Unambiguous previous Federal acknowledgment means the Federal government at some time has acknowledged that a government-to-government relationship exists with an Indian group. The supplementary information on the regulations (59 FR 9283), in discussing section 83.8 states that the "regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government to government relationship with the United States."

Evidence submitted to demonstrate unambiguous previous Federal acknowledgment, whether specifically cited in 83.8 or not, has to be evaluated in the context of the definition of unambiguous previous Federal acknowledgment in 83.1, as government action "clearly premised on the identification of a tribal political entity" and "indicating clearly the recognition of a relationship between that entity and the United States." This means that the action must be shown to be unambiguously addressed to a group that the Federal government in the course of those actions considered to be a tribal political body with which the United States had a government-to-government relationship.

The purpose of section 83.8 rests on the idea that unambiguous previous Federal acknowledgment is sufficient evidence of tribal existence to that point. In contrast, some Federal actions dealing with Indian groups may not require or be premised on the existence of a political body or on a government-to-government relationship. One example would be dealing with a group of descendants who are no longer tribal in character with a common, legally defined interest (such as a claims payment to descendants of a historical tribe) in funds, even Federal funds. Similarly, a common interest in land, especially land not held for the group by the Federal government, is not by itself evidence the Federal government's action in recognizing that interest is premised on the existence of a political body which has a government-to-government relationship with the United States. The requirements that unambiguous previous Federal acknowledgment be "unambiguous" and that the evidence "clearly" show recognition of a relationship with the United States are intended to exclude miscellaneous Federal actions where these required elements are not clearly demonstrated.

The Federal government's actions in the Mashpee land condemnation suit do not fulfill either aspect of the definition of unambiguous previous Federal acknowledgment.

CONCLUSIONS UNDER THE CRITERIA (25 CFR 83.7)

The evidence for this PF came from the MWT and through independent research by the OFA staff to verify and evaluate the arguments submitted by the petitioner. Some of this research included a two-week field trip in January 2006 to collect interview data and other information on the Mashpee's community and politics in the modern period. This PF is based on the evidence available, and, as such, does not preclude the submission of other evidence during the comment period following the finding's publication. Such new evidence may result in a modification or reversal of the PF's conclusions. The FD, which will be published after the receipt of any comments and responses, will be based on both the evidence used in formulating the PF and any new evidence submitted during the comment period.

Evidence in the record demonstrates that the MWT meets the seven criteria for Federal acknowledgment. In accordance with the regulations set forth in 25 CFR 83.7, meeting all seven criteria requires a determination that the group is an Indian tribe within the meaning of Federal law.

Executive Summary of the Proposed Finding's Conclusions

The proposed finding reaches the following conclusions under each of the mandatory criteria under 25 CFR Part 83:

The petitioner meets criterion 83.7(a). The available evidence demonstrates that external observers identified the petitioning group or a group of the petitioner's ancestors from 1900 to 2005 as an American Indian entity on a substantially continuous basis.

The petitioner meets criterion 83.7(b). The available evidence demonstrates the petitioning group and its claimed ancestors evolved as a group from the historical tribe of Wampanoag located in and around the town of Mashpee on Cape Cod, Massachusetts. The petitioner provided sufficient evidence to establish that a predominant portion of the group has comprised a continuous community distinct from other populations since first sustained contact with non-Indians.

The petitioner meets criterion 83.7(c). The petitioner provided sufficient evidence to establish that the group and its antecedents maintained political authority or influence over its members as an autonomous entity since first sustained contact. The available evidence indicates that the exercise of political authority took many forms including political control of the town of Mashpee by the group up to 1974 and by an incorporated council since.

The petitioner meets criterion 83.7(d). The petitioner presented a copy of its governing document and its membership criteria.

The petitioner meets criterion 83.7(e). The petitioner submitted evidence which shows that 88 percent of the current members have demonstrated descent from the historical tribe. Based on precedents in previous findings, this is sufficient to meet the requirements of 83.7(e)(1) for

descent from the historical tribe.

The petitioner meets criterion 83.7(f). The petitioner's membership is composed principally of persons who are not members of any federally acknowledged North American Indian tribe.

The petitioner meets criterion 83.7(g). Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Failure to meet any one of the mandatory criteria will result in a determination that the group does not exist as an Indian tribe within the meaning of Federal law. The petitioner has met criteria 83.7(a), (b), (c), (d), (e), (f), and (g). Therefore, the Department concludes the petitioner exists as an Indian tribe.

Criterion 83.7(a) requires that

> **the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met.**

Introduction

Criterion 83.7(a) is designed to evaluate the existence of the petitioner since 1900. The key to this criterion is identification of the petitioning group as an American Indian entity by an external source or sources. For the petitioner to meet the requirements of criterion (a), acceptable identifications must be part of a series of identifications which constitute "substantially continuous" identification of the petitioning group since 1900.

The available evidence demonstrates that since 1900 external observers have identified the petitioning group now known as the Mashpee Wampanoag Tribal Council, Incorporated, or a group of the petitioner's ancestors as an American Indian entity on a substantially continuous basis.

Petitioner's Claims

The petitioner claims to have evolved and descended as a group from a Wampanoag tribe of Algonquian-speaking Indians, who trace their origins to the colonial period in the area around the present day town of Mashpee, Massachusetts, on the southwestern coast of the Cape Cod peninsula. Up to the present, the petitioning group and its antecedents have generally functioned or been identified as the Mashpee Indians or Mashpee Wampanoag Indians. Since 1974, the group has also been identified as the Mashpee Wampanoag Tribal Council, Incorporated, which is the official title of its business council.

<u>1900-1929</u>

Local Authors, Periodicals, and Newspapers

In 1903, Rosamond P. Rothery, a travel writer, wrote an account of the town of Mashpee and its inhabitants for the *Bourne Independent*.[7] The article described the history of the "Mashpee Tribe" and the town of Mashpee to that time, described as a "little settlement of Indians" (Rothery 1903.00.00, 227-228, 232).

[7]The version of this article in the petition record was a reprint published in a 1918 book entitled, *Cape Cod New and Old*, by travel writer Agnes Rothery Edwards, the original author's daughter. The 1918 book clearly identified the original author, date, and place of publication.

In December 1915, *Cape Cod Magazine* published a travel essay identifying the town of Mashpee as an "Indian" town. The author referred to the village as the "little Indian settlement of Mashpee." These "Indians and their descendants," the article stated, "comprise most of the population of the town," which had "only two white families . . . within its borders" (*Cape Cod Magazine* 1915.12.00).

Magazines and newspapers submitted by the petitioner supplied numerous descriptions of the Mashpee in the 1920's. Several accounts concerned two prominent leaders, Nelson D. Simons and Eben Queppish, who led a cultural revival of the Mashpee during their tenure. In 1923, *Cape Cod Magazine*, for example, described the group's "council" and that Simons was the "chief" of the "Mashpees" and "leader of some 250 souls" (*Cape Cod Magazine* 1923.10.00). Other articles that identify the Mashpee as an Indian entity concerned the 1923 rededication of the chapel belonging to the "Mashpee Indians," which was established in 1684 and supported by a trust fund from Harvard University (*New Bedford Evening Standard* 1923.09.10; *Cape Cod Magazine* 1923.00.10. In 1928 and 1929, Boston and Cape newspapers described the ceremonies of the Wampanoag powwows, which the Mashpee "tribe" sponsored (*Boston Globe* 1928.10.14; *New Bedford Evening Standard* 1928.10.15; *New Bedford Sunday Standard* 1929.08.11; *New Bedford Times* 1929.08.12). To publicize the 1928 gathering, one newspaper produced a detailed report on the town of Mashpee's "Wampanoag Tribe of Indians" powwow, history, leaders, church, and cultural practices, including the use of medicinal herbs (*Falmouth Enterprise* 1928.09.27).

Academics

In 1928, Frank Speck, an anthropologist, completed a study of the Mashpee and other Indian groups in southern New England (Speck 1928.00.00, 7-136). Speck provided a detailed analysis of the geography, culture, and history of these groups based on scholarly research and interviews of members. In the study, he declared success in charting "the survival of the actual Wampanoag" at the town of Mashpee and elsewhere on Cape Cod (Speck 1928.00.00, 77). Speck also supplied population estimates from 1674 to 1920 for the town of Mashpee, which he called "the last stronghold of the Cape Cod tribes" and "this native settlement" (Speck 1928.00.00, 123). For 1920, he placed the Mashpee Indian population at about 230 (Speck 1928.00.00, 124).

The available identifications of the Mashpee submitted for between 1900 and 1923 constitute minimal evidence for substantially continuous identification for that period. The sparseness of identifications for this period, however, appears to be only a fluctuation in that identifications of the Mashpee were made on a regular basis before 1900 and after 1923. Although identification before 1900 is not required under the regulations, in this case such identifications help establish the existence of a long-term pattern of regular identification. This apparent fluctuation in the number of identifications may also be the result of a minimal submission of evidence rather than the actual existence of minimal evidence of identification during these years. Therefore, the petitioner may wish to strengthen its evidence for criterion 83.7(a) by submitting additional identifications for the period from 1900 to 1923.

1930-1949

Federal Officials, Academics, and Researchers

Federal officials, academics, and various researchers consistently described the Mashpee in the 1930's and 1940's In 1934, W. Carson Ryan, Jr., an official with the Bureau of Indian Affairs, wrote James F. Peebles, superintendent of schools in Bourne, Massachusetts, regarding Federal assistance for building a school in the "Indian town of Mashpee." Ryan, writing at the behest of Eleanor Roosevelt, informed Peebles that Federal grants for school construction were unavailable for "Indian groups" like the "Mashpee Community" under State jurisdiction. He also commented on his trip to the town of Mashpee the previous summer with Gladys Tantaquidgeon, whom he described as an expert on "surviving New England Indian groups." During the trip, Tantaquidgeon had confirmed the acute need for "for more space and better accommodations for these Indian pupils" (Ryan 1934.11.20).

Academics and other researchers also produced important works describing the Mashpee. In 1934, Gladys Tantaquidgeon, a Mohegan Indian and a University of Pennsylvania student, completed a survey of community life among New England Indian groups, which became part of a report for the Bureau of Indian Affairs. In a series of charts covering these groups, she offered statistics on the Mashpee's geography, government, population, economy, health, education, culture, and crafts. Tantaquidgeon estimated the group's population at 300, with 262 (87 percent) living in or near the town of Mashpee (Tantaquidgeon 1934.12.06).[8] That same year, Tantaquidgeon also summarized her findings in a newsletter published by the Office of Indian Affairs. In it she described the Mashpee and Gay Head native groups as "the largest of the surviving bands of Wampanoag" (Tantaquidgeon 1935.02.01, 22-23).[9]

In the 1930's, Harvard sociologist Carle C. Zimmerman, as part of a Federal Works Progress Administration (WPA) community study, conducted an elaborate analysis of the town of Mashpee, to which he gave the pseudonym "Littleville," and its "native" population and devoted a chapter to it in his book, *The Changing Community*. Zimmerman explored the Mashpee's history, population, economy, family, social customs, and public life, devoting particular attention to the "tribal" council and the town government (Zimmerman 1938.00.00, 158-91). In 1939, reporter Jerome Kearful repeated these findings and identified the "Indian community" of Mashpee in an article about the town, which he clearly adapted from the Zimmerman study without crediting the author (*Boston Evening Transcript* 1939.08.17).
Updating his field research in 1943, Frank Speck tried to dispel the notion that New England Indian groups like the Mashpee had vanished. He estimated the Mashpee "band" population in the "Indian" incorporated town of Mashpee at 350. Speck also described the group's racial makeup and some cultural traits (Speck 1943.00.00, 33-38).

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[8]The Federal Census for 1930 recorded 361 individuals in 93 families in the town of Mashpee: 265 Indian, 4 Negro, 53 White, 38 Portuguese, and 1 Italian (1930 Census Mashpee, MA). Please see the summary under the criterion for (e) for a detailed discussion of the 1930 Federal Census.

[9]See also BIA 1935.00.00 ca (Tantaquidgeon).

In 1947, William H. Gilbert, an anthropologist with a doctoral degree from the University of Chicago and a researcher for Legislative Reference Service of the Library of Congress, published a *Synoptic Survey of Data on the Survival of Indian and Part-Indian Blood in the Eastern United States*. Using 1930 census data, this survey of "Indian mixed groups" counted 356 "Cape Cod Indians" lived in Barnstable County, "centered" in the town of Mashpee, Massachusetts (Gilbert 1947.00.00, 3-4). The following year, Gilbert provided similar population figures for the Mashpee in an article he wrote for the Smithsonian Institution called "Surviving Indian Groups of the Eastern United States." Again, he maintained the "Cape Cod Indians" numbered about 356 and were "centered" in the town of Mashpee. Like the Indians of Gay Head they are an organized 'tribe' with an elected "chief" (Gilbert 1948.00.00, 407-438).

Newspapers and Periodicals

The petitioner submitted articles from newspapers and periodicals that furnished identifications of the Mashpee between 1930 and 1941. In the early 1930's, many articles chronicled a financial crisis triggered by the town of Mashpee's inability to collect adequate tax revenues during the Depression. These accounts, while describing the town government's way of doing business, provided numerous external identifications of the Mashpee as an Indian entity.

During March 1932, for example, the *Boston Post* reported on the efforts "of the 361 people of this Indian community" to "pull themselves out of the financial tangle which has threatened to engulf them." To straighten out matters, the State had appointed an advisory committee to offer guidance, and it was in the midst of hearings with town members (*Boston Post* 1932.03.17). Another newspaper, trying to make sense of these financial entanglements, blamed the woes of the "old Indian town" on its "long course of queer government." In describing the history and political evolution of this "Old Indian town," the newspaper announced the community had "a background unlike that of any other Cape town, in fact, unlike any other town in this Commonwealth" (*New Bedford Sunday Standard* 1932.03.20).

In January 1933, a Cape newspaper covered the funeral and burial of Mashpee Eben Queppish, "chief" and "medicine man" of the "Wampanoag tribe," who had died in an automobile accident. The article related that more than 225 mourners attended the funeral in the town of Mashpee, some dressed in "the full regalia of the Wampanoag tribe." The newspaper eulogized the "medicine man," as "an outstanding citizen of Mashpee, known to all in his long years of residence." It also indicated that he had been "chosen" for his position by the "tribe" (*New Bedford Times* 1933.01.11).

The following month, another newspaper devoted part of its Sunday magazine to tracing the culture and history of the Mashpee. It depicted them as the "tribe" who living in the town of Mashpee "still roam and hunt through Mashpee's woods on ancestral land," and described the "Wampanoag" group's powwow, leadership, social practices, folklore, and racial makeup (*New Bedford Standard Times* 1933.02.05). Dozens of newspaper articles of this kind identifying the

"Mashpees" or a Mashpee "Indian" group, offered as evidence by the petitioner, appeared regularly in Boston and Cape Cod newspapers for the next eight years.[10]

1950-1969

Newspapers and Periodicals

Most of the identification for the Mashpee for this period came from newspapers and magazines. During the 1950's, many articles dealt with the restoration of the Mashpee Indian church, which was again in need of repair. In 1953, the *Boston Post*, for example, relating the fears of the "Wampanoag Indian Tribe of Mashpee" for the church, warned that Cape Cod was in danger of losing the landmark (*Boston Post* 1953.08.24).

Six years later the group initiated a fund to save the church and the adjacent Indian graveyard from further damage. In May 1959, "tribal" leaders for the "Wampanoag Indians of Mashpee" elicited the aid of the Assistant Attorney General of Massachusetts to uncover old probate records that might contain dormant estate funds to use in restoring the old church (*Cape Cod Standard Times* 1959.05.21). Later that summer, a local newspaper reported on the restoration and gave an overview of the history of the "Mashpee tribe of Indians," its leaders, and customs (*New Bedford Standard Times* 1959.08.30).

During the 1960's, articles on town finances, powwows, and an Indian Bible supplied most of the identifications of the Mashpee. In 1961, the *Boston Herald* recounted the town's financial crisis of the 1930's. It explained how the State had imposed an advisory committee on the town, as it had done with other communities during the Great Depression, to oversee its finances. The committee (which was abolished in 1969) for this "Cape Cod Indian Community" was the only one remaining in Massachusetts (*Boston Sunday Herald* 1961.01.21).

There were also several descriptions of the group's annual powwow. In 1961, attendance at the ceremony, held by the "Mashpee Indian Council," reached 2,000, while the next year about 1,000 people viewed the event. The 1962 article described the "chief" of the "Mashpee Indians" and discussed how "members of the "tribe" came from all across the country to attend the gathering (*Cape Cod Standard Times* 1961.07.10, 1962.07.29). During the 1964 powwow, "members of the Mashpee tribe" held commemorative services at the Old Indian Church for the 300th anniversary of the first Indian Bible, a noteworthy event which the Boston newspapers covered (*Boston Traveler* 1964 06.12; *Boston Globe* 1964.07.11).

Local Authors

In 1957, Milton Travers, a local historian, published *The Wampanoag Indian Federation*. This book gave an overview of all the Wampanoag groups on Cape Cod, past and present, and devoted a few pages to the "Marshpee Wampanoag Tribe." Travers outlined their history, leadership, the "Old Indian Church" and burial ground, and some "Marshpee Indian" social

[10]See, for just a few examples, *Boston Globe* 1934.08.05; *Cape Cod Times* 1936.05.13; 1939.08.09; *Cape Cod Colonial* 1937.08.16; Greene 1939.00.00; *New Bedford Times* 1934.06.09, 1934.08.05b.

events from the 1930's and 1940's. He noted that outsiders knew "the Mashpees still claim to function as a tribe" (Travers 1957.00.00, 179-180).

1970-1979

Federal and State Government Officials, Academics, and Researchers

Identifications of the petitioner rose dramatically in the 1970's. In March 1976, Senator Edward M. Kennedy of Massachusetts wrote Commissioner Terrel H. Bell of the Office of Education voicing support of the Mashpee's application for Federal aid to a cultural awareness program. Kennedy urged positive action on the request because "as one of the few remaining Indian tribes in Massachusetts, the preservation of their culture is not only beneficial to the state of Massachusetts but to the country as well" (Kennedy 1976.03.26). Two years later, the Soil Conservation Service, part of the Department of Agriculture, issued a report on several planning and development projects for the "Mashpee Wampanoag Indian Tribal Council." The report reviewed the geographical and cultural attributes of the "Mashpee Wampanoags" (US Dept. of Agriculture 1979.09.00).

During the 1970's, the Federal government instituted revenue sharing programs for which Indian groups were eligible as local governments. State-affiliated Indian entities, however, had to be certified for such programs by their Governor. In June 1976, Governor Michael S. Dukakis of Massachusetts wrote the Office of Revenue Sharing and certified that the "Mashpee Wampanoag Tribe" and two other state native groups had governing bodies capable of administering such funds. The Governor estimated the population of the Mashpee at 650 (Dukakis 1976.06.22).

Soon after, and just before the Mashpee launched a land-claim suit in Federal court, Dukakis signed an executive order recognizing the "Mashpee Wampanoag Indian Tribal Council" as governing body of its members and authorizing State agencies to do business with it (Dukakis 1976.07.08). Two years later, the State legislature passed an act establishing Indian housing authorities for the "Mashpee" and other "Indian tribes" to carry out low-income housing projects (MA Gen. Court 1978.00.00).

In 1972, Dr. Theodore W. Taylor, in *The States and Their Indian Citizens*, identified a population of 435 Indians in 1966 at the "Wampanoag community" in the town of Mashpee. The author was an acknowledged expert on Indian policy and a former Deputy Commissioner of Indian Affairs. He published this book on the states and relations with their American Indian inhabitants for the Bureau of Indian Affairs after conducting research as an Executive Fellow at the Brookings Institution in Washington, D.C. The book described the "Mashpee Wampanoag" as one of the "Indian Groups without Trust Land" living in Massachusetts (Taylor 1972.00.00, 228-229).

Jean Ludtke, a graduate anthropology student at the University of Massachusetts, produced a master's thesis on the Mashpee during the 1970's. As part of the study, Ludtke conducted extensive historical research and anthropological fieldwork that included a number of interviews. The resulting thesis examined the group's history and geography, economics and politics, social and family life, and patterns of ethnic persistence. She described the contemporary inhabitants of

the town as "the Wampanoag Indian tribe" and as "members of the native Mashpee community" (Ludtke 1974.02.00, ix).

Newspapers and Periodicals

The Mashpee made national headlines in the summer of 1976 when they initiated a land-claim suit against the town of Mashpee and several developers (*Mashpee Tribe v. New Seabury* 1977-1978). Newspapers and magazines covering the suit through its various stages over the next few years supplied numerous identifications of the Mashpee as an Indian entity, frequently using such terms as "Mashpee Wampanoag Indians," or "Mashpee Indians" in their descriptions of the suit. During the landmark case, journalists from across the country provided coverage, including those from the *Christian Science Monitor*, the *New Republic*, the *New York Times*, and *Time (Christian Science Monitor* 1977.09.27; Taylor 1977.04.30; 1977.04.30; *New York Times* 1977.10.19; *Time* 1976.11.15).

Paul Brodeur, a reporter for the *New Yorker,* provided one lengthy account of the trial in a lengthy article for the magazine in November 1978. He also gave a detailed history of the "Mashpees" up to that time and described some their leaders and prominent members. In addition, he recalled a series of trips he made to the town of Mashpee in the 1960's, when he spent considerable time with "Mashpee" members. In a 1962 visit, before the influx of many non-Indians, Brodeur described the town as having "the largest body of Indians in New England." In his view the town of Mashpee in 1978 was unique because its "six hundred and fifty year round residents had survived as a race of Indians," despite a long history involving non-Indian peoples (*New Yorker* 1978.11.06).

<u>1980-1989</u>

Court Records, Academics, and other Writers

Descriptions of the Mashpee continued at a steady pace throughout the 1980's. One of the identifications came from a court case in Massachusetts that attracted considerable press coverage. In 1984, a game warden issued citations against four Mashpee for taking shellfish without a license and exceeding permissible limits. Tried in a county court, the accused claimed to have an aboriginal right to hunt and fish within the state. The trial judge, Brian Rowe, agreed and dismissed the charges. The "Findings of Fact" also concluded the "Mashpee Indians were a tribe of Wampanoag Indians," of which the four defendants were enrolled members of the "Mashpee Tribe" in "Barnstable County" (*Massachusetts v Hendricks* 1984.10.23).

During this period, three works by academics and one by a journalist examined the Mashpee and their community. Three of them focused on the group's recent land-claim suit. In 1980, anthropologist Rona Sue Mazer completed a doctoral dissertation at Columbia University on the "Mashpee tribe" and the trial. Combining anthropological fieldwork and documentary research, she traced the history of the Mashpee up to 1980 and the motives for their legal action (Mazer 1980.00.00).

Five years later, Paul Brodeur expanded and updated his earlier journalistic account for the *New Yorker* into a book called *Restitution*, a lengthier exploration of the land claims of the "several hundred Wampanoag Indians who live in the town of Mashpee" and two other Indian groups from Maine. Besides going over the familiar legal terrain of the trial, he detailed the efforts, of the group, described as the "Mashpees" and the "Mashpee Wampanoag Tribe," to seek Federal acknowledgment and defend its aboriginal fishing and hunting rights in the early 1980's (Brodeur 1985.00.00, 3, also 4-64).

In his *Spirit of the New England Tribes, 1620-1984.* William Simmons examined the survival of folklore among the Mashpee and other New England native groups. Professor Simmons built his study partly on a number of folklore texts, collected during field research and Mashpee interviews in the town of Mashpee and other native New England communities in the early 1980's. The book provides a brief history of the Mashpee and retells many of their legends and traditions. While discussing which Mashpee he had interviewed in the contemporary group in the early 1980's, Simmons identified the "Mashpee Wampanoag Tribal Council, Incorporated" (Simmons 1986.00.00, viii).

Laurie Weinstein, a professor of anthropology at Southern Methodist University, published an article on the Mashpee and other Wampanoag in a 1986 edited work entitled *Strategies for Survival.* Professor Weinstein provided not only a history of the Mashpee, but also information about their contemporary affairs. She placed special emphasis on the "Wampanoag village of Mashpee" and its growing importance as a "cultural center" for the Wampanoag from the colonial era to the 1980's (Weinstein 1986.00.00, 85-112, especially 87, 100-102).

James Clifford, as part of a 1988 book on the theory of anthropology, also offered his view of the "Mashpee Tribe," past and present, and its land-claim suit. Professor Clifford, a self-defined "historian and critic of anthropology," observed and took notes on much of the trial. He also read some of the relevant literature on the case, including the works by Brodeur and Mazer. Clifford outlined the testimony of many of the witnesses and supplied some vignettes of the key players at the trial (Clifford 1988.00.00, 278, 336).

Newspapers and Periodicals

During the 1980's, numerous stories identifying the Mashpee came from newspapers and magazine articles. Many concerned the group's legal struggles. In 1981, one newspaper reported "350 Mashpee Wampanoag" and several other "Wampanoag Indian tribes" had introduced another land claim suit, this time against seven towns on Cape Cod (*Cape Cod Times* 1981.12.29).

Another issue played out in the headlines of local newspapers was the question of aboriginal shell-fishing rights. In September 1984, the *Sunday Cape Cod Times* published an editorial voicing support for the Mashpee's stand on the issue. The newspaper agreed the "shellfish are a community resource and that regulations are in place for their protection." Yet, it argued "on behalf of breaking these rules—when . . . the violator is exercising the ancestral rights claimed by Mashpee's Wampanoag Indians." The article also referred to the "president of the Wampanoag

Tribal Council" and the "450 members" of "the tribe living in Mashpee" (*Sunday Cape Cod Times* 1984.09.23).

In the summer of 1985, the *Washington Post* covered the 50th annual powwow, or "gathering" of the "Wampanoag Indians of Mashpee, Massachusetts." It gave an account of the Mashpee's history and present condition, and described the ceremonies and events at the yearly ceremony (*Washington Post* 1985.04.28).

Early in May 1988, David Hendricks, a Mashpee member, was shot and killed by a town police officer following a high-speed chase in the town of Mashpee. Anger over the shooting and the investigation galvanized group members, who demanded the officer be fired. The controversy, and the group's response, drew wide coverage in local newspapers that described the existence of the "Wampanoag Tribal Council" in the town of Mashpee (*Mashpee Messenger* 1988.05.04, 1988.05.11,).

1990-2005

Newspapers and Periodicals

The petition record contains a number of newspaper articles from the 1990's identifying the Mashpee. Some concerned the ongoing dispute between the town of Mashpee and the group over fishing and hunting rights. In 1992, the town revived the controversy when it resumed giving out citations to "Wampanoag shell fishermen" operating in local waters who belonged to the "tribe" (*Cape Cod Times* 1992.06.06). Frustrated by the impasse over the conflict, the "Mashpee Wampanoag Tribal Council" agreed at a town meeting to open a dialogue with the town to seek an acceptable solution to both parties. One newspaper, referred to this event as the start of a "historic dialogue on aboriginal rights" between the "Wampanoag Indians" and the town. Part of the dialogue included setting up a special committee to study the issue that would include representatives from the town and the "Mashpee Wampanoag Indian Tribal Council" (*Falmouth Enterprise* 1992.05.19).

The David Hendricks's case also captured a fair share of newspaper reports that identified a Mashpee entity. In 1989, and for many years after, the Mashpee organized a protest march on the anniversary of the shooting. Newspapers reported that "Mashpee Wampanoag Indians," "Wampanoag Tribe members," and the "Mashpee Wampanoag Tribal Council" pressured town officials, often in public town hall meetings, to dismiss the police officer involved in the incident (*Cape Cod Times* 1992.08.21, 1992.09.30).

Other dealings between the town and the Mashpee also provided identifications of an Indian entity. In October 1995, for example, one newspaper reported that the "Mashpee Wampanoag Indian Tribal Council" and the Board of Selectmen had negotiated a 99-year lease for the Mashpee to operate the Wampanoag Indian Museum (*Mashpee Enterprise* 1995.10.05). The newspaper viewed the return of the museum to the "Mashpee Wampanoag Tribal Council" as "long overdue" (*Mashpee Enterprise* 1995.09.29).

Several newspapers repeatedly identified an Indian entity, the "Mashpee Wampanoag," in articles covering the group's efforts to win Federal acknowledgment. In October 1999, for example, town of Mashpee officials, while negotiating on the recognition process, provoked an angry reaction from the "Mashpee Wampanoag Tribal Council" by seeking advice from the Boston law firm of Hale and Dorr, which had represented the town during the land claim suits. The Mashpee "tribal council" refused to cooperate with town selectmen on any matter regarding Federal acknowledgment until they removed the law firm from the process. The next year, the town and the "tribal council" agreed to hold talks with the firm excluded from the negotiations (*Cape Cod Times* 1999.10.03; *Falmouth Enterprise* 2000.03.10; *Mashpee Enterprise* 1999.10.08, 2000.03.03).

Fifteen magazine and newspaper articles from 2005 discuss the Mashpee's Federal recognition and lobbying activities, language education program, board elections, and restoration efforts at the Old Indian Meeting House. In the articles, reporters generally identified the group as the "Mashpee Wampanoag tribe," the "Mashpee Wampanoag," the "Mashpee tribe," and the "Mashpee Wampanoag Tribal Council" (*Boston Globe* 2005.08.03, 2005.12.21; *Cape Cod Times* 2005.02.14, 2005.08.20, 2005.09.15, 2005.10.01; 2005.10.11, 2005.12.03, two articles on 2005.12.04; *Indian Country* 2005.09.07; *Metro West Daily News* 2005.08.05; *San Joaquin News Service* 2005.12.06; *The Upper Cape Codder* 2005.05.26).

Conclusion

External observers have identified the Mashpee petitioner as being an American Indian entity from 1900 to the present. Therefore, the petitioner meets the requirements of criterion 83.7(a).

Criterion 83.7(b) requires that

> **a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.**
>
> **(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:**
>
> **(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community.**

Introduction

Criterion 83.7(b) requires that a "predominant portion of the petitioning group comprises a distinct community." The term "predominant" requires that at least half of the membership maintains significant social contact with each other (59 FR 9287) by participating in the social relationships, interaction, or institutions used to demonstrate community, and that the remainder should be connected to those who participate.

The Federal acknowledgement regulations provide a specific definition of community in section 83.1:

> Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture, and social organization of the group.

Sustained interaction and significant social relationships must exist among the group members. Petitioners must show interactions have occurred continuously since first sustained contact with non-Indians. Interaction should be broadly distributed among the membership.

As the following analysis shows, the available evidence demonstrates a predominant portion of the petitioner's members or claimed ancestors have maintained consistent interaction and significant social relationships throughout history. The evidence also establishes the petitioner's claimed ancestors and current members have maintained significant distinction from non-members in and around the town of Mashpee on Cape Cod in Massachusetts from historical times until the present.

The Petitioner's Claims

In its December 2002 "Historical Narrative of the Mashpee Wampanoag Indian Tribe," the Mashpee petitioner claimed the following:

> A predominant portion of the Mashpee Wampanoag Indian Tribe, whose head quarters and core community is located in Barnstable County, Cape Cod, Massachusetts, have comprised a distinct historical community and existed from historical times to the present. They are the Mashpee Wampanoag Indians. Today the tribe is formally known the Mashpee Wampanoag Tribal Council, Inc. (MW 2002 Supplement Part I Historical Overview, FAIR page 1)

Evidence of Community during the Contact, Colonial, and Revolutionary Periods, 1620's-1788

The Mashpee[11] maintained a distinct Indian community in and around the town of Mashpee, Massachusetts during the contact, colonial, and revolutionary periods. During the 1620's, the Wampanoag of southeastern Massachusetts on Cape Cod along Nantucket Sound, called "South Sea Indians" by the Pilgrims and Puritans, had a number of local leaders, or sachems, in charge of one or more villages joined in a loose alliance under one chief sachem (Smith 1616.00.00, 192, 205; Salwen 1978.00.00, 167-168; Mazer 1980.00.00, 29-32;). Included among the villages of the South Sea Indians were the adjoining settlements of Massipee (later Marshpee and then Mashpee), Cotuit, and Santuit.

The arrival of English settlers, and the resulting diseases and wars, quickly reduced the population of these settlements. After the 1650's, the colonists established several praying towns, as the Puritans called them at the time, among the Wampanoag on Cape Cod and other tribes in Massachusetts (Gookin [1674] 1972.00.00, 57; see also Mazer 1980.00.00, 38). These praying towns were designed to convert their Indian inhabitants to Christianity. Puritan minister Richard Bourne began preaching to the Wampanoag in the village of Mashpee and the nearby area in 1658.

In 1665, Bourne established one of these praying towns after acquiring 25 square miles of tribal land in Mashpee from two local Wampanoag sachems, Wequish and Tookenchosen. One year later the Sachem of Manomet (Plymouth) confirmed the deed, and granted additional contiguous land (which is in the present town of Mashpee). Then in 1685, the General Court of Plymouth Colony officially recognized these grants of land in perpetuity (Quichatapet 1666.09.09;

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[11]Scholars and authors have written extensively on the Mashpee, particularly for the colonial period. Included among these works are the following: Frank Speck, *Territorial Subdivisions and Boundaries of the Wampanoag, Massachusetts, and Nauset Indians* (1928); Jean Ludtke, "The Mashpee Wampanoag: A Case of Ethnic Resurrection," MA Thesis, University of Massachusetts (1974); Rona Sue Mazer, "Town and Tribe in Conflict: A Study of Local-Level Politics in Mashpee, Massachusetts," Ph. D. Diss. Columbia University (1980); Paul Brodeur, *Restitution: The Land Claims of the Mashpee, Passamaquoddy, and Penobscot Tribes of New England* (1985); Yasuhide Kawashima, *Puritan Justice and the Indian: White Man's Law in Massachusetts, 1630-1763* (1986); William Simmons, *Spirit of the New England Tribes: Indian History and Folklore, 1620-1984* (1986). Daniel Mandell, *Behind the Frontier: Indians in Eighteenth Century Eastern Massachusetts* (1996).

Plymouth Colony Record 1685.00.00). This settlement was the largest praying town in Massachusetts, and over a period of years Bourne converted most of its Wampanoag inhabitants to Christianity.[12]

The population of the praying town of Mashpee was primarily drawn from the South Sea Indians, as the number of English settlers on the southwestern portion of the Cape increased and forced many natives from the area to relocate. Later, after King Phillip's War in the early 1670's, some other Wampanoag Indians and a few Narragansett and Long Island Indians were also absorbed into the town. Thus the praying town was a continuation of the Mashpee and other South Sea Indian villages in the immediate area.

Until the early 1690's, the praying town's government consisted of a six-member council, staffed by Mashpee, who served with the pastor's advice. When Bourne died in 1685, Simon Popmonit took his place, the first of two Mashpee during the colonial period to become pastor, a position of influence and importance in the town. Popmonit delivered his sermons in Wampanoag and helped to maintain the aboriginal language in the town. In 1698, one outside observer described the Indian preacher Popmonit as a "superbly qualified" for his position and identified four other Mashpee as "rulers" (MA Historical Society 1698.00.00, 133). In 1720, when Popmonit died, the Mashpee, by threatening a boycott, forced the non-Indian replacement, Joseph Bourne, to learn their language and preach in the native tongue. Bourne also had ministerial competition from within the Mashpee for their religious sympathies. Beginning in the 1720's, Solomon Briant preached to his fellow Mashpee in their native language, but did not officially become the minister until 1742 (Gookin [1674] 1972.00.00, 56-58; see also Nicholas 2002.00.00, 173).[13] The maintenance of religious beliefs among a significant portion of the group provides good evidence for community.

As members of a praying town, the Mashpee exercised a considerable degree of self-government. They also held shared title to the land. In the early 18th century, Mashpee leaders engaged in a series of land disputes with nearby towns to prevent non-Indians from settling the area (Popmonet 1710.05.31, Province Laws 1717.00.00-1718.00.00, Province Laws 1718.06.16).[14] During the 1720's, the colony instituted an English-style proprietary system in the town of Mashpee. Under this arrangement, Mashpee became proprietors, or collective owners of the land. They could sell land to other members or their descendants. Land sales to outsiders occurred only with the approval of all the proprietors.[15] They also elected their own town officials, including positions like magistrate and constable. In 1746, colonial legislators limited

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[12]For overviews of these events see Speck 1928.00.00, 89, 91, 120, 122; Mazer 1980.00.00, 37-39; Brodeur 1985.00.00, 14; Kawashima 1986.00.00, 28-35; Simmons 1986.00.00, 18; Mandell 1996.00.00, 19).

[13]For other overviews of these events see, Kawashima 1986.00.00, 28-35; Mandell 1996.00.00, 53, 108; Ludtke 1974.00.00, 14-15; and Mazer 1980.00.00, 39-41;

[14]See also Ludtke 1974.00.00, 14-15 and Mazer 1980.00.00, 40.

[15]The Mashpee technically remained proprietors until 1870 when the State incorporated the town of Mashpee and removed restrictions on the sale of Indians lands. Until that time land within the town of Mashpee could only be sold to outsiders with the approval of all the proprietors (see Earle Report 1861.03.00, 52-54).

this political control by assigning three guardians to the settlement (Province Laws 1746.09.13). For the next 16 years, as described in criterion 83.7(c), the Mashpee proprietors regularly petitioned the legislature complaining about the guardians' actions. In response, the colony in 1763 made the town into a self-governing "Indian" district, the only one of its kind in Massachusetts, with five elected overseers, three Mashpee, and two colonists (Province Laws 1763.05.25; see footnote below regarding petitions from this period).[16] This political arrangement stayed intact until after the American Revolution.[17] These political activities also provide evidence of community during this period.

External observers consistently described the Mashpee as having a distinct Indian settlement during the 17th and 18th centuries, except for 1700 to 1709, where no documentation has been provided. Between 1648 and 1685, there are colonial records attesting to land sales between English settlers from other towns and the Mashpee inhabiting the town of Mashpee, and one, dated 1671, pledging neutrality to the Plymouth colony (Colony Record 1671.07.05).[18] In the 18th century, colonial documents include petitions from the proprietors of Mashpee, records of boundary disputes with neighboring towns, and authorizations for land sales.[19] In 1762, Ezra Stiles, president of Yale College, visited the town and described the inhabitants, living arrangements, dwellings (still almost entirely wigwams), church, and cultural practices of the Mashpee (Stiles 1762.00.00, 160-171). In addition, there are letters from the latter part of the century written by Reverend Gideon Hawley, the Congregationalist pastor and later overseer for the town, discussing the Mashpee.[20]

Gideon Hawley's tenure as minister (1758-1807) provided important evidence of community for the Mashpee.[21] Hawley became minister when the Mashpee needed his assistance to develop petitions to the General Court. These petitions sought to end or curtail the practice of leasing Mashpee land to non-Indians (Nicholas 2002.00.00, 169). While Hawley assisted in drafting

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[16]Petitions during the colonial proprietary period generally were usually signed by the leaders of the Mashpee, sometimes with as many as two dozen signatures. Sometimes the Mashpee issued these at legal meetings of the proprietors on behalf of the "rest of the Indian proprietors of Mashpee" (see Province Laws 1747.10.20; Amos 1748.03.29; Suncossor 1753.09.08; MA Gen. Court 1760.12.20; see also Mazer 1980.00.00, 41). Some of these leading proprietors held recognized positions of authority and are identified in other contemporary evidence. Please see criterion 83.7(c) for more detail about some of these leaders.

[17]For overviews of these events see Jennings 1975.00.00, 252-253; Kawashima 1986.00.00, 28-35; Ludtke 1974.00.00, 14-15; Mandell 1996.00.00, 3, 179; Mazer 1980.00.00, 40-41).

[18]The petition record contains 19 colonial documents relating to the Mashpee from 1648 to 1699.

[19]The petition record contains 54 colonial documents relating to the Mashpee in the 18th century.

[20]The petition record contains 11 letters by Hawley from 1767 to 1802 describing various aspects of life for the Mashpee group. These represent only a small amount of Hawley's correspondence from his tenure. Mark A. Nicholas in his "Mashpee Wampanoags of Cape Cod, the Whalefishery, and Seafaring's Impact on Community Development," *American Indian Quarterly* (Spring 2002), has provided a comprehensive analysis of Hawley's ministerial correspondence. See also Mandell 1996.00.00, 124, 178-180.

[21]Other available evidence suggests that Hawley may have served to 1810.

these appeals, it was the Mashpee's collective actions as proprietors, described in criterion 83.7(c), which compelled the legislature to take them seriously (Nicholas 2002.00.00, 169).

Hawley also felt compelled to meet the wishes of the Mashpee. For 17 years after his arrival, he was obliged to share the pulpit as an assistant to Solomon Briant, who continued to deliver sermons in the "native" language until his death in 1775. When Hawley finally gained sole possession of the ministry, he tried preaching only in English[22] like Joseph Bourne before him. In response, his parishioners began abandoning the church in growing numbers, eventually attending services with John Freeman, an Indian Baptist minister of their own choosing.[23] Evidence suggests the Mashpee preferred Baptist doctrine to that of Hawley's conservative Congregationalism because of its less traditional social and religious attitudes (Nicholas 2002.00, 167, 187-188; see also Hawley 1795.09.02). As Mark Nicholas explained,

> During the colonial times, Indians and Africans filled the back pews while whites paid for the seats up front [of Congregationalist Churches in New England]. Such traditions never held sway in Mashpee. Because Hawley could not 'rent' the pews to any local whites, Mashpee's 'more ambitious' Indians paid for the pews up front. According to the missionary, they would 'give anything for the privilege of a pew because they elevate them to the highest rank in the meeting house.' Paying £10 for each person, by 1760 Mashpee Indians had taken over all the front pews. Wampanoags purchased pews . . . to express their economic and social independence. Mashpee were like other people who used money to mark social rank and to improve the quality of their lives. (Nicholas 2002.00.00, 180)

These events provide evidence of shared religious practices among a significant portion of the Mashpee.

Hawley also found the Mashpee defied his efforts to prohibit alcohol consumption on the settlement. In the 1760's several female members, such as Hannah Babcock, opened taverns to serve sailors and whalers despite Hawley's objections (Nicholas 2002.00.00, 179-180). The Mashpee also rebuffed his persistent attempts to transform them into farmers. Instead, many male members became whalers or simply subsisted off the abundant natural resources in the town by fishing, shell gathering, hunting, and logging (Nicholas 2002.00.00, 172-173). Some women Mashpee took up trades and became peddlers of baskets, brooms, cheese, and butter. Others became servants or teachers (Nicholas 2002.00.00, 181; MA Historical Society 1802.09.16, 5). Indeed at one point, Hawley paid about eight Mashpee widows to teach its children, and by the 1790's the community had two schools for training teachers (Nicholas 2002, 181).

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[22]An 1802 document also contained a copy of a 1767 report by some visiting missionaries who had witnessed Mashpee church services held entirely in the Wampanoag language.

[23]For overviews of these events see Nicholas 2002.00.00, 172, 188; Mandell 1996.00.00, 108-109, 180, 194; Mazer 1980.00.00, 39; Weinstein 1986.00.00, 92.

Residence Patterns for the Colonial Period and Revolutionary Periods

The population of the settlement was about 117 in the 1670's (Gookin 1972.00.00, 57; Speck 1928.00.00, 124 and Nicholas 2002.00.00, 168 citing Gookin in 1674 as primary source). In 1684, Governor Thomas Hinckley described the settlement and estimated the number of Mashpee above the age of 12 in the town of Mashpee at 141 (Hinckley 1685.04.02, 133). By 1698, the settlement probably contained 263 Mashpee over the age of 10 in 57 families (MA Historical Society 1698.00.00, 133). The available evidence for the 17th century indicates the praying town was almost wholly occupied by the Mashpee except for the presence of an occasional non-Indian like the pastor. Estimates of population for 1700 to 1788 also show the vast majority of Mashpee continued to reside within the town of Mashpee. In 1729, the population was around 280 (see table based on primary sources in Nicholas 2002.00.00, 168). By 1762, the town of Mashpee had an estimated 250 Mashpee in 75 families (Stiles 1762.00.00, 60). In 1776, there were 341 people in the town, 327 Mashpee and 14 black men married to Indian women (Nicholas 2002.00.00, 168, citing June 24, 1776 letter and census by Hawley; see also citation in, Address to Legislative Committee 1834.03.07, 28)[24]. During the American Revolution, the town of Mashpee lost about 50 men, half the adult male population, fighting for the colonial side. Some Mashpee women married non-Indians making the town more ethnically and racially diverse. These non-Mashpee spouses became proprietors, but they lacked any legal right to land in the town as individuals. A small number of squatters moved to the settlement as well, none entitled to land ownership.[25] In 1788, Hawley recorded two black males married to group members, and eight who were not. He also reported four Hessian soldiers and two other whites married to Mashpee women. The population of the Mashpee at that time was possibly 400 Indians (Nicholas 2002, 168, citing 1788 letter by Hawley). Given the limitations inherent in colonial documents, these residential patterns provide sufficient evidence (83.7(b)(2)(1)) that a large majority of the Mashpee lived in an exclusive geographical area during the colonial and revolutionary periods. The Mashpee were still identified by outsiders as a separate tribal entity and there is no reason to believe a significant number of them lived within non-Indian communities at the time. This evidence is, therefore, also sufficient to meet the requirements of political influence, under 83.7(c)(3) for this time.

Evidence of Community during the Overseer Era, 1788-1834

In the 1780's, Gideon Hawley's difficulties with the Mashpee increased. He complained frequently about female members having relationships with non-Indians, mainly African-Americans but sometimes whites, some of whom were squatters. In many cases, the women refrained from marrying these men, thereby preventing them from owning land. In other cases,

[24]A transcribed copy of the 1776 census from Hawley's manuscript collection in the Massachusetts Historical Society was found in the ancestor file for Daniel Sunkansin. This transcribed version lists 346 Mashpee and 14 African-Americans (Daniel Sunkansin 1750.00.00 ca [AF]). It may be that the unknown transcriber recorded some of the numbers incorrectly. The petitioner may wish to obtain and submit a copy of the original, or another transcription, for further evaluation.

[25]For overviews of these events see Mazer 1980.00.00, 41-42; Clifford 1988.00.00, 306-307; Mandell 1996.00.00, 193-194).

women in long-term relationships with non-Indians forced them to adopt "Indian" lifestyles, including living in wigwams (Nicholas 2002.00.00, 184-186).

By 1788 (and for the remainder of his ministry), Hawley's Congregationalist church services were also boycotted by most of the Mashpee (Hawley 1795.09.02). In 1788, he petitioned the legislature to appoint guardians for the Mashpee, ostensibly to prevent his parishioners from losing land to non-Indian arrivals. The State answered by appointing a trio of overseers to supervise the Mashpee's affairs, and by curtailing their control of land, resources, and labor (MA Gen. Court 1788.05.12; Address to Legislative Committee 1834.03.07, 19-20; Apes 1835.00.00, 40-42).[26]

During the next 45 years, however, the Mashpee retained a significant amount of self-government, while being generally ignored by the overseers, as State records demonstrate. Mainly, the overseers proved unwilling to remove squatters stealing firewood or fishing illegally in the town's streams and lakes. The Mashpee petitioned the State several times between 1807 and 1827 to obtain greater control of their government with varying degrees of success.[27] Responding to the 1827 petition, the legislature investigated conditions in the town, and discovered that due to the overseers' neglect, the Mashpee were running municipal affairs by themselves, indeed had been doing so for over 100 years (Child 1827.03.01 [HR No. 68], 5, 9-10).[28]

Then in 1833, 102 Mashpee belonging to leading family lines issued a resolution[29] proclaiming the right to self-rule. The resolution affirmed their intention as well to expel the overseers and prevent outsiders from removing firewood (Whitman 1833.05.21 [Senate No. 14], 6-7; *Boston Daily Advocate* 1833.12.20; Amos 1834.01.00 [HR No. 11], 1-14). These acts of civil disobedience drew substantial newspaper coverage.

In January 1834, one newspaper, the *Boston Advocate,* published a "memorial," from the "Marshpee Indians" to the legislature demanding the right to self government. According to the legislative report that officially published the memorial, 171 unnamed adult Mashpee and some of their non-Indian spouses living in the town signed the petition for themselves and on behalf of 166 unnamed other Mashpee who were temporarily in the surrounding area because they refused to return and submit to overseer control "under the present laws" (Amos 1834.01.00 [HR No.

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[26]For overviews of these events see Brodeur 1985.00.00, 15; Mandell 1996.00.00, 180-181, 185, 186, 193-195; Mazer 1980.00.00, 41-43; Simmons 1986.00.00, 20-21; Weinstein 1986.00.00, 92.

[27]Generally, the names of the signers of these petitions from this period are unknown because the available evidence only contains descriptions of the petitions in the copies of the official State responses to them. The petitions were usually brought by the "Indians of the Marshpee plantation," with the State frequently responding with full-fledged investigations of conditions.

[28]For overviews of these events see Mazer 1980.00.00, 43-44; Simmons 1986.00.00, 21-22.

[29]See criterion 83.7(e) for information on these 102 individuals. Among the well known Mashpee family names on this petition were Simons, Coombs, Pocknet, Mingo, Webquish, Amos, Attaquin, Mye, Cowett, Quippish, Degrass, Garner, Jones, Hicks, and Keter (Whitman 1833.05.21 [Senate No. 14], 7-8).

11], 14; Address to Legislative Committee 1834.03.07, 29-30).[30] The State answered in 1834 by changing those laws and making the town of Mashpee a self-governing Indian district. Population records for this period indicate that almost all of these temporarily absent Mashpee returned (see following section residential patterns for 1788-1834). The Mashpee now controlled their schools, roads, welfare, and hunting and fishing areas. They still lacked, however, the full rights of citizenship, including the right to vote for and send representatives to the legislature (MA Gen. Court 1834.03.31).[31] This political activity is also evidence of community during this period.

State officials and other important observers continued to describe the Mashpee as a distinct Indian settlement throughout the overseer period. These observations contained pertinent data for evaluating community. Between 1788 and 1834, the Massachusetts legislature passed laws and issued reports on many facets of life in the town of Mashpee that repeatedly referred to its inhabitants as the "Mashpee Indians" or "tribe." The legislature appointed guardians, answered petitions, resolved boundary disputes, investigated complaints, validated land sales, regulated woodcutting, and appropriated school funds largely in response to group entreaties (see for, example, MA Gen. Court. 1793.03.26, 1798.06.22, 1818.00.00; Pickman 1818.06.18; Child 1827.03.01 [HR No. 68]).

In addition, Reverend Hawley penned several letters, from 1792 to 1802 giving his estimates of population and observations of native life in the town of Mashpee, including the maintenance of traditional arts like basket and broom making by "many" of the women (Hawley, 1792.04.04, 1792.04.05, 1795.09.02; 1796.01.30, 1801.04.03, 1802.08.00; MA Historical Society 1802.09.16, 5; see also Weinstein 1986.00.00, 91).[32] Hawley also lamented the Mashpee's continued boycott of his Congregationalist services and attendance at those of the Indian Baptist preacher, whom he chastised for being "about among the Indians on the Sabbath to bring them to his side in politicks [*sic*] and to the Baptist side in religion (Hawley 1795.09.02; MA Historical Society 1802.09.16, 7). He further objected to the sexual practices of some female members and their operation of illegal taverns (Hawley 1792. 04.04, 1795.09.02). The minister also expressed his disapproval that some Mashpee were in political parties, "Whigs and Tories," as he labeled them (Hawley 1795.09.02). The Mashpee's continued resistance to Hawley's demands shows evidence of community.

The Baptist church remained an integral part for a majority of the Mashpee community after Hawley's departure. By the 1830's, many of the Mashpee had become Baptists and followers of an Indian preacher named "Blind Joe" Amos. They did this partly out of growing frustration with Hawley's replacement, Reverend Phineas Fish, the non-Indian Congregationalist minister. Fish earned their enmity by neglecting the Mashpee, while using the church, supported by trust funds from Harvard, for his small congregation of mainly "white" parishioners from other towns

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[30]The State report does not name of these 171 petitioners or the 166 others.

[31]For overviews of these events see Brodeur 1985.00.00, 16-18; Simmons 1986.00.00, 22; Mazer 1980.00.00, 44-47.

[32]See also Weinstein 1986.00.00, 91.

(see footnote below).[33] To express their displeasure, a large number of the Mashpee boycotted Fish and his services at the Indian Meeting House and attended services in the schoolhouse held by a minister of their own choosing. This controversy culminated in 1834, when the Mashpee and a Pequot preacher named William Apes instigated an uprising that led to self rule and Fish's subsequent removal (Apes 1835.00.00, 22, 40-42).

During the Mashpee "rebellion" of 1833-1834, Boston and Cape Cod newspapers published many articles depicting the revolt and its aftermath. In January 1835, the Governor, in his annual address to the legislature, briefly discussed the events of the last two years that led to the passage of the 1834 act establishing the town of Mashpee as an Indian district. In the address, he depicted the town officials as Indian proprietors (Governors Address 1835.01.13, 66-67). The Governor observed the following about the Mashpee:

> The Marshpee are few in number, and although surrounded with white population with whom they have held daily intercourse, two centuries of experiment have failed to do more than mingle the arts and customs of civilized life with the habits of their ancestors. The precariousness of reliance upon the forests, now that they shelter little game, and upon the rivers and the sea for support, is not sufficient to detach them from the chase, or to wed them to the cultivation of the earth. The habits of the whites have, however, stolen upon them unawares, and they now engage in many pursuits with perseverance and success. (Governors Address 1835.01.13, 66-67)

These accounts of a distinct Indian settlement provided pertinent evidence to demonstrate community for the Mashpee from 1788-1834.

Residential Patterns, 1788-1834

During this time, external observers supplied extensive accounts of the Mashpee that gave population estimates for the period from 1802 to 1834. In 1802, James Freeman visited the town of Mashpee and published a detailed description, with the help of Gideon Hawley, of the Mashpee (MA Historical Society 1802.09.16, 1-12).[34] Freeman estimated the population of the town at 380 living in 80 houses, mostly cottages but with a few wigwams, but did not distinguish the number of Mashpee from non-Mashpee in that total (MA Historical Society 1802.09.16, 4). However, he also described the population of the town in this manner:

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[33]Fish ministered to about 23 whites and only a handful of Mashpee in his Congregationalist services at the meeting house, a building he refused to relinquish control of to the Mashpee. Almost all his white congregants belonged to other towns. Most of the Mashpee, 202 of the 315, attended the services of their self-chosen Baptist minister (Whitmarsh 1839.03.30 [IIR No. 72], 6-7).

[34]Just before the completion of the PF, OFA found in the ancestor file of Arubah Amos what appears to be either a State or overseer census, dated 1808, of the inhabitants of the town (Amos, Arubah 1782.00.00 ca [AF]). It listed approximately 353 to 355 inhabitants. This census may have been prepared in response to an 1807 petition from the Mashpee and an 1808 legislative report it triggered (Davis & Goodfish 1807.12.31; MA Gen. Court 1808.03.04). OFA was unable to examine this census in detail for the PF and will do so for the FD, if necessary.

> At the time when this was granted to the South Sea Indians, as they are styled in the deeds, the natives were numerous in the county of Barnstable; but they were not particularly so in Mashpee. At present there are as many in Mashpee, as in former periods, whilst from other parts of the county they have almost entirely disappeared. (MA Historical Society 1802.09.16, 8)

In 1822, Reverend Jedidiah Morse discussed the "reservation," as he called it, and other "Indian" settlements in the state, in a survey of "Indian affairs" commissioned by the War Department.[35] Using information from Reverend Fish, he set the population of "Indians" in the town of Mashpee at 320 (Morse 1822.00.00, 68-71). Morse also pointed out that all "the Indians remaining in this State reside[d] on their respective reservations at Marshpee, Herring Pond, Martha's Vineyard, and Troy, in the southeast part of the state, from fifty to one hundred miles from Boston" (Morse 1822.00.00, 68).[36] A State legislative report from 1832 put the population of the town at 313, with 297 being Mashpee and the rest being African-American spouses (Earle 1860.00.00, 47). Two years later a State report recorded the population of the town in 1832 as 315, with 299 of them being Indians and the rest being African-Americans (Address to Legislative Committee 1834.03.07, 28).[37] In 1833, 171 unidentified adult Mashpee and some of their non-Indian spouses living in the town signed a petition to the legislature for themselves and on behalf of 166 unidentified other Mashpee who were temporarily in the surrounding area because they refused to return and submit to overseer control under the current system of law (Amos 1834.01.00 [HR No. 11], 14; Address to Legislative Committee 1834.03.07, 29-30). Reports from State officials from this period provide good evidence that most of the 166 individuals who were temporarily absent returned to the settlement after the legislature changed the form of government in the town (see footnote below).[38] There is other evidence that Mashpee who lived elsewhere usually did so only a temporary basis. For example, William Apes, a Pequot preacher living among the Mashpee in the early 1830's, described Mashpee who lived among non-Indians, learned arithmetic and to read and write English, and then returned to the town of Mashpee to educate the children for little or no pay (Apes 1835.00.00, 44). These residential patterns show that virtually all the Mashpee resided in an exclusive community and that those few who lived elsewhere retained contact through return migration. Therefore, they

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[35]OFA was unable to do a residency analysis under criterion 83.7(b)(2)(1) for 1788 to 1802 because it discovered the 1788 and 1809 censuses in the petitioner's ancestors files too late during active consideration. An analysis of this kind will be done for the final determination, if necessary.

[36]That same year, a Federal report on "Indian trade," released by the House of Representatives in 1822, quoted liberally from Morse's findings and specifically mentioned the Mashpee "reservation" and its pastor (US House of Reps. 1822.05.02, 1794-1795). Three years later, Thomas L. McKenney repeated Morse's findings for his report on Indian tribes in the United States for the Office of Indian Affairs within the War Department (McKenney 1825.01.10, 545).

[37] Just before the completion of the PF, OFA found a copy of the 1832 State census in the ancestor file of Arubah Amos (Amos, Arubah 1782.00.00 ca [AF]). It listed 315 inhabitants. OFA was unable to examine this census in detail for the PF and will do so for the FD, if necessary.

[38]In 1838, a State official put the total of the Mashpee population in the town at 315 (Whitmarsh 1839.03.30 [HR No. 72, 7]. In 1848, State officials recorded 305 inhabitants, "of whom 26 were foreigners, married to natives of the tribe" (Earle 1860.00.00, 47).

provide sufficient evidence (83.7(b)(2)(1)) of community from 1802 to 1834. It is, therefore, also sufficient to meet the requirements of political influence, under 83.7(c)(3) for that time.

Evidence of Community during the District Period, 1834-1870

Important external observers described the Mashpee as a distinct Indian settlement regularly during this time. These descriptions contained pertinent data for evaluating community. Between 1834 and 1870, the Massachusetts legislature passed laws, issued annual reports, authorized payments, and reviewed petitions involving and specifically describing the inhabitants as the "Mashpee Indians." A State-appointed commissioner compiled yearly reports that reviewed the Indian district's accounts. These reports detailed the financial transactions for renting common land, sale of timber, support of paupers, payments for schools and teachers, repairs of highways and bridges, and expenses for maintaining fisheries. Dozens of Mashpee receiving or making payments were identified by name very year (see for example, Everett 1838.01.24).

In 1835, the Mashpee sued their Congregationalist pastor, Reverend Phineas Fish, to regain control of the meeting house and parsonage, established in 1684, and its adjacent land. Fish, widely disliked by the Mashpee in the town, had used the meeting house, and its subsidy funds from Harvard College, largely to minister to "whites" from other towns (Apes 1835.00.00, 22, 40-42). The court record included the legal opinion of Benjamin F. Hallett, counsel for the "Marshpee Indians," who gave a meticulous analysis for the State legislature of the Mashpee's history, their settlement, and ministerial problems (*Marshpee v Fish* 1835.05.20, 142-167; see also Hallett's Address to Legislative Committee 1834.03.07).

That same year, William Apes, a Pequot preacher living among the Mashpee, described Mashpee who lived among non-Indians, learned arithmetic and to read and write English, and then returned to the town of Mashpee to educate the children for little or no pay (Apes 1835.00.00, 44). Four years later, J.W. Burber, while itemizing his travels on Cape Cod, briefly recounted the history of the town of Mashpee's residents and provided details on settlement's subsistence patterns, industry, employment, religion, and Indian graveyard (Burber 1839.00.00, 46-48). In 1840, the legislature established the Indian district as a parish, which finally gave the Mashpee complete control, through a Parish Committee, of its public meeting house, sometimes called the Indian Meeting House, and parsonage lands (MA Gen. Court 1840.03.24).

With the advent of Indian district status in 1834, the Mashpee, as State documents attest, firmly controlled most aspects of community life. Apparently, they did a good job of running the district in the opinion of State officials. In 1849, the legislature issued a report by George N. Briggs on the "Indians of Massachusetts," which noted "the wonderful improvement" in the 13,000-acre town of Mashpee. Briggs detailed the Mashpee's activities in managing the district's land, economy, education, and parish (Briggs Report 1849.00.00, 24-38; see also criterion 83.7(e)).

In 1859, John Milton Earle investigated the Mashpee and other "Indians in the Commonwealth" and issued a report in 1861, which became known as the Earle Report. In his description of the

Mashpee, Earle noted the district inhabitants held elections, took care of the sick and destitute, maintained roads, and supported the local school. "The Indians," he affirmed, "are in their own home, their own, by the strongest and most sacred rights, original and uninterrupted possession, and the guaranty of the state thereto" (Earle Report 1861.03.00, 46-67). The report also provided a detailed history of the historical tribe and a complete listing of all members as of 1859 (see also criterion 83.7(e)).

District status apparently gave the Mashpee the means to preserve their resources. District minutes show the Mashpee protected their resources by regulating the use of common lands and resources (Minutes 1834.00.00-1870.00.00). This regulation of group resources provides sufficient evidence of community during this period (83.7(b)(2)(5); see criterion 83.7(c) for more detail on this allocation of resources by the Mashpee leadership). There also remained a close connection between political and religious matters among the Mashpee that provides good evidence of community. Some Mashpee, for example, served on both the district government and the Parish Committee (MW 2005.10.31 Mashpee Church, 9-11). The district government and the Parish Committee both held their meetings in and raised money for the maintenance of the Old Indian Meeting House, which also functioned as the place for Baptist church services (Parish Minutes 1840.07.11; 1843.09.09-1893.09.09). They also cooperated to remove Reverend Fish from the parsonage grounds.

State officials also issued reports on the Mashpee's activities almost annually, confirming much of the activity described in the minutes. These reports documented the existence of the many leading family names that would later dominate the Mashpee's social and political activities.[39] These reports also provide evidence of a distinct Indian settlement for this period.

Residential Patterns during the District Period

As stated previously, in 1833, 171 unidentified adult Mashpee and some of their non-Indian spouses living in the town signed a petition to the legislature for themselves and on behalf of 166 unidentified other Mashpee who were temporarily in the surrounding area (Amos 1834.01.00 [HR No. 11], 14). In 1859, the Earle Report stated the Mashpee numbered 403, including "thirty-two foreigners," persons of non-Indian ancestry, married to Mashpee (Earle Report 1861.03.00, 47)[40]. In addition, there were 66 "out of the whole number of the tribe," who did not reside in the district, 52 of whom were considered as "retaining their rights in the tribe," by which Earle probably meant either membership or ownership of land in the district (Earle Report 1861.03.00, 47). Of those 52, half were "understood to be only temporary residents abroad" and expected to return eventually and take up permanent residence in the district. A small number

[39]The family names included Amos, Attaquin, Coombs, Degrasse, Edwards, Freeman, Gardner, Hendricks, Hicks, Jackson, Mills, Ockrey, Pells, Pocknet, Simons, Webquish, Whiting and others (Briggs Report 1849.02.21 64-66). See also Speck 1928.00.00, 125 for a discussion of family names in the Earle Report.

[40]As explained in criterion 83.7(e), the petitioner's current constitution cites this report as evidence of the composition of the historical tribe in 1861, and the current members must prove their descent from someone identified as Mashpee in the Earle report (or from the two Peters's brothers, whose father was Asa Peters, A Christiantown Indian on the Earle Report). See criterion 83.7(e) for further discussion of the Earle Report.

were living in adjacent communities and were understood to be Mashpee members (Earle Report 1861.03.00, 47). Earle also found about 14 Mashpee living with other Wampanoag tribes on the Cape (Earle Report 1861.03.00, Appendix; please see footnote below on Federal censuses from the 19th century).[41] These figures show that 82 percent of the Mashpee lived within the town of Mashpee at the time, which was composed almost wholly of them. These residential patterns demonstrate that a large majority of the Mashpee lived in an almost exclusive settlement. There is also evidence that those few who lived outside of the town either lived very close by or were doing so only temporarily and were expected to return, thereby maintaining social ties to the majority in the town. This evidence is sufficient in itself to demonstrate community (83.7(b)(2)(1)) during the district period.

Evidence of Community during the Early Town Period, 1870-1930

In 1870, the State government ended the prohibition on land sales (including individual properties and common areas) and incorporated the Indian district of Mashpee as a town, giving full citizenship to the Mashpee. The State did so despite considerable opposition voiced by prominent Mashpee before a public hearing of a State legislative committee in February 1869. The meeting was in response to two petitions from town residents in December 1868. In one petition, 56 residents, representing 54 households, opposed the removal of the ban. In the other, 31 residents, representing 24 households, requested an end to restrictions on land sales (Coombs 1868.12.01; see also Plane and Button 1997.00.00, 189-190). At this hearing a vote was taken on the issues of land sales and citizenship. Twenty six of the Mashpee attendees voted against and 14 for the decision to lift the land restriction (MA Gen. Court 1869.06.03 [HR No. 502], 1-34; Mazer 1980.00.00, 53-54). The Mashpee vote for citizenship was a tie at 18 to 18. Four months later the legislature granted citizenship and, despite the negative vote, removed the restriction on land sales.

Mashpee preacher, Blind Joe Amos," his family, and followers, including prominent Mashpee William Simons and Nathan S. Pocknett, provided the main opposition to the State's efforts to incorporate the town and to end the restriction on land sales. These individuals, for the most part, represented what some academics have described as the Mashpee "traditionalists." Those who supported the government's proposals were largely the Mashpee "non-traditionalists," more prosperous individuals like the wealthy entrepreneur Solomon Attaquin, or Mashpee married to African Americans who were barred from owning land (Plane and Button 1997.00.00, 188-196; Clifford 1988.00.00, 307-308).[42] The character of this division can be seen in how one non-

[41]The 1860 Federal census recorded 289 "Indians" in the town of Mashpee out of 323 individuals. The 1860 census is the only Federal census from the 19th century for the town of Mashpee in which the enumerator made a concerted effort to identify the "Indian" residents of the town of Mashpee as "Indian." Other censuses, particularly the 1850 one, have various shortcomings. For this reason the Federal censuses proved less useful in determining the residence patterns of the Mashpee during this time than the numerous accounts of State officials and outside observers that provided detailed population figures for the group. For a full description of the 19th-century censuses see criterion 83.7(e).

[42]James Clifford in his discussion of the conflict refers to the two divisions as "traditionalists" and "modernists" (Clifford 1988.00.00, 308). Ann Marie Plane and Gregory Button in their study saw the breakdown as between a group of "cautious or more traditional Indians" and another of "individualists and foreigners" (Plane and Button

Mashpee proponent of the changes, Mr. Sewall, referred to the opposition as "Red Jackets [alluding to the 18th century Iroquois leader century] growing up amongst us, that oppose civilization, and don't do what they should for the Christian gospel" (MA Gen. Court 1869.06.03 [HR No. 502], 6; see also Plame and Button 1997, 190). The votes on citizenship and land sales, and the internal conflict they generated within the group, provide evidence that the Mashpee remained a distinct Indian settlement from that of surrounding populations in 1870.

In 1878, the Senate, seeking to dispose of about 3000 acres of common land in the town, described the district as a former "Indian" district (MA Gen. Court 1878.05.15, 204-205). The following year, the Superior Court mentioned the Mashpee, "the people heretofore known as the Marshpee Indians," in detail when responding to a petition from the town selectmen regarding the sale of common "hay and meadow" lands (MA Gen. Court 1879.07.24, 278-282). Then in 1882, the State passed a law dealing with the "disposal of the remaining lands of the Mashpee Indians" (MA Gen Court 1882.04.12, 109). These documents indicate it took more than 12 years for the Mashpee to relinquish legal title to much of the common land as required by the 1870 statute. Non-Indians, almost all of whom were absentee landlords, soon began buying acreage, and within 50 years, they owned much of the town's taxable property.

Although control of the land passed out of their hands, the Mashpee remained the primary force in town politics from 1870 to 1930, indeed for the next 100 years. From 1870 to 1968, all but three of the town selectmen were Mashpee or their non-Indian spouses (see Appendix A and Oakley 2000.05.25 [Selectmen]). In addition, the Mashpee overwhelmingly dominated the other elected offices—including the key ones of town clerk, treasurer, and tax collector.[43] They also controlled the appointed positions that dealt with most aspects of social, economic, and legal matters in the community. They operated the schools, board of health, and the library. Mashpee served as constables and jurors, supported the poor, maintained roads, removed snow, and ran the cemeteries, including the church graveyard. They acted as harbor, fish, and tree wardens, fence viewers, pound keepers, burial agents, and farm-bureau directors for a town composed overwhelmingly of other Mashpee (Minutes 1870.00.00-Minutes 1880.03.01; see also, Mashpee Town Reports 1901.02.07-1930.12.31).[44] The Mashpee's regulation of natural resources and control of the police department provides sufficient evidence under (83.7(b)(2)(5) of community during this time (see criterion 83.7(c) for more detail on the allocation of resources by the Mashpee leadership during this period).

In addition to State officials, other important external observers gave detailed descriptions that provided evidence of a distinct Indian community for the Mashpee. In 1874, the *Massachusetts Gazetteer* gave the population of the group in the "Indian town" of Mashpee as 348 inhabitants in 62 houses. The magazine described the Mashpee, "the largest remnant of all the tribes of red men west of Penobscot River." It described the Mashpee as engaged in "farming, fishing and

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1997.00.00, 193).

[43]For these three positions, all but four between 1870 and 1968 were Mashpee or their spouses.

[44]See also Zimmerman 1938.00.00, 169-175; Mazer 1980.00.00, 64-72.

lumbering." The magazine described a number of the town's schools, post office, and the Baptist church, and also disclosed that the town had three Indian burial places. It also named the town selectmen, clerk, and other prominent citizens (*Massachusetts Gazetteer* 1874.00.00, 395-396).[45] A *History of Barnstable County, Massachusetts,* edited by Samuel Deyo and published in 1890, gave an extensive portrayal of the Mashpee's present social and economic conditions in the town of Mashpee, referred to as "the home of the natives." The book discussed the town's government, parish, church, and Sunday school, manufacturing and industries, temperance societies for elders and juveniles, and some prominent citizens, including members of the Attaquin, Coombs, Amos, Hammond, Pells, and Mingo families (Deyo 1890.00.00, 707-719). Both these documents provide detailed evidence of an active community described consistently by external sources as an Indian town.

The most extensive study of the Mashpee during this period was conducted by Frank Speck in the 1920's. Speck provided a detailed analysis of the culture and history of the group based on scholarly research and interviews, with a photographic record of many members included. In the study, he chronicled "the survival of the actual Wampanoag" at the town of Mashpee (Speck 1928.00.00, 77). Speck called the town "the last stronghold of the Cape Cod tribes" and "this native settlement" (Speck 1928.00.00, 124). For 1920, he placed the Mashpee Indian population at about 230 out of a town population of 252 (Speck 1928.00.00, 124). Most importantly, Speck documented the continued existence of many of the leading family names for the Mashpee, which have formed the basis of the groups' kinship ties to the present, that the Earle Report described almost 70 years before (Speck 1928.00.00, 124-126; see footnote below for list of some of the family names).[46] The evidence Speck discussed regarding this Indian settlement demonstrates a distinct community within the meaning of the regulations.

In the 1920's, the Mashpee also underwent something of a "revival" led by leaders Nelson D. Simons and Eben Queppish, both of whom were return migrants to the town. Under their tutelage, the Mashpee rededicated their chapel, established an informal council,[47] explored their history and folklore, and began holding annual powwows, events which were widely covered by Cape and Boston newspapers (*Cape Cod Magazine* 1923.10.00; *Boston Globe* 1928.10.14; see also Mazer 1980.00.00, 86-97). *Cape Cod Magazine* in 1923 commented, "Nelson Simons, the chief, says that in spite of all equalities of civilization granted his people, the tribal form persists, though it is more traditional than official. Nevertheless, matters come up which are settled in council, apart form the town meeting, and thus Simons is a leader of some 250 souls" (*Cape Cod Magazine* 1923.10.00; see also Hatchell 1928.09.27; Mazer 1980.00.00, 89-93; Ludtke 1974.00.00, 43-44).

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[45]The *Massachusetts Gazetteer* was a guide book to all the towns of Massachusetts that went through several editions in the late 19th century. Each town entry detailed the social, industrial, educational, and religious condition of the respective towns.

[46]The better known family names included Attaquin, Amos, Coombs, Pocknet, Tobias, Jones, Mye, Simon, Briant, Queppish, Webquish, Mingo, James, Pells, Hammond, and Oakley or Ockrey.

[47]See criterion 83.7(c) for more detail on the relationship between this council and the town government.

The Parish Committee and Baptist church also remained significant social institutions for the group from 1870 to 1930. The Parish Committee retained responsibility for the Old Indian Meeting House, the parsonage and its grounds, and the Baptist chapel built in 1894. Membership and voting privileges on the Parish Committee were restricted to voting members of the town of Mashpee, effectively ensuring the Committee and the Baptist church functioned as "Indian" organizations, dominated by Mashpee and their spouses.

From 1870 to 1888, the Mashpee held both town government and parish meetings in the Old Indian Meeting House, continuing the historical connection between politics and religion among the group. Parish Committee and town meeting minutes from the 1870's show that both bodies contributed to the upkeep of the meeting house (Minutes 1872.00.00, 368: Deyo 1890.,00.00, 713; MWT Petition Narrative 2005.10.31, 17). Around the turn of the 20th century, the town and parish held their meetings in the new public hall while the meeting house underwent repairs. Even after the meeting house was refurbished in 1923, the Parish Committee continued holding its meetings in the public hall until the 1970's. The Baptist church, with the permission of the Parish, also used the meeting house for summer services. Throughout this period Mashpee or their spouses also served on both the Parish Committee and the town Board of Selectmen (MWT Petition Narrative 2005.10.31, 16; MW Selectmen and Parish Officers, 1870-2005, 2005.11.00; see also Mazer 1980.00.00, 122-123).

An analysis of meeting minutes for the Parish Committee from 1901 to 1930 demonstrates its significance for most Mashpee. Announcements for the annual meetings from 1901 to 1930 were made through the constable and posted in public areas throughout the town of Mashpee. Occasionally, special meetings were held and publicized in the same fashion. The yearly meetings, held in March to coincide with the annual town meeting (and later the annual powwow or homecoming), involved going over routine business, such as electing officers, dealing with finances, and appointing and paying the minister. For most of the period, there was a parish clerk, treasurer, three-person committee, wardens, and other officers. Attendance at the meetings was strong. An analysis of periodic vote tallies shows that about 24 to 30 adults attended regularly, although occasionally as many as 45 or so participated, a significant number given the relatively small size of the Mashpee at that time. These parish officials and meeting attendees came from most of the Mashpee families (see footnote below).[48] Besides routine business, the Parish Committee established fund raising committees to repair the Old Indian Meeting House, the Baptist chapel, and the parsonage. These fund raising efforts often involved setting up entertainments and socials among members in the town. In addition, Mashpee volunteers did much of the painting and general repairs for the meeting house and the Baptist chapel, contributing out of pocket for supplies. In 1923, the committee expended considerable effort and money for music and decorations for the rededication of the Old Indian Meeting House. This ceremony was widely attended by members, other Indian groups, and non-Indians, and received substantial newspaper coverage on the Cape and in Boston (Parish Records 1901.00.00-1930.03.10). These minutes provide evidence of shared religious practices among a significant portion of the Mashpee.

[48]The families included the following: Pells, Pocknett, Edwards, Gardner, Green, Coombs, Simons, Bearse, Oakley, Mills, Avant, Amos, and Frye.

Residential Patterns, 1870-1930

The petitioner submitted evidence that a large majority of the Mashpee resided in an area exclusively or nearly exclusively composed of Mashpee from 1870 to 1930. During this period, the town was almost wholly composed of Mashpee. They owned all the land in the town of Mashpee until 1870, but over the next 60 years much of it passed into the hands of absentee owners or seasonal residents who were not Indians. Despite the loss, the available evidence reveals a town still composed overwhelmingly of Mashpee. Copies of maps from 1877, 1880, 1910, and 1930, submitted by the petitioner and described below, show the Mashpee households were concentrated mainly in the north and partly in the south of town.[49]

1. 1877 Proprietors Map

The 1877 map is "Map of the Town of Mashpee Massachusetts" (Cahoon 1877.00.00; MW Mashpee Proprietors Map 2005.00.00). The original map, based on a survey conducted in 1877, provided a breakdown of the landholders in the town of Mashpee. It gave the names of those who owned the land and where it was situated. According to the petitioner there were 77 non-Indian and 111 Mashpee landowners. Using census data for supporting evidence, the petitioner claims there were only two non-Indian landowners living in the town in 1870, and only five in 1880. Other petition evidence confirms the identity of these Mashpee landowners and the claim that the number of non-Mashpee families in the town remained quite small, as described below. The vast majority of non-Mashpee landowners were absentee landowners. On one copy of the map in the record, the Mashpee petitioner designated the location of the property of Mashpee landowners with a number from 1-111. In the accompanying chart, the petitioner indicated which documents demonstrate these individuals were Mashpee (Earle Report, Briggs Report, Federal censuses, etc.).

The petitioner also provided a chart on the map that indicates the relationship of the Mashpee landowners to one another. Since the map lists only landowners and not all the residents, the chart offers only a partial picture of kinship ties within the Mashpee. The relationships show primary kin, as defined by the Mashpee petitioner. In actuality, these relations as listed are both primary and secondary kin, including grandparents and grandchildren, uncles and aunts, nieces and nephews, first cousins, great grandparents and great grandchildren. Nonetheless, the ties are fairly extensive, involving in some cases kin connections to as many as five or six Mashpee landowners.

The map shows that Mashpee owned land throughout the town at this time, but there were noticeable clusters. One was in north Mashpee, just south of Mashpee Pond. Another was in south Mashpee near Ockway Bay (or Pond). Some pieces of property were quite large and in a few cases non-contiguous. Clearly this was a town composed of Mashpee in 1877. In the 1880's, the population of Mashpee in the town ranged from 311 to 346, and the Mashpee made

[49]See MW Supplement 2005.10.31 Map Methodology and MW 2005.10.31 Kinship for additional details on these maps.

up the vast majority of the inhabitants (*Massachusetts Gazetteer*1874.00.00, 395-396; *Cape Cod Magazine* 1923.10.00: Speck 1928.00.00, 124, citing original sources for population figures).

2. 1880 Map

This is a copy of the "Town of Mashpee, 1880" map (Map of Mashpee 1880.00.00 [Indian Households]). The Mashpee petitioner did not add any information to this original map or describe it in its narrative. The map indicated residence sites of the Mashpee rather than land ownership as on the 1877 map. Almost all the household names listed were of the Mashpee. In terms of residence patterns not much had changed since 1877. Most Mashpee households were still just south of Mashpee Pond and around Ockway Bay. There was also a line of residences along the Santuit River in the eastern portion of the town connecting these two clusters.

3. 1910 Map

The petitioner submitted a copy of the "Barnstable Co., Mass. Index Map to the town of Mashpee" map (Map of Mashpee 1910.00.00). A notation on it [provenance unknown] states "1910 Map, according to antique dealer in Hyannis, where original purchased." Based on available evidence, the date for the map seems reasonable. The petitioner did not append any information to this map, which indicates the dwellings and residents of the Mashpee in the town. Almost all the names were Mashpee. Other evidence from this time shows there were only a handful of permanent non-Mashpee families in the town. A few of these non-Mashpee residents were boarders and domestics. By 1910, the group was even more concentrated in the north of the town of Mashpee just south of Mashpee Pond. The main streets of residence were Snake Pond, Great Haying, and Santuit (near Santuit Pond) Roads. There were still some Mashpee residences in the southern portion of the town of Mashpee but they had become less dense in that area. By this time a clearly discernible town center had evolved just south of Mashpee Pond near the Old Indian Meeting House. Many town roads were still little more than unmarked paths.

4. 1930 Mashpee Heads of Household Map.

The petitioner submitted a copy of a "Massachusetts State Planning Board Roads and Waterways Town of Mashpee" map (MW Heads of Households 2005.00.00). According to the petitioner this map was published in 1939 by the planning board, which was "a product of the WPA project." The location of the residences on the map for 1930, supplied by the petitioner, was based on the knowledge of three "tribal elders" born in the 1920's and 1930's, and augmented with data from the 1930 census. There are 56 heads of households indicated who have kinship ties with descendants in the present group. Thirteen do not have descendants in the present petitioner, but these households have well-known Mashpee names and likely had kinship and social connections with other Mashpee listed on the map. Based on a review of the accompanying kinship chart, these Mashpee were all long-time residents of the town, appearing on the 1900 to 1930 Federal censuses. The genealogical ties were extensive with some members having 8-12 connections to other households.

This map shows that by 1930 most of the Mashpee in the town were concentrated in northern

Mashpee just south of Mashpee Pond around Snake Pond and Great Neck Roads. By this time, the number of residences in southern Mashpee had become much less concentrated. There was still a clearly discernible town center near the Old Indian Meeting House, and many more paved roads. The year round population at the time was almost wholly Mashpee or their spouses, although temporary non-Mashpee residents (300 to 400 summer vacationers) were increasing in number. But these seasonal inhabitants lived in the southern part of town along the beachfront and could not vote or send their children to school.
Other evidence from around this time confirms both the high concentration of Mashpee in the town shown on these maps and also that a majority of the group lived in this exclusive area. It is important to note that just before the township period, in 1859, the Earle Report stated the Mashpee numbered 403, including "thirty-two foreigners," persons of non-Indian ancestry, married to Mashpee (Earle Report 1861.03.00, 47). In addition, there were only 66 (18 percent) "out of the whole number of the tribe," who did not reside in the district, 52 of whom were considered as "retaining their rights in the tribe" (Earle Report 1861.03.00, 47). Of those 52, half were expected by the Mashpee eventually to return to take up permanent residence in the district. A small number were living in adjacent communities and were understood to be Mashpee (Earle Report 1861.03.00, 47). It also found about 14 Mashpee living with other Wampanoag groups on the Cape (Earle Report 1861.03.00, Appendix). It is reasonable to conclude that these population figures, which show 82 percent of the group living in the town of Mashpee, had not changed much by the beginning of the township period in 1870. In 1874, the *Massachusetts Gazetteer* gave the Mashpee's population in the Indian town of Mashpee as 348 inhabitants in 62 dwellings, but did not differentiate between Indians and non-natives. Sixteen years later, the publication set the figure at 311 in 66 houses. This time it described the town as having the "largest remnant of the tribes of red men in New England west of the Penobscot River," with all the inhabitants having some degree of "Indian extraction" except for 25 "white" residents (*Massachusetts Gazetteer* 1890.00.00, 446-447).

In December 1915, *Cape Cod Magazine* published a travel essay identifying the town of Mashpee as an Indian town. The author referred to the village as the "little Indian settlement of Mashpee," populated mostly by the descendants of "the famous Mashpee, or South Sea, tribe," who had befriended the Pilgrims. These "Indians and their descendants," the article stated, "comprise most of the population of the town," which had "only two white families . . . within its borders" (*Cape Cod Magazine* 1915.12.00). During the late 1920's, town clerk and member, Ferdinand Mills, informed anthropologist Frank Speck, who was conducting research on the group at the time, that 250 of the 262 town residents belonged to the Mashpee as of 1920 (Speck 1928.00.00, 124). In 1934, Gladys Tantaquidgeon, in her field report on the Mashpee for the Office of Indian Affairs, estimated the Mashpee population at 300, but pointed out that 262 (87 percent) of them were living in or near the town of Mashpee. In addition, she noted the town had been recognized as an "Indian town" since 1834 (Tantaquidgeon 1934.12.06).[50] Federal census

[50]See also BIA 1935.00.00 ca (Tantaquidgeon); FAIR page 12. She comments in this work: Mashpee has been recognized as an Indian town since 1834. Its officers, with few exceptions, are members of families of old Mashpee stock. . . . The descendants of Mashpee families number 262 living in or near the town and of this number 100 are minors. The absentee as near as can be ascertained number 38. The total population of the town is 360 according to information furnished by Flora Amos, Town Clerk. Some Portuguese (locally called 'Brava'), Whites, and Negroes are living in the town certain of them being married to Mashpee men and women."

records from 1900, 1910, 1920, and 1930, also provide supporting evidence that the town of Mashpee was almost wholly Mashpee or their spouses (see footnote below for discussion of some of the limitations of these census records).[51] The 1930 census listed 265 "Indians" as living in the town of Mashpee, indicating that the 262 Mashpee described by Tantaquidgeon as living "in or near" the town, were most likely all living in the town (1930 Census Mashpee, MA). It is also worth noting again that the Mashpee had a well-documented rate of return for those few who left the town in this time period (see following discussion on return migration) which allowed them to retain contact with the large majority who remained. The above residential data is sufficient evidence of community (83.7(b)(2)(i)) since it shows that a large majority of the group resided in a geographical area almost exclusively composed of Mashpee from 1870 to 1930, with the remainder of the group maintaining contact. It is, therefore, also sufficient to meet the requirements of political influence, under 83.7(c)(3) for this time.

Marriage Patterns, 1870-1930

The petitioner submitted evidence contending the group maintained a high level of intra-group percent marriages until the 1930's. The December 2002 supplement to the petition contains a list (Exhibit 93) of "all known" Mashpee marriages that the petitioner claims occurred between 1750 and 2002. This data as presented by the petitioner imply a high rate of intra-group marriages, over 50 percent, for the Mashpee by until 1930. Due to the Agreement's time restraints, the Department was unable to verify the intra-group marriage data submitted by the petitioner to determine if they provided sufficient evidence of community (83.7(b)(2)(i)) that at least 50 percent of the new marriages in the group from 1750 to 2002 were between Mashpee. An in-depth analysis of that nature will be done by decade for the FD, if necessary. OFA researchers were able, however, to determine whether other available marriage data showed evidence that the petitioner still had significant rates of marriage within the group. Such rates would provide evidence of community (83.7(b)(1)(i)). The evidence, as described below, indicates the group did maintain such significant rates from 1860 to 1930.

For example, an examination of the extant marriages listed on the 1861 Earle Report (see below) appears to support a portion of the petitioner's marriage data for the period from 1860 to 1930. Of the 66 extant marriages listed in the Earle Report, 33, or 50 percent, were between members of the Mashpee.

[51] Like the Federal censuses from the 19th century, the census records from 1900 to 1930 lacked some consistency and accuracy that limited their usefulness in evaluating residential patterns for the Mashpee compared to other sources from that 30-year time span. People who were clearly Mashpee were often identified as "mulatto" or as belonging to the wrong tribe. Although, these censuses did a better job at identifying many known Mashpee as Indians, the names of many Mashpee who should have appeared on the Indian population schedule were sometimes placed on the general population schedule and misidentified as to race. See criterion 83.7(e) for more detail on the 1900, 1910, 1920, and 1930 censuses.

Intermarriage Data extracted by OFA from the 1861 Earle Report of the "Marshpee Tribe"[52]

Marriages to other Earle Report Mashpee[53]	33
Marriages to other Indians[54]	4
Marriages to non-Indians	27
Marriages to spouses of unknown ethnicity	2
Total 1861 extant Mashpee marriages:	66

(Source: 1861 Earle Report (pp. xx-xxxvi))

One sociological study on the Mashpee from that time also appears to confirm a high rate of intra-group marriage for the period from the late 1880's to the early 1930's. In the 1930's, Carle Zimmerman, a Harvard sociologist engaged in a community study on the group for the WPA, conducted an analysis of new marriages among Mashpee occurring just in the town of Mashpee from 1889 to 1934, and concluded that 59 percent (33 of 56) of the matches were between Mashpee (Zimmerman 1938.00.00, 177). An analysis by OFA of data (see below) from the 1920 and 1930 censuses for the town of Mashpee also suggests a high intra-group marriage rate until the late 1920's and probably into the early 1930's. The 1920 census, for example, shows a possible 38 nonwhite marriages in the town of Mashpee then extant at the time of enumeration. Of these marriages, 22, or 58 percent, were between individuals who could trace their ancestry to someone appearing as a Mashpee on the Earle Report of 1861. In 1930, the census shows 50 such extant matches. For these marriages, 24, or nearly 48 percent were between such individuals. Since the identity or ancestry of some of the people who appear on these records is unknown, the total of intra-group marriages then extant may be higher for both 1920 and 1930. The census records also would not include any Mashpee absent from the town during the actual tally, or anyone missed or incorrectly identified by the census taker.

[52]The count excludes subsequent changes in marital status as noted in Earle's footnotes. These totals do not include marriages of individuals listed on the supplemental list of Mashpee no longer in tribal relations in 1861, or the Mashpee who appear only in Earle's listings of other tribes.

[53]The Earle Report lists several married Mashpee husbands who were then residing in California (William Jones, James A. Lippett, and Joshua Pocknet); these are included in the count of extant marriages.

[54]The four non-Mashpee Indian spouses are listed by Earle with their "Tribe or Race" as "Chappequiddick" Indian (1 spouse), "Gay Head" Tribe (1 spouse), "Herring Pond" Indian (1 spouse), and "Middleboro" [Middleborough] Indian (1 spouse). Earle recorded one woman (Sarah R. Simpson) in the "Marshpee Tribe" as married, but without her spouse; Earle's footnote explains that she "[b]elongs by marriage and residence to Chappequiddick," and she and her husband appear in Earle's listing of the "Chappequiddick Indians" (Earle Report iv).

Intermarriage Data extracted by OFA from the 1920 and 1930 Federal Censuses of Mashpee

1920

A total of 38 non-white couples enumerated in the town of Mashpee

Marriages to other Earle Report Mashpee descendants[55]	22	58 percent
Marriages to other Indians	5	
Marriages to all others	6	
Marriages between others of unknown or Indian descent	5	

(Source: [Petitioner's Box 5, Vol. 1, Exhibit 3])

1930

A total of 50 couples with at least one "Indian" spouse living in Mashpee in 1930

Marriages to other Earle Report Mashpee descendants[56]	24	48 percent
Marriages to other Indians	12	
Marriages to all others	9	
Marriages between unknown Indians and others	5	

(Source: [1930 census, Genealogist's Files])

Based on the above data, it appears that significant rates of intra-group marriages occurred among the Mashpee between 1860 and 1930. This is good evidence of community under 83.7(b)(1)(i).

Evidence of Community during the Late Town Period, 1930-1974

The Mashpee during the 1930's and 1940's

Important external observers consistently described the Mashpee in the 1930's and 1940's. In the process, they provided evidence that the group constituted a distinct Indian community with significant social relationships and interaction among most of the membership.

On March 20, 1932, for example, the *Boston Sunday Globe* carried a detailed article based on a number of interviews with Mashpee that portrayed the town of Mashpee, the "venerable Indian

[55]This total includes the extant marriages of four individuals whose status was recorded in the 1920 census as "married," although their spouses were not enumerated as residing in the household. Petition documentation shows that their then-living spouses were Earle Report Mashpee descendants. Removing these four as extant marriages between Earle Report Mashpee descendants would decrease that total to 18, and the grand total of non-white marriages to 34, which results in an intra-marriage percentage of 53 percent.

[56]This total includes the extant marriages of five individuals whose status was recorded in the 1930 census as "married," although their spouses were not enumerated as residing in the household. Petition documentation shows that their then-living spouses were Earle Report Mashpee descendants. Removing these five as extant marriages between Earle Report Mashpee descendants decreases that total to 19, and the grand total of Indian marriages to 35, which results in an intra-marriage percentage of 42 percent.

town of the Cape," as a largely rural, isolated village cut off from surrounding communities due to a lack of train service. The town was almost wholly composed of Mashpee who were quite aware of their "traditions." One Mashpee, Cyrus Edwards, explained it was "a small town" where everyone was "related," a situation which tended to cause "all sorts of quarrels and jealousies." Community life centered "around the entry of Mrs. Flora Amos' house which is the post office, the Baptist chapel across the way, the yellow schoolhouse, and the foot of the main road, Irving Oakley's general store." Most Mashpee residences were near this central location. The local grammar school was composed almost entirely of Mashpee as well. The villagers, as one Mashpee put it, were "all related" in some way, and the Mashpee ran the town government (*Boston Globe* 1932.03.20b).

Academic researchers who spent considerable time among the Mashpee during that time confirmed this portrait of a distinct community described by the *Boston Globe* article. In the 1930's, sociologist Carle Zimmerman, under the auspices of the WPA, conducted an extensive small community study of the Mashpee's political and social life in the town of Mashpee based on field work and interviews (see footnote below on the Zimmerman study).[57] Zimmerman noted the Mashpee residents, 380 according to his calculations, practiced an informal brand of kinship politics. He also concluded that a large set of Mashpee families dominated political affairs in the town. These families used the town government to fashion a unique family-based economy in the community (Zimmerman 1938.00.00, 175-177). Other researchers who conducted field work and interviews among the Mashpee, such as Gladys Tantaquidgeon (1935), Jean Ludtke (1974), and Rona Mazer (1980), have also noted this strong and continuing connection between family groups and politics. Zimmerman called these extended families "semi-clans," linked together by race, proximity, personal knowledge, and heritage. He further noted there were few arrests in the town, and that most "differences" were settled by families (Zimmerman 1938.00.00, 175-177, 185).

The pull of family ties was strong even on Mashpee who left the town in search of education or employment opportunities. Zimmerman, for example, documented a high rate of return migration among such Mashpee (Zimmerman 1938.00.00, 176). This practice of Mashpee migrants returning to the town of Mashpee has a long history as OFA researchers found. In 1835, William Apes, the Indian preacher, described Mashpee who lived among non-Indians, learned arithmetic and to read and write English, and then returned to educate the children (Apes 1835.00.00, 44). In 1859, John Milton Earle, pointed out that 52 of the 66 Mashpee residing out of town still retained their rights within the group, and 33 of them fully expected to return and make the town their permanent place of residence (Earle Report 1861.03.00, 47). In 1980, anthropologist Rona Sue Mazer also described this phenomenon of returning Mashpee, many of whom became influential in the group's "tribal" council, its Baptist church, or the town government (Mazer 1980.00.00, 84-86, 119, 165-167). The practice is also confirmed in

[57]This was a full-fledged study of the Mashpee community conducted by Zimmerman and several of his graduate students. The Mashpee survey, typical of "small town" studies in the 1930's, was just one of several Zimmerman did on communities in New England. The WPA also was responsible for scores of such studies by academics on various ethnic and racial groups across the United States during the 1930's, many of which depended heavily on field work and oral histories.

numerous interviews (see footnote below) showing that a significant number of Mashpee who lived outside the town frequently returned on weekends and during summer vacations.[58] Many, after being away for varying periods, returned to the town of Mashpee to live permanently.

Just like the *Boston Globe* article, Zimmerman also described the town of Mashpee, though rural and isolated, as having schools, a library, churches, and a social life centered on the town hall. In fact, he referred to the town as a "closed community," dominated by Mashpee who lived clustered along a series of "interlaced" roads in the village center (Zimmerman 1938.00.00, 159-164). Zimmerman believed the town of Mashpee differed significantly from its neighbors. Indeed, he portrayed the town's "Indian community" as a "closely knit" group of people, bound together by racial solidarity, common ancestry, politics, geography, history, and culture. Welded together in this fashion, they formed a "cumulative group" united for "self protective purposes" against the encroachments of outsiders (Zimmerman 1938.00.00, 184-186).

The Mashpee also continued their dominance of the town government through the 1930's and 1940's, with mostly members or a few of their spouses holding all the elected and appointed positions that managed the social, legal, and economic spheres of the town (see criterion 83.7(c) for more detail). These town officials collected taxes and assessed property values, operated the schools and library, served on juries, maintained the cemeteries and roads, and established welfare and public works programs initiated by the New Deal. They also allocated group resources by reforesting woods and restocking streams, and regulating the fishing and hunting activities in the town. Evidence shows that the Mashpee, who were the vast majority of residents, used these resources quite freely up until the 1960's because most of the town remained undeveloped. In addition, they controlled group behavior by running the police department (Mashpee Town Reports 1930.12.31-1949.12.31). A close social connection between the town government and the Mashpee "tribal" council also existed (see criterion 83.7(c) for more detail on the "tribal" council.[59] As described by Zimmerman the council often worked in concert with the town government on cultural matters. The town government, as part of its annual meeting, also sponsored the Mashpee's annual "tribal" homecoming with the added cooperation of the Baptist church. These events included church services, clambakes, social and dances, baseball games, motion pictures, and field sports (Mashpee Town Reports 1946.12.31). Leaders served both a political and social function. Steven Peters, who served as selectman throughout these years, was known for his frequent visits to other Mashpee (see interview of Bingham 2000.08.07, 4).

During the 1930's and 1940's, the Parish Committee and the Baptist church sustained their positions as important social organizations for a significant number of Mashpee. Attendance at the annual Parish meetings, still held in the town hall, stayed relatively stable, at 24 to 30 people, although in 1934 there may have been as many as 79 attendees at one meeting. Besides routine

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[58]See, for example, Black 2000.06.21; Dias 2000.04.19; Lopez and Lopez 2000.04.18; Marshall 2000.07.05; Pocknett 2000.07.05; Pocknett 2000.04.19; Tavares 2000.07.31; Foxx, Anne n.d.; Peters 2000.06.01; Peters 2000.05.08; Hendricks 2000.06.02; Tobey 2000.04.20; Harding and Ringling 2000.04.21.

[59]This close connection between the town government and the Mashpee is confirmed in interviews of individuals active at the time (see Peters 2000.04.20; Dias 2000.04.19; Bingham 2000.08.07).

business, the committee voted to hold summer services at the Old Indian Meeting House and to raise funds for repairs at the parsonage. In 1937, it voted to make the fourth Sunday in August "Indian Day" (Parish Minutes 1930.03.10-1946.03.11). Individuals representing well over a dozen Mashpee families served on the committee (see footnote below).[60]

The Baptist church in 1935, according to a membership list from that year, had 55 active adult parishioners, 54 of whom were Mashpee or their spouses. There were a total of 50 "resident" members of the congregation including the non-Indian minister; 45 from the town of Mashpee; and 5 from either Waquoit or Cotuit, two adjacent towns. There were five non-residents; three from nearby towns on the western portion of Cape Cod, one from Taunton, and one from Brookline, New York. There were 13 inactive members, all Mashpee, with no address given. Individuals representing over 17 Mashpee families comprised the 1935 church membership (see footnote below).[61] These adult membership numbers at the church are significant because there were only about 262 Mashpee (perhaps 60 households) in the town at the time and 300 overall according to Indian Affairs researcher Gladys Tantaquidgeon.[62]

In 1935, the Baptist church burned down and the Parish Committee established a building fund, managed by its treasurer, to rebuild it. While it was being rebuilt, church members held services in the town hall. A church ledger from the period shows that most of the donations from 1936 to 1938 were from Mashpee,[63] and ranged from 50 cents to several hundreds of dollars, with some larger amounts coming from non-Mashpee organizations and companies. Some other Indian groups also made contributions. The Baptist church also gave portions of its weekly collections to the fund and held community suppers and cake sales to raise money. While there is a gap in the ledger from 1938 to 1945, entries from the late 1940's show that the Baptist church continued to raise money for repairs on the chapel. The ledger also noted receipts from collections, and bills for socials, breakfasts, lunches, and suppers, all of which were used to raise money for different causes. In addition, there were payments for the minister's salary, flowers, and collections for the missions. Each year, church members held a dinner, for which parish women cooked, to coincide with the annual town meeting and powwow festivities. They also held suppers to collect money for the Old Indian Meeting House, and provided charity to needy parishioners (Mashpee Baptist Church 1936-1956).

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[60]They included the following families: Pells, Pocknett, Edwards, Gardner, Green, Coombs, Simons, Bearse, Oakley, Mills, Avant, Amos, and Frye.

[61]Among the family names listed are Amos, Avant, Booker, Brown, Edwards, Gardner, Green, Frye, Hammond, Haynes, Hicks, Lopes, Mills, Oakley, Peters, Pocknett, and Tobey

[62]In 1930, the town of Mashpee had only 361 people according to the Federal census; 265 of whom were listed as Indian (Redfield 1935.00.00). Some of those not listed as Indian were likely spouses of Mashpee or even Mashpee misidentified as to race.

[63]Among the well-known family names providing donations were the following: Amos, Avant, Bearse, Coombs, Cash, DeGrasse, Frye, Edwards, Green, Gardner, Hicks, Haynes, Lopes, Lovell, Mills, Oakley, Peters, Pells, Potter, and Webquish.

Although the church was Baptist in orientation, it retained a distinctly Indian flavor. One group member, Delscena Hendricks, recalled that the annual homecoming and powwow in the 1930's and 1940's were held to raise money for both the church and the Old Indian Meeting House. She and other parish women would cook beans, bread, and pies at a local inn and then transport them to the powwow at the town hall (Newspaper 1988.08.26). One church ceremony in 1933 featured a bronze tablet dedicated to "the undisturbed record of a rugged race" and a song that expressed longing "for my old native forest" (*New Bedford Times* 1933.08.06). In 1934, the church adopted a new constitution and became part of the American Baptist Indian Caucus, linking it to other Indian congregations in the country (*Boston Globe* 1934.03.14).[64]

This distinct image of the Mashpee as portrayed in academic field studies and secondary sources is also mirrored in interviews of members alive during the 1930's and 1940's. Some Mashpee recalled socials and parties in private homes or the town hall and clambakes on the beach involving many people from different family lines (Bingham 2000.08.07, 5; Tavares 2000.07.31, 29; Tobey and Tobey 2000.04.18, 5; see also Marshall 2000.07.05, 35, 37-38). Others recounted herring runs or wood-cutting parties that drew large numbers of Mashpee or included a number of families working together (Dias 2000.04.19, 6-11; Peters 2000.04.20, 5, 31; Tavares 2000.07.31, 28).[65] Ockrey Trading Post was a popular place for socializing among young and old members, and the local firehouse frequently hosted community socials and dances (Mills 2000.07.19, 1, 14; see also Marshall 2000.07.05, 35: see also *Mashpee Messenger* 1989.01.18). There were also inter-tribal baseball games that drew large crowds (Lopez 2000.04.20, 1). Joan Avant Tavares spoke of how her grandmother, Mabel Avant, an important Mashpee leader at the time, recited "old tales" and "old stories" at the public library or her house to large numbers of Mashpee children (Tavares 2000.07.31, 17). Tavares, like others, also recalled the annual powwows that doubled as homecomings. These powwows had various social events like dancing around fires, playing lacrosse, clambakes, and storytelling (Tavares 2000.07.31, 19). These events show that significant social relationships and interaction connecting individual members occurred among the Mashpee during the 1930's and 1940's.

The isolated setting of the town of Mashpee, however, sometimes had a negative impact on younger Mashpee when they ventured into other communities for employment or to attend public high school in Falmouth, as testified in their interviews. For many Mashpee these times represented their first significant contact with outsiders. Some found the adjustment difficult or rebelled against it. Those who attended the high schools often discovered they were steered into vocational or home economics courses regardless of their desires (Bingham 2000.08.07, 5; Tavares 2000.07.31, 35; Tobey 2000.04.20, 1).

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[64]Funeral services could also take on a distinctly "Indian" flavor at this time. A newspaper article in 1933 depicting the 1933 funeral of prominent group leader Eben Queppish listed the number of relatives, friends, and neighbors at 225, a few of whom wore Native American regalia. Queppish was referred to in the eulogy as the "greatest Indian leader in the Eastern states in the last 50 years." The services contained both Christian and Indian rites, including an Indian invocation. The services took place in the Old Indian Meeting House and the burial in the adjacent Indian cemetery where scores of Mashpee have been buried over the years (*New Bedford Times* 1933.01.11).

[65]Tantaquidgeon also confirmed Mashpee's reliance on herring, fish, and game (BIA 1935.00.00 ca [Tantaquidgeon], FAIR page 15).

Gladys Tantaquidgeon, who studied the Mashpee in the 1930's, also described and confirmed this difficult adjustment process. She explained,

> When the boys and girls leave [the] Mashpee school they are transported to Falmouth, about 14 miles away to continue work in the high school. This year there are twelve attending high school and doing good work. These represent the boys and girls who 'stick.' Many of the boys and girls have entered high school and after a short time have lost interest in school or have felt the urge to go to work. They leave school and life ends there. That is, what one would regard as a useful, constructive life. It is impossible for the young people secure employment in neighboring towns and so they idle their time away. Of course, in the case of certain Mashpee families it is impossible for them to provide clothing for their children and to pay for the extras that go with high school activities. (BIA 1935.00.00 ca (Tantaquidgeon), FAIR page 17)

The various evidence described above, particularly the marriage rates and residential patterns, demonstrates that the Mashpee remained a distinct community with significant social interaction and relationships.

<u>The Mashpee, 1950 to 1974</u>

The town of Mashpee remained a close-knit, largely Indian settlement until the middle 1960's. After World War II, the number of "non Indians" in the town began to increase. Initially, during the 1950's, most of these were seasonal residents, wealthy vacationers or prospective retirees, who settled mainly in the southern section of the town along the beach. By the middle to late 1960's, more of these "newcomers" began taking up permanent residence and voting in elections. The Mashpee population in the town, possibly around 342 in 1960, had remained relatively stable, and become increasingly concentrated in the small area around the two to three village roads south of Mashpee Pond on which it had historically resided (see the residential analysis below). This part of town contained the grammar school, library, fire station, Ockrey Trading Post, Baptist church, and American Legion Hall (all run by Mashpee). These two groups of people remained socially distinct. One Mashpee, Alice Lopez, who came of age during this period, described the divide between them in this way:

> You know, I mean, when I grew up, I mean, and I went to school, I maybe had, you know, one or two non-Indian kids in my class. You know, it was normal. You know, and that was the normal thing. And now today, it's like, you know, for the kids in the school today one or two Indian left in their class. But when I grew up, it was like, I mean, basically, I mean, we were the town. (Lopez 2000.04.19, 13)

Anthropologist Rona Sue Mazer who studied the Mashpee extensively in the 1970's through field work and interviews commented about relations between the two groups of townspeople at the time:

> [The] town and tribe were basically synonymous. Elected officials were from Indian families and the town was inhabited by Indians. Even though the land was lost earlier than most people realize, the new non-Indian landowners did not live in Mashpee, so their presence wasn't apparent. When whites finally did start coming, at first for vacation and then year round, the two groups kept separate. The schools remained native and the two groups did not socialize. In fact, several non-Indian supporters of the Mashpee's [land claims in the 1970's] were surprised that I had been invited into people's houses since they never had. (Quoted in Austin 2000.09.30, 97)

Despite the changing demographics, the Mashpee retained control of the town government to the early 1970's. They also engaged in activities outside the purview of the town's political system. In the 1950's, the Mashpee formalized the organization of their "tribal" council and they launched a long-term project to renovate the Old Indian Meeting House (see criterion 83.7(c) for more detail). In 1970, the Mashpee played a key role in the community's centennial festivities, which highlighted the Native American heritage of the town. In addition, they began an effort to fund and build a "Wampanoag Indian" museum in the town, which eventually opened its doors in 1973.[66] By the middle 1970's, the Mashpee's population in the town was between 450 and 500, out of 2,500 (Conant 1978.07.00, Appendix C, 2).

The social events of the 1930's and 1940's that had enhanced interaction and relationships among the Mashpee persisted into this era. These activities occurred at the beach, the lake, the town hall, and private homes, and cut across family lines. They included socials, dances, baseball games, and powwows which attracted not only Mashpee from the town but also relatives and friends who lived elsewhere but returned often for visits.

Mashpee who grew up during this period recalled many of these activities. Vernon Lopez, who lived outside the town and returned on weekends to visit family and friend during the 1950's, stated that "everybody attended the ball games. It was like a Sunday. They go to church, go to church in the morning. And in the afternoon, they'd gather for the ball games and we used to have them on top of the hill" (Lopez and Lopez 2000.04.18, 46). Glenn Marshall portrayed the socials and baseball games from this time in this manner:

> In those days, they played double headers on weekends, Saturdays and Sundays. It was just a social time around Mashpee. I was told about the social time in the 30's and 40's, but I remember it from the 50's and 60's. There was always a social or always a benefit or always a dinner, potluck supper, to help somebody, somebody getting married, somebody passing. And they—would come to Mashpee from all over, ones that would be—that wouldn't have a place that have married and would come down, some that would come from the island, Cotuit, Falmouth, Mashpee, everybody just would converge on Mashpee in those days. (Marshall 2000.07.05, 23)

[66]For overviews of these events see Ludtke 1974.00.00, 44-35; Mazer 1980.00.00, 117-125, 155-159. These events are discussed more fully in criterion 83.7(c).

When asked how members learned about such events, Marshall explained, "Word of mouth. Nobody had any telephones then. But there used to be one telephone in one area, like around the post office, and then they'd send a message and put something up on the bulletin board, or somebody would be down and say, hey, don't forget, now we got a social going on at such and such. . ." (Marshall 2000.07.05, 23).

Marlene Lopez Black, raised in Holbrook, Massachusetts, about 45 miles northeast of Mashpee, told of her family attending group picnics and gatherings in the town, which they learned about by word of mouth. Her family also participated in herring runs, shellfish harvests, and clambakes that involved a number of family lines. She stated, "People would all gather and somebody would get the rocks and go down and get the seaweed and you'd go down and get your clams, you'd dig the clams and quahogs and you'd just put them all on and bake them" (Black 2000.06.21, 15). She also described the town in the 1960's:

> It's a small town atmosphere. But we did have a community; as such as it was it was our community. So Native communities are much different than urban communities when people come from the city and expect a rural community to be like. As long as you've got a church and you've got a meeting house of something, that's a community, where people will gather. You gather over at the pond, you gather at somebody's house, you gather here. It doesn't have to all be in a row on Main Street. (Black 2000.06.21, 17)

June Hendricks remembered other events that involved "relatives and friends" including "clambakes held by her father." She related, "Everyone just knew about it and would flock to the house." Everyone in this case included family and friends, and "fictive relatives" referred to as aunts and uncles. According to Hendricks, people from all over the neighborhood came to her family's house at any time to eat. Her family "felt the same" way about "visiting other people" (Hendricks 2000.04.20, 1).

Shirley Jordain Peters, a Gay Head Indian married to Mashpee and long-time leader Russell Peters, (who died in 2002) stated that during the 1960's her husband "thought nothing of driving [from Philadelphia where they were living at the time] home to Mashpee for the weekend" to stay with his mother in Mashpee or to visit her mother in Boston (Peters 2000.05.08, 1; see criterion 83.7(c) for more on Russell Peters). Her family never missed the annual powwow, for which she always dressed her children in regalia and taught them various native dances (Peters 2000.05.08, 1). The family also returned for social events in which people would get together and "bring different game food" (Peters 2000.05.08, 1). Her husband especially liked "herring season" and made a special effort to be in the town of Mashpee at that time of year (Peters 2000.05.08, 1).

These social events provide evidence of informal social interaction and relationships among most of the Mashpee during this period.

In addition, the Mashpee continued to dominate the town government from the 1950's and into the early 1970's (see criterion 83.7(c) for more detail). They did lose control of the Board of

Selectmen in 1968 when non-Mashpee gained two of the three seats. The Mashpee regained the Board in 1972, despite being a minority of eligible voters, and held onto it for two more years. Mashpee or their spouses still held most of the other elected positions and appointed positions in the town until the early 1970's. Through these positions they supervised the social, legal, and economic activities of members, particularly for that period up to the middle 1960's when they made up the vast majority of the permanent population in the town. Town officials from the Mashpee collected taxes and assessed property values, operated the schools and library, maintained the cemeteries and roads, fought fires, staffed civil defense positions, assisted veterans, served on juries, and operated welfare and public works programs. They also allocated group resources by reforesting woods and restocking streams, and regulating the fishing and hunting activities in the town. In addition, they controlled group behavior by serving on the police department (see, for example, Mashpee Town Report 1950.12.31).

There also remained a close connection between the town government and the Mashpee council. Mabel Avant, for example, proved instrumental in the 1950's in getting Earl Mills Sr. installed as the head of the council. While doing this, she also served in the town government as the elected town clerk. She ran the clerk's office out of her house (which in the 1970's became the "Wampanoag Indian Museum"), distributing pay checks to municipal employees, almost all of whom were Mashpee (see criterion 83.7(c) for more detail on these political activities). All of these significant political activities described above provide evidence for community.

The Parish Committee and the Baptist church still functioned as important social institutions for the Mashpee until the 1970's, although attendance at committee meetings did begin to wane in the middle 1950's (see footnote below for the list of leading family names in attendance).[67] Despite lagging participation, the committee and the Mashpee devoted a lot of energy in the 1950's and the 1960's to restoring the Old Indian Meeting House, which was again in need of repairs. In 1954, the committee voted to close the meeting house while renovations were undertaken (Parish Minutes 1954.03.05). At first, fund-raising efforts by the committee went badly and one Mashpee tried to have the Board of Selectmen, all of whom were also Mashpee, assume legal control of the meeting house.[68] In 1955, to forestall the town government from taking control of the property, the committee established a special restoration fund that began raising considerable sums of money through "dinners, powwows, and door-to-door solicitations by Indians dressed in regalia" (Parish Minutes 1955.01.21; Mazer 1980.00.00, 124). Over the next 15 years, many Mashpee, mainly through volunteers and the coordination of the Parish Committee, raised over $50,000 for the Old Indian Meeting House.

In 1960, the Parish Committee voted to give formal authority over the Old Indian Meeting House to a newly formed Mashpee Old Indian Meeting House Authority (OIMH), which assumed legal

[67]The family names of the people involved in the Parish Committee from 1950 to 1974 included Aiken, Amos, Avant, Averett, Bingham, Coombs, Couett, Frye, Hendricks, Hicks, Jeffers, Miller, Mills, Oakley, Peters, Pocknett, Sturgis, Tobey, and Webquish.

[68]This effort was led by "Chief Wild Horse," Clinton M. Haynes, self-proclaimed Mashpee leader since the 1930's. Haynes was opposed by town clerk Mabel Avant and other Mashpee. The town selectmen at one point hired a lawyer to see if the committee's claim to the meeting house was legal (*Boston Globe* 1954.00.00). See criterion 83.7(c) for more detail.

responsibility for maintaining and repairing the building. The OIMH was incorporated by John Peters, Shirley Mills, Louis Webquish, George Avant, Delscena Hendricks, Adeline Hicks, and "Chief" Earl Mills, all of whom were active on the Mashpee council at the time. All but one of the officials of the organization was a Mashpee. Earl Mills was President; John Peters was vice-president; and Emma Mills was treasurer of the OIMH (Parish Minutes 1960.08.15). At the time, John Peters also served as a town fireman, George Avant as inspector of animals, and Emma Mills on town juries. All the other OIMH officials had relatives who were elected or appointed officials in the town government. Then in 1970, the committee voted to turn over control of the parsonage to the Baptist church (Parish Minutes 1970.02.24).

Dinners and social dances to raise money for the Baptist church also continued. These events took place at the town hall until the early 1960's when it was converted into a fire station and new government offices established at the former USO building. According to the petitioner, these steps left the Mashpee with no place to hold large, all-day meetings (MWT Petition Narrative 2005.10.31, 25-26). These activities provide evidence that the Parish Committee and the Baptist church remained important organizations for fostering social interaction and relationships among the Mashpee until the 1970's.

Marriage Patterns and Kinship Ties, 1930-1974

The petitioner claims the community always had "an intricate network" of extended families capable of molding social behavior and attitudes (MW Petition 1990.08.16 83.7(b), 122-126). The high rate of intra-group marriages up to the 1930's provides evidence for this claim of strong kinship ties among the Mashpee during this period. There is also considerable evidence to support these claims from knowledgeable researchers who closely studied the Mashpee. In the 1930's, sociologist Carle Zimmerman echoed these sentiments about the size and cohesiveness of the Mashpee's families (Zimmerman 1938.00.00, 175-177, 185).

Forty years after Zimmerman's study, Jean Ludtke, an anthropologist who conducted field work among the group, found that "many interlocking familial strands" still existed among the Mashpee. Extended families were common, often headed by a grandmother or mother, with or without a spouse. Mashpee tended to marry at a young age, to live and work in a "narrowly defined geographical area" close to relatives, and to share a "take care of our own" philosophy, all of which set them apart from most of their non-Indian neighbors (Ludtke 1974.00.00, 52-53, and 57-59). Such close-knit families clearly made social interaction and relationships across family lines more likely, particularly in a community where many of the Mashpee were, as one newspaper portrayed them, "all related in a tangled web of kinship that defies ready understanding" (*Boston Phoenix* 1977.10.18). Like Zimmerman before her, Ludtke also described a group of families, about 15 to 20, which dominated the Mashpee's political and religious activities (Ludtke 1974.00.00, 59). These kinship ties provide evidence of community because they would have facilitated social interaction and relationships among a predominant portion of the Mashpee, particularly when combined with evidence of their concentrated residential patterns at the time as described in the following section.

Residential Patterns, 1930-1974

The petition record contains significant documentation of very concentrated residential patterns in and around the historical settlement area for the Mashpee from 1930 to 1974. This data provides good evidence for community because it indicates the group residential pattern in a separate settlement area was concentrated enough to facilitate significant social interaction and relationships among most Mashpee.

The Mashpee petitioner prepared and submitted a residential map for 1950 entitled "Mashpee Heads of Households Map" (MW Supplement 2005.10.31 Map Methodology; MW 2005.10.31 Kinship, 18-19). Since no Federal census schedules are yet available for 1950, the petitioner based the location of residences on the recollection of five older Mashpee who have lived in the town of Mashpee all their lives. The map shows 92 heads of households. Only about 11 individuals are listed as "not in genealogy," but even they have well-known Mashpee names. The kinship ties, as indicated on an accompanying chart, were still considerable, in some cases with as many 12-20 connections to other Mashpee in the town. According to this map, the Mashpee remained clustered in the northern part of the town just south of Mashpee Pond. A large number lived along Snake Pond Road just east of Hay Road. Other members were living in a circular pattern around Great Neck Road just south of the Mashpee Pond (MW Supplement 2005.10.31 Map Methodology; MW 2005.10.31 Kinship, 18-19).

Other available evidence confirms that the town's year round population at this time was almost wholly composed of Mashpee. All the military personnel at Otis AFB, opened during World War II, were residing in an enclosed portion of the western section of town, away from the Mashpee residential area, in military housing. These individuals were not permanent residents. The few non-Mashpee who were beginning to arrive, mostly retirees and seasonal visitors at first, settled mainly in the southern portion of the town along the beachfront, and their numbers did not increase significantly until the middle 1960's. During the 1950's, many of them, owing to their seasonal residency, could not vote, hold office, or send their children to the local schools. After 1965, they began to register to vote, run for office, and enroll their children at school (Mazer 1980.00.00, 103-111; see footnote below).[69]

The Mashpee petitioner did not submit any residence analyses for the period from 1950 to 1974. Regarding the location of its members during this period it claims the

> influx of non-Indians, did not affect the pattern on tribal member's residences. In the 1970's housing construction as well as commercial development did not take place in the village center on Rte. 130 (which was already densely populated by tribal members), but instead occurred in south Mashpee. Over the next 30 years, housing and commercial development has filled in and spread over tracts of land that had historically remained as open land. Still, tribal members have continued

[69]Rona Mazer did a wide-ranging population study on the post-war Mashpee in the town based on a variety of primary records including realty, school, planning board, and census records. She also conducted considerable field work and interviews.

> to reside in Mashpee, many on the same land that their ancestors did. (MW 2005.10.31 Kinship, 23-24)

It is a fact, as stated above, that by the 1970's, the number of "non-Indian" summer and permanent residents had increased significantly in the town of Mashpee, with the most dramatic growth between 1965 and 1975 (Conant 1978.07.00, 2).[70] But an analysis of several sources indicates that a concentrated residential pattern of Mashpee still existed in the northern section of the town just south of Mashpee Pond. As late as 1965, one secondary source claimed there may have been as many as 500 Mashpee in a year-round population of 665 (75 percent) in the town of Mashpee (*Christian Science Monitor* 1977.09.27; see also Conant 1978.07.00, 2 and App. C).[71] In 1970, the *Boston Globe*, in an article entitled "A Town Full of Indians," described a growing racial, economic, and residential divide between the "Indians" or "American Mestizos" of northern section of the town and the whites of the southern portion (*Boston Globe* 1970.07.19). Jean Ludtke, writing in her Master's thesis in the middle 1970's and drawing heavily on field interviews with members, depicted the bulk of the Mashpee as largely concentrated in the northern section of town surrounded by non-Indian residential areas composed of summer vacationers and permanent dwellers who had arrived in the last decade. She regarded this geographical divide as a "clear native/outsider dichotomy in a north-south dimension." According to Ludtke, Mashpee referred to this area as a "ghetto in our own community" (Ludtke 1974.00.00. 38). A map Ludtke provided showing the areas of member residences along Route 130 and Great Neck Road supports her analysis of group distribution (Ludtke 1974.00.00, 38-39, 62, 89).

According to anthropologist Rona Mazer, during the middle 1970's the majority of the Mashpee lived along two roads in town. Mazer, who conducted numerous interviews among the group, also claimed the Mashpee made up a distinct social and racial entity in the community. Non-Mashpee residents, she asserted, not only lived in different areas, but also had higher incomes, more expensive residences, and tended to socialize within their group (Mazer 1980.00.00, 134-137).[72]

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[70]According to the Federal census, the town of Mashpee grew from 665 residents in 1965, to 1,288 in 1970, and 2,496 in 1975. The percentage change (275 percent) from 1965 to 1975 was the largest of any town on Cape Cod during this period, with the town of Sandwich being second with a rate change of 161 percent.

[71]In 1972, Dr. Theodore W. Taylor, in *The States and Their Indian Citizens*, identified a population of 435 "Indians" in 1966 at the "Wampanoag community" in the town of Mashpee. The American Friends Service Committee in its 1978 report on the community had the number of Mashpee in the town ranging from 400 to 500 for the early to middle 1970's (Conant 1978.07.00, Appendix C, 2). The petitioner claimed in its 1990 narrative that the Mashpee total in the town was 450 (MW Petition 1990.08.16 83.7(b), 15). For the report's purpose, the Mashpee population in the town of Mashpee in the middle 1970's is estimated at between 450 and 500.

[72]During testimony for the Mashpee at the Mashpee land claim suit of 1977-1978, anthropologist Jack Campisi, relying on field data, described a similar concentration of Mashpee in the northern area of the town:

> Well, I determined that a very large percentage of the residents, town residents—Indian population resident in the town lived along two major roads, 130, running southeast to northwest to where the fire station is, and then intersecting with, I think it's called Central Road, I think it was at one time something like that, but I think it's Central Road now, running from there to the traffic circle. I

The *Boston Phoenix* in 1977 also described this geographic and social divide between the Mashpee and others:

> If nothing else, that there are two Mashpees is a geographical fact. Whether well-to-do or poor, the Indians, who are all related in a tangled web of kinship that defies ready understanding, all live in the center of Mashpee along two major roads. And Mashpee's non-Indians, who far outnumber the natives, are clustered in other parts of towns. The largest and best-known of these is New Seabury, a carefully planned and largely self-contained community on Vineyard Sound offering waterfront properties and a private golf course to those who can meet the price. (*Boston Phoenix* 1977.00.00)

A circa 1976 partial membership list of the "Mashpee Indian Community" and a circa 1976 list of potential Mashpee members resident in Barnstable County also provide additional support for the continued existence of an concentrated residential pattern up to the middle 1970's. The partial membership list of the "Mashpee Indian Community" was prepared by Bernice Grant, Mashpee Town clerk and group member. This list may have been created for use in the land claim suit of 1977-1978, but it is unclear if Ms. Grant was acting on behalf of the group or the town. It contains the names of what appears to be mostly adult Mashpee, and in a few cases their non-Indian spouses, living in the town of Mashpee. An analysis of the list demonstrates that it is incomplete, lacking the names of most children and even some prominent adult members. Nonetheless, the list shows the overwhelming majority of these 204 members were living clustered along three roads—Great Neck, Old Meetinghouse, and Main Street—in the northern section of the town (MW Membership List 1976.00.00 ca).

The other circa 1976 listing included 748 potential members, then living mostly in Barnstable County (MW Eligible Members List 1976.00.00 ca).[73] It is unclear whether the Mashpee petitioner, which created this list, considered descent and group affiliation in its preparation. Of the 748 potential members, 316 lived in the town of Mashpee mainly in the northern section of town along the same three roads. A 1974 United States Geological Survey topographical map of this area pinpointing many of the residences indicates that this section of the town was much more sparsely populated than the more distant southern portion (Map of Cotuit, Massachusetts, Quadrangle N41132.5-W.7022.5/7.5). These 316 individuals constituted 42 percent of the potential membership (316 of 748) and about 47 percent (316 of 673) of those living in Barnstable County. Most of the potential members in Barnstable County from outside the town of Mashpee lived in adjacent or nearby communities. Only 38 potential members lived outside of Massachusetts.

> found other centers of population, but the bulk of the population lived in that one. (*Mashpee v New Seabury* [Day 11], 11-80)[72]

[73]In actuality, there were two lists, a primary list of those potential members (660 names) in Barnstable County, and a smaller list (88 names) of other people (50) mostly living outside of Barnstable County in other parts of Massachusetts and a few (38) from outside of the state.

The petitioner's first official membership list of 1979 included 541 of those 748 (72 percent) identified as potential members circa 1976. Of the 737 members listed on the 1979 list, about 366, or just under 50 (49.6) percent, lived in the town of Mashpee, with many of the remainder living in adjacent or nearby locations. Because the 1979 membership contained only the names of the towns of residence and not the actual residential addresses for the members, and in a few cases no address at all, it is not possible to determine definitively if most members in Mashpee resided in the north section of town, but there is a reasonable likelihood that they did given the previous residence patterns of the group since 1870 (MW Membership List 1979.04.00).

This pattern of residence from 1950 to the middle 1970's provides good evidence of community, when combined with the evidence of substantial kinship ties, in that it would have facilitated social interaction and relationships among a predominant portion of the group.

Evidence of Community during the Mashpee Wampanoag Tribal Council Period, 1974-Present

Historical Overview of Mashpee Group from 1974-Present

In 1974, the Mashpee lost control of the town government as the electorate changed and the Mashpee remained distinct with a different set of interests. In response, the group reorganized and established an incorporated council in 1974. The incorporated council became responsible for legal and financial concerns, dealings with outside groups, and legislative issues. (See 83.7(c) for a more detailed discussion of politics during this period.) In July 1976, Governor Michael Dukakis of Massachusetts signed an executive order recognizing the Mashpee Wampanoag Incorporated Council (incorporated council) as the governing body of the group and authorizing state agencies to do business with it (Dukakis 1976.07.08). During the 1970's, the incorporated "tribal" council began publishing a newsletter, established an aqua-farming project, briefly operated a craft store, obtained government grants for employment training and education programs, set up scholarships, and acquired additional land and property.[74]

In August 1976, the incorporated council launched a land-claim suit in Federal court against the town of Mashpee and several local developers. The Mashpee claimed to have viewed the suit, which was ultimately unsuccessful, as a means of regaining control of their land and halting indiscriminate development in the town. Lasting over three years, the case ruptured relations between the town and group and sparked "anti-Indian" sentiment. In the 1980's and 1990's, the Mashpee resisted efforts by town officials to tax "tribal" land, restrict hunting and fishing rights, bury non-natives in the "Indian cemetery," and block requests for educational and economic grants (for overviews of these events see Mazer 1980.000.00, 179-206, 313-363; Brodeur 1985.00.00, 38-39; Simmons 1986.00.00, 23).

Over the last 20 to 25 years, the incorporated council also sponsored employment training, fuel assistance, health services, aqua farming, low-income housing, and home insulation for its members. In addition, it created education programs, a cultural and spiritual center, an equestrian

[74]For overviews of these events see Brodeur 1985.00.00, 36-39; Mazer 1980.00.00, 111-117, 162-165, 170-178.

center, and a language reclamation project. Group membership in 1989 was 829; by 1995 it had reached 1,001. By 2005, it was 1,462.

The Land Claim Suit, 1976-1983

The Mashpee enjoyed relatively unrestricted access to the largely undeveloped land and natural resources of the town of Mashpee until the 1970's. Once they became a minority population in the town, they lacked the political power which flowed from control of the government. When non-Mashpee began buying up waterside property, they blocked access to traditional hunting and fishing areas. Now the Mashpee could no longer freely use the natural or economic resources of the town to their benefit, either for subsistence or recreational purposes. These developments formed an important part of the rationale for the Mashpee's Federal land-claim suit in 1976 (Brodeur 1985.00.00, 36-39; Mazer 1980.00.00, 111-117).

The unsuccessful land claim suit was launched by the group in August 1976 and formally ended in December 1983 when the U.S. Supreme Court's refused a second request to hear the case on appeal. In pursuing the suit, the group demonstrated significant social interaction and social distinction from non-members, as described below, all of which provide evidence of community. The land-claim suit galvanized and drew support from a large majority of the Mashpee membership. During the trial phase, from October 1977 to January 1978, significant numbers of members traveled daily to and from Boston to hear the testimony. Members arranged transportation through car pools and ensured that updates on the case got back to those unable to attend. For some members this marked the first time they had ever left the Mashpee area. Dr. Rona Sue Mazer, who studied the group in the late 1970's and attended the trial daily, described these events as follows:

> I am not surprised that some people think the land claim suit filed in 1976 was a fabrication of outside influences. In fact, the Mashpee were very active in the suit. This was grass roots effort supported by the legal staff at NARF. During the trial in Boston, there was always a large native presence in the courtroom. I personally chauffeured a car full of people every day. . . . Even people like Vernon Pocknett who had never left the Cape before went to Boston on a regular basis. In the evenings, the suit and the legal case were the only conversation. Those who attended the trial were expected to keep others informed. (Austin 2000.09.30, 103; quoting Mazer letter dated July 31, 2000)

These observations are confirmed in recent interviews of members. Alice Lopez, for example, commented on participation in the case, "I mean, I remember as a teenager, you know, I spent a lot of days in court. You know, listening to what was going on, trying to figure out what was going on. And, um, the, you know, a lot of tribal members spent a lot of time in court and asking questions and [indiscernible] each other" (Lopez 2000.04.19, 9). Vernon Lopez recalled that "a lot of our people went up every day" (Lopez and Lopez 2000.04.18, 80). Members, according to Lopez, traveled in their own cars, by car pool, or by public transportation (Lopez and Lopez 2000.04.18, 81).

A small portion of the group opposed the land suit and a few members even testified on behalf of the defendants in the case. These actions by a small minority still elicit strong negative emotions from many members to this day. A few individuals who most publicly opposed the trial are allowed to retain their membership in the group but are actively shunned by other Mashpee, as attested in group interviews (Marshall 2000.07.05, 31; see also Peters 2000.06.01, 2-3 Harding and Ringling 2000.04.21, 2; see also Austin 2000.09.30, 84).

A division reflected within the group over the suit was between "traditionalists" and "non-traditionalists" (see later sections of criterion 83.7(b) and criterion 83.7(c) for more on the differences between these two groups). According to the petitioner, the "traditionalists" generally sought to preserve "Indian" culture and to work through more informal political mechanisms like the "traditional" leadership. "Non-traditionalists" mainly operated through the incorporated council and previously the town government. This latter group was more comfortable with mainstream politics and culture. While the two divisions largely supported the land claim suit, they disagreed on the suit's purpose and how it should be pursued. The "traditionalists" accused the "non-traditionalists" of initiating the suit to gain monetary compensation, while they claimed to want to retain the land to support the group. The "traditionalists" also complained they were prevented at first from testifying in the trial because the other side viewed them as behaving in an un-assimilated manner. According to the "traditionalists," it was their pressure tactics that forced the incorporated council to put some of them on the witness stand (Peters 2000.03.27, 4).

The organized responses of the town of Mashpee and the developers who fought the suit increased already significant social distinctions between the Mashpee and the rest of the town. These responses clearly distinguished the Mashpee from non-members during this period. Some town citizens, for example, arranged informal boycotts against businesses owned by Mashpee members or their supporters. One member, Randy Peters, eventually lost his home heating oil delivery business because of a boycott (Noonan 2000.04.22, 3). Other town residents, mostly wealthy property owners, established a Mashpee Action Committee to coordinate opposition to the suit with town officials.[75]

Some members faced personal and direct forms of discrimination during the trial. Jesse Fermino, 12 years old at the time, remembered the experience as "pretty rough" (Fermino 2000.04.19, 79). She encountered racism due to the trial from non-Indian children in school (Fermino 2000.04.19, 79-80). She explained, "When I was a kid, when we were going through this land suit, the other kids in school were talking about it. And the kids from the area were horrible. And there were fights every day, physical fights at school every day over these issues" (Fermino 2000.07.06, 0033). Alice Lopez recalled

> I was a teenager during the land claim, actually. And what I remember about it was, um, I think a lot of prejudice came out. And things were like really hostile. I remember rumors going around about they're going to take everybody's farms or

[75]All these events are well documented in Mazer (1980.00.00, 218-257, 313-357) and newspapers from the time. An American Friends Service Committee Report in 1978 on the impact of the land claim also described most of these developments (Conant 1978.07.00).

> they were gonna burn down everybody's home and, um, just really, really horrible things. I remember actually getting run off the road while I was riding my bike down the street. And it didn't surprise me. (Lopez 2000.04.19, 4)

Morgan James Peters, who was nine at the time, remembered hearing racial slurs like "white nigger" or "nigger Indian" used against Mashpee members (Peters 2000.06.01, 2-3). Shirley Jordain Peters told an interviewer she had difficulties performing her job as director of Elder Services for the town during the trial, because people treated her as if she worked for the Mashpee rather than the municipality (Peters 2000.05.08, 3).

Social Distinctions by Non-Members, 1974-Present

Besides the social differentiation between the Mashpee and non-members that resulted from the land claim suit, other events over the last 35 years have created social distinctions between the Mashpee and non-Mashpee town members. These events tended to increase the social dichotomy that already existed between the Mashpee and other residents in the town.

One such incident, according to a petitioner researcher, involved the so-called "Mashpee Nine," who were arrested for disturbing the peace near Mashpee Lake in 1976 just before the land suit trial commenced (Austin 2000.09.30, 87-89). They were arrested at the site of the recreated village called "Twelve Acres" some young Mashpee were building as a living museum (see also *Falmouth Enterprise* 1976.08.20). Apparently, some of these individuals decided to live in the village instead of using it as a museum (Austin 2000.09.30, 87-88). According to the petitioner researcher, "The village became a focal point of their social lives. The young people started having Indian education classes at twelve acres, as well as sleeping and eating there. They also held potluck dinners and socials on the twelve acres. Some of the young people would go out fishing and share whatever they caught with the others" (Austin 2000.09.30, 88). In 1976, nine young Mashpee were arrested for disturbing the peace by drumming and singing at the site. The police allegedly roughed some of them up and set dogs on them while they were in their sleeping bags (Austin 2000.09.30, 88-89; Lopez 2000.04.19, 34-38; see also *Falmouth Enterprise* 1976.08.00). All the charges were eventually dropped. According to the petitioner researcher, the "Mashpee Nine" had the complete support of the group. One interviewee, according to the petitioner researcher, saw this arrest and trial as "a watershed for the tribe, galvanizing the political commitment of the members" (Austin 2000.09.30, 89).

Another incident was the 1989 shooting of David Hendricks, mentioned previously, which was viewed as a racist act by the Mashpee (Austin 2000.09.30, 61-62). In 1989, and for many years after, the Mashpee organized a protest march on the anniversary of the shooting, with support from the group (Austin 2000.09.30, 106). The fifth memorial march in 1993 drew more than 500 people, mainly Mashpee but also some non-members (*Cape Cod Times* 1993.05.13). The group and the "Mashpee Wampanoag Tribal Council" sustained pressure on town officials, often in public town hall meetings, to dismiss the police officer involved in the incident (*Cape Cod Times* 1992.08.21). Through peaceful protest and persuasion, it finally forced him to resign (*Cape Cod Times* 1993.05.13) Ramona Peters, however, who got involved in the Hendricks case "to make sure that the white people who live here have to know that it is not okey-dokey to kill Indians

here," insisted that the "traditionalists" were the primary force behind the group's efforts rather than the incorporated council (Peters 2000.05.09, 43-45). According to Paula Peters in a 2006 interview with OFA staff, the protest is not longer being held:

> I think his mother asked, after ten years, if we would stop. She really wanted to put it behind her. But people would've kept coming. I mean, it was a major event and people would gather and march and remember, and, you know, it was pretty intense (Peters 2006.01.00).

Another continuing area of distinction between the town of Mashpee and the group was the Indian Education Program in the local schools. Shirley Jordain Peters, part of the group's Indian Education Committee, complained that non-member residents of the town of Mashpee operated under the mistaken assumption that money to finance the program came from local taxes rather than the Federal Government. According to Peters, non-members saw the program as a "special privilege" for Mashpee children. She also claimed that one school superintendent tried to use the money allocated for it for other programs in the school budget (Peters 2000.05.08, 2). Alice Lopez, whose mother initiated the Indian Education Program in 1974, charged that the town did not want to give up the classroom space during school hours and forced the group to hold the classes after hours. This restriction caused hardships for the Mashpee which they overcame through organized effort. Lopez explained:

> [It] meant that our children would have to go from class to this—from their normal, everyday elementary class level to this one classroom at the school, and then someone would have to make sure that they got home, because the busses would stop running after four o'clock, or whatever, so you'd have to make sure your time span was between that time. And then we'd have activities for the kids and take them on bus trips, or everybody would gather in cars and bring them here and there for field trips and things like that. (Lopez 2000.04.19, 31-32)

Joan Avant Tavares, a Mashpee and school employee who runs the Indian Education Program, arranged for a special space at the school to be devoted to the program, which apparently took considerable time and effort on her part. Tavares contends she had a difficult struggle with the Parent's Committee of the school district in establishing the program curriculum (Tavares 2000.07.31, 52-59).

At present the incorporated council continues to support educational initiatives for Mashpee Wampanoag children. In January 2006, OFA research staff attended a meeting of the Education Committee. The purpose of the Committee is to "support and enhance the educational experience of tribal members being educated in Mashpee public schools and other school systems within and without the Commonwealth of Massachusetts." The issue at hand at the January meeting was to review a "Cooperative Agreement between Mashpee Wampanoag Tribe and The Town of Mashpee School Committee".

Social Structure and Community, 1974-Present

From 1974 to the present, the Mashpee Wampanoag maintained a distinct community

geographically and socially. This section will describe the ways that features of their social structure including residence and kinship underlie community cohesion. It is based on data provided by the petitioner that was validated in a follow-up site visit by OFA research staff.

1. Residence Patterns from 1974 though Present

From the mid 1970's on residence patterns provide strong evidence for community. In 1975, the group's population in the town of Mashpee was between 450 and 500 (see appendix in Conant 1978.07.00). By 1989, the overall group membership had grown to 829. According to the petitioner, almost four-fifths of the membership, 782 individuals, then lived on Cape Cod, most of them in the town of Mashpee, "the group's ancestral base", or the nearby communities of Barnstable County. About 46 percent, or 386 members, lived within the town of Mashpee (MW Petition 1990.08.16 83.7(b), Vol. 1, 121-122).

In 1996, the petitioner claimed 1,001 members. Of these, 334, slightly more than 33 percent, lived in the town of Mashpee. In addition, the petitioner asserted that a total of 639 members (including the 339), or just more than 63 percent, resided within a 10-mile radius of the "Mashpee Wampanoag Museum," which the petitioner identified as the center of the "social core area." According to the petitioner different locations within the region are easily accessible by automobile and other forms of transportation.[76] An additional 46 members, nearly 5 percent, were born in the "core area" but lived elsewhere.

Another 193 members, a little more than 19 percent, lived outside the "social core" and had at least one primary (nuclear family) relative within the area. In summary 878 members, almost 88 percent lived, were born, or had primary kin in the group's defined core area (MW OD Response 1996.01.23 [Criterion B], 3-12).

In 2005, the petitioner submitted a new residence analysis demonstrating 767 members, or 52.5 percent of the present group (1,462 members), live within the "core area" of 10 miles. Of these 767 members, 420 lived in the town of Mashpee. The next largest grouping of members, 100, lived in Falmouth on the western side of the town of Mashpee. The next largest was 95 members lived in Hyannis, a town just east of Mashpee.

Also included with the submission were a number of maps to verify further its residency data. One was a Mashpee Core Community map. According to the petitioner this map depicts the location and primary kin relationships among Mashpee member heads of household who live within a 10 mile radius of the original Mashpee Indian settlement. All told there were 371 claimed households listed. The kinship ties down to first cousin as verified by OFA are extensive within this radius.

The petitioner also provided a map that includes a chart showing adult members living outside the "core area" who have "primary kin" inside the core area. In this case, the petitioner extended the definition of primary kin to include what the Department would normally view as secondary

[76]While the 10-mile core area is a petitioner construct, historically it does contain the communities in which many of the petitioner's ancestors lived.

kin such as grandparents and grandchildren, aunts and uncles, nieces and nephews, and first cousins. Nonetheless, the kinship ties are extensive given that 75 percent of the group lives within Massachusetts. For example, member Delscena Michelle Hicks has 6 sisters, 3 brothers, 7 aunts, 4 uncles, 2 nieces, and 33 first cousins living in the core area. Such kinships ties are common throughout the group.

In addition the petitioner submitted a map showing the aggregated areas of members in Massachusetts. It shows 1,133 members living in the state. These members constitute about 75 percent of the group. The group has 777 members living in the Mashpee core area or 53 percent. Another 46 members live elsewhere on the Cape, all of them in what looks like the town of South Yarmouth. Most other members reside in the area of just four towns: Boston (98), New Bedford (76), Plymouth (25) and Middleboro (24). Another 87 live in unidentified locations.[77]

In 2006, OFA conducted a site survey in order to verify these claimed residence patterns as well as confirm the social involvement of members in group activities. The survey was conducted in two parts focusing on the historic town of Mashpee as well as the surrounding towns in the area where the Mashpee are geographically clustered. While in Mashpee, OFA's research staff accompanied the incorporated council's genealogist Patricia Oakley in a site visit to Mashpee Wampanoag neighborhoods and houses.

The field review verified that within the historic town of Mashpee, members still reside along two roads, Main Street (State 130), and Great Neck Road North, which intersects with Main Street.[78] They also reside on side streets from those roads (approximately 2 miles of Main Street and 2 miles of Great Neck Road). This area was identified in 1974 by Ludtke as the most important residential area, in existence since the 1800's.[79] It is located near the Old Indian Meeting House, and Mashpee families still own land in this portion of town. Housing here, largely older houses, is on properties individually owned by Mashpee members. The Mashpee are concentrated here in an area which is almost exclusively occupied by them. Many different family lines are represented in this location.

An additional concentration of Mashpee within the town of Mashpee proper is found in the Mashpee village housing development, which is rental property. This is outside the area identified on 1974 Ludtke's map, though immediately contiguous (see uncorrected Mashpee

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[77]According to a petitioner map that shows the group population in the northeast, the group is divided in the following manner: Massachusetts: 1,133; Connecticut: 63; Rhode Island: 21; New York: 21; New Jersey: 14; New Hampshire: 7; Maine: 7; and Pennsylvania: 3.

[78]This area was also identified by Campisi in court testimony in 1977 (Campisi, *New Seabury* Testimony, vol. 11, 80).

[79]Similar concentrations are found in a 1910 map (Map of Mashpee 1910.00.00) and on the petitioner's map which reconstructed residence within the town of Mashpee in 1930 (MW Heads of Households 2005.00.00) although in those time periods Mashpee also lived in other locations within the town and the town had few non-Mashpee residents.

"core area" map, Grabowski, 25).[80] Field data indicates that the Mashpee here are a fluid population, with individuals moving in and out of the development. Unlike the older settlement areas, housing here is not owned by Mashpee and it is not a specific historical settlement area, although it is within the town of Mashpee. The project is not an exclusively Mashpee settlement area.

Another concentration, on Cotuit Road, near Santuit Pond, is in a location identified by the petitioner as an area of single family homes developed in the early 1980's (approximately 22 households, per uncorrected map; Grabowski 2005.00.00, 25). This is outside the area marked on Ludtke's area map as where Mashpee were resident in 1974. It is immediately contiguous to the older area, Cotuit Road intersecting with Main Street/Route 130. It is not an area of exclusive or near exclusive Mashpee residence.

The second part of the site visit survey consisted of phone interviews with Mashpee members living outside of Mashpee but within the 10-mile radius of the town. The following towns were selected as they had significant numbers of members living in proximity: 1) Hyannis; 2) Bourne; and, 3) Falmouth. Seventeen individuals were selected including seven in Hyannis, six in Falmouth, and four in Bourne. During the site visit, OFA's research staff asked the petitioner to supply the phone numbers for the potential interviewees. The incorporated council returned a revised interview member list. One potential interviewee was eliminated as he was child. Six others were listed as having "medical disabilities." Five were either away at school or in the military. Three new individuals were added to the list by the incorporated council.

The phone survey was time consuming for the following reasons. First, some of the phone numbers were incorrect or were fax machines. Second, some individuals on the list who were supposed to be available were not at home. Three individuals were ultimately contacted and interviewed from the original list. While the incorporated council generally informed members of the OFA visit, the individuals who were contacted had not expected to be contacted.

The following questions were asked during the phone interviews: 1) Do you live at the address listed on the incorporated council's current membership rolls? 2) Were you aware of the 2004 "tribal" constitutional election? 3) Did anyone try to contract you during the recent "tribal" election? 4) Do you attend Mashpee Wampanoag events? Which ones? OFA's staff researcher found that addresses on the original list were the same except for one individual who is now homeless and another in Bourne who moved back with family in the town of Mashpee. All interviewees indicated that they were aware of the 2004 "tribal" constitution vote, although knowledge of its contents varied from one person to the next. When asked if they were contacted everyone interviewed said that they had received notice by mail. In response to question number four, the people contacted said that they were proud to be part of the Mashpee Wampanoag "tribe" and had attended various functions and events. While they all had attended the powwows, participation in other events and activities varied based on their schedules and preferences. One interviewee stated that "when it comes to tribes there are traditional ways and modern ways. Some people like to focus on the traditional while others focus on the modern."

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[80]Campisi also found Mashpee in this housing project (Campisi, *New Seabury* Testimony, vol. 11, 82).

She said that she preferred the modern and had participated in events such as taking computer classes that were sponsored by the incorporated council.

OFA requested a phone list of the entire membership from the petitioner and found that a large percentage of members did not have their phone numbers listed. This brought up a question of group involvement and participation. But according to the incorporated council chairman, Glenn Marshall, information travels by "word of mouth" through family lines. Networking by "word of mouth" through family lines was also discussed by previous researchers (Austin, 2000.9.30, 31). As part of the site visit OFA research staff conducted an additional 31 in person interviews with a cross-section of the membership in a variety of settings. All interviewees agreed that news about the group's events is communicated by word of mouth through family lines to members living both inside the town and outside the state. During the site visit, OFA's staff asked for a concrete example of how this works and was given the following:

> The fabric and nature of our people is to stay in touch, and in today's world, there are many ways to connect. They are all used! From my days taking part in "Home coming day", people returning to hunt, pick cranberries, go scalloping, go clamming, have a mess of eels, sit down to some Wamp Codfish Cakes, returning for Tribal Festivals, et al, our People have been a "Family," connected by a common thread (s)—Massipee, Marshpee, Mashpee and our Relationships to each other.

Pat Weeden, my "cuzzin" from Rhode Island, said that her son, David, called her in regard to something on the Web. She "webbed" Toni, her sister, who "webbed" Bud, a brother, who "webbed" Jason, a son, who "webbed" his brother, who "webbed" his cuzzin, who in turn "webbed" his Father. The connections cover from Plymouth, Massachusetts, to Rhode Island, Arizona, California, back East to Florida and Georgia." The actual list included family members at the following locations: Washington, D.C.; Weston, Maryland; Middleboro, Massachusetts; Sandwich, Massachusetts; Philadelphia, Pennsylvania; Arizona; Oklahoma; Rhode Island; Florida; New Bedford, Massachusetts; Hyannis, Massachusetts (Earl H. Mills, Sr.).

OFA also examined the petitioner's claim that resident members in the "social core area" are within driving distance of each other by calculating distances from the town of Mashpee outward to various locations occupied by Mashpee members. Residence figures in Appendix B are based on addresses in the 2002 membership list, as revised by the supplemental submission in 2005, requested by OFA. The populations here are analyzed by post office addresses shown on the membership list. The data is organized by direction from Mashpee proper. The term "town" refers to the center of Mashpee which is the historical area of the group, rather than the town of Mashpee, originally the Mashpee Indian district.

Approximate distance by road is shown to indicate the feasibility of interaction between individuals in Mashpee proper and the nearby towns. Driving distance is provided for specific areas elsewhere in Massachusetts and Rhode Island, e.g., the Boston area, Providence area, but not otherwise. Distances are approximated from the south end of Mashpee pond the center of the settlement. This data, along with interviews conducted during the site visit, confirms the short

driving distance and facility in which members can visit each other. As an example, from the town of Mashpee to Hyannis, the driving time is 23 minutes. From Mashpee to Harwich, MA is 38 minutes. The driving time for members living in Oakdale, Connecticut is two and a half hours. OFA's field anthropologist interviewed a member from Connecticut, while attending an incorporated council's Girls and Boys event. The individual mentioned that she comes with her family to Mashpee two times a month to attend Mashpee Wampanoag events. She commented that the driving time is not problematic, but lately the cost of gasoline had become more difficult to deal with.

The majority of members live in or near the town of Mashpee, and driving distances from more distant locations are possible. In the case of the petitioning group, residence does facilitate social interaction.

2. Residence Patterns and Attitudes about Community

Residence patterns shape attitudes about community in three ways. First, a distinction is made concerning members born in town and those born away. This was noted by the petitioner's researcher Steve L. Austin in his 2000 modern community report:

> A number of tribal members alluded to an intra-tribal distinction between Mashpee Natives who were born and grew up in Mashpee, and those who have lived away. There is some antipathy (perhaps wariness is a better term) expressed by local Mashpee Indians toward those who were raised outside of Mashpee. (Austin 2000.09.30, 54)

In the 2006 site visit, OFA research staff found a strong relationship between geographic centricity and authority. Members who live in the town of Mashpee have more authority, while those living farther away have less. This can be seen in rules regarding voting. Regardless of political faction, all members agreed that absentee ballots should not be permitted. According to Paula Peters and Jessie Baird:

> Well that has been our history, that we have not accepted absentee ballots. We have never allowed it. We have never allowed it because.... If you live outside of the community, you have some connection here and you have family that will vote your interests. But you need to come home to vote because it would be easy for people who live outside for the community who weren't really in touch with what's going on in the core here to make decisions that affect our lives, and we live here...It is an issue for the future. If you could imagine that the tribe gets Federal recognition and from what we've seen with other tribes round the nation is when the tribe gets Federal recognition, they get what we call the "woodwork cousins," that people start coming out of the woodwork, claiming that they have a right to be on your roll. (Peters, Paula 2006; Baird, Jessie, 2006)

When asked if all members on the membership roll should be allowed to participate, Peters answered that even if they are on the roll, "That doesn't mean necessarily that they have the

cultural background and information to make proper decisions."

Recent voting sign-in sheets collected during the site visit indicate that regardless of the size of the total vote, no more than 20 percent of those voting came from outside of the town of Mashpee itself (All elections were included from 1994 to 2005, excluding 1995). The highest percentage of the 2005 vote from members living outside of the town was somewhat higher in percentage terms, at 29 percent, as well as the largest in absolute numbers, at 65. Voting sign-in sheets indicate that local residents living in the town of Mashpee dominate the political processes.

The second way that residence affects attitudes about community is that members who live in the town of Mashpee receive more economic benefits. These include the LIHEAP program to help with fuel assistance, housing program, and the work initiative program (See section on Political Influence and Authority below). Members living outside of the town do not always receive the same benefits as it is not financially possible. According to David Pocknett, incorporated council member, some programs are area specific due to federal funding requirements. In addition, it would be financially prohibitive to offer all programs to all members living in different states. During OFA's site visit, some people felt that members living in town deserved more benefits as they are maintaining the group's traditions but paying the price in doing so as there is little or only seasonal employment on the Cape for locals.

Third, members view the geographical area of Mashpee town as "home" (Mazer, 1980.00.00, 164-167). The lack of year-round employment opportunities on the Cape has meant that many members simply can't afford to live in the town of Mashpee. During OFA's field visit, members confirmed the importance of "coming home" to visit relatives, participate in events such as the powwow, to establish a permanent residence, and to retire. Based on an analysis of residence and kinship patterns, OFA confirmed that a high percentage of Mashpee living away do come home to the town of Mashpee. (See the section below on "Family").

3. Kinship Patterns from 1974 to Present

Mashpee Wampanoag kinship continues to underlie community cohesion. Features of kinship that effect community include: marriage, descent, and extended family networks.

Marriage

From 1974 to the present, intermarriage among group members continues to affect community cohesion. As stated before, the rate of new intra-group marriages dropped significantly after the 1950's. By the 1970's, according to group statistics, the rate had fallen to 8 percent (11 of 141 marriages). In the 1980's, it increased slightly to 11 percent (19 of 170). From 2000 to 2002, it dropped to 0 percent (0 of 8). However, the high rate of such marriages from previous decades did have a continuing social impact on kinship ties from 1974 to the present. An analysis of the 1979 membership list shows that 36 percent (268) of the 737 members had two Mashpee parents. By including the other 19 members who had one Mashpee parent and one "other" Indian parent the percentage climbs to 39 percent.

The Department conducted a separate analysis of the marriages of all the parents on the 1979 list. It found 277 marriages that occurred between 1900 and 1979. Of these 84, or 30 percent were between Mashpee. The breakdown of intra-group marriages by decade is as follows before 1900; 10 intra-group marriages out of 15 total marriages or 67 percent; 1900's: 5 of 17 for 29 percent; 14 of 29 for 48 percent; 1920's: 9 of 19 for 47 percent; 1930's: 11 of 37 for 30 percent; 1940's: 8 of 31 for 26 percent; 1950's: 15 of 54 for 28 percent; 1960's 7 of 47 for 15 percent; 1970's: 5 of 28 for 18 percent. These statistics mirror other statistics in the record and the finding which show the major drop-off in intra-group marriage rates occurring after the 1920's. They remain relatively high throughout the 1950's and then drop sharply again.

Descent

Descent to a Mashpee Wampanoag ancestor continues to play a significant role in distinguishing the petitioner as a separate group. While it is important in ethnic identity, it is not an organizing principal for the mobilization of members and resources. According to the petitioner, clans and mother clans were organized in the 1970's as part of a revival of a traditional clan system (Austin, 2000.09.30, 56). During the site visit, OFA's research staff did not find evidence of a clan system.

Family

An important feature of kinship underlying community cohesion is the presence of large and interconnected families. Mashpee social organization is based on bilateral kinship with extended family networks often referred to as by Ludtke as "core family groups." According to Ludtke:

> Beyond the two or three ascending generations there usually turns out to be so many interlocking familial strands that the matter resolves into 'Well you know, almost all of us are related.' 'Almost all of us' refers to Mashpee core families, around 15-20 in number now, whose aggregate membership (about two hundred adults) composes most of native Mashpee today, and has done so throughout the last three hundred years. `(Ludtke, 1974.00.00, 53)

In a 2006 field site visit, OFA's research staff confirmed the continued importance of the extended family networks described by Ludtke. Members presented substantial evidence indicating the social importance of family in the form of photographs and newspaper clippings of various events. In a photograph of a 2005 Haynes, Mye, Mingo, Attaquin family reunion of South Mashpee, group member Myrna Nuey explains:

> Our family has come together every year since 2002 to gather and celebrate our family ancestry. They have come to gather as far away as Florida, Canada, Washington D.C., Maine, New York, Connecticut, Rhode Island, Orleans, Massachusetts, Wareham, Plymouth, Sandwich, Hyannis, Falmouth and Mashpee. Our family gatherings are very important to us and our family Elders who are slowly passing on. We want to learn all we can from our Elders about our family

> unity and tradition. The present core of our family is the children of Daisy Attaquin Mingo and Clinton Mye Hayes Sr. (Wildhorse). They bore ten children of which there are now 4 surviving. We treasure the love enrichment of "Family" that they have brought to all of us and for our families' next generation of Elders we look ahead with pride and dedication to the family names of Haynes, Mye, Mingo and Attaquin. (Forty-four family members are depicted in the photograph).

Another package of photographs submitted to the researcher included a recent wedding reception with 28 combined Mashpee and Aquinnah (Gay Head) members. Photos were also provided of numerous extended family members attending the following events: the Turtle Project sponsored by the incorporated council; a bus trip to a social in Connecticut; a 1999 social with members drumming and singing; 1999 language class graduation social; 2000 spring social; Mashpee attending an Aquinnah social; members take a vacation cruise to Bermuda; members gathered at Mashpee 2001 Winter Ball; 2001 Wampanoag Women's Scallop Cutting Contest, 2003 group of family members at the May 2003 Herring Run in Mashpee. A recent community project involved 30 pairs of Mashpee Wampanoag mothers and daughters in the making of a large quilt. Photos were sewn into 30 panels displaying groups of women and their daughters in various settings.

Not only do large extended family networks persist at present, but they also are strongly interconnected to each other through social and political ties. Through interviews and photographs, OFA's research staff confirmed that members of different extended families frequently socialize with each other both informally and at planned events. According to David Pocknett, incorporated council member, the various associations and interest groups sponsored by the incorporated council are well represented by members of different extended families (Pocknett, David, 2006). This was confirmed by OFA's research staff. And while some extended families have had influence in the group's politics (see Criteria C on Internal Conflict), positions of political leadership at the incorporated council have been held by a cross-section of the group members from different family groups.

In addition, the interconnectedness of different extended families is evidenced by the socially-recognized stereotypes that extended family networks attribute to each other. For example, extended family members with the last name of Tobey have a reputation for having assertive women. Other extended family groups are known for being wealthy while others have a reputation for being poor. And as is mentioned above, others are known for their involvement in politics. These stereotypes are evidence of social knowledge that distinguishes, and at the same time, integrates extended family networks.

Extended family networks continue not only in form but also function to integrate group members. They provide a strong basis for community cohesion.

During the 2006 OFA site visit, the powwow was consistently described by members as the most heavily attended Mashpee Wampanoag social event where family members unite. Current powwow director Carolyn Turner describes it as a "giant family reunion," a home coming when relatives and friends get together. During OFA's visit, the incorporated council provided

research staff with seventy-five newspaper articles with numerous photographs of members participating in Mashpee Wampanoag powwows from the years of 1979 through 2005. While the powwow is an important event for the community at large, the photographs alone did not indicate the extent to which individuals return specifically to visit extended family members. In her observation of previous powwows, the current director noted:

> ...I would bet my life that every Wampanoag, other than those being hospitalized or very ill comes.. and then we have a lot of people who live away that come. They have family here. You know, they stay with their families and they are here at the powwow.

Based on a review of birthplaces of Mashpee members OFA's research staff found evidence for nuclear and extended family connections between members living in the town of Mashpee and those living away. Many of the 418 Mashpee living in the town of Mashpee presently were born elsewhere, verifying the conclusion from interviews and other evidence that members who live elsewhere maintain ties with family in the town and frequently return after living elsewhere. This process of return includes individuals who were born elsewhere as well as those born in Mashpee. The following is a list of group members who currently live in Mashpee. It is based n the membership database.

Born before 1940	11 born elsewhere of 43 total	26%
Born 1940 to 1959	43 born elsewhere out of 110	39%
Born 1960 to 1974	42 born elsewhere out of 102	41%
Born 1975 to 1985	49 born elsewhere out of 86	57%
Born 1986 to the present	37 born elsewhere out of 77	55%

The breakdown by time periods reflects that living away from Mashpee is not a new phenomenon, since these presumably reflect the residence of the individual's parents at the time they were born.

The specific birthplaces of returnees were not analyzed in detail for this review, but most were within Massachusetts, many in nearby towns as close as Santuit, which is two miles away from the Mashpee settlement. This in part reflects the difficulty in recent years in finding affordable housing and employment in Mashpee itself.

Birthplace analysis, all birth dates, current Mashpee residents:

Mashpee	236 of 418
Nearby (as far as New Bedford)	111
Boston	29
Other Mass.	18
Outside of Mass.	24

The data shows that hardly anybody living in Mashpee who was born elsewhere is from far away.

Consistent with this evidence is the substantial number of Mashpee who live elsewhere but were born in the town of Mashpee. Past decisions have assumed, together with other evidence, that where a location has been established which is included in the social core community, birthplace is evidence for maintenance of community ties on the part of individuals now resident elsewhere (see Mohegan FD, Eastern Pequot PF).
Born in Mashpee Resident elsewhere (178 total)

Born 1920 or before	7 members born in Mashpee
Born 1921 to 1940	60
Born 1941 to 1960	57
Born 1961 to 1980	43
Born after 1980	11

Social Activities and Community, 1974-Present

Among the Mashpee Wampanoag, community cohesion is facilitated by numerous social activities that vary in function. Some are for entertainment while others are more service oriented. While the incorporated council sponsored many of them, some events such as the powwow generate their own funding. Others discussed below under criterion 83.7(c), such as the LIHEAP Program are funded by government grants.

In 2006, OFA interviewed a cross-section of individuals in the group to assess membership involvement in social activities. Participation varied based on personal interests and circumstances. For example, in some cases people had work schedules or health problems that limited their participation. All interviewees attended the yearly powwow, followed in popularity by the King Phillip's or Winter Ball. The following describes social activities as presented by the petitioner and confirmed during OFA's site visit.

1. Council Headquarters as Center of Group Activities

Social interaction frequently occurs at the incorporated council headquarters in the town of Mashpee. According to the petitioner's "modern community" study, completed in 2000, it is "evident from the interviews conducted, and from the research team's participant observation in Mashpee affairs for the past five months, at both public and private tribal events, that the Mashpee Indians who live in Falmouth, Hyannis, Sandwich, Bourne, and other nearby towns visit Mashpee frequently, to stop by the tribal office to pick up the latest gossip, to visit relatives, and to attend monthly tribal meetings . . . and other tribal activities" (Austin 2000.09.30, 20). Information can also be gained by visiting the "tribal office" (Austin 2000.09.30, 32). The study also claimed members of the major families assisted at the center doing genealogy, repairs, cleaning, moving furniture, and grounds-keeping. They also helped out elderly members at their homes. Members also went to the office to search job postings or to "visit regularly or just to talk with each other and to their leaders" (Austin 2000.09.30, 32).

One member, Alice Lopez, during an interview at the headquarters, also described it as a center of activity. She said, "You know, so the communication, I mean like you see here today, you

know, I mean, this place is always so busy. And, uh, people [indiscernible] around and there's always something going on with some committee or some group or something" (Lopez 2000.04.19, 11).

OFA's staff researcher verified the above information. Even those individuals who are at odds with the current administration were interested in, and knowledgeable about, the daily events at the headquarter office. OFA's research staff also collected the visitor sign-in book from the incorporated council for the period of 2000 to 2005. The book contains 35 pages with approximately 40 names on each page for a total of 1,400 names. Many are visitors from outside of the town including some non-members.

2. Second Sunday Meetings

Some social interaction since 1974 also occurred during the "Second Sunday Meetings," which are Board of Directors' meetings open to the entire membership. The modern community study described these meetings as "both social and political occasions" and "well-attended." This claim was based on three meetings from 2000 in which about 40 to 60 adults attended. People apparently socialized before and after the events. The meetings usually dealt with "tribal business" and "were all lively in terms of discussions that took place." According to the study, "participants demonstrated" they knew "each other well" and were "very familiar with the activities of their leaders" (Austin 09.30.00, 21). The study also claimed the meetings were generally attended by all the "major family lines" (Austin 09.30.00, 22). An ice cream social following the meeting had become a routine activity in recent years. Topics discussed included opposing a land development on a sacred burial site, Federal recognition, pollution of local rivers and lakes, hunting and fishing rights, the shellfish grant, and negotiations with the town of Mashpee over recognition and land claims.

An OFA analysis of the available evidence on the Second Sunday Meetings verified these claims. A review of the sign-in sheets (1993-2005) in the petition reveals that the meetings usually attracted about 30 to 40 attendees, with 30 being the average. The major family names indicated in the modern community study were represented (MW 2005.10.09 post Second Sunday Meetings).[81]

3. Women's Medicine Society

The modern community study described the "Women's Medicine Society" which was formed to handle women's issues like health, domestic abuse, and relationships (Austin 2000.09.03, 23). In submitted documentation, several members spoke of the involvement of women members in social activities and politics, but did not specifically discuss the "Women's Medicine Society." In 2006, OFA's research staff interviewed Evelyn Fermino, current committee member for the Medicine Woman's Society. According to Fermino:

There are about six or seven women on the current committee. We work hard together as a

[81]The family lines included Attaquin, Avant, Hendricks, Hicks, Mills, Oakley, Peters, Pocknett, and Tobey.

group...It is a very warm and caring society...looking out for the health and welfare of women and children and men in the tribe. We deal with a lot of domestic violence, and natural healing...We try to go back to some of the old ways. And we get together once a month.

The number of participants who attend the Society's meetings is usually small varying from eight to twenty-five (Fermino, 2006). This was verified by OFA's research staff who collected e-mail membership batch lists from current committee member, Jessie Baird. In addition, OFA's research staff also found that the majority of the Society's committee members are aligned with the "traditional" faction. (For a description of the Mashpee Wampanoag traditional and non-traditional factions see the section below entitled: "Social Conflict between 'traditionalists' and "non-traditionalists" in the Mashpee.") While the Medicine Woman's Society is an important cultural event, it is not significant in contributing to the group's cohesion.

4. Language and Education Programs

The modern community study also claimed that Wampanoag language and Indian education programs operated by the group are a means of social interaction. There is considerable evidence that these education programs, although they affect only a modest number of children, are of importance to group relationships. For example, the incorporated council has sponsored an Indian Education Program as part of the local school system since 1974. The program teaches Mashpee culture, history, and crafts (*Cape Cod Times* 1989.12.31). It is currently run by Joan Avant Tavares, who also wrote a study guide for "teacher training purposes" (MW 2005.10.31 Tribal Council Programs, 3). The guide "helps teachers evaluate school materials for racial stereotyping and educational tracking of Native Americans" (MW 2005.10.31 Tribal Council Programs, 3). One 1993 newspaper article described a class held by Tavares and other members for over 100 town of Mashpee school teachers and administrators (*Falmouth Enterprise* 1993.02.26). This federally funded program started in 1979 (although it operated before then without such support) and has been held weekly at the town elementary and middle schools and at Falmouth High School. Despite the Federal assistance, volunteer help from members, such as arranging rides and assisting tutors, is important to maintaining the program (Lopez 2000.04.19, 34). It is open to non-Indians, but is used mostly by members, mainly young girls, and admits about 35 of 45 applicants yearly (Tavares 2000.07.31, 70-76). This is a significant amount given the small number of Mashpee children presently in the school system (MW Newsletter 1995.00.00 [No. 1]).

Since 1994, the incorporated council, along with the Gay Head Indian Council, has sponsored a language program, run by member Jesse Fermino, who specifically obtained a Master's Degree in linguistics, paid for by the incorporated council, at the Massachusetts Institute of Technology to teach the courses (Fermino 2000.04.19, 72-76). It holds day and evening classes, and recently began providing CDs and coloring books to Mashpee parents to help their children learn the language. It is open to all Wampanoag, not just the Mashpee, and some Narragansett. As many as 36 students per year have attended the classes (Fermino 2000.04.19, 72). Twenty-one students graduated in 2003. The following year, 50 Wampanoag participated in the program, 26 of whom were Mashpee (MW 2005.10.31 Tribal Council Programs, 3 and Exhibit 17; see also *Mashpee Messenger* 1999.03.25). This program never received outside funding, but the Parish Committee

provided the parish building for the classes and financing came from voluntary contributions from members, the incorporated council, and non-members.

5. "Elders" Services and Council

The modern community study additionally claimed that during the last three years "tribal elders" have held monthly meetings in which about 30 members gather to discuss issues which may later be brought before the incorporated council (Austin 2000.09.30, 24). A review of the available evidence, as well as a follow-up visit by OFA, confirmed that older members have significant social interaction with each other and have created several programs aimed at providing services for group seniors. Since 1974, the incorporated council has operated the "Mature Worker's Program." It is part of the "Elder Services for Cape Cod," a program funded by the Department of Labor. The program assists older workers in the group to return to the workforce. It is run by member Patricia Oakley and is "a host agency", which hires only native elders to work at the tribal office and to be on the Elder's Council" (MW 2005.10.31 Tribal Council Programs, 2; see also *Barnstable Patriot* 2004.09.03; *Cape Code Times.*)
The Elder's Council, for members over 55, was started in 1997 by Patricia Oakley's mother, Hazel Oakley, and "serves both a social and political role in the community" (MW 2005.10.31 Tribal Council Programs, 2; see also discussion under political influence). The council meets on a monthly basis (MW Newsletters 2001.12.00). At the meetings, participants have lunch and birthday parties and "catch up" on family news. Guest speakers sometimes appear (MW Elders Council 2004.03.20). The council holds yard sales to raise money for various events and has dinners and socials (MW Newsletters 1999.00.00 [No. 1], 2003.00.00, 2004.00.00, 2005.00.00; MW Elders Council 2004.03.20). According to the petitioner, the council also provides "volunteers to check on seniors living alone and during storms; to help with grocery shopping and other errands; to ensure they get needed medical attention; and, that their homes are adequately heated and safe" (MW 2005.10.31 Tribal Council Programs, 2). The council recently purchased a new van to transport seniors to group activities and personal appointments (MW 2005.10.31 Tribal Council Programs, 2). OFA's staff researcher verified the continued importance of the Elder's Services and Council in the 2006 site visit.

6. King Phillip's Ball

The modern community study also discussed the importance of the group's annual King Phillip's Ball, which functions as a fundraiser. According to the study, both members and non-members attend the ball, although the former make up "a large number" of the attendees (Austin 2000.09.30, 25-26). An analysis of the available evidence shows the ball has existed since 1997, when women in the group established it to create a "fun" social activity to relieve some of the monotony of the harsh New England winters (Peters 2006.01.00, 6-10). In its first year 200 people attended, represented by a fair amount of members and non-member townspeople and officials (Newspaper 1997.03.11). In 2004, 400 people attended, including many Mashpee from elsewhere in New England. Members of other Indian groups participated as well (MW Newsletter 2004.00.00). The ball usually has dancing to Indian music and an award ceremony to honor the achievements of notable members. Proceeds go to support the group's various

programs.[82] Based on interviews conducted during the site visit with committee chairs and members, this event is ranked as the second most popular after the powwow.

7. Group Powwow

The modern community study also claimed that the group's annual Powwow in the town of Mashpee drew "a large number of tribal participants" (Austin 2000.09.30, 26). According to the petitioner in 2000, there were 7,140 attendees. Since the group only had about 1,500 members at the time, many attendees were clearly not from the petitioner.[83] The study claimed, however, that "most tribal members who live in and around Mashpee were probably present at some point" during the 2000 ceremony. It also contended that many members who live outside the area participated, and that a significant amount of "social interaction" occurred, "within and across family lines" during the event (Austin 2000.09.30, 26).

While the actual number of Mashpee Wampanoag attendees cannot be confirmed, an analysis of the available data does show that the annual powwow is an important event for many group members. Held every year except for a short hiatus during and after World War II, the powwow draws hundreds of Native American participants from across the country and large crowds of spectators, making it one of the most popular summer events on Cape Cod. The three-day gathering has always attracted a great deal of press coverage. In 1985, the *Washington Post* covered the 50th annual powwow. According to the *Post*, the ceremony drew hundreds of visitors and several hundred Native Americans from fifteen Indian groups across the nation (*Washington Post* 1985.04.28). The petitioner claims that members carefully prepare for the festivities throughout the year and it is an important source of revenue for other group programs. It also provides an opportunity, according to the petitioner, for members to meet and communicate with other Wampanoags and other American Indians from outside of New England. The petitioner also claims members and their families who live out of state often plan summer vacations and family reunions around the powwow, which takes place during the first weekend in July (see, for example, MW Petition 1990.08.16 83.7(b), 136-139; MW OD Response 1996.01 23 [Criterion B], 38-41; Weinstein 1986.00.00, 104).

Powwow brochures from 1977 to 2005 show a host of activities occurring at these functions. Included among the typical events are dances, peace pipe smoking, drumming, music, suppers, spiritual services, clambakes, storytelling, name-giving ceremonies, a princess pageant, road races, and a fireball game. There are also commercial vendors, mostly non-members, selling Native American food and jewelry, but since 1997 the Mashpee have being trying to increase the use of group merchandise. Alcohol and drugs are strictly prohibited. While many of the ceremonies are largely symbolic in character, a mixing of Plains and Eastern Woodland

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[82]The Mashpee have also held an annual craft fair at the Mashpee Baptist Church or council headquarters since at least 1996. Proceeds from this fair have gone to the "Elders" Council Transportation Fund, Chronic Disease Prevention Program, and the council in general (*Mashpee Enterprise* 1996.12.17).

[83]The numbers attending can be large. In 1991, the powwow drew 3,000 people on each of its three days. The 1997 powwow attracted 10,000 over the three-day period. On one day alone 6,000 people came to view the activities (MW 2005.10.31 Tribal Council Programs, Exhibit 22).

traditions, the event, due to the large crowds, does require extensive preparation throughout the year by a special committee and volunteers from members (see MW 2005.10.31 Tribal Council Programs, Exhibit 22). A number of members, some of whom lived at one time or another outside of the town of Mashpee, have described in interviews how the powwow functioned as a homecoming for themselves, or friends and relatives (Fermino 2000.04.19, 4-5; Lopez and Lopez 2000.04.18, 45-46; Pocknett 2000.07.05, 1 Tavares 2000.07.31, 6). The importance of the powwow was verified during interviews by OFA's research staff.

8. Youth Activities

The modern community study further described some activities for Mashpee children. According to it, the group "holds regular, gender specific meetings for its younger children (Austin 2000.09.30, 26). These meetings, held weekly, are led by adult volunteers from the group and are designed to "teach Wampanoag culture and history, as well as tribal values" (Austin 2000.09.30, 27). The study discussed the first "Youth Sobriety Powwow" held in June 2000 as well. This get together was designed to teach children how to "abstain from the use of drugs and alcohol" (Austin 2000.09.30, 28). About 300 members, adults and children, attended. The event was funded by a private foundation and supervised by Mashpee adults, but the children apparently had a hand in organizing all stages of the event. It was run like a powwow with dancing and drumming (Austin 2000.09.30, 29). According to the study, members of all "the major families were involved in the planning and preparation of the powwow" (Austin 2000.09.30, 29).

Available evidence indicates that the incorporated council does indeed have a number of important youth programs. It sponsors a "Tribal Youth Council," "Youth Cultural Activities," "Mashpee Wampanoag Survival Skills Training Program," and a "Youth Sobriety Program." The Youth Council was formed in 1999 to be "organized and run by young people" (MW Newsletter 1999.00.00 [No. 1]). Its goal was "to bring together our young people so they can learn to work together and become active productive tribal members" (MW Newsletter 1999.00.00 [No. 1]). The Cultural Youth program was started in 1999 and it "meets throughout the year to engage in cultural arts and craft projects, native dancing, drumming, singing, regalia-making, native language, motivational and leadership projects, as well as, educational and cultural field trips" (MW 2005.10.31 Tribal Council Programs, Exhibit 9). Another program involved training member adults as counselors to protect children from "abuse, drugs, and prisons" (MW 2005.10.31 Tribal Council Programs, Exhibit 9). The Youth Survival Training program, held throughout the year, began in 1994 (MW 2005.10.31 Tribal Council Programs, Exhibit 10). The Youth Sobriety Powwow started in 2003 (MW 2005.10.31 Tribal Council Programs, Exhibit 11). Newspaper articles with photographs suggest these events are well attended.

9. Informal Social Interaction

The Report on Modern Community and Political Authority to Present also described a variety of informal social activities such as graduation parties, clam bakes, holiday gatherings, weddings, funerals, and memorial services, and native dinners sponsored by the Mashpee Wampanoag Rod

and Gun Club, all of which supposedly involved significant numbers of members (Austin 2000.00.00, 31-44). Some interviews have detailed informal social activity among women members (Fermino 2000.04.19, 22-24 Hendricks 2000.04.20 [Interview], 1). The continued importance of these events was confirmed by OFA's research staff in 2006.
As part of its 2005 submission, the petitioner submitted registers of five Mashpee funerals from 1986 to 2001. None of the deceased was a prominent member. All the funeral services took place at either the Mashpee Baptist Church or the Old Indian Meeting House, followed by burials at the Old Indian Cemetery. The 1986 funeral for Elmer Weston Hendricks had 133 attendees, of whom 82, or 61 percent, were members.[84] For the 1987 funeral of Matthew F. Pells there were 76 attendees, of whom 27, or 35 percent, were members.[85] For the 1987 funeral of Selena Frances Edwards Coombs, there were 261 attendees, 126, or 48 percent, included members.[86] The 1992 service for Elmer Hendricks Jr. had 308 attendees, 147, or 48 percent, being from the Mashpee.[87] Finally, the 2001 funeral of Glenna Marshall had 143 attendees, with 58, or 40 percent, coming from the group.[88] OFA's research staff documented the continued importance of funerals as evidence of community through 2006.

The Mashpee Wampanoag Rod and Gun Club, an independent organization composed almost entirely of Mashpee, sponsors several dinners every year that draw 100 to 200 members (Austin 2000.09.30, 41; Baird 2006.01.00, 12). The Fishermen's Association, formed by the group in the 1990's to foster water conservation, also frequently hosts a number of member events. According to Glenn Marshall, the association, composed wholly of members, took 11 hunting and fishing rights cases to court and won every one. The association raises the money for the litigation expenses of the cases through clambakes. It provides the seafood and sells tickets to members for these events, making them social gatherings. In one fish fry in 1999, the association served 200 people (Marshall 2000.07.05, 41-42). Some money raised is also used to pay young members who work in the aqua farm.

10. Other Forms of Social Interaction: Baptist Church, Old Indian Meeting House, Old Indian Cemetery, and Wampanoag Indian Museum

There is little available evidence for the Baptist church being an important social institution since

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[84]Representatives from the following family lines at this service were the following: Peters, Frye, Green, Avant, Hendricks, Bearse, Lopez, Dias, Bingham, Coombs, Pocknett, Ramos, Keliinuii, Edwards, Casta, DeGrasse, Hicks, Tobey, Oakley, Mills, and Thaxton.

[85] The following family names were represented at this service: Gardner, Pells, Degrasse, Murray, Thaxton, Hendricks, Oakley, Carter, and Woods.

[86] Family lines involved the following: Perry, Jackson, Mills, Pocknett, Ramos, Haynes, Hendricks, Coombs, Edwards, Peters, Avant, De Grasse, Green, Harding, Frye, Oakley, Casta, Averett, Bingham, Sharpe, Dias, Mendes, Gardner, Hicks, Lopes, Jones, Lopez, and Tobey.

[87] Family lines included the following: Hicks, Peters, Cash, Dias, Oakley, Pocknett, Thaxton, Keliinuii, Frye, Green, Casta, Ramos, Jackson, Jones, Sharpe, Perry, Tobey, Lopez, Cash, Mills, Edwards, Coombs, and Dias.

[88] Family names at this funeral were Marshall, Green, Peters, Dias, Hicks, Mills, Edwards, Pocknett, Hendricks, Lopez, Perry, Oakley, Harding, Thaxton, Lopes, Foxx, Ramos, Tavares, and Fermino.

the middle 1970's. In its 2000 response to the OD letter, the petitioner claimed that as many as 125-150 churchgoers, 75 percent of whom were Mashpee, attended weekly services. There is no evidence in the record to support this claim. A 1983 membership list for the church showed only 33 active members (MW 2002 Supplement Part IV (ix) Church Activity, exhibit 95). Nor does the available evidence demonstrate the influence the church may have had on non-Baptists in the membership since 1976. In the 2006 site visit, OFA interviewed the petitioner's genealogist Patricia Oakley concerning the importance of the Baptist church today. According to Oakley:

> At this time Baptist church unfortunately doesn't play a big, significant role in the membership of the tribe or tribal affairs. At one time, I'd say in the last five years ...people have not been going to church and that's why it's not as powerful as it was at one time. At one time, we used to even hold our tribal Sunday tribal meetings in the building, in the Baptist church itself. Unfortunately, a lot of younger people don't go to church, they don't embrace organized religion, so that's why the church is not as powerful as it was at one time. And at one time, 95 percent of the members of the Mashpee Baptist church were natives and they are members of the Indian Caucus, the Baptist Indian Caucus. Some of the members that sit on the Board of Directors are tribal members. We have one, two, three that sit on the Board, the Council for the Baptist church, and we also have a couple of the officers in the Baptist church still are tribal members. We do still conduct funerals there, if tribal members choose to have their funerals there. Most of the funerals are held at their old Indian Meeting House and not inside, because it is closed for renovations, but we did hold our funerals there, weddings, and right now the funerals are held outside. We have graveside funerals now until the church is -- the Indian Meeting House is finished and done. Then we'll be holding meetings there, in the basements, and we'll have our weddings and funerals there.

There is some evidence the Old Indian Meeting House remained an important symbol for the group, and that its ongoing renovation and fund-raising efforts generated some social interaction, and even controversy among members. Presently, there are two competing fund raising organizations for the meetinghouse within the group. One is the Old Indian Meeting House Authority started in the 1960's by Earl Mills Sr. The other is a fund raising organization recently established by long-time leader Amelia Bingham, which functions as part of the Parish Committee. In interviews members have indicated that growing discontent over Earl Mill's handling of restoration money precipitated the creation of the alternative fund raising organization (Lopez and Lopez 2000.04.18, 12-13). Parish minutes from 1996 suggest the two organizations have set aside their differences and begun to cooperate (Parish Minutes 1996.08.07). In fact, it appears the two may have merged into a new organization called the "Old Indian Meeting House Restoration Project," which in 2005 convinced the State legislature to appropriate $200,000 for ongoing renovations at the Old Indian Meeting House.

Near the meetinghouse is the Old Indian Burial Ground, which dates to the 1670's. An analysis of the available evidence shows that the cemetery has been an important part of group history and community. Records for the cemetery, and a few smaller Mashpee burial grounds elsewhere in the town of Mashpee, show the existence of hundreds of graves of members from the early 19th

century to the present. The headstones bear the names of many family ancestors (*Cape Cod Magazine* 1923.00.00; Peters 1989, 78)[89]. Over the years, members of the group who live elsewhere have frequently arranged to be returned after death and buried with their ancestors (*Cape Cod Standard Times* 1954.03.07; see also member obituaries in petition record). For 1969-1986, 1989-1994, and 1999, the number of annual burials in the "Old Indian Burial Ground" of persons bearing Mashpee family names appears to range from 2 to 13 (MW List of Burials [Old Indian Cemetery]). These burials are good evidence of community.

Following the land claim suit of the 1970's, the town of Mashpee began using the cemetery for the burial of non-Indians. The group vigorously protested these actions, pointing out that adequate land existed elsewhere in the town for non-Indian cemeteries. It has also opposed excavations of residential subdivisions that disturbed unmarked native gravesites. In 1986, the group managed to stop a construction project that had unearthed a gravesite once belonging to the Hicks family. The State Historical Commission called in an archaeological team from the University of Massachusetts to conduct a survey, and it recommended creating a boundary around the site, but only after consultation with all the involved parties, including the Mashpee (Peters 1989.00.00, 78; Gumaer and McArdle 1986.05.12; *Falmouth Enterprise* 1987.10.14).

According to the petition, the maintenance of another building, the Mashpee Wampanoag Museum, has also been an important part of the group's community. Opened to the public in 1973, the museum was the brainchild of member Amelia (Peters) Bingham, who conceived of the idea while planning the town of Mashpee's centennial celebration. Bingham organized a fund-raising effort for the museum that garnered over $50,000 in Federal grants and direct solicitations. The museum, a renovated homestead that once belonged to Mashpee leader Mabel Avant, contains art, artifacts such as baskets and tools, and photographs donated by members. In the beginning, the town operated the museum, although Mashpee made up the staff (Peters 1989.00.00, 76-77).

Following the land claim suit, the museum became an ongoing source of contention between the group and the town of Mashpee. The latter proved reluctant to finance the museum's operations, particularly the hiring of an Indian director, and it remained unused for long periods (Peters 1989, 76-77). Finally, in October 1995, after 20 years of considerable pressure from members, the town offered the group's incorporated council a 99-year lease to run the museum, and a restoration effort commenced shortly after. Volunteer fund raising by the group over the next four years netted over $100,000 for the renovation (*Mashpee Enterprise* 1995.10.05; MW Newsletter 1999.00.00 [No. 1]). Mashpee volunteers, as many as 30 to 40 at a time, also helped to do repairs and clean up at the museum (MW Newsletter 1999.00.00 [No. 1]). In 1998, the town of Mashpee officially transferred the deed for the museum to the group.

Social Conflict between "Traditionalists" and "Non-Traditionalists" in the Mashpee

The modern community study described "two broad factions" within the Mashpee whose existence shows significant interaction and relationships among a significant portion of the

[89]Family names include Amos, Attaquin, Avant, Coombs, Hendricks, Oakley, Peters, Pocknett, Queppish, Simon, Tobey, and many more.

membership (Austin 09.30.00, 44). One division is called the "traditional people," and the other the "non-traditional" (Austin 09.30.00, 45). Divisions between the two are fairly complex and "cut across" family lines and generations (Austin 09.30.00, 45). According to the study, these divisions have existed since the early 1900's. Since then, the group produced both traditional leaders and non-traditional leaders, with the latter functioning through the more "western style town government." Both types of leaders have "exercised political influence" over members (Austin 09.30.00, 45). Since 1974 and the creation of the incorporated council, the two divisions have become more clearly defined. The modern study asserted that the council is viewed as the "business or legal arm" of the group, while traditional leaders "provide leadership in areas related to traditional spirituality" (Austin 09.30.00, 45-46).

The study further claimed that the "traditionals" have "a strong appreciation for and familiarity with traditional Wampanoag culture and way of life." They tend to seek more "radical solutions against oppression" (Austin 09.30.00, 46) and are "suspicious and wary toward tribal members" who were involved in the founding of the incorporated council, viewing them "as being too much in favor of adopting western culture and forms of government, and too willing to negotiate away aboriginal rights to land, fishing, and hunting" (Austin 09.30.00, 47). The "traditionals" also have a group called the "Chief's Council," which is "a small group of members, hand picked by the Sachem to make and enforce decisions regarding the overall direction of the Tribe, as well as to help individual tribal members who are experiencing problems." This council meets "regularly and frequently" to carry out its duties (Austin 09.30.00, 49). Apparently, some "traditionals" also try to get elected to the Board to keep lines of communication open. There are also social events which bring the two "factions" together. One is the powwow and the other the Mashpee Rod and Gun Club dinner which ends the powwow (Austin 09.30.00, 50). Younger members of the "traditional" faction hold their own gatherings as well. The study described some of these "small and intimate" gatherings as "informal, impromptu" socials in which "members drum, sing and dance to traditional eastern Woodland Indians' songs" (Austin 09.30.00, 50). It also described an informal social called a "forty-niner" that has dancing and drumming outside of more public, commercial venues like the annual powwow (Austin 09.30.00, 50).

There is good evidence to support the existence of "traditionalist" and "non-traditionalists" divisions in the group even well before the early 1900's. As stated previously, Mashpee women in the late 18th century forced their non-Indian spouses to live "Indian" style. They also resisted the efforts of non-Indian ministers to compel them to assimilate. In 1869, the traditionalists opposed efforts by outsiders and more assimilated members to adopt the State plan to sell collective land. In the 1920's, traditionalists "revitalized" the group by adopting a council, wearing Indian regalia, and instituting an annual powwow. Friction continued between the two divisions up to the 1970's and the loss of the town government. Jesse Fermino, a member of the traditionalists, described the division this way:

> The elders that attended the Mashpee Baptist Church, yeah, did not have these traditions. They did not have them. And the ones that you would see at the Baptist Church, and that you would also see at traditional spiritual things, they might show up at traditional things, but they wouldn't say anything. They

> wouldn't participate actively, because they were members of the church. And the elders were running the church, were running this freaking town. (Fermino 2000.07.06, 12)

Fermino contends other members in the group kept the more traditional customs alive even before the 1970's, including her mother, Loretta White Fermino, Barbara Peters, Hazel Haynes, and Gertrude Haynes Aikens (Fermino, 2000.07.16; for more discussion of the division see also Peters 2000.03.27, 1).

Since the 1970's the two divisions have clashed over how to handle the "Mashpee 9" incident, the 1970's land claim suit, and the David Hendricks Case. In 2005, the traditionalists became outspoken critics of the incorporated council's efforts to hire lobbyists to help in the quest for Federal acknowledgment, and also ran an almost successful write-in candidacy against Glenn Marshall, the sitting president (*Cape Cod Times* 2005.02.14 2006.01.13). Ironically, Marshall once considered himself part of the very division now opposing him, which demonstrates the complexity of how the two groups co-exist. In 2000, he commented as follows:

> The tribe has some factions in it, factions of renegades who will go and support the solidarity among tribes. And the Rod and Gun Club is part of the faction.[90] And the problem with renegades, and they have designated me a renegade because I wasn't mainstream tribe, I didn't agree with the things that the town has done, I don't agree with the way the land was taken, I don't agree with everyday politics with the town, and I'm very outspoken about it. I've been arrested for aboriginal rights, I was arrested and—for fishing without a license. I was found not guilty and then brought a lawsuit against the town because they handcuffed me behind the back. (Marshall 2000.07.05, 43-44)

Conclusion

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The Mashpee petitioner is located in an area that was traditionally Wampanoag. Based on the evaluation of its 1,462 members, the petitioner represents a group of lineal descendants of the Wampanoag Indians who have inhabited this area since first sustained contact with non-Indians in the early colonial period. From 1665 to 1720, the Mashpee inhabited a praying town that provided considerable political autonomy. In 1720, the colony established a proprietary system for the Mashpee, a system of government that also afforded them significant political authority. In 1746, the colonial legislature limited this self-rule by assigning three guardians to the Mashpee proprietors. For the next 16 years, the Mashpee frequently petitioned the legislature with complaints about the overseers, and were able to govern their affairs despite the presence of the overseers. In 1763, the colony, in response to the Mashpee complaints made the settlement a self-governing "Indian" district. This political structure remained until after the American Revolution.

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[90]Some of the leaders of the Road and Gun Club are group members Norman Dias, Warren Hicks, and Derek Mills (Peters 2000.05.08, 2)

The evidence shows that almost all of the Mashpee maintained a distinct community during the colonial and revolutionary eras. Colonial officials regularly described the Mashpee as being a distinct Indian entity. Other available evidence of shared religious activities by the Mashpee also demonstrates the existence of a social community distinct from that of surrounding populations. There is also good evidence from the colonial and revolutionary periods to demonstrate that much more than 50 percent, in fact almost all, of the Mashpee resided in a defined geographical area, the town of Mashpee, exclusively, or almost exclusively, composed of its members. This residential patterns provides evidence which, under 83.7(b)(2)(i), is sufficient by itself to demonstrate community during the colonial and revolutionary eras.

From 1788 to 1834, when State overseers were again assigned to the group, the Mashpee remained set apart from surrounding populations. A large portion, as many as two-thirds, of the members demonstrated shared religious practices through the Mashpee Baptist church from 1788 to 1834, which is also good evidence of community. State officials in reports consistently described the distinct Indian character of the Mashpee at this time, thereby providing good evidence of community from 1788 to 1834. This evidence is sufficient under criterion 83.7(b)(i). The available evidence further shows that virtually all the Mashpee from 1802 to 1834 lived in a defined geographical area composed almost exclusively of its members. Evidence shows that the Mashpee who lived outside the town usually did so only on a temporary basis, thereby retaining contact with the majority. This evidence is sufficient in itself to show community during this period under criterion 83.7(b)(2) for the period from 1802 to 1834. The petitioner also provided significant evidence under 83.7(c) of political influence or authority for this period that demonstrates interaction and social ties and thus provides additional evidence of community.

During the period, 1834 to 1870, when the State of Massachusetts designated the town of Mashpee an Indian district, the State generated records, particularly the 1849 Briggs Report and the 1861 Earle Report, which showed the Mashpee settlement was a distinct Indian community with significant social relationships and interactions. Through the district government, the Mashpee controlled most of the social and economic behavior of the Indian community. The Baptist church also maintained its position as an important social institution for a large portion of the Mashpee. The available evidence also shows that a large majority of the Mashpee during this time, as high as 82 percent in the late 1860's, lived in a defined geographical area composed almost exclusively of its members. There is also evidence that those few who lived outside of the town either lived very close by or were doing so only temporarily and were likely to return, thereby maintaining social ties to the majority in the town. This evidence is sufficient in itself to show community during these years under criterion 83.7(b)(2)(i),.

Moreover, the petitioner provided sufficient evidence to demonstrate the exercise of political authority from 1834 to 1870, using evidence described in 83.7(c)(2). This evidence shows Mashpee leaders using the district government to allocate group resources on common lands and fisheries and to exert influence on the behavior of the Mashpee, including through law enforcement by the district constables. Under 83.7(b)(2)(v), this political evidence is also sufficient evidence of community during this period.

In 1870, the Mashpee Indian District became an incorporated town, which the Mashpee controlled politically for the next 100 years. From 1870 to 1930, the town records showed that almost all the political offices were held by the Mashpee and contemporary records described a distinct Mashpee Indian community in and around the town of Mashpee. Early in this period, evidence of conflict among the Mashpee over the sale of collective land demonstrated both social interactions among the Mashpee and their distinct character from that of other populations in the area. The Baptist church and Parish Committee remained important social institutions for a majority of the Mashpee from 1870 to 1930. The available evidence further shows a large majority of the Mashpee during this time, as many as 87 percent by the early 1930's, lived in a defined geographical area composed almost exclusively of its members. There is also evidence during this period that those few Mashpee who lived outside of the town, often in adjacent towns or other areas on the Cape, maintained contact with those in the town through a high rate of return migration. This evidence is sufficient in itself to show community during these years, under criterion 83.7(b)(2)(i). There is also good evidence for this period of significantly high patterns of intra-group marriages, as described in 83.7(b)(1), for 1860 to 1930. These high rates of intra-group marriage resulted in extensive kinship ties among the Mashpee that have fostered social interaction and relationships within the Mashpee to this day.

During the remainder of the town period, 1930 to 1974, contemporary records described the Mashpee in a way that demonstrated the group constituted a distinct entity with significant social relationships and interactions among a predominant portion of the membership. It was a community bounded by a common ancestry, politics, geography, culture, and extensive kinship ties. The available evidence shows that the Parish Committee and Baptist church functioned as important social organizations for a significant portion of the group into the early 1970's, although the significance of the latter declined after the 1960's. There is also good evidence of socials and other activities that involved Mashpee from many family lines and multiple generations throughout the period. Significant kinship ties provided by still high intra-group marriage rates also facilitated social relationships and interactions within the group during this time. In addition, the petition record contains evidence of concentrated residential patterns that show a significant part of the group still lived in an exclusive settlement in the town of Mashpee from 1930 to 1974. These residency patterns are good evidence of community.

Moreover, the petitioner provided sufficient evidence to demonstrate the exercise of political influence or authority from 1870 to 1965, using evidence described in 83.7(c)(2). This evidence shows Mashpee selectmen and public officials using the town government to regulate fisheries, including the catching of herring, shellfish, and trout obtained from streams and waterways and exerting influence on the behavior of the Mashpee on a consistent basis through their control of the police department. The Mashpee provided this leadership for a town in which they continued to make up the large majority of the year-round population up to 1965. Under 83.7(b)(2)(v), this political evidence is also sufficient evidence of community during that period.

In 1974, the Mashpee lost control of the town government to non-Indians. For the period since 1974, when the group has been governed by an incorporated council, the petitioner presented good evidence of social interactions and relationships connected to the Mashpee's land claim suit (1976-1983) that mobilized the support of a significant portion of the group. The petition record

also contains evidence of social distinction by non-members towards the Mashpee because of the land-claim suit and other controversial events that show distinct community.

For this period, the majority of group members have continued to reside in or near their historical territory of the town of Mashpee. In addition to geographic proximity around an area of exclusive settlement within the town of Mashpee, social relationships and informal social interactions within the community are facilitated by kinship patterns that include substantial rates of intra-group marriage among Mashpee members and a persistent and extensive network of extended family connections. Different family lines are well represented in various Mashpee events and activities, some of which are sponsored by the incorporated council. Group involvement is additionally expressed through a historically recognized political division within its membership of "traditionals" and "non-traditionals." The petitioner also provided significant evidence under 83.7(c) of political influence or authority since the middle 1970's that demonstrates interaction and social ties and thus provides additional evidence of community.

The petitioner presented sufficient evidence to demonstrate that it has comprised a distinct community since first sustained contact with non-Indians. Therefore, the petitioner meets the requirements of criterion 83.7(b).

Criterion 83.7(c) requires that

> **the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**
>
> **(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist, or existed, which:**
>
> **(i) Allocate group resources such as land, residence rights and the like on a consistent basis.**
>
> **(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;**

Introduction

To meet the regulations, a petitioner must be a distinct political body, able to exercise significant formal or informal influence over its members, who in turn influence the policies and actions of the leadership. It must be shown there is a political connection between the membership and the action being taken. Groups that lack a bilateral political relationship between members and leaders would not meet criterion 83.7(c). Such a lack would be evident if a small group of people carry out actions or legal agreements affecting the interests of the group without much political process going on or without the awareness or consent of those affected. The petitioner should demonstrate there exists now and has existed throughout its history a method of dealing with group problems and making group decisions. An analysis of the available evidence demonstrates the Mashpee petitioner maintained political influence over its members throughout its history as an autonomous Indian entity.

The Petitioner's Claims

In its 1990 petition narrative, the MWT asserted the following about its historical political authority:

> The political structure of the Mashpee tribe is complicated, but clearly it serves the interests of its members and exerts influence and authority over that membership. Its leaders operate within defined parameters, their behavior prescribed and proscribed by the willingness of the members to follow; no leader is immune to criticism and challenge, and no membership is more likely to voice

> its opposition. Underlying the tribe's political activities are the extended families which provide political articulation, permitting discussion without disintegration. Few tribes in the United States have survived as long and as well in the face of such unremitting opposition from the surrounding non-Indian community. Their very opposition is a demonstration of the tribe's existence. As they have for more than 300 years, the Mashpee continue to modify their political institutions to adjust to external pressures without sacrificing the distinctive features of their social and cultural ways. (MW Petition 1990.08.16 83.7(c), 166-167)

Evidence of Political Influence and Authority during the Contact, Colonial, and Revolutionary Periods, 1620's to 1788

During aboriginal times, the village constituted the basic political unit in Wampanoag territory in the Cape Cod region of Massachusetts. A sachem, or hereditary chief, supplied the leadership for these settlements. Before English settlers arrived in the1620's, Cape Cod had a few of these sachems controlling several villages joined in a loose confederacy under a chief sachem (Smith 1616.00.00, 192, Salwen 1978.00.00, 167). Normally, these chiefs made decisions in consultation with a handful of respected village elders. Their exercise of power was largely local, informal, and built on kinship, persuasion, and consensus.[91]

Diseases brought by English colonists early in the 17th century and war killed many of these leaders and the inhabitants of their communities. As their numbers dwindled, the Wampanoag in southeastern Massachusetts on Cape Cod, commonly called "South Sea Indians" by the English, lost land to the newcomers, although the area around the town of Mashpee remained a center of tribal activity. The settlers soon established praying towns to convert the Wampanoag in the region. In the 1660's, Richard Bourne, an English missionary, convinced two Wampanoag sachems in the Mashpee area, Wequish and Tookenchosen, to donate more than 25 square miles of tribal land as a praying town for the South Sea Indians. One year later the sachem of Plymouth confirmed this grant of land and provided additional contiguous land for the praying town (Quichatapet 1666.09.09; Plymouth Colony Records 1685.00.00). This praying town took shape well before the colonists eliminated the last vestiges of Wampanoag (along with Narragansett and Nipmuc) resistance in King Phillip's War in 1675, a conflict in which the Mashpee pledged and maintained neutrality (Colony Record 1675.10.04).[92]

As pastor of the Mashpee, Bourne was responsible for the religious needs of the largest Indian settlement in Massachusetts. He gradually succeeded in converting most of the Wampanoag inhabitants to Christianity. At the very beginning of his tenure, Bourne persuaded the colonial government, based on the "desire" of the Mashpee to form a new "orderly way" of government for the praying town (Colony Record 1665.02.07). The political apparatus consisted of a six-

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[91]For overviews of these issues see Cronon 1983.00.00, 59-60; Jennings 1975.00.00, 112-113; Mazer 1980.00.00, 29-32; Salwen 1978.00.00, 167-168; and Speck 1928.00.00, 31-32, 51-53.

[92]For overviews of these events see Mandell 1996.00.00, 19; Mazer 1980.00.00, 33-39; Simmons 1986.00.00, 18-19.

member council, composed of Mashpee who exercised a significant amount of political independence with Bourne's help and advice.

The colonial document establishing this form of government reads as follows:

> Whereas a motion was made to this Court by Richard Bourne in the behalf of those Indians under his instruction, as to their desire of living in some orderly way of government, for the better preventing and redressing of things amiss among them by meet and just means, this Court doth therefore, in testimony of their countenancing and encouraging to such a work, due approve of those Indians proposed, viz, Paupmunnacke, Keencomsett, Watanamatucke, and Nanquidnumacke, Kanoonus, and Mocrust, to have the chief inspection and management thereof, with the help and the advice of said Richard Bourne, as the matter may require; and that one of the aforesaid Indians be by the rest installed to act as constable among them, it being always provided, notwithstanding, that what homage accustomed legally due to any superior sachem be not hereby infringed. (Plymouth Colony Records. 1665.02.07; spelling modernized)

Several of the persons designated to be part of the council had appeared as approving signatories or as identified leaders on previous colonial documents, demonstrating that they already held positions of leadership among the Wampanoag of the area (Colony Record 1618.05.17, 1662.06.03; MA Gen. Court 1834.03.31, FAIR page 1). This gives indication of the support of existing leaders for the praying town.

After Bourne died in 1685, Simon Popmonit, a Mashpee, became pastor and remained in this important position of leadership for the next 40 years. Popmonit conducted services in Wampanoag, thereby helping to maintain the aboriginal language in the Mashpee's community. By 1690, Popmonit and four other Mashpee leaders under the oversight of a colonial justice of the peace controlled the praying town, although it is unclear how involved this official was in group affairs. The Mashpee also held collective title to the land on the praying town, which enabled them to remain geographically isolated and socially distinct from the surrounding populations.[93] In fact, to protect their lands from outsiders, Mashpee leaders engaged in several land disputes with surrounding towns in the early 18th century (see Province Laws 1710.06.07, 1717.00.00-1718.00.00, 1718.06.16, 1741.07.29).

In 1720, when Popmonit died, the Mashpee, by threatening a boycott, forced his non-Indian replacement, Joseph Bourne, to learn their language and preach in the native tongue. Another Mashpee minister, Solomon Briant, assumed the post in 1742 and held it until his death 33 years later.[94] In the 1720's, the colonial legislature installed a proprietary system in the settlement. Under this arrangement, the Mashpee (both men and women) elected local officers, held regular

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[93]For overviews of these events see Brodeur 1985.00.00, 14; Jennings 1975.00.00, 252-253; Kawashima 1986.00.00, 28-35; Ludtke 1974.00.00, 14-15; Mandell 1996.00.00, 3; Mazer 1980.00.00, 40-41.

[94]For overviews of these events see Mandell 1996.00.00, 19, 108-109; Mazer 1980.00.00, 33-39; Simmons 1986.00.00, 18-19.

town meetings, maintained the public records, and owned their land in common as proprietors.[95] They could sell land individually to other Mashpee or their descendants. No land could be sold or leased to outsiders without the consent of every other proprietor. The town of Mashpee also differed from the surrounding communities in that all its inhabitants lacked the right to vote for or send representatives to the colonial legislature. In 1746, the General Court of Massachusetts limited this self-government of the town by assigning three overseers to the settlement (Province Laws 1746.09.13). For the next 16 years, as contemporary documents show, the Mashpee proprietors, led by Solomon Briant, pressed for change of their government by regularly petitioning the colonial legislature (once in the aboriginal language) with "loud" and "pressing" complaints about the overseers and their actions, demanding but never obtaining redress (see, for example: Province Laws 1747.10.20; Suncosson 1753.09.08; Natompam to Mass. Gen. Court 1758.09.05; MA Gen. Court 1760.12.20; see also Mazer 1980.00.00, 41). Finally, in 1760, the Mashpee dispatched one of their own as an envoy to the king of England to appeal on its behalf (Province Laws 1763.05.25; Hawley 1792.04.05; see also, Address to Legislative Committee 1834.03.07, 10). The king responded by directing the colony to reform its policy. Bowing to this diplomatic pressure, the colony in 1763 made the town of Mashpee a self-governing "Indian district," with five elected overseers, three Mashpee members and two colonists (English Province Laws 1763.05.25). This form of government remained in place until after the American Revolution.[96]

Throughout the 18th century, the Mashpee had several members who took on significant political roles that enabled them to exert strong influence on other Mashpee either through governmental or religious authority. These leaders held important positions and regularly appeared on Mashpee petitions to the colonial legislature (Amos 1748.03.29; Suncosson 1753.09.08; Natompam to Mass. Gen. Court 1758.09.05). Many came from two prominent families, the Popmonit and the Wepquish. In 1698, a report by a colonial missionary organization identified Caleb Popmonit as one of four Mashpee leaders, and his son, Simon, as the minister (MA Historical Society 1698.00.00). Caleb's brother was a town magistrate. Isaac Popmonit, Simon's son, served as both the church deacon and the magistrate. Josiah Popmonit, another of Simon's children, was a longtime schoolmaster (Hawley 1770.12.31, 1771.01.22). The Wepquish family stayed at the center of Mashpee politics well into the 20th century.[97]

These activities provide evidence of political influence during the colonial period. In addition, the Mashpee petitioner provided evidence of community for this period, under paragraph 83.7(b)(2), through the residential patterns of the Mashpee, sufficient to demonstrate political authority at the same time.

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[95] As stated previously, legally the Mashpee remained proprietors until 1870 when the State incorporated the town of Mashpee and removed the restrictions on individual land sales.

[96] For overviews of these events see Freeman 1802.00.00, 9; Mandell 1996.00.00, 89-92, 138-139, 146-147, 156-158; Mazer 1980.00.00, 40-41).

[97] See also Speck 1928.00.00, 125-133.

Political Influence and Authority during the Overseer Era, 1788-1834

Between 1788 and 1834, the Mashpee displayed political influence by mounting a vigorous (and well-documented) defense of their right to self-government. The Mashpee had fared poorly during the American Revolution, when about half the adult male population died fighting for the colonial side. In 1788, Gideon Hawley, the town's non-Indian Congregationalist minister, petitioned the State government ostensibly to install overseers to supervise and ostensibly to protect the Mashpee from losing its land to outsiders. That same year, the State replied to Hawley's demand by appointing three guardians, one of whom was Hawley, to supervise the Mashpee's affairs (MA Gen. Court 1788.06.12). In addition, the legislature curtailed the Mashpee's control of their land, resources, and labor.[98] The Mashpee did not willingly accede to the new legislation, for one month after its passage, 31 of the Mashpee proprietors signed a petition protesting the State's actions (see Address to Legislative Committee 1834.03.07, 20-21).[99]

Due to the death of many Mashpee males during the Revolution, Mashpee women stepped into the void to provide informal political authority only to clash with Hawley.[100] These women resisted Hawley's attempts to prohibit the sale of alcohol or to regulate their sexual behavior. They also opened up schools for the instruction of group children and even forced some non-Mashpee spouses to adopt Indian lifestyles and living arrangements (Nicholas 2002.00.00, 179-185). Two of the Mashpee's "leading matriarchs," as historian Mark Nicholas described them, were Sarah Mie and Hannah Babcock. These two women proved to be a constant irritant to Hawley and his attempts to impose mainstream standards of behavior on the Mashpee. According to Nicholas, who studied Hawley's correspondence extensively, Babcock and Mie "complained in 1791 to local authorities of their unfair treatment under the overseers, specifically their inability to control their land and resources" (Nicholas 2002.00.00, 186). At another time, Mie accused Hawley of cutting firewood illegally for personal profit (Nicholas 2002.00.00, 187). Four years later, Hawley was still complaining of these women and disparaging them for visiting State officials about conditions in the town (Hawley 1795.09.02). These protests on the part of Mie and Babcock apparently had their effect, because in February 1796, the State legislature passed a law severely curtailing the cutting of timber by non-Mashpee on the settlement (MA Gen. Court 1796.02.22). Interestingly, when Hawley wrote to protest the activities of these two women, he also revealed political activity within the community. He explained, "These Indians are in parties. We have Whigs and Tories. In case our government is more popular than it now is the consequences will be bad. Our election and popular days will be anarchical in a very high degree" (Hawley 1795.09.02).

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[98]For overviews of these events see Brodeur 1985.00.00, 15; Mazer 1980.00.00, 41-43; Simmons 1986.00.00, 20-21; Weinstein 1986.00.00, 93-94)

[99]The names of these petitioners are unknown from the available evidence in the petition.

[100]Some of the dissatisfaction with Hawley and the other overseers is detailed in the Address to Legislative Committee 1834.03.07, 21-23).

For the next 40 years, the Mashpee struggled to regain political control of their town, as the documentary record abundantly shows. During this time, the guardians imposed a number of policies that provoked frequent protests from the Mashpee. Mostly, the overseers proved unable or unwilling to prevent squatters from settling on Mashpee lands or using up valuable resources, particularly timber. Following Hawley's death in 1807, the overseers replaced him with Phineas Fish, who alienated most of the Mashpee during his 33-year tenure as pastor. Disenchanted with Fish's ministry, the Mashpee eventually abandoned his church and began following "Blind Joe" Amos, a Native-American Baptist preacher. As frustration mounted, the Mashpee petitioned the State several times between 1807 and 1827 for a change in government (see, for example, MA Davis & Goodfish 1807.12.31; Gen. Court 1808.03.04, 1818.01.31; Child 1827.03.01 [HR No. 68] see also, Address to Legislative Committee 1834.03.07, 23-26 for a good overview of the 1818 petition).[101]

For the most part, the legislature either ignored the Mashpee's entreaties or passed only modest reforms regarding the overseers. In response to the 1827 petition, however, the State legislature detailed a committee to investigate the Mashpee. During their inspection, the committee uncovered records, "more than a century old," which showed the Mashpee "managing their municipal affairs" with the same skill as their non-Indian neighbors. It also discovered, because of the recent neglect and indifference of the overseers, that the Mashpee "had assumed the business of self-government," even to the extent of holding town meetings, electing public officials, and allowing women proprietors to vote (Child 1827.03.01 [HR No. 68], 9-10). This document provides evidence that the Mashpee continued to mobilize and communicate with their members on important political issues up to 1827.

Finally, in 1833, the Mashpee took direct action against the overseers. Assisted by William Apes,[102] a Pequot Indian and itinerant preacher, they asserted the right to self-rule in a petition signed by 102 Mashpee (Whitman 1833.05.21 [Senate No. 14], 6-7). Next, the Mashpee tried to oust Fish, seize the church, and prevent outsiders from removing timber from the town. State officials reacted by arresting Apes, who was later tried, convicted, and imprisoned for 30 days. The Mashpee "uprising" succeeded in attracting noticeable coverage in several Boston newspapers sympathetic to its cause. When the *Boston Daily Advocate* printed a petition to the legislature demanding self-government, the lawmakers felt compelled to resolve the matter (Amos 1834.01.00 [HR No. 11], 1-14). In response to the Mashpee, Massachusetts removed the overseers in 1834 and made the Mashpee settlement a self-governing "Indian district" with elected (by both sexes) officers, including three selectmen, a clerk, and constables (MA Gen. Court 1834.03.31).[103] These events demonstrate the Mashpee were able to mobilize many members for important purposes and that there was widespread communication and involvement in political processes during this period.

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[101]For overviews of these events see Mazer 1980. 00.00, 43-44; Simmons 1986.00.00, 21.

[102]The Mashpee clearly indicated that they and not Apes were the controlling force behind the revolt when they publicly announced in a Boston newspaper that "our dissatisfaction with the laws and the overseers was the same as it is now, long before Mr. Apes came among us, and he will have our confidence no longer than while we are satisfied he is right" (*Boston Daily Advocate* 1833, 1833.12.27).

[103]For overviews of these events Brodeur 1985.00.00, 16-18, Mazer 1980.00.00, 44-47; Simmons 1986.00.00, 22)

Evidence of Political Influence and Authority during the District Period, 1834-1870

As part of an Indian district, the Mashpee gained complete control, as State legislative documents attest, of political and economic affairs within the confines of the town's borders. District status gave the Mashpee full control over local government, justice, schools, roads, parish, welfare, and natural resources, but without the rights of full citizenship. State officials clearly recognized the high level of independence the Mashpee enjoyed in running the town. In 1842, the State legislature passed a law that divided much of the land held in common by the Mashpee into severalty. Each proprietor was guaranteed a minimum of 60 acres under this act (MA Gen. Court 1842.03.03; see also criterion 83.7(e) for more information on the 1842 Proprietors List generated in response to this law). Although the State created a commission of three individuals to supervise the allotment, the Mashpee selectmen had final authorization over the division of land (MA Gen. Court 1842.03.03, 259-263; Minutes 1842.00.00, 91).[104] Almost twenty years later, State documents reported 10, 171 acres held in severalty and 3,150 in common, including the parsonage and meadows and marshes. In 1849, a legislative report, which put the Mashpee on 13,000 acres of territory, described its efforts in managing the local economy, schools, and religious matters, and noted "the wonderful improvement" that had occurred in the district (Briggs Report 1849.02.21, 24-37, quote is from page 37). A report from 1855 pointed out that the members of this "interesting community" wished to improve both their parish meeting house and schoolhouses (Stewart 1855.03.27, 1-9). In 1859, John Milton Earle conducted a thorough State investigation of the district. He observed the Mashpee elected their public officials, who then supported the poor and sick, repaired the highways, and oversaw the school committee. Overall, Earle believed district status had proved "unquestionably" beneficial to the Mashpee, having allowed them "substantially, to manage their own affairs," which in turn fostered "self-respect" and "individual responsibility" (Earle Report 1861.03.00, 46-67; quote is from page 54). Similar evidence from this period detailing self-government on the Mashpee's part can be found in the other yearly reports by State officials and in the annual district minutes.[105]

District government status allowed the Mashpee to protect their common resources by regulating the activities of native proprietors, non-Indian spouses, and outsiders. District minutes showed that Mashpee leaders strictly regulated the use of common meadows and marshes, and the use of rivers, streams, and ponds, including determining when, where, and how much herring and trout could be taken both by proprietors and others. Only Mashpee proprietors cut wood on common land or fished without charge within certain catch limits, but they were still required to seek permits to do so. If proprietors exceeded their allowable share they were required to pay a fee. Non-residents or non-member spouses engaged in none of these activities without the group's charge, sanction, or regulation. The grazing of livestock on common lands was also closely regulated. The Mashpee, therefore, exercised substantial political autonomy when acting as stewards of communal property (see any of the Minutes from 1834.00.00-1869.00.00). The consistent allocation of resources is sufficient evidence (83.7(c)(2)(i)) in itself of political

[104]The governor appointed one commissioner and the Mashpee elected one of their own as the second. These two commissioners then appointed a third who could not be a Mashpee proprietor (MA Gen. Court 1842.03.03, 259).

[105]For an overview of these events see Plane and Button 1997.00.00, 180-181, 193-195.

influence for this time period. The district government status also allowed the Mashpee to exert strong influence (83.7(c)(2)(iii)) on the behavior of group members, because Mashpee served as constables.

Evidence of Political Influence and Authority, 1870-1928

In 1870, the State government ended the prohibition on individuals selling land in the town to non-Mashpee. As described in criterion 83.7(b), it did so despite considerable opposition voiced by prominent Mashpee before a public hearing of a State legislative committee in February 1869. The meeting was in response to two petitions from town residents in December 1868. In one petition, 56 residents, representing 54 households, opposed the removal of the ban. In the other, 31 residents, representing 24 households, requested an end to restrictions on land sales (Coombs 1868.12.01; see also Plane and Button 1997.00.00, 189-190). At this hearing a vote was taken on the issues of land sales and citizenship. Twenty six of the Mashpee attendees voted against and 14 for the decision to lift the land restriction (MA Gen. Court 1869.06.03 [HR No. 502], 1-34; Mazer 1980.00.00, 53-54). The Mashpee vote for citizenship was a tie at 18 to 18. Four months later the legislature granted citizenship and, despite the negative vote, removed the restriction on land sales.

Mashpee spiritual leader and Baptist preacher, Blind Joe Amos," his family, and followers, including prominent Mashpee William Simons and Nathan S. Pocknett, supplied the main resistance to the State's efforts to incorporate the town and end the land sale prohibition. These people mainly constituted the "traditionalists" among the Mashpee. Backers of the government's proposals were largely the "non-traditionalists" in the group like businessman Simon Attaquin. Some were Mashpee with African-American spouses. These spouses resented the laws that prevented them from purchasing land in the district (Plane and Button 1997, 188-196; Clifford 1988, 307-308; see also Mazer 1980, 53-54). These events demonstrate the Mashpee had significant internal conflicts over valued collective land and important decisions regarding its political future. Yet, these conflicts were resolved in a satisfactory manner that enabled them to function effectively within the town governmental structure for the next 100 years (Mazer 1980.00.00, 58).[106]

The Mashpee continued to dominate town politics for the next 60 years and beyond by virtue of its superior numbers. Most non-Mashpee landowners were only part-time or summer residents, wealthy but few in number compared to the Mashpee. The non-Mashpee paid the bulk of property taxes but could not vote or hold office. This revenue generated a stable stream of income for the Mashpee, who remained largely exempt from taxation through their own design. As the voting majority, the Mashpee easily monopolized the town's elected and appointed positions, from which they governed on their own behalf, allowing the town of Mashpee to maintain its reputation as an Indian town for almost a century. For example, of the 39

[106]Just twenty years after the town's incorporation, one observer commented on the Mashpee's governance as follows: "Notwithstanding the long years of surveillance and oppression by the Commonwealth rendering the Mashpees distrustful of their own capacity for self-government, the affairs of the town are now as wisely administered and its books as well kept and arranged, as those in adjoining" (Deyo 1890.00.00, 710).

individuals who served as selectmen from 1870 to 1968, 33 (85 percent) were Mashpee; 3 were non-Indian spouses of Mashpee; and 3 were non-Mashpee with no relation to the group (Appendix A).[107] Of the 36 individuals who served in the important elected positions of town clerk, treasurer, and tax collector during this period, 32 (88 percent) were Mashpee.[108] Through these positions, the Mashpee ran the schools, assessed the taxes, supported poor members, and paved roads. In addition, the Mashpee operated the library, directed recreation programs, and so on. It also appointed public officials, most of whom were Mashpee.[109]

The Mashpee also continued to regulate access to and use of common resources by regulating fishing and hunting, harvesting trees, and maintaining streams, rivers, and harbors (see any of the Minutes 1870.00.00-1880.00.00; see also Mashpee Town Reports 1893-1930). For example, the selectmen passed rules and appointed officials to regulate who, how, and when herring, pickerel, eel, shell fish, trout, and minnows, and other fish could be caught in local streams, ponds, marshes, and bays. It must be remembered that until the 1960's the town of Mashpee remained largely undeveloped and was populated almost entirely by Mashpee except during the summer months. This enabled the Mashpee to use these natural resources as they pleased. Evidence also shows that Mashpee who lived outside the town, generally in adjacent towns, used these resources in a similar manner. The Mashpee also controlled group behavior through the constables and the police department (Minutes 1870.00.00-1880.00.00; see also Mashpee Town Reports 1893-1930). This is sufficient evidence in itself of political influence for this time period.

Kinship ties were at the heart of this political system. Many selectmen and public officials came from leading families, closely linked by a high rate of intra-group marriage and residential proximity (see criterion 83.7(b)). From 1870 to 1900, the Amos, Attaquin, and Coombs families held sway over town politics. In the early 20th century, the Amos family, mostly Republicans, controlled several elected and appointed posts. Their patriarch was Edmund B. Amos, who served as fire warden, treasurer, and selectman (Mazer 1980.00.00, 79).

Examples of the Mashpee's control of town politics can be found by examining any annual report from 1893 to the 1928, most of which are in the petition documentation. The 1901 report, for example, listed about 60 elected and appointed government offices. Mashpee or their spouses dominated almost all the positions.[110] Major elected officials included the selectmen, town clerk, treasurer, and tax collector. Mashpee served on the school committee, cemetery committee, and the committee for stocking ponds. They held positions as overseers of the poor, library trustees, or as constables. Some acted as tree, herring, or harbor and fish wardens, while others were field

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[107]The latter three were Oscar Chase (1915-1916); Leo Sweeney (1964-1968); and Kevin O'Connell (1968).

[108]The four who were not members were Seth Collins (1877, 1880); Virgil Collins (1893-1895); Oscar Chase (1917-1918); and Ann West (1966-1968). None of these were married to a Mashpee.

[109]For overviews of these events see Clifford 1988.00.00, 307-308; Mazer 1980.00.00, 64-72; Simmons 1986.00.00, 22; Zimmerman 1938.00.00, 168-173).

[110]The family names included Peters, Mingo, Hammond, Amos, Coombs, Degrass, Avant, Mills, Pells, Oakley, Hendricks, Pocknett, and Tobey.

drivers and pound keepers. Town officials appropriated money through taxes and fees, largely from non-Mashpee absentee landowners or seasonal residents, for schools, roads and bridges, snow removal, the church cemetery (along with a hearse and horse), public welfare, and the public library (see also Mazer 1980.00.00, 71-2). They assessed real estate and personal estates, including horses, cows, sheep and swine, and even imposed a poll tax (Mashpee Town Report 1901.02.07). By running the town government in this manner, the Mashpee impacted almost every aspect of life in this community composed largely of its own members. The Mashpee also provided evidence of community under 83.7(b)(2) during this time to provide sufficient evidence of political influence.

Evidence of Political Influence and Authority, 1928-1974

In 1928, a more traditional-style "tribal" council structure publicly emerged among the Mashpee, although there is evidence it originated in the early 1920's (*Cape Cod Magazine* 1923.10.00). In that year, the "Wampanoag" groups on Cape Cod formed the "Wampanoag Nation," and held their first annual powwow. They elected Reverend Leroy Perry (Yellow Feather) of Gay Head "supreme sachem" and Eben Queppish (Red Jacket) of Mashpee "supreme medicine man." The Mashpee also organized a separate functioning council and held separate elections. Lorenzo T. Hammond (Little Bear) became "chief," William James (High Eagle) "medicine man," and Clinton Haynes (Wild Horse) secretary. Generally, this council dealt with social, cultural, and ceremonial "Indian" issues outside the purview of the town government. This newly-formed council and the town government leaders often appeared together during public events but there often seemed to be an overlap between the two forms of leadership. Town selectmen participated in Indian activities and council leaders frequently held their meetings in the town hall. Indian-style ceremonial activities were part of town meetings. The annual town meeting in March, for example, coincided with the "tribal" homecoming, in which group families living elsewhere returned to renew acquaintances. "Tribal" leaders and town politicians often wore Native American dress to the meeting, which was followed by a community meal at the town hall or Indian Baptist Church. Wearing of regalia and community meals remained a part of Mashpee town meetings until the late 1960's (Mazer 1980.00.00. 93-95, 103-104; *Cape Cod Magazine* 1923.10.00).

This close public affiliation between council and town government could be seen during challenges to the leadership in the early 1930's. In 1933, Clinton Haynes challenged the composition of the council leadership, claiming that he, rather than Hammond, was the head. In August 1933, Haynes went so far as to hold an elaborate ceremony with native dances and regalia to install himself and others as the "real" leadership (*New Bedford Times* 1933.08.20; see also Mazer 1980.00.00, 93-94). In May 1936, after Haynes bestowed an unauthorized honorary membership on Massachusetts Governor Curley, Mashpee leaders in the council issued a resolution *during the annual town meeting in the town hall* denouncing his actions (*Cape Cod Times* 1936.05.13). Despite this public rebuke, Haynes continued to claim leadership of the Mashpee into the 1950's.

During the Great Depression, the Peters family also challenged the Republican Amos family for command of the town government. Led by Stephen Peters, a Democrat, these political

newcomers took over the town government and began using New Deal programs to help the Mashpee through hard times. Not surprisingly, they gained many supporters among the poorer elements of the Mashpee and soon changed the once Republican town into a Democrat stronghold (Mazer 1980.00.00, 78-86). Peters blended a personal touch, visiting with as many Mashpee as possible, with considerable political skills, and held power in the town until the 1950's. His daughter, Amelia Bingham, described his relations with other Mashpee in this way:

> The people in the area used to call my father doctor, lawyer or an Indian chief, because no matter what their problem was, he took care of them. If they were sick, he would get a doctor for them, if they couldn't get one themselves; if one of them had to go to jail for something, he got them out. And but he never wore Indian regalia. He always, well, he was like the PR person. He was fed up, you know, with plans for appearance and things like that. We attended a lot of political functions because he was one of the few Democrats on Cape Cod. Cape Cod was Republican other than Mashpee. (Bingham 2000.08.07, 3).

And,

> My father always visited all the elderly. And I would go with him when he, you know, visited the different ones, if they were sick or if they wanted—if they needed something, you know, he was going to see about them. And they would sit and talk about, you know, the old days for them, which was very interesting to me. (Bingham 2000.08.07, 4)

The advent of the council and the ascendancy of Steven Peters in the town government provide evidence of internal conflicts over important goals and policies among the Mashpee during the 1930's and demonstrate political influence. These events also show the group's ability to handle exigencies by adopting different forms of politics, whether they came in the form of a "traditional" council or "New Deal" welfare programs sponsored by the town government.

The Mashpee also practiced an unusual brand of kinship based politics that was distinguished from and recognized by outsiders in the surrounding population. Indeed, behind the party labels and public events, there may have been a layer of family-based political activity. In the 1930's, Carle Zimmerman, a Harvard sociologist, conducted a study of the town of Mashpee, or "Littleville," as he called it, in which he described the inner workings of the town's and the Mashpee's "tribal" government. "The government," Zimmerman stated, "which is merely the white man's name for what the Littles [the Mashpee group] have always thought of as their tribal council, is a living vigorous organization" (Zimmerman 1938.00.00, 178). Zimmerman's comments suggest, and OFA researchers believe, that the Mashpee actually though of the town government as a type of "tribal" council.

According to Zimmerman, who was given access to private, informal meetings of the town government, the Mashpee conducted an unofficial, kinship brand of politics in these meetings where important discussion of town policies occurred. The annual town meeting functioned, he claimed, as the forum where the Mashpee announced their decisions, reached by consensus (Zimmerman 1938.00.00, 177-186). In fact, Professor Zimmerman uncovered a strong

connection between family groups and politics in the town based on family ties and group ancestry that sought to preserve "community solidarity" and economic security. The town's families, unlike others in the region, were "marked by their size, their cohesiveness, and their use of the community as an integral element in family economy." These extended families were linked by marriage to form a "number of semi-clans." Zimmerman estimated that these clans "possessed 61 percent of the voting power" in these meetings in 1934, and were "so interlocked that a dozen of the elders who composed them "dominated the whole group" (Zimmerman 1938.00.00, 175-178).

Other observers, lacking the intimate access granted Zimmerman during his research, also noticed peculiarities about this rural, isolated town's way of doing town business. As early as 1923, one newspaper quoted Nelson D. Simons, the "tribal" leader at the time, as saying that "matters" came up that were "settled" in the "tribal council, apart from the town meeting"(*Cape Cod Magazine* 1923.00.00). In March 1932, the *Boston Post* reported on the Mashpee's efforts to extricate itself from some financial problems, mainly caused by the inability or refusal to tax its members properly. An advisory committee, appointed by the State legislature to investigate these difficulties, was conducting public interviews of town members. Reviewing the testimony of Lorenzo Hammond, a "tribal" leader, the reporter explained

> [T]hings were a little different in Mashpee than they were in some of the other communities in the State, because of the strong inter-family relationship. And this was so strong, he stated, that the person in authority did not say to their subordinates, "this is your duty" and that they were apt to overlook cases of laxity and other acts which might be classified as crimes. (*Boston Post* 1932.03.17)

Another reporter, present at the same hearings, blamed the town of Mashpee's money woes on its "long course of queer government." He described the town's political history and machinery as "unlike that of any other Cape town. In fact, unlike any other town in this Commonwealth" (*New Bedford Sunday Standard* 1932.03.20).

Zimmerman was not the last scholar investigating the Mashpee to note this conjunction between kinship ties and politics. Thirty-six years later, anthropologist Jean Ludtke also found the "many interlocking familial strands" of the Mashpee remarkable. She discovered that 15 to 20 families, leading elements of the community's social and political institutions, still made up most of the Mashpee's population as they had for more than three centuries (Ludtke 1974.00.00, 52-56).

Kinship and politics also apparently exerted an influence on Mashpee living outside of the town of Mashpee. In his study, Zimmerman discovered a high rate of "inward" migration, among the Mashpee. These members frequently left in search of better jobs or schooling only to return later to obtain "community aid" within the "family-based" economy of the Mashpee. For Zimmerman, this high rate of return migration was "equaled in few regions of United States" (Zimmerman 1938.00.00, 176).

Four decades later, Rona Sue Mazer, an anthropologist studying the Mashpee, revealed that many returning members later held positions of influence in the "tribal" council and town government.

In the 1920's, for example, Eben Queppish and Nelson Simons, both return migrants, were leaders in the "tribal" council. Stephen Peters, founder of the town's Democratic Party in the 1930's, after being raised and attending school in the town had lived in Boston well into his late twenties before coming back. In the 1950's, Earl Mills became the council leader following military service in World War II, and remained in "tribal" politics into the 1990's. Russell M. Peters Sr., a founder of the incorporated council in 1974, returned to the town after serving in the Army and working several years for the Honeywell Corporation. Peters was one of the leaders in the Mashpee's land claim suit in the 1970's and their later pursuit for Federal recognition (Mazer 1980.00.00, 84-89, 118-121, 164-167; see also Brodeur 1985, 26-28).[111] These kinship ties, described by Zimmerman and others, clearly facilitated the Mashpee's ability to influence members and enabled widespread knowledge, communication, and involvement in political processes, both formal and informal throughout this period.

The insularity that marked the Mashpee diminished after World War II. The summer population continued to grow and developers built more homes along the seashore to accommodate it. Cape Cod Air Force Base began operations in the 1950's, and it attracted a small but growing number of permanent residents. To meet the base's needs, the State built new roads making the area more accessible to non-Mashpee. Better transportation meant more industry and employment for the area, and the Cape Cod region and resort areas like the town of Mashpee became a magnet for real estate development. From 1950 to 1975, the town's population began to increase with non-Mashpee newcomers as described in criterion 83.7(b). During the same time, the group population grew relatively slowly. Yet the Mashpee, concentrated and socially isolated in a small area of the community remained in control of the town government as the recent arrivals showed little interest at first in participating in local politics (Ludtke 1974.00.00, 29-35; Mazer 1980.00.00, 97-105).

During the postwar transition, the Mashpee still exercised political control through both the town government and the informal "tribal" council. One important post-war leader of the Mashpee was Mabel Avant, known as "Miss Mabel." She helped to re-establish the powwow in 1946 after it in went into a brief hiatus during the war, served as town clerk from 1950 to 1957, and proved instrumental in 1954 in preventing the Old Indian Meeting House from being taken over by the town. At the time, the meeting house was once again badly in need of repairs. Fund-raising efforts by the Parish Committee to restore it were stalled and one Mashpee was trying to have the Board of Selectmen take control of the meeting house. These efforts were led by Clinton M. Haynes, self-proclaimed "Chief Wild Horse." Haynes was opposed by Avant, who soon organized an efficient fund-raising organization with the help of Mashpee council leader Earl Mills ("Flying Eagle") (*Boston Globe* 1954.00.00; see also Peters 2000.04.18, 3). What is important to remember is that all three of the political entities battling over the building, the town government, the council, and the Parish Committee, were controlled by the Mashpee. This internal conflict over the meeting house showed controversy over valued group goals and

[111]This desire to return to the town continues to this day. In July 2005, the head of the Mashpee's housing program stated in her monthly report: "I have had many calls from both young and elders from the tribe who desperately want to move back to Mashpee, so I have been doing a lot of housing search [*sic*]. When tribal members are coming from out of state, they don't realize how much housing costs" (Wampanoag Housing Program Report July 2005).

property (see criterion 83.7(b) for more information on the fund-raising for the meeting house in the 1950's).

In 1956, Avant persuaded the Mashpee, through a consensus vote of the leading families, to elect Earl Mills as "chief" of the council (Mills 2000.07.19, 21; Peters 2000.04.18, 3). Mills, part of a new generation of leadership, strove to "revitalize" the Mashpee following the disruption of the war. Mashpee at the time viewed him as a traditionalist and with a great deal of respect. As Mashpee David Pocknett stated,

> When I was a kid Earl Mills was the chief of the tribe and kept everything going and was not afraid to say that he was a Wamp or whatever else and not because he is my father in law now. I look back and see the two most respected people that I knew was Lorenzo [Jeffers?] and Earl because they kept hope alive. (Pocknett 2000.07.05, 2-3)[112]

As one of his first acts, Mills, along with other Mashpee leaders, "formalized" the council organization. It now included a "chief," a "medicine man," a secretary, a treasurer, and a historian.[113] Meeting once a month in the town hall or the Baptist church, the council, as described in some minutes from that time, focused on organizing the powwow, raising money, and holding arts and crafts workshops. The family ties that existed among the Mashpee members on the council, town government, and parish remained strong. Selectmen, public officials and council leaders, almost all of whom were Mashpee, cooperated in a wide range of activities (MW Minutes 1956.12.10; MW Minutes 1958.10.13; Mazer 1980.00.00, 117-126).

During the late 1950's, "Chief" Mills, by now backed by Mashpee town officials and council members, expended great effort to finish restoring the meeting house. To attract donors, Mills and other Mashpee leaders formed the Mashpee Old Indian Meeting House Authority, composed of members of the council and the Parish Committee. The Mashpee finished the restoration in 1969, after raising $50,000 from members and civic and business organizations (Ludtke 1974.00.00, 44; Mazer 1980.00.00, 123-125; see criterion 83.7(b) for additional information on this fund raising effort.).

That same year, Amelia (Peters) Bingham, wife of the police chief and daughter of the late Steven Peters, became the prime mover behind the town's centennial celebration, which highlighted the community's Indian heritage. Her efforts elicited the support of members and the non-native residents of the town, and eventually led to a fund-raising campaign to build a "Wampanoag Indian" museum. Over the next five years, Bingham, a return migrant like her father, collected more than $50,000 in Federal grants and direct solicitations for the "Wampanoag Indian Museum," which opened its doors in 1973 (Ludtke 1974.00.00, 42-43). Both the restoration of the meetinghouse and the creation of the museum showed the Mashpee's

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[113]In 1956, Mills was "chief"; John Peters, son of Steven Peters, was "medicine man"; Shirley Mills, Earl Mill's wife was secretary; Louis Webquish, "Supreme Medicine Man of the Wampanoag Nation," was treasurer; and Mabel Avant was historian. In the 1950's, Leroy Perry, "Supreme Sachem of the Wampanoag Nation," often attended meetings of the Mashpee group as did his successor Lorenzo Jeffers in the 1960's (Mazer 1980.00.00. 120-121).

ability to mobilize resources and members even outside the framework of the town government, which they too controlled.

The control of the town government the Mashpee practiced between the 1920's and 1974 demonstrates they maintained political influence and authority over members during this period. For example, the 1954 Annual Report for the town of Mashpee listed about 100 elected and appointed government positions. The Mashpee dominated almost all the positions.[114] The elected officials controlled or appeared on the boards of selectmen, health, public welfare, and tax assessment and the school committee. Mashpee served as the town treasurer, welfare investigator, recreation commissioner, harbormaster, and the herring warden. They also acted in appointed positions as inspector of slaughtering, town hall janitor, police chief, shellfish warden, fire chief, forest fire warden, civil defense director, and shell fish constable. There were 19 group members in the fire department out of 20 positions (Mashpee Town Report 1954.12.31). Similar examples of the Mashpee's control of town politics can be seen by selecting almost any annual report from 1928 to the 1974, most of which are part of the petition documentation. By using the town government in this fashion, the Mashpee impacted almost every aspect of life in this largely still rural community composed largely of its own members. Through the town government, the Mashpee also allocated group resources during that period in which they were the large majority of the year-round population (up to 1965) by regulating the catching of shellfish and herring from waterways and controlled group behavior through the police department, which would be sufficient evidence in itself of political influence from 1870 to 1965. It is also sufficient evidence of community for this period.

Relatively isolated, the Mashpee had used the local government to maintain political authority. In addition, they influenced members living outside of the town of Mashpee because of the high degree of return migration. Mashpee who left the town to pursue schooling or employment opportunities usually returned, often after long absences, to take advantage of the economy and resources that existed in the town of Mashpee. Frequently, these returnees went on to achieve positions of influence on the Board of Selectmen or the council.

Evidence of Political Influence and Authority during the Incorporated Council Period, 1974-Present

Structural Organization and Historical Overview of the Mashpee Group Political System, 1974-Present

In the late 1960's and early 1970's, the Mashpee began to lose control of the town government as increased development brought even more non-Mashpee to the town of Mashpee. Unlike the earlier newcomers of the postwar era, these recent arrivals were year-round residents willing to get involved in local politics. The changing demographics of the town were quickly reflected in the polling booth as more of these latecomers registered to vote and cast their ballots. In 1968, the Mashpee became a minority on the town's Board of Selectmen for the first time. The group

[114]Family names like Mills, Avant, Webquish, Hicks, Coombs, Peters, Pocknett, Oakley, and Hendricks appeared repeatedly.

regained control of the Board in 1972, only to surrender it again two years later. The loss of political control meant the group now lacked the means to dispense patronage or control the natural resources of the town of Mashpee. When their new neighbors purchased most of the prime real estate along the largely undeveloped shoreline and streams, blocking access to longtime hunting and fishing areas, the group was powerless to act (Brodeur 1985, 36-39; Mazer 1980.00.00, 111-117).

The loss of control over town functions does not demonstrate in itself that the petitioner did not continue to have political authority and influence, only that this must be demonstrated by using other forms of evidence. As the evidence below shows, the Mashpee did adopt new forms of political influence.

During this time of transition, the Mashpee cooperated with the town of Mashpee on several projects that benefited the group. In 1970, the Mashpee played a key role in the town's centennial festivities, which celebrated the "American Indian" heritage of the community, with the approval of non-Indian residents. A few years later the Mashpee, led by Amelia Bingham, was instrumental in building a "Wampanoag Indian" museum for the town, again with the support of non-members in the town. In 1975, the town sold 55 acres to the group for $500. Voters at the town meeting, representing both the Mashpee and non-members, approved the sale by a vote of 283-0. The following year, the town also approved a Mashpee proposal for an aqua-farm to harvest shellfish. So between 1968 and 1976, the town recognized and maintained a relationship with the Mashpee (Mazer 1980.00.00, 154-159, 175-176). These events show the group's continued ability to mobilize resources and members and to deal with outsiders on matters of consequence even during a time of difficult political transition.

The spirit of cooperation between the town and the Mashpee soon ceased as tensions between them mounted over several issues. Having lost political control of the town government, the Mashpee sought a new way to defend its interests. The solution it chose was to incorporate the existing "tribal" council. Part of the impetus for doing so came from member Amelia Bingham, who recognized the growing difficulty of obtaining and maintaining Federal grants for the museum at a time when the group was losing power in the town government (Austin 2000.09.30, 101-102; Bingham 2000.08.07, 17-22). On February 25, 1974, the "Mashpee Wampanoag Tribal Council" was formally chartered by the State of Massachusetts. Two years later, Governor Michael Dukakis signed an executive order recognizing the incorporated council as the Mashpee's governing body and authorizing State agencies to do business with it (Dukakis 1976.07.08). The council's first president was Russell Peters (Mazer 1980.00.00, 165-166; Weinstein 1986.00.00, 102).

According to the petitioner, the incorporation of the council created a multi-level political structure. The "traditional" system remained intact as represented by the "chief" (or "sachem") and "medicine man." These two men handled cultural and social matters and functioned as ceremonial leaders for outsiders. Their leadership derived from their experience and ability to reach consensus among members. At first, both the "chief" and the "medicine man" were appointed by the "Supreme Sachem of the Wampanoag Nation," upon request from Mashpee members (MW Petition 1990.08.16 83.7(c), 162-164). Since the 1980's, the "chief" and

"medicine man" have been elected by consensus vote among Mashpee elders whenever the positions have become vacant due to resignation, dismissal, or death. In a 2000 interview, "Chief" Vernon Lopez described the process of how he became "sachem" in 1999 following the death of "Chief" Vernon Pocknett. According to Lopez, the voting occurred at a meeting of 50 Mashpee "elders" (Lopez and Lopez 2000.04.18, 63; MW Newsletter 1999.00.00 [No. 2]). Apparently, Mr. Lopez did not want to become the "chief," as the other candidates did, but he became the ultimate choice. During the "ceremony," the elders formed a "sacred circle," in which all who wanted Lopez to be "chief" lined up behind him to announce their desires (Lopez and Lopez 2000.04.18, 64-65). Although the "elders" lined up behind several candidates at first, eventually all or almost all of the voters gathered behind a consensus candidate (Lopez and Lopez 2000.04.18, 68). The event was followed by a social which lasted all day and drew 100 to 150 Mashpee (Lopez and Lopez 2000.04.18, 65-67).[115]

While the "chief's" position lacks the legal authority of the president of the incorporated council, it appears to command respect and influence from the group. In 1994, for instance, when "traditionalists," particularly some women members, among the Mashpee felt that longtime "chief," Earl Mills, was insufficiently involved in the community, the incorporated council, backed by a large portion of the membership, asked him to step aside (MW Minutes 1993.08.08). The Mashpee then elected Vernon Pocknett as Mill's replacement. Pocknett remained "chief" until his death in 1999. During his tenure, he worked closely with Council President Russell Peters, and acted as mentor to Peter's successor, Glenn Marshall, another return migrant who assumed leadership in the group (Marshall 2000.04.21, 2-9). The "chief" also retains a permanent voting seat on the Board of Directors (see below) as does the "medicine man" (MW 2000 Supplement [Further Response], 60-62 and 84-85).

The second level of government is the Board of Directors or the incorporated council. The Board deals with the external matters of the group. It is an elected body with a president, vice president, secretary, historian, and seven other members, including the "chief" and the "medicine man." The Board of Directors meets frequently in executive session, but the second Sunday meeting of the month is open to the general membership. This meeting, based on an analysis of meeting minutes from the 1970's to the present, attracts anywhere from 20 to 64 attendees. The Board establishes policies, raises money, manages business projects, applies for grants, oversees the powwow, holds elections, operates the parish house, supervises Mashpee employees, and controls group real estate and land. The Board also represents the group in dealings with local authorities and the Federal government. During the 1970's, the Board began publishing a newspaper, created an aqua-farming project, opened a craft store, pursued grants for employment training and education, established scholarships, acquired additional land (55 acres), and leased the parsonage as "tribal" offices (Mazer 1980.00.00, 163-164, 170-178; Weinstein 1986.00.00, 102; MW OD Response 1996.01.23 [Criterion C], 14-20, 23-25, 35-38).

The council's incorporation appears to have broadened political participation within the group. In the 1980's, two women, Hannah M. Everett and Joan Avant Tavares, served as president, and women hold numerous other positions in the group (*Falmouth Enterprise* 1980.11.21; Mann

[115]Other candidates who received support in 1999 included Ramona Peters, Glenn Marshall, and Leonard Pocknett (Austin 2000.09.30, (110-111).

1986.02.00, 84-88; MW OD Response 1996.01.23 [Criterion C], 16-18). The political role of women, both formal and informal, and election turnout is discussed more fully in a following section.

In 1996, the petitioner provided an analysis of kin relations among the members who had served on the Board of Directors from 1975 to 1995. According to the petitioner there were about 13 major family lines represented on the Board during that period. All told, 69 members, mainly from these various families served in one or more of the 8 different positions. In 1995, 60 of these individuals were still represented on the membership list, making up about 7 percent of the adult Mashpee population. An analysis of these statistics by the Department indicates that extended families and kinship ties still play an important role in the political affairs of the group (MW OD Response 1996.01.23 [Criterion C], 14-22). The significant level of group participation also demonstrates that there is widespread knowledge, communication and involvement in political processes by most of the members.

The next level of the political structure, according to the petitioner, is the parish. There is little evidence in the petition, however, of the parish committee's influence on the group since 1974, although it is now part of the incorporated council.

Founded in the 1920's, the "Wampanoag Nation," according to the petitioner, constituted the final layer of government. The Nation is a federation of Wampanoag groups in Massachusetts. The various groups elect the Supreme Sachem and Supreme Medicine Man of the Nation, who, together with local "tribal" leaders, act as advisors to promote the political interests of all the "Wampanoag" (Mazer 1980.00.00, 169-170; Weinstein 1986.00.00, 100-101). In the 1975 election for Supreme Sachem, the total Mashpee vote was 175 out of 214 votes cast in what appears to have been a very close and hotly disputed contest between four candidates, three of whom were Mashpee (*Falmouth Enterprise* 1975.05.06). After 1987, however, the "Wampanoag Nation" declined in importance when the Gay Head Indians won Federal acknowledgment and withdrew from the selection process. Since then, the petitioner has been the only group participating in the "Wampanoag Nation," and the evidence does not indicate how much of a role the organization, other than a purely ceremonial one, plays in Mashpee politics (Petitioner 2000, 60).

In August 1976, the incorporated council initiated a Federal land claim suit against the town of Mashpee and several developers (*Mashpee Tribe v. New Seabury, et al.* 1977-1978). The landmark suit, which lasted more than three years, garnered national attention and eventually ended in defeat for the group. The group pursued the suit, according to its statements, the observation of knowledgeable observers, and member interviews to regain control of its land, and prevent further development of open areas within the town of Mashpee. By legally reclaiming its land base, the group also hoped to recapture the political power it had lost. As events unfolded, the case exposed a fundamental dichotomy between the group and the town regarding the ownership of community land and the town's future. The Mashpee, particularly the "traditionalist" members (Peters 2000.05.09, 47-50), wished to preserve the land for common use, and allow for open access to seashore, streams, fields, and wooded areas. This desire to conserve the land within the town of Mashpee has been described by several scholars as one of

the historical unifying elements in Mashpee life (see, for example, Carillo 1998.00.00, 44-45; Clifford 1988.00.00, 287-288; Ludtke 1974.00.00, 71-72).

Local developers, on the other hand, viewed the land as a marketable resource for private profit and investment. Many other non-Indian residents wanted to protect their property rights, which the suit endangered. In the end, the suit, a form of direct political action, drove a wedge between the town and the Mashpee, engendered a well-documented "anti-Indian backlash," as described in detail in criterion 83.7(b), and, as a result, further segregated the group from the surrounding populations (see, for example, Brodeur 1985.00.00, 38-39; Mazer 1980.00.00, 179-271, 336-364; Simmons 1986.00.00, 23). The land claim suit also shows the political leadership of group was able to mobilize members for an important objective, and that a majority of the members know of and supported that effort as described in criterion 83.7(b).

The incorporated council spearheaded several other high-profile campaigns in the 1980's and 1990's. Early in 1980's, the council supported but declined to be a plaintiff in a second unsuccessful land suit brought by members of several other Wampanoag groups, including 350 members of the Mashpee, against seven towns on Cape Cod. Despite the incorporated council's approval, the case provoked some dissent among the Board of Directors and other members doubtful of its efficacy (*Cape Cod Times* 1981.12.29). This case shows that the Mashpee were able to mobilize members for an important goal despite internal conflict within the group regarding the policy.

The incorporated council was also an advocate of aboriginal shell fishing rights for the group. Its controversial insistence that Mashpee had the aboriginal right to hunt and fish freely within Massachusetts generated ongoing conflict and difficult negotiations with State and local authorities. It also led to extensive fund raising by the Mashpee, describe in criterion 83.7(b), to cover the cost of legal challenges to these rights, all of which the Mashpee have litigated successfully (as describe below). Sometimes the defense of such rights led the group to take direct action. In the summer of 2000, for example, some Mashpee noticed that some non-Indians were fishing for herring after the season had ended and quickly informed the president of the incorporated council of the violations. He reacted by barring access to the parking lot on the property of the Old Indian Museum that fishermen used to gain access to the herring run. The president then interceded with the town officials and compelled them to stop the violations despite meeting with resistance (*Mashpee Enterprise* 2000.06.23d; see also Austin 2000.09.30, 42-43). The group's defense of fishing and hunting right also shows its ability to mobilize members for a cause deemed important by a significant number of members. It also shows the facility with which members expressed their political needs to leaders.

In addition, the incorporated council resisted efforts by the town of Mashpee to tax "tribal" property, open the "Old Indian Burial Ground" to general use, and build a high school on land bordering the "Old Indian Meeting House." Many of these conflicts played out in town meetings, with vigorous debate between Mashpee and non-Indians and wide reportage in local newspapers. In one case, a "series of statements" from "numerous Wampanoag Indians" at a town meeting convinced the town selectmen to open a dialogue on hunting and fishing rights and other issues with the group (*Falmouth Enterprise* 1992.05.19).

The incorporated council, due to pressure from the "traditionalist" faction in the membership, provided some of the Mashpee response to the police shooting and death of member David Hendricks, as described in criterion 83.7(b). Starting in 1989, and for many years after, the council organized a protest march on the incident's anniversary. The march drew more than 500 people in 1993. The incorporated council called upon town officials to fire the officer involved in the shooting. Through peaceful civic action, often played out in town hall meetings, the group eventually persuaded the town to dismiss the police officer (*Cape Cod Times* 1992.08.21; *Cape Cod Times* 1993.05.03).

In October 1995, the incorporated council negotiated a 99-year lease with the town for the Mashpee to operate the "Wampanoag Indian Museum," after a number of the members persuaded voters to support unanimously the transfer at a town hall meeting. The group soon initiated a fund-raising campaign, which collected more than $100,000 in the first four years, for a museum restoration project (*Mashpee Enterprise* 1995.10.05; MW Newsletter 1999.00.00 [No. 1]).

Also in the 1990's, the incorporated council pushed forward in its efforts to seek Federal acknowledgment, which included negotiations with the town government. In 1999, town officials elicited an angry and vociferous response from the Mashpee, as portrayed in several newspaper accounts, when they sought advice on the acknowledgment process from the law firm of Hale and Dorr, which had represented the town during the earlier land claim suits. The incorporated council decided to sever negotiations on Federal acknowledgment with the Board of Selectmen while the law firm remained part of the proceedings. Imposing a moratorium on negotiations apparently had the desired effect, for the town agreed to hold talks through a facilitator, with Hale and Dorr excluded from the talks (*Cape Cod Times* 1999.10.31; *Mashpee Enterprise* 2000.06.30). All these dealings with the town of Mashpee provide evidence of the group's skill in mobilizing members to deal in difficult situations with the political representatives of surrounding populations. These efforts also were well-known among Mashpee members, who provided support for the successful outcomes.

During the 1980's and 1990's, the incorporated council also obtained grants for employment training, fuel assistance, health services, aqua farming, low-income housing, and seminars on Mashpee history and culture. The council operated education programs for adults and children in the local schools, a canning program, survival training, a cultural and spiritual center, and a language reclamation project. And it renovated a number of buildings donated for group use (MW OD Response 1996.01.23 [Criterion C], 28-34; MW 2000 Supplement [Further Response], 50, 54-57, 59-67). Some of these programs, which were more "social" in nature, such as the youth programs, provide some evidence of political influence because they fostered social interaction and volunteer activities among members.

Political Influence and Authority at Present

Presently the incorporated council oversees 18 committees.[116] Some of the programs that are more social in nature, such as the education and language programs, elder services, the King Phillip's Ball, the powwow, and youth activities, provide evidence of political influence because they are funded and supervised by the group and help to foster social interaction and volunteer activities. Those programs that are more social in purpose were discussed in criterion 83.7(b). What follows is a discussion of the programs that are more economic and political in character and their impact on the group as a whole.

The incorporated council operates a number of health programs including a Mobile Health Link. The group claims this program, established in recent years, "provides individuals and families with various health services they might otherwise not receive" (MW 2005.10.31 Tribal Council Programs, 1). Such services might include medical screenings for blood pressure, diabetes, cholesterol, AIDS, and breast cancer, mental health and substance abuse programs, and referrals to health providers. This program was an outgrowth of the Mashpee Chronic Disease Prevention Program, formed in 1992 with a grant from the State Department of Health. In 1992, that program had 30 to 40 Mashpee participating and receiving information about cancer (breast and prostate) and heart disease prevention (MW 2005.10.31 Tribal Council Programs, Exhibits 1 and 2). The Mobile Health Link program is open to non-members, but according to the petitioner "many tribal members take advantage of these services because they are provided at the tribal council, where they feel comfortable, among fellow members" (MW 2005.10.31 Tribal Council Programs, 1). Presumably, non-members would not find the setting as comfortable or would have other alternatives. The "health director" of the council announces the dates of the services through the group newsletter (MW 2005.10.31 Tribal Council Programs, 1). The group also conducts health surveys (Exhibit 3) to "tailor services to the members' needs" (2). In 2002, the council's Environmental Health Assessment Task Force Team surveyed 324 members (MW 2005.10.31 Tribal Council Programs, Exhibit 4). Eventually, 131 members took advantage of the free clinical screening created from the survey's results.

The council also sponsors a Low Income Heating Assistance Program that provides financial assistance to purchase home heating fuel for poorer Mashpee. The program, in operation since 1999, is funded by the Department of Energy and administered by the Department of Health and Human Services, but is open only to members. It provides assistance for up to 50 families (MW 2005.10.31 Tribal Council Programs, 4; Exhibit 18).

The council has been involved in a job assistance program as well, presently called the Workforce Investment Act Program, for over 24 years. This program involved creating "links" with local and state agencies and educational programs and private businesses "to compile a list

[116]They are as follows: Wampanoag Housing Program; Work Initiative Act Program; LIHEAP—Fuel Assistance; Maushop Stables; Constitution Committee; Election Committee; Scholarship Committee; Museum Committee; Powwow Committee; Youth Sobriety Powwow; Language Committee; Personnel Committee; Health Advisory Committee; Parish Committee; Elder's Council; Women's Medicine Society; CLK Memorial Golf Classic, and Mashpee Wampanoag Ball.

of educational training and employment opportunities" (MW 2005.10.31 Tribal Council Programs, 4). The WIA program "currently assists 30 students financially and over 19 job search participants" (MW 2005.10.31 Tribal Council Programs, 4; Exhibit 20). Assistance can include instruction on resume writing, interviewing, and even money for books and college classes (MW 2005.10.31 Tribal Council Programs, 4). A Mashpee newsletter from 2004 announced 8 graduates from various colleges who had taken advantage of the program's financial assistance (MW 2005.10.31 Tribal Council Programs, Exhibit 20).

These various programs, however, provide little evidence of political influence within the group because they are funded largely by grants or outside donations. It is also not clear if the incorporated council created the programs because of pressure from the membership that such programs were indeed needed.

Another council program provides housing assistance to members only and receives no outside funding. It has existed since December 2002 and presently serves over 100 members (MW 2005.10.31 Tribal Council Programs, Exhibits 20, 25). In 2003 it sent out over 80 surveys to members and assisted 60 households. It provides assistance in finding housing, paying utility bills and repairs, credit, budgeting, and mortgage counseling, forgiveness of loans, and "landlord negotiations and advocacy for members losing their housing" (MW 2005.10.31 Tribal Council Programs, Exhibit 19). The program further provides special services to first-time home buyers, elderly home seekers, returnees, and homeless members (Wampanoag Housing Program Monthly Report, July-August 2005; see also *Indian Country* 2005.09.07). The program provides evidence of political influence because it responds to a strong demand from within the group for affordable housing within the Mashpee area. By attempting to house members in the group's historical area it also contributes to social cohesion among the membership.

The council holds meetings on every second Sunday of the month that are open to all the membership. The petitioner claims members of all the major family lines attend the meetings, including those from the town of Mashpee as well as from Boston and nearby towns on the Cape (MW 2005.10.31 Tribal Council Programs, 4). OFA confirmed this to be true during the site visit. As evidence, it provided a breakdown of family lineages represented at meetings since 1993.[117] The group further claims about 30 adult members attend each meeting and that socialization takes place during and after them (MW 2005.10.31 Tribal Council Programs, 4). A review of the sign-in sheets provided (1993-2005) showed the meeting normally attracted from about 20 to 55 people, with 30 being average. The major family names indicated by the group were indeed represented (MW 2005.10.31 Tribal Council Programs, Exhibit 21).

A Department analysis of the council's committees in existence in 2000 shows 18 committees with 110 positions. The largest committee, with 15 positions, was the powwow committee. Education and "Tribal Girls" were the smallest with two each (MW Committee List 2000.05.09). Fifty-nine members held positions on the various committees, with 25 holding 2 or more spots. Many committee members came from a broad section of those group's families which have provided steady, active, and influential leadership over the last 100 years or more (MW

[117]The names include Avant, Coombs, Frye, Green, Haynes, Hicks, Hendricks, Lopez, Mills, Oakley, Peters, Pocknett, and Tobey.

Committee List 2000.05.09).[118] These statistics suggest that extended families and kinship ties still play an important role in the group's government, helping to facilitate communication and knowledge of political processes.

In 1999, the group established an "Elders Council," composed of senior members appointed by the "sachem" with representatives from as many different family lines as possible. The Council functions as an advisory group for the "chief" and as a watchdog or monitor of the activities of the incorporated council. The Elders Council holds monthly meetings, with about 30 (over age 55) members attending, to discuss issues to bring up before the incorporated council. The group apparently has significant authority, particularly when it comes to picking replacements for outgoing or deceased "sachems" (Austin 2000.0.30, 24-25). When asked to describe the role of elders, one senior member, Eleanor Harding, described an incident in which someone at the Elder's Council Meeting objected to profanity used on member Lenny Pocknett's public access television show. In response, the council asked Pocknett to appear before one of its meetings to resolve the issue and requested he tone down the show's language (Harding and Ringling 2000.04.21, 5).[119] The Council also played a critical arbiter's role in recent internal disputes discussed below. The "Elders Council" provides evidence of political influence in that it appears to be a means of mobilizing an important segment of the leadership, which helps to control, or at least moderate, some aspects of group behavior.

The Role of Informal and Formal Female Leadership in the Group

Women have held important leadership roles, both formal and informal, in the group since the late 18th century. When many male Mashpee died fighting in the American Revolution, women stepped into the resulting political vacuum to provide critical leadership. In the 1950's, Mabel Avant provided leadership in the town government and on the council. Through her efforts Earl Mills was elected "chief" and the town government was prevented from taking over the Old Indian Meeting House. During the 1970's, Amelia Bingham proved instrumental in establishing the incorporated council at a critical juncture in the group's political history. As illustrated in criterion 83.7(b), women in the group have also played a key role in supervising youth activities and education programs since the 1970's. Among the recognized women leaders of the group today are Anita Peters Little, Ramona Peters, June Hendricks Texiera, Joan Avant Tavares, Desire Hendricks, Alice Lopez, and Jesse Fermino, just to name a few (Austin 2000.09.30, 106-107).

In 1994, women in the group played a key role in removing Earl Mills as "chief" and replacing him with Vernon Pocknett. According to Amelia Bingham, Earl Mills had grown out of touch with the group and needed to be replaced. She commented,

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[118]They included Avant, Bingham, Harding, Hendricks, Lopez, Mills, Oakley, Peters, and Pocknett.

[119]At the time of her interview in 2000 Harding was 91 years old and still regularly attended both council and elder meetings.

> Well, when he was younger, he was very ambitious and, you know, he did a lot of things to represent the tribe, but as he got older and his interests went in different directions, he failed to serve the tribe at all. He was not available for tribal events. He seldom went to the powwow, not even to make an appearance. And he just wasn't available to us. . . . So this is when we decided to vote him out as the chief. And of course he refused. (Bingham 2000.08.07, 23)

Jesse Fermino, on the other hand, had a different interpretation of why Mill's needed to be removed. She claimed a dispute over fishing and hunting rights had arisen and that Mills was being too compliant with State officials and not showing up at meetings to answer questions, so the women in the group "got together" and "raised a new chief" (Fermino 2000.04.19, 40-42). Another member, Ramona Peters, alleged that Mills was too egotistical and no longer took care of the group's needs (Peters 2000.03.27, 3). She also asserted the women in the group resented his attempt to appoint his own replacement as "medicine man," and so decided to replace him with Pocknett (Peters 2000.03.27, 6-7). It is also important to note that when "Chief" Vernon Pocknett died in 1999, members of the group's "Women's Medicine Society" worked with the elders to ensure the election of Vernon Lopez as the new "sachem," overriding Pocknett's own public announcement that his protégé Glenn Marshall was going to be his successor (Marshall 2000.04.21, 11-27). Finally, in the most recent controversy in the group involving lobbying activities by the incorporated council, a woman member, Paula Peters, is the head of the faction most critical of the elected leadership (*Cape Cod Times* 2005.02.14).

Leadership among women in the group can sometimes take the form of spontaneous, informal, direct action as well. Jesse Fermino described an incident during 1998 in which she precipitated a confrontation with local officials when she refused to pay an entrance fee to one of the local Mashpee beaches within the traditional area of the group. Knowledge of the confrontation soon spread to other women in the group and they orchestrated a "beach day" in which 14 carloads of Mashpee women and their children showed up at the beach and refused to pay the fee (Fermino 2000.04.19, 100-107).

While much of the female leadership in the group adopted a behind the scenes, or "underground" quality, as one member described it (Fermino 2000.04.19, 29), there have been recent but very limited attempts to provide it with a more formalized structure. One such effort led to the creation in 1997 of a "Women's Medicine Society" as part of the incorporated council. The society supposedly deals with important women's issues, such as spousal abuse, health, education, and youth activities (see criterion 83.7(b) above). It is unclear, however, how widespread the involvement of female membership is in this group or its overall impact on them.

Another recent development, which started possibly around 1999, is the emergence of "clan mother" organizations based on family lines and headed by women members. As with the Women's Medicine Society," it is difficult to determine the extent of involvement in these clans or their political importance. One female member, for example, described their purpose as being to compel the incorporated council to take notice of important women's issues (Fermino 2000.04.19, 31-32). Another female member, however, portrayed her role as a clan mother as largely ceremonial---such as wearing regalia at powwows to greet dignitaries or acting as a

"hostess" at group functions (Bingham 2000.08.03).

Internal Conflicts

The most salient areas where internal conflicts occur include: 1) conflict regarding family; 2) competition over the group's assets; and, 3) politics. These areas of conflict often overlap. As an example, political leadership, to some extent has concentrated in particular extended families. Russell Peters Sr. served as the incorporated council's President from 1975 to 1979 and subsequently from 1994 to 1999. His daughter Paula Peters than ran in 2005 challenging the current President, while her brother, Jim Peters, served on the constitution committee. Earl Mills Sr. served as Chief from 1975 through 1994. His son, Earl Mills Jr. was both a board member and Council President. There has been significant political participation of the Oakley, Hendricks, Lopez, and Pocknett family members as well.

In the context of conflicts Mashpee members often attribute corporate functions to families referring to them as "clans." While certain extended families have enjoyed some influence in political affairs, that influence tends to span no more than two generations, and does not predict political positions or affinities of members. For example, when discussing the 2005 election most people talked about write-in candidate Paula Peters as representing the Peter's family interests. In fact however, Glenn Marshall is the great grandson of Anita B. Peters, making him a second half cousin to Paula Peters. OFA's field researcher found that members tend to be simultaneously involved in several interest groups in spite of the political tendencies of the groups or proclivities of members.

Competition over the incorporated council's assets also generated conflict. Some group members argued that not enough money was devoted to the restoration of the Old Indian Meeting House and Wampanoag Museum. Others suggested that resources be focused on obtaining Federal acknowledgement. While others claim that too much money was received and spent in that pursuit. During an interview with OFA research staff, one member found out about an event sponsored by the incorporated council. She immediately became annoyed suggesting that the event was being kept a secret from the group at large. Further questions followed regarding the amount of money spent on the event and whether or not food was provided.

The political conflicts beginning with the 2000 election and continuing to the present demonstrate widespread interest among the membership. This is evidenced in part by the large turnout in the last two elections. One issue was the perceived lack of progress towards Federal acknowledgment leading some members to support the side that promised more aggressive action in the 2000 election. Federal acknowledgment is an important issue to the membership. Because the side that won the election changed the form of the governing processes so that there was a substantially lower degree of direct membership input, this change itself generated political controversy, as members objected to their perceived exclusion from the political processes. This became an issue in the 2005 election. These events show evidence of internal conflicts over important issues within the group, and widespread knowledge of political processes within the group.

1. The 2002 Elections

In 1999, an internal dispute arose over the leadership of the incorporated council President Russell Peters. Some members believed he was not doing enough to pursue Federal acknowledgment.

In 2000 Russell Peters stepped down and Glenn Marshall ran against Mark Harding. Marshall ran an effective campaign which included visits to over 220 member homes to explain his platform and a clambake sponsored by the Fisherman's Association that drew over 200 people (Marshall 2000.07.05, 48-51). Marshall defeated Harding by 176-105 in one of the largest ever turnouts for the group (Austin 2000.09.30, 113).[120] According to Harding, the issue in the 2000 campaign was not about whether to pursue Federal acknowledgement, but rather how to go about doing it (Peters 2005.01.00). Harding criticized Marshall's style of making decisions claiming that he did not seek sufficient in-put regarding financial decisions for the group.

2. The 2004 Constitution

The ratification of a new constitution in June 2004 caused an intense amount of anger and conflict within the group that ultimately resulted in the formation of an opposing political group led by Paula Peters. The main issue surrounding the constitution concerned the enumerated powers of the incorporated council and group representation.

The process of developing a new constitution began on May 26, 1999, when the council began to consider revising its Bylaws. According to current President Glenn Marshall a governing document was needed that would meet the criteria for Federal acknowledgment. In the early stages of forming a committee there was little dispute. On May 26, 1999, the incorporated council met to begin the process. The committee members were selected from the general membership and served on a volunteer basis. The original members included Mark Harding, Chair, Anne Fox, Jim Peters, Russell Peters, and Rudge McKenny. Native American Rights Fund (NARF) attorney, Mark Tilden also served on the committee from the time of its inception.

The Constitution Committee met for the next four years and was well attended by a cross-section of the group's members. According the Desire Hendricks, the current Committee Chairperson, meetings were scheduled with different groups like the Elders committee and members of the Medicine Woman's society to insure a wide range of input.

The conflict began when the incorporated council allegedly terminated the meetings and scheduled a constitutional election on a day when two other important festivities were occurring including the Strawberry Thanksgiving festival at the Plymouth Plantation and a high-school graduation. According to current President Glenn Marshall the voting attendance was consistent with most elections with a total of 37 votes (26-11). In addition, the incorporated council sent notice to every household by mail informing them about the election.

[120]The eligible voter list for that year listed 298 names.

While the timing of the election for the constitution was criticized, far more contentious was the debate over the new powers given to the incorporated council. During OFA interviews members expressed dissatisfaction with the Constitution claiming that in the past members could override the Board of Directors whereas now, the 13 people on the Council had power to engage in selling property, establish contracts, set their own salaries, and make laws. According to Anita Peters:

> I went to all the original Constitution meetings when they were voting on, you know, the different sections of the Constitution. And, one of the things that really bothered a lot of people was that the power was taken away from the people and given to the Board of Directors. It was changed so that the Tribal Council became only the Board of Directors and not the general tribe. And, that caused a lot of concern, and so did the part where the Board of Directors got to choose their own salaries, their per capita, imposing taxes on us. That was all their choice. Yeah. It (the Constitution) was ratified by 26 people. And, the vast amount of those people, if not all of them, are employees of the Tribal Council, or/and Board Members. (Anita Peters, 2006).

On the other hand, some members supported the ratification of the constitution, pointing out that consensus at group meetings was rarely achieved due to constant wrangling and rehashing of issues. While everyone had the opportunity to express their point of view, issues were not resolved in a timely fashion.

Other members complained about the structure of the constitution suggesting that it was appropriate for a larger group: "I propose that we do something a little bit more, like a town government, shape it a little bit more towards something were familiar with, rather than going with something abstract like what we have now" (Ramona Peters, 2006).

3. The 2005 Elections

The next regular election would have occurred on February 2006, but the ratification of the new Constitution in 2004 required an election in February 2005. The incorporated council Chair, Vice-Chair, Secretary and Treasurer were required to run for office. This provided an opportunity for members who were dissatisfied with the current administration to run for election early. Paula Peters, daughter of the Russell Peters, the incorporated council's first President consolidated her support into a new group called "Wamps4Change" and ran for the position of Chair.

The Peters campaign focused on the following issues: 1) Federal recognition and the allocation of funds to various programs should it occur; 2) "Rescue Maushop"—a tribal business that is currently failing; 3) Address the issue of back taxes as the tribe allegedly owes more than $30,000 in fines due to failure to file with the IRS for the last six years; 4) Appoint a finance committee to work with the Treasurer, Chairperson, and council to create and manage a budget and provide monthly financial reports at the general tribal meetings; and, 5) Restore and revitalize the Old Indian Meeting House and the Mashpee Wampanoag Museum.

In late summer of 2004, Peters began to develop an email batch list of members that included 52 individuals and their families. The list was developed to share information about political issues facing the group and to make social announcements and share other news on occasion. Peters ran an effective campaign and lost by a small margin to Marshall in a vote of 190 to 175.

Members of both political sides agreed that the 2005 election was one of the most contentious in the history of the group. Particular events that generated anger include the following. First, in response to a letter sent to him by Paula Peters announcing her candidacy, the group's financial backer, Herb Strather, responded with a letter to the incorporated council suggesting that Peters not run (Strather 2004.11.24). Second, the incorporated council did not allow Peters to run as she had not attended enough council meetings. Peters claimed to have attended 13 or 14 of the meetings. There was further dispute regarding the meeting attendance records. Peters ended up running as a write-in candidate.

Further conflict surrounded voting proceedings and conduct during the election itself. Peters and other members of her group accused the incorporated council of misconduct in counting the ballots and in using fear and intimidation techniques against voters. In turn, Marshall accused Peters of behaving too aggressively against members of the Elder's Council during the election.

In December 2005, Marshall found himself entangled in a conflict over the council's 2002 hiring of a high-profile lobbyist to assist in the group's quest for recognition. The lobbyist later came under investigation by the Federal government. To counter growing criticism from a large portion of the membership over these revelations, Marshall appeared before the monthly meeting of the "Elders Council," from which he requested and received a vote of confidence from the 28 "elders." Anita Peters, an "elder" who chose to boycott the meeting, accused Marshall of using the "elders for his own purposes." Vernon Lopez, "chief" of the group, disagreed with this assessment and expressed support for Marshall's actions. He stated, "We have some dissidents in the tribe. You'll find them no matter where you go". But Jesse Fermino, a follower of the "traditionalist" faction mainly opposed to the incorporated council, charged Marshall with not attending a council meeting in six months and no longer communicating with members, thereby preventing them from knowing about the hiring of the lobbyist (*Cape Cod Times* 2005.12.04).[121]

As media coverage of the controversy intensified, an opinion piece from Paula Peters appeared in the *Cape Cod Times* expressing the dissatisfaction of "dissident" members who did not "want the mistakes of our elected officials to go unchallenged and compromise our future" (*Cape Cod Times* 2005.12.07). In the letter, she revealed a level of discontent within the group to Marshall's leadership that went beyond simple displeasure with the use of lobbyists. She explained,

[121]As early as November 2001, Board of Director's meeting minutes indicated there was growing dissatisfaction with the level of communication from the Glenn Marshall and the Board of Directors to members (see BOD Meeting, November 29, 2001). Council meeting minutes from March 10, 2005, also indicated that individuals at the second Sunday Meetings, open to all members, had become disruptive, and that Marshall was taking "heat" from the audience. During this meeting, one member suggested posting a sergeant-at-arms at the second Sunday meetings (Council Meeting Minutes, March 10, 2005).

> Our chief [Vernon Lopez] has labeled us dissidents. If we are, then the chief and tribal chair, Glenn Marshall, need to ask themselves where they failed as leaders to cause such a rebellion, because those who question this leadership are many and significant.
>
> They are tribal members deeply disturbed by our elected governing council, which has acted as an administration of absolute power that benefits a few and disenfranchises many. They have ruled by the politics of fear and intimidation. The will of the tribal body has been summarily ignored by the council, and the leadership has betrayed the people they are elected to serve in favor of their loyalty to outside backers. The chairman has not attended a monthly meeting of the tribe since June. That is the place he should be seeking a vote of confidence.
>
> But that is unlikely given the lack of fiscal responsibility, lack of representation in tribal affairs, and the failure of the council to address the human and cultural needs of tribal members. Marshall has repeatedly misled the tribe and the media about tribal real estate dealings and his denial that he ever had any direct dealings with . . . a lobbyist now under investigation (*Cape Cod Times* 2005.07.05)

While internal disputes are intense they seemed to be somewhat confined to the political area. Photographs presented during the OFA site visit indicate community cohesion in spite of political animosities. In one 2004 photograph of a social event, members of the "Wamps4Change" political group were sitting next to each other with members of the incorporated council. In the same photograph, traditionals are seen socializing with non-traditionals. That the group is socially integrated in spite of political conflict is also evidenced by the fact that members work with people and in activities that are often in opposition to each other. Some members who are in opposing political divisions are involved in the same organizations and interest groups. The integration of members who are politically opposed to each other can also be seen geographically as they live in long established Mashpee Wampanoag neighborhoods in houses that are next to each other. According to Jessie Baird, part of the "Wamps4Change" political group, members cannot avoid interacting with each other because even when intense conflicts exist they are going to run into each other at the post office, grocery store, and other places. In addition there are lots of socials "so either you're going to sit alone in the house or you're going to go to the social, where everybody else is going to be" (Baird 2006.01.00)

Conclusion

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. Wampanoag leadership at the time of first sustained contact in the 1620's was provided by a hereditary chief or sachem. The area around what is now the town of Mashpee, Massachusetts, had a number of these sachems controlling several villages joined in a loose confederacy. For the period between 1665 and 1746, after the formation of the praying town, there is evidence that the Mashpee exerted political authority over its members, first through a six-member council and then later

through a proprietorship. Native religious leaders also exercised important political influence during this period. After the Massachusetts colony appointed guardians in 1746, the Mashpee proprietors regularly petitioned the colonial authorities of Massachusetts for the next 16 years, demanding a change in government. In 1763, shortly after sending one of their members to petition the King of England and his ministers with a list of their grievances, they persuaded the colonial legislature to give them full self-rule once again, a form of government that lasted until 1788. Therefore, the petitioner provided sufficient evidence to demonstrate that it meets 83.7(c) for the colonial and revolutionary periods. In addition, the group supplied evidence of community through the Mashpee's residential patterns during the colonial and revolutionary periods to meet the requirements of paragraph 83.7(b)(2)(i), which is also sufficient to demonstrate political influence, under 83.7(c)(3) during that period.

Following the American Revolution a number of Mashpee women provided notable leadership in defending standards of behavior and opposing outside control of land and resources in the town of Mashpee. Between 1788 and 1834, when Massachusetts again appointed overseers to supervise the group, the Mashpee frequently petitioned State authorities complaining about the activities of these overseers. State records acknowledged that despite the presence of overseers between 1788 and 1834, the Mashpee still remained essentially autonomous and self-governing. Indeed, one State investigation report from 1827 stated that the Mashpee had been running their "municipal affairs" for the past hundred years. In 1834, the State, in response to their entreaties, gave the Mashpee greater self-government by establishing an "Indian District" in Mashpee, Massachusetts. Therefore, the petitioner provided good evidence to demonstrate that it meets 83.7(c) for 1788 to 1834. In addition, the group supplied evidence of community through the Mashpee's residential patterns during the overseer period to meet the requirements of paragraph 83.7(b)(2)(i) that is also sufficient to demonstrate political influence, under 83.7(c)(3), during that period.

As an Indian District, between 1834 and 1870, the Mashpee gained complete control of political, legal, and economic affairs in the town once again. District status gave the Mashpee control over government, local justice, schools, roads, parish, and welfare. The Mashpee allocated group resources by regulating common lands and waterways. This regulation included laws regarding grazing of livestock, cutting of timber, and the catching of herring, trout, eels, and shellfish. They also controlled group behavior through law enforcement by the local constables. The consistent allocation of group resources and control of individual behavior are sufficient evidence in themselves, under 83.7(c)(2)(i) and (iii), of political influence, and therefore, under 83.7(b)(2)(v), is also sufficient to demonstrate community during this time as well. In addition, the group supplied evidence of community through the Mashpee's residential patterns during the district period to meet the requirements of paragraph 83.7(b)(2)(i) that is also sufficient to demonstrate political influence, under 83.7(c)(3) during that period.

In 1870, the State of Massachusetts incorporated the Indian district of Mashpee as a town. The evidence shows that from 1870 to 1974, the Mashpee adapted the principal elements of the town governmental system for their own political needs. The Mashpee employed the town government as the primary structure by which they maintained political influence and/or authority over members. The Department's Final Determination for Federal Acknowledgment of

the Wampanoag Tribal Council of Gay Head, Inc. provides precedent for evaluating such a governmental form as meeting 83.7(c). This type of government also provided the Mashpee with the means to continue the allocation of group resources through the regulation of fisheries and the ability to control individual behavior of members through the local police department from 1870 to 1965, when they represented much more than a majority of the year-round population in the town. The consistent allocation of group resources and control of individual behavior are sufficient evidence in themselves, under 83.7(c)(2)(i) and (iii), of political influence for those years and, therefore, under 83.7(b)(2)(v), is also sufficient to demonstrate community during this time as well. In addition, the group supplied evidence of community through the Mashpee's residential patterns from 1870 to 1930 to meet the requirements of paragraph 83.7(b)(2)(i) that is also sufficient to demonstrate political influence during that period under 83.7(c)(3).

Since 1974, the petitioner maintained political influence and authority over its members in the following ways. First, the incorporated council, formed in 1974, mobilized significant numbers of members and resources to meet group purposes through ongoing programs, events, and associations. Extended family networks play an important role in facilitating communication and political involvement among members. Second, while there are notable political divisions within the group, most members consider the actions taken by the incorporated council's leaders to be important. Within the incorporated council, leadership is multifaceted including both traditional as well as business positions. During this period, informal leadership within the group also existed along with the authority of the incorporated council. Third, there is widespread knowledge and communication regarding political processes, which disseminates mostly through family networks. And fourth, there are intense intra-group conflicts that demonstrate controversy over valued group goals, policies, and decisions. Since the late 1990's, internal disputes have intensified because the incorporated council changed its administrative processes and style of leadership, which culminated with the adoption of a new constitution in 2004.

The petitioner meets the requirements of 83.7(c) from historical times to the present.

Criterion 83.7(d) requires that the petitioner provide

> **a copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.**

The June 28, 2004, Constitution and By-laws

The petitioner submitted a copy of a current constitution and bylaws, which were certified by the council and board of directors on June 28, 2004, and were effective as of that date. The governing body's certification stated that at a meeting on June 26, 2004, "at which a quorum was present it was voted by a two-thirds majority of those Tribal members present and voting to adopt a new Constitution of the Mashpee Wampanoag Indian Tribe and it was further voted to amend the Bylaws of the Mashpee Wampanoag Indian Tribal Council, Inc." (MW Constitution 2004.06.28, Certification). The OFA received two copies of the June 28, 2004, constitution on July 22, 2004. However, both copies were missing page 5 (Sections 4 - 5 of Article III concerning appealing denied membership applications and "Automatic Forfeiture" of membership), page 18 (Section 1 of Article VIII concerning procedures for recalling officials), page 24 (part of Section 1 of Article IX concerning the procedures and meetings of the council), pages 30 to 35 (Sections 5 – 9 of Article X concerning rules, records, appropriations, and enforcement of the "Tribal Judiciary" and how the council can remove judges from the court), and all of Articles XI, XII, XIII, and XIV concerning "Civil and Aboriginal Rights," "Initiative and Referendum," "Amendments," and "Certificate of Results of Election and Savings" (See MWT-OTH-V025-D0004 in FAIR; MW Constitution 2004.06.28).

The petitioner submitted another copy of the 2004 constitution in December 2005 that included all of the pages missing from the previous submission (MW Supplemental Submission 2005.00.12). However, there were some differences in the pagination that indicated the 2005 submission was not identical to the 2004 submission.

The MWT also submitted a copy of the June 26, 2004, bylaws of the "Mashpee Wampanoag Indian Tribal Council, Inc.," which were certified by the MWT council and board of directors on June 28, 2004. According to the chronology on the last page, the bylaws were first adopted in 1974, revised in 1978, accepted in April 1979, edited in February 1995, and revised again in June 2004. The bylaws stated that the members of the corporation are the same as the members of the MWT, defined the composition and duties of the board of directors of the corporation, the times of the meetings, and the duties of the officers (MW By-Laws 2004.06.28). The "The Mashpee Wampanoag Indian Council, Inc." was incorporated in the Commonwealth of Massachusetts on March 13, 1974 (Davoren 1974.03.13).

The Petitioner's Current Membership Requirements

Article III of the 2004 constitution contains several sections stating the eligibility requirements, including descent from a Mashpee Indian on the "1859 Earle Report"[122] and "community involvement," as well as defining individuals who were ineligible for membership as those who have "publicly denounced" that the "Mashpee Tribe" existed or "their affiliation to the Tribe." The constitution elsewhere defines a "voter" as an enrolled member over the age of 18 "who was registered to vote in the Tribe" (MW Constitution 2004.06.28, Article I).

Article III of the 2004 governing document is composed of eight sections relating to membership in the group. Section 1 listed the specific requirements for membership as being able to:

> (a) trace direct descent (1) to a Mashpee Indian identified in the Report to the Governor and Council, concerning the Indians of the Commonwealth, Under the Act of April 16, 1859 . . . (also known as the 1859 Milton Earle Report), or (2) to the union of Georgina Palmer and Charles Peters or Leander Peters and Lydia DeGrasse; and
>
> (b) demonstrate tribal community involvement as set forth by ordinance; and
>
> (c) (1) have not publicly denounced Mashpee tribal existence, and (2) have not publicly denounced their affiliation to the Tribe; and
>
> (d) have lived in or near Mashpee, Massachusetts, or have had family members actively involved in tribal community affairs who have lived in or near Mashpee, Massachusetts, for at least the preceding 20 years.
> (MWT Constitution 2004.06.28, 3-4)

The petitioner has not submitted a copy of the ordinance referred to in Sec. 1(b) or explained what is meant by "publicly denounced Mashpee tribal existence," or "family members." The petitioner has not provided any evidence that the group has applied this section as a means of removing individuals from the membership list.

The 1989 governing document afforded "associate membership to those of non-Mashpee Wampanoag descent" (MW Constitution 1989.04.09). "Associate members" under the 1989 constitution did not have voting rights, yet the petitioner's 1995 membership list carried descendants of two non-Mashpee Wampanoag couples as full, not associate, members (MW Membership List 1995.05.01). The two non-Mashpee Wampanoag couples consisted of three Christiantown Indians and one non-Indian. Charles Peters,[123] a Christiantown Indian whose first

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[122]John Milton Earle conducted the census of Indians in Massachusetts in 1859, but the report was published in 1861, and it is cited as the "1861 Earle Report" in this PF.

[123] Charles Peters, age 14 and Leander Peters, age 19, were living with their father Asa Peters in Christiantown, another Wampanoag settlement dating to the 1600's, and were identified as Christiantown Indians in the 1861 Earle Report (Earle Report 1861.03.00, vii). Charles Peters (abt. 1840-1924) married Cordelia Amos (a Mashpee Indian)

wife was a Mashpee Indian, married, as his second wife, non-Indian Georgina/Georgiana Palmer. His brother Leander Peters married a fellow Christiantown Indian named Lydia DeGrasse in 1875. Adding the specific language to the 2002 constitution allows full membership rights to descendants of the 1882 Peters-Palmer and 1875 Peters-DeGrasse marriages. See criterion 83.7(e) for additional information about the descendants of these two couples.

Section 2 states that individuals enrolled in another tribe are not eligible for membership in MWT. The constitution did not state whether the word "tribe" in this instance applies to federally recognized tribes, state recognized groups, Canadian tribes, or other petitioners for Federal acknowledgment.

Section 3 describes the duties of the enrollment committee, which is to be composed of five individuals appointed by the council for three-year terms in office. Elected or appointed officers or candidates for such offices are not eligible to serve on the enrollment committee, or if elected to an office while serving on the committee, they will forfeit the remainder of their term on the committee; "*however*, one member of the Tribal Council may be allowed to serve on the Enrollment Committee" (MW Constitution 2004.06.28, 4). [Emphasis in the original.] The duties are listed as maintaining the membership list, reviewing and approving or rejecting applications, "other duties as may be delegated to the Committee by Ordinance," and issuing regulations "necessary to carry out Tribal enrollment law" (MW Constitution 2004.06.28, 5).

Section 4 describes how an individual could appeal a decision that denied him/her membership in the group could be appealed to the "Tribal Judiciary" and Section 5 states that anyone who enrolled in another "tribe" or was found to have obtained membership by fraud, was "deemed to have automatically forfeited membership" in the group (MWT Constitution 2004.06.28, 4-5). Section 6 states that if the enrollment committee advised that an enrolled member lacked "a required membership requirement," then the council may remove that person from the membership list. However, the individual may appeal the removal to the "Tribal Judiciary" which would then determine whether to uphold the council's removal action or not. Section 7 states that the enrollment committee will establish procedures for individuals to relinquish their membership and that a member who relinquishes his/her membership may not reapply for 5 years. This section allows a minor, whose membership had been relinquished by a parent or guardian, the right to petition for reinstatement within 90 days of reaching age 18, or after that time, to apply for membership under the provisions of Section 1. According to Section 8, the council has the authority to "enforce this Article by ordinance" but does not have the authority to "establish substantive requirements" for membership or removal, nor does it have the authority to waive any of the requirements (MW Constitution 2004.06.28, 4-6).

The petitioner submitted four pages of documents that appear to have been prepared to memorialize proposed changes to the governing document concerning the group's membership criteria (MW Proposed Changes to Membership Provisions 2003). This document listed the

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in 1865 and their known children were born in Mashpee between 1866 and 1876. After Cordelia's death, Charles Peters remained in Mashpee and married Georgina/Georgiana Palmer, a non-Indian, there in 1882. All of his children by this second marriage were born in Mashpee between 1888 and 1896. There is no evidence at this time that Charles' brother, Leander Peters (abt. 1840- ??) and his wife, Lydia DeGrasse, lived in Mashpee.

"Existing Provision" of "Article III: Tribal Membership" in the constitution and bylaws of the MWT and the "Suggested Provision" of seven sections to Article III. The document itself was not dated, but the "suggested provisions" had internal citations to "2nd draft 5/19/00, 3rd draft 6/9/00" and some sections were marked as "(Approved 3/11/00)" or "(Approved 5/19/00)." It is not clear if this document was prepared for the MWT council's use, or to inform the membership of proposed changes in preparation for voting on a new constitution. The language in the "Suggested Provision" was not an exact match for the language in the June 28, 2004, constitution and bylaws, but the gist of each section was the same.

Criterion 83.7(d) requires only that the petitioner submit a governing document that describes its membership criteria and "current governing procedures." For the analysis of political authority within the group, see the discussion under criterion 83.7(c).

The Petitioner's Current Enrollment Procedures

On March 3, 2003, the petitioner submitted supplemental petition materials, including seven pages of "application materials" that were apparently to be completed by each applicant for membership. This packet included instructions for completing the membership application, ancestry chart, and individual history chart, and listed the vital records that "must" be included "for each individual listed on the Ancestry Chart (including yourself) through whom you are attempting to trace your lineage" (MW Membership Application 2003 ca.). The instructions included guidance for obtaining the "valid" birth, marriage, or death certificates from either the State Vital Statistics Office or the county recorder's office, and clearly stated that "computer generated," abstracted, or transcribed birth records issued by the hospital, city, or county are not acceptable (MW Membership Application 2003 ca., 2). Although this requirement appears to place importance on certification of the "full image" document, which names the parents, many of the membership files have a photocopy of the hand-written entry of the applicant's birth recorded in the town recorder's ledger. In most cases the birth certificates issued by the hospital, town, or county were certified copies.

The membership files do not contain birth, marriage, or death certificates for each ancestor on the applicant's ancestry chart; few contained a birth, marriage, or death certificate (when applicable) for their own parents.

The petitioner's March 7, 2003, supplemental petition materials included an undated "Report on the enrollment program/records of the Mashpee Wampanoag tribe of Massachusetts," signed by Mitchell L. Bush Jr., former chief of the Branch of Tribal Enrollment in the Bureau of Indian Affairs, that described the MWT enrollment process, the membership roll itself, the supporting records, the facilities, and the staff (Bush, 2003 ca.). Bush reported that the enrollment process was supervised by the historian/genealogist, Patricia Oakley,[124] two support staff, and a board of five individuals who had been appointed by the MWT council. He described the contents of a member's file folder as "genealogical information that relates to the person," rather than the actual records establishing descent from someone named on the "base roll" (Earle Report), but

[124]Hazel (Peters) Oakley, mother of Patricia, previously maintained the membership records.

added that "established genealogical family history charts have been prepared for the ancestors and filed in the descendant's folder" and that the individual file folder of a deceased member, which was in a separate file cabinet, substantiated the relationship (Bush, 2003 ca.). Bush did not state who prepared the "established genealogical family history charts," but based on the evidence in the record, it appears that the applicant initially drafts an ancestry chart, which may be replaced by a typed or computer-generated chart prepared by the Mashpee group's staff once the applicant has shown a connection to a previously established family line.

In response to the Department's August 8, 2002, request for "[a] description of circumstances surrounding the preparation of the 1995 [membership] list and the two previous membership lists dated 1979 and 1989 ...," the petitioner submitted a brief statement in 2005 entitled, "Mashpee Membership Criteria," which summarized requirements from the 1979 constitution and bylaws that eligibility for membership was based on Mashpee Wampanoag ancestry as well as "has not abandoned his or her tribal affiliations" (MW 2005.10.31 Membership Criteria). The 2005 statement also briefly summarized language from the 1989 and 1995 constitutions concerning membership and maintained that the 1995 membership list updated the 1989 list and that the 2002 list updated the 1995 list, but did not otherwise describe how the membership lists were compiled.

Summary of Differences between the Previous and Current Governing Documents

Membership

The petitioner's 1989 constitution[125] stated anyone "of Mashpee Wampanoag ancestry who has not abandoned his or her tribal affiliations" was eligible for membership upon submitting the approved application forms and "documentation of birthright" to the membership committee for approval (MW Constitution 1989.04.09). Members who were 16 years old or older could vote. This document included a category for "associate members" who were "other Wampanoags" who could be adopted as members but who would not have voting rights. The 1989 constitution did not have any provisions for removing members from the membership list or for individuals relinquishing membership, nor did it define what constituted "abandonment."

The Department's Obvious Deficiency (OD) letter to the petitioner in 1991 requested that it "[e]xplain the process by which the Mashpee Membership Committee determines an applicant's eligibility for membership" (Eden 1991.07.30, 6 [Revised for 2nd TA]). The petitioner responded:

> The process by which the Mashpee Membership Committee determines an applicant's eligibility for membership begins with the applicant submitting an application. The application is basically [a gen] ealogy form, Ancestor Chart (attached hereto), filed along with accompa [nying] documentation that traces the applicant's ancestors to the 1859 Milton Earle Report. In other words, the

[125]The 1974 constitution was revised in 1979 and 1989. See Appendix D for a summary of the 1974 document and the 1957 constitution and bylaws.

> applicant must prove lineal blood descendancy from the 1859 Milton Earle Report.
>
> The application is then submitted to the Membership Committee. The committee then reviews the application and either rejects or accepts the application. Although the applicant's ancestors may trace to the 1859 Milton Earle Report, the applicant's application may be rejected on the grounds of tribal abandonment (MW OD Response 1996.01.23, 88-89).

The "Ancestor Chart" which was used as the petitioner's application form is discussed further under criterion 83.7(e); however, it is noted here that the 206 ancestor charts which the petitioner originally submitted were not signed by the applicants, and neither did they sign the 197 individual history charts also submitted at that time. Therefore, OFA did not have evidence that the petitioner's 1,001 members consented to being placed upon the petitioning group's 1995 membership list. The regulations at section 83.1 define a "member of an Indian group" as "an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group." See the discussion of membership files under criterion 83.7(e) for the evidence of the petitioner's response to this deficiency.

The "Earle Report" was compiled in 1859 and published as a Massachusetts Senate report in 1861. The appendix to the report includes a person-by-person census of each of the Massachusetts tribes Earle visited. The format for this census included a "Tribe or Race" column. For the enumeration of the "Marshpee Tribe," the designations in this column included mostly "Marshpee," as well as a few for "Chappequiddick," "Gay Head," "Herring Pond," and "Middleborough." Earle's enumerations of 6 other Massachusetts tribes noted 14 instances in which the spouses were recorded as Mashpee.

The petitioner's 1989 constitution indicated applicants must prove their Mashpee Wampanoag Indian ancestry, without specifying that those ancestors must appear in the Earle Report. The petitioner's response to the OD letter stipulated that applicants must be able to trace to an ancestor on the Earle Report, without specifying that those ancestors must appear on Earle's enumeration of the "Marshpee Tribe." It was also unclear whether descent from one of the 14 Mashpees who married into other tribes as recorded by Earle was acceptable or unacceptable for membership purposes.

The petitioner's 1989 constitution offered associate (i.e., non-voting) membership to "other Wampanoags," a description which appears to denote Wampanoags without Mashpee Wampanoag ancestry. However, 31 members on the 1995 MWT membership list did not have Mashpee Wampanoag ancestors (rather a Christiantown Indian ancestor), and yet, insofar as the petitioner stated it had no associate members, these 31 appeared to be full voting members. [The current 2004 constitution makes specific reference to the descendants of two couples who were Christiantown Indians as eligible for membership in the MWT. See the discussion above.]

Governing Procedures

The 1989 governing document described the composition, authority, and duties of the board of directors as the governing body with the power to conduct the business of the "Mashpee Wampanoag Indian Tribal Council, Inc." (MW Constitution 1989.04.09). However, the 2004 constitution referred to the "Mashpee Wampanoag Indian Tribal Council, Inc." (sometimes simply, "the Tribal Council") as the governing body of the "Mashpee Wampanoag Tribe," and expanded the authority, composition, and powers of the governing body by stating that "[a]ll members who are elected to the Tribal Council shall also serve as members of the Board of Directors of the Mashpee Wampanoag Indian Tribal Council, Inc., as well as members of the Board of Directors of the Old Indian Meetinghouse Authority, Inc." (MW Constitution 2004.06.28 [Article IV, Sec. 6(c)], 10). The 2004 constitution also provided that a "Tribal Judiciary" branch, composed of a supreme court and lower courts with judges appointed by the council, would have separate but equal powers with the council (MW Constitution 2004.06.28, 10, 28-31). The Old Indian Meeting House Authority and judiciary system were not mentioned in the previous governing documents. The petitioner has not submitted evidence concerning the implementation of the judiciary system provision of the 2004 constitution.

The 1989 constitution stated that 11 to 13 "members of the Corporation" would be elected to serve on the board of directors and that the "medicine man" and "chief" were automatically members of the board, "with full voting privileges" (MW Constitution and Bylaws 1989, Article IV), with all officers serving 2-year terms. Two months before the annual meeting, the general membership of the group would elect a nominating committee to prepare slate of six directors and six officers and "a ballot with two names for each office with the consent of the nominees" (MW Constitution 1989.04.09, Article VII). The 2004 constitution stated that the elected members of the new "tribal council" would serve four year terms of office. Candidates for the 11 seats in the new governing body must be registered voters of the group, must be at least 25 years old, not convicted of a felony for the preceding five years, have attended at least 12 council or general membership meetings within the preceding 12 months, and not be "related as an immediate family member to more than one person serving on the Tribal Council (i.e., mother, father, brother, sister, spouse, son or daughter)." Under the 2004 constitution, the "medicine man" and the "chief" were not elected to the council, but were "selected by the general Tribal membership according to Tribal custom and tradition and acknowledged by resolution as such by all the elected Tribal Council members prior to taking their respective seat on the Tribal Council" (MW Constitution 2004.06.28, Article VI, Sec. 1(a)).

The constitution that was amended in 1989 had been originally drafted in 1974, revised in 1978, and "accepted" in April 1979 (MW Constitution 1979.04.00, 5). In the earliest version, the general membership meetings were held on the second Sunday of each month, with a quorum of 25 members, which was revised in 1978 to a quorum of 20 members, and amended in 1989 to a quorum of 15 members. The voting age was 18 in 1979 and 16 in 1989. The 2004 constitution did not define a quorum for holding the general membership meetings, which continue to be held on the second Sunday of each month. Article V of the 1989 constitution stated:

> The Board of Directors shall have the authority to delegate specific duties and

> responsibilities to the Board and other officers provided that such administrative policy does not conflict with action taken by the membership at duly noticed and convened meetings. (MW Constitution 1989.04.09, Article V, Sec. 1)

The 2004 constitution states that the purpose of the general membership meetings (second Sunday meetings open to the entire membership), is to "discuss the problems and issues concerning Tribal affairs; to review the policies, goals, and priorities of the Tribal Council; to review the functioning of Tribal programs and to make recommendations to the Tribal Council for change" (MW Constitution 2004.06.28, Article IX, Sec. 4). See the section entitled "Internal Conflicts" under criterion 83.7(c) in this PF.

Another difference between the 1989 and 2004 constitutions is that the voting age increased from 16 to 18 years old. The 2002 membership list shows there were 1,232 members over age 16 in 2004 and eligible to vote under the previous constitution. Fifty of the 1,232 were between the ages of 16 and 18. By changing the voting age in the 2004 constitution those 50 voters who were 16-18 years old, lost their voting rights (for the next two years).

Conclusion

The petitioner submitted a current governing document, which was certified by the governing body on June 28, 2004, and which included its membership criteria and the processes by which it governs itself. Therefore, the petitioner meets criterion (d).

Criterion 83.7(e) requires that

> **the petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.**
>
> **83.7(e)(2): Provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.**

Introduction: Descent from the Historical Tribe or Tribes

The historical tribe is determined to be Wampanoag Indians residing at Mashpee, Barnstable County, Massachusetts at the time of first sustained historical contact in the 1620's. (See sections 83.7(b) and (c) in this PF for the evidence establishing the historical presence of the Mashpee Wampanoags in the same geographical area from historical contact, through the praying town era of the late 1600's, to the Marshpee petitioners in the early 1800's, and the separate Indian District established in 1834, to the State-ordered reports on Indians in 1849 and 1861). Outside observers noted the increase in marriages of Mashpees to non-Indians from the time of the American Revolution, but they did not report that other tribes combined with the Indians at Mashpee. The membership list of the historical tribe, for purposes of calculating descent from that tribe, is the 1861 Earle Report of Indians in Massachusetts.

By act of the Massachusetts legislature on April 6, 1859, John Milton Earle was appointed commissioner to examine and report on the condition of all Massachusetts Indians with respect to their number and tribal identity, their social and political condition, their economic state, and

> [a]ll such facts in the personal or social condition of the Indians of the Commonwealth as may enable the general court to judge whether they can, compatibly with their own good and that of the other inhabitants of the State, be placed immediately and completely, or only gradually and partially, on the same legal footing as the other inhabitants of the Commonwealth. (Earle Report 1861.03.00, 5-6)

In his report on and enumeration of the Indians of the District of Mashpee, Earle recorded them

as the "Marshpee Tribe," and not among the "Miscellaneous Indians." The narrative section of Earle's report on the Mashpee begins with the following description:

> The District of Marshpee, the residence of the largest distinct body of the descendants of the Indians, now remaining in the State, is situated on Cape Cod, in the westerly part of Barnstable County, and is bounded on the north by Sandwich and Barnstable, on the east by Barnstable, on the west by Falmouth, and on the south by the waters of the Vineyard Sound. The whole number of the tribe, so far as is ascertained, is 403. . . . Sixty-six, out of the whole number of the tribe, at the time of the enumeration [1859], were not residents of the District; but fifty-two of them were considered as retaining their rights in the tribe, and more than half of the sixty-six were understood to be only temporary residents abroad, expecting, at some time, to return to Marshpee, and make it their permanent place of residence. A few others, as a matter of personal convenience, are now residing just over the line, and are so returned, but they consider themselves as identified with the tribe in all respects, and are so considered by the tribe. Fourteen individuals, included in the above sixty-six, whose names are in the "Supplementary List," own no land in the District, but have been gone so long from it, that they are not now recognized by residents as members of the tribe. (Earle Report 1861.03.00, 46-47)

Earle included in his report, without refutation, Benjamin F. Hallett's 1834 statement made before a committee of the Massachusetts legislature which traces the group's estimated population totals back to 1767 (Earle Report 1861.03.00, 47). As explained in his initial description of the Mashpee, Earle made efforts to distinguish between those Mashpee Indians living outside the District of Mashpee who were maintaining relations with the group and those who were no longer recognized as members.

Evidence supplied by the petitioner enabled OFA to verify that the Earle Report individuals or their ancestors can be documented back to the 1849 Briggs Report, the 1842 proprietors list, the 1834 vital records, in which whole Mashpee families were recorded, and an 1833 petition signed by 102 Mashpee Indians. The 1834 vital records of the District of Mashpee provided birth and parentage data which documented some lines back to the middle 1700's; however, the petitioner's genealogical database contained only one annotation which appears to denote that person's presence on a 1776 document.

For purposes of this genealogical review, descent from individuals identified as "Marshpee" Indians on the 1861 Earle Report was considered descent from the historical tribe. About 98 percent of the individuals on the 2002 membership list claim descent from Indians identified by Earle as members of the "Marshpee Tribe." The petitioner does not trace descent from any of the 14 names on Earle's "Supplementary List." The remaining 2 percent do not claim descent from Mashpee ancestors, but rather from Indians identified by Earle as members of the "Christiantown Tribe" (Earle Report 1861.03.00, Appendix, vii).[126] Initially, the petitioner provided evidence to

[126]The petitioner's 2004 constitution specifically mentioned that applicants who "trace direct lineal descent" from the unions of Charles Peters and Georgina Palmer or Leander Peters and Lydia DeGrasse were eligible for membership.

document descendants of individuals in the "Marshpee Tribe," as enumerated by Earle, up through 1920. The petitioner provided additional evidence documenting the ancestry of the members on the 2002 list back to the 1920 era. This evidence included the birth records, marriage records, or affidavits confirming parentage[127] that were in each membership file. The petitioner also submitted microfilm of the Mashpee Town records of births, marriages, and deaths which may be used to verify dates, and parentage for those individuals who were living in Mashpee at the time of their birth, marriage, or death (MWT Supplemental Submission 2002: Mashpee Microfilm TR-3 [Births, Deaths, Marriages 1834-1870, 1871-1899, 1900-1959], Microfilm BMD-2 [Deaths 1998-1999, births 1800-1900 (Missing 1932-1942)]).[128] The petitioner also included photocopies of the 1930 Federal census for the Town of Mashpee which listed the individuals living in each household and how they were related to the head of the house. The 1930 census information confirmed the parents' names for a few individuals who were deceased before 2002, and whose children or grandchildren's membership files did not include copies of birth records for their deceased ancestors. Thus, a combination of evidence, primarily the vital records and censuses, was used to confirm the Mashpee ancestry of the current membership.

Explanation of Databases Used in This PF

The petitioner submitted two databases as part of its documented petition under criterion 83.7(e). One database, created in Microsoft Access™ consisted of the group's 2002 membership list, including fields or columns for first, last, and maiden names, "Suffix" (Jr., Sr., III) gender, street address, city, state, ZIP Code, membership number, date of birth, "Born" (place of birth), father's name, and mother's name (MW Membership Roll Zip Disk 2002.11.15).[129] In most cases, if the father or mother was not a Mashpee Indian, the petitioner included "(NM)" after his/her name. The 1,462 names and other information in the printed version of the 2002 membership list were the same ones in this electronic version. OFA copied this electronic membership list and added

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Charles Peter and Leander Peters were the sons of Asa Peters, another Christiantown Wampanoag Indian (Earle 1861.03.00, vii). The Peters-Palmer marriage has 80 descendants in the current group and the Peters-DeGrasse marriage has 23 descendants in the current group. However, two of the grandchildren of the Peters-DeGrasse marriage married their second cousins, grandchildren of the Peters-Palmer marriage; therefore, the 12 descendants of those cousin marriages were counted only once in order to reflect the actual number of Christiantown descendants on the membership list (91). At least 4 descendants of these two marriages married Mashpee descendants; therefore, their descendants on the current membership list (56) have Mashpee ancestors as well as Christiantown. This leaves only 35 individuals (about 2 percent, 35 of 1,462) on the current membership list who descend from the Peters-DeGrasse or Peters-Palmer marriages, and have no Mashpee ancestors.

[127]In some cases in which the birth record did not name the father, the individual's membership file included a paternity affidavit that was signed and dated by the father.

[128]OFA found about 20 individual lineages that need to be checked against the information in these town records or in either the 1920 or 1930 censuses in order to confirm the parental link recorded in the petitioner's FTM database. There was not time to do this before PF. The petitioner did not submit a copy of the 1930 census for families living in places other than the Town of Mashpee.

[129]OFA received this database on December 20, 2002. The petitioner had previously submitted a similar electronic database that had constituted the petitioner's official 1995 membership list, which was certified by all members of its governing body (MW Zip Disk 2000.06.30)

fields for additional data as warranted for the PF review (OFA-2005-Mashpee Membership.mdb).

The petitioner also sent of another database, created using Roots IV™ genealogical software that contained genealogical information on almost all of its current 1,462 members and many of their ancestors (also on MW Membership Roll Zip Disk 2002.11.15 that was received by OFA on December 20, 2002). The petitioner previously submitted a version of the genealogical database that included the membership as of 1995 and their ancestors (MW Zip Disk 2000.06.30), which OFA copied and used to evaluate the petitioner's genealogy and membership prior to August 2002. The OFA added data fields or facts as warranted in the review process, and changed data or links between generations where supported by the evidence. As an example, the petitioner's genealogical database showed that the Margaret Tobey who married James Den(n)ison was the daughter of Ephraim Tobey and Philena Pocknett (this is claimed in one of the submitted ancestor charts). However, the Margaret Tobey who married James Den(n)ison was the daughter of Joseph Tobias/Tobey and Jedidah Jerrett. This fact is documented in the petitioner-submitted record of Joseph and Jedidah's family in 1862, and in the record of James "Denison" and Margaret Tobey's marriage on March 6, 1865, both of which give Margaret's correct parentage (Mashpee Town Records 1834-1870).

OFA made copies of the petitioner's two genealogical databases, converted them into Family Tree Maker for Windows™ (FTM) files, and merged them into a combined database for this PF review (BARMashpee2Combined.FTW). OFA also added a few individuals who were new to the 2002 membership list, but not obviously connected to any of the individuals already in the genealogical database. The membership list identified the name, birth date, and at least one parent's name; however, it was not always possible to attach the member or the parent to one of the already established families recorded in the genealogical database, especially when the accompanying birth record did not name the parents. Therefore, there are a few "unattached" family units showing just the new member and his or her parents. OFA was also able to add several birth dates and full names of parents based on the birth certificates or other records in the individual membership files. For example, in two instances birth dates for current members as found in the genealogical database conflicted with those given in the membership list, but the certified birth records verified the correct birth dates. Unless otherwise noted, the membership and genealogical databases referenced in this PF are OFA's annotated versions of the petitioner's submissions.

While the genealogical database linked every current member to at least one person enumerated as a "Marshpee" Indian, or in the Peters' brothers case, as "Christiantown" Indians, on the 1861 Earle Report, it did not furnish every member's complete ancestry back to the 1861 era, and may not capture all of the Earle Report ancestors from whom a member descends. Thus, current members may have even more Earle Report ancestry than was immediately apparent from the petitioner's genealogical database. As an example, the ancestry of deceased member Carl Avant (1909-1985) appeared in the genealogical database, but not that of his wife Philena James (1900-1983), who herself had six ancestors on the Earle Report of the "Marshpee Tribe." As a result, the Avant-James children's list of Earle Report ancestors did not include their mother's six ancestors. Where warranted by the evidence, OFA made the additional connections in its

genealogical database which links individuals to other Mashpee lineages.

Genealogical Evidence

The Membership Files Submitted on December 20, 2002

The Mashpee submitted copies of the membership files for each member of the group. OFA checked the content of each membership file for birth records that identified parents, a consent or application form, and how many of those forms were signed by the applicant or a parent or guardian. These files typically included a certified copy of the member's birth certificate, an ancestry chart that identified the member's descent from Mashpee individuals on the 1861 Earle Report [such ancestry charts may run 15 or more pages, depending on how many generations were included and how many of the parents or grandparents were Mashpee], and an individual history chart that listed the member's spouse, children, parents and siblings. Some files included a title page/cover sheet with the member's name, street, town, state, ZIP Code, and telephone number. This form was not in all of the folders and there was no date or indication when or how it was completed, but may have been used to process a change of address. Many of the membership files included an application form headed: "Mashpee Wampanoag Indian Tribal Council, Inc."

The upper section of the form, to be completed by the applicant, calls for the applicant's full name, including maiden name, residential address, mailing address if different from the residential address, date of birth, gender, daytime telephone number, home telephone number, signature[130] and date signed, and asks if the person is an enrolled member of "any other tribe." The form appears to have been used beginning in 1999, the earliest date on any of the signature lines. Not all of the applications were both signed and dated, but most included a signature. In many instances the names of minor children appeared as "signatures," although clearly they were too young to sign and the handwriting was that of an adult. However, the person filling out the form did not identify himself or herself as the adult parent or guardian. In a few instances, a grandparent, great-grandparent, or aunt signed the application for a minor child, while the parent of the child was yet living and also on the membership list. There was no explanation as to why the non-parent had the authority to act for the minor. There were also several unexplained instances when a parent signed the application for his/her adult child. The age at which a child could enroll/sign in his own behalf was not consistent. In some instances the parent signed for their children who were 16, 17, 18, 19, or 20 years old, yet in other cases, the youth apparently signed the application form.

The lower section of the application shows the disposition of the application; whether disapproved (with reasons) or approved by the MWT council, with the authorizing signature, assigned membership number, and date. Not all of the forms had the blank for the MWT council approval checked. The name "Patricia A. Oakley," which is the only name that appeared in the "authorizing signature" field, was stamped on most forms. Almost all of the approval dates were from 2000 or 2001 with only a few from 1999 or 2002. Not all of the application forms had all

[130]The signature line includes a statement to "Indicate Relationship if other than Applicant (Parent/Guardian must sign for minors/wards)."

three elements completed: the authorizing signature, the membership number, and the date approved; however, the MWT apparently accepted the application because the applicant's name appears on the 2002 membership list.

A second type of form entitled "Acknowledgment" was a consent form that provided blank spaces for the applicant to sign and date a statement reading "I, the undersigned, acknowledge that my name is included on the Mashpee Wampanoag Indian Tribal Council, Inc.'s membership roll." The parent or guardian could sign for minor children under age 16 who were listed on the "Mashpee Wampanoag Indian Tribal Council, Inc.'s membership roll." Many of these consent forms were signed, but not dated, although those that were dated were all from 2000, 2001, or 2002. In several instances, a parent signed in behalf of children listed on the form, but those children were not on the 2002 membership list and did not have separate membership files. This form did not provide space for the MWT council's approval of the application or the member's enrollment number. The incomplete or unsigned applications, and those lacking evidence of council approval, should be reviewed by the membership committee and updated where possible. Some of the membership files had both the application and consent forms, but some membership files did not have either form.

OFA considered that either the application or the consent form, whether properly completed or not, was sufficient evidence in addressing the intent of the "consent" requirement in the following analysis.[131] OFA added a field to its Access database of the membership list and noted the information concerning "consent" to membership in the group. OFA then analyzed the data by age of applicant at enrollment, residence, and relationship to individuals on previous membership lists.

OFA's review of the petitioner's files for evidence of consent to being on the membership list showed that about 735 individuals had signed either the application or consent form and that in 313 cases a parent, grandparent, great-grandparent, aunt, or sister had signed an application for his/her relative. Therefore, there was evidence that perhaps as many as 1,048 individuals had consented to be on the membership list.[132] In 12 cases, the handwriting of the individual signing or initialing on the signature line of the application was not legible and OFA could not determine who filed the application. There were no files for four individuals on the membership list, thus, OFA could not determine whether they consented to membership. There were several instances where a grandparent, aunt, or other unidentified adult filled out the application or consent form for a minor child, but the file did not contain any evidence that the signer was the legal guardian of the child. See below for further analysis of the membership applications. There were 398 membership files without an application or a consent form, or with only a partially completed, but not signed, application. The petitioner has provided sufficient evidence that about 72 percent

[131]The regulations at 83.1 define a "Member of an Indian group," in part, as having consented to being placed on the group's membership list. In the event of a positive Final Determination, that membership list, in turn, becomes the tribe's complete "base roll" for purposes of Federal funding and other administrative purposes (83.12(b)). Thus, it is important that the petitioner furnish proof of its members' consent to be on the membership list.

[132]See additional discussion concerning adults signing for other adult family members under the section on the 612 members added since 1995.

(1,048 of 1,462) of its current members have consented to being members of the group.

The petitioner should continue to update its membership records to include evidence of consent to be on the membership list.

Analysis of these files determined that the petitioner provided evidence that seven individuals on the membership list were adopted; however, the evidence also demonstrated that each of these children had at least one biological parent who was a Mashpee descendant. In one case, the grandmother (a Mashpee descendant) adopted two of her grandchildren, and in another case, the aunt (a Mashpee descendant) adopted her brother's children, a niece and nephew. In two cases, a Mashpee woman's husband adopted his wife's child from a previous relationship. Thus, the adopted children were of Mashpee parentage and were adopted by their Mashpee families. In another case, the member's file contained a court record that explained the individual had been adopted as a young child, not an infant, and had remained in contact with the biological mother who was a Mashpee descendant.

OFA's review of the information on individual history charts found that they varied in completeness and accuracy, but typically listed the member's spouse, children, parent or parents, and brothers and sisters. In many instances, the fields were left blank. Although this form did not require dates and places of birth, marriage, or death, the names and relationships provided in it helped to correct conflicting information found in the petitioner's genealogical database or the membership list.

The review of the files showed that almost all of the files included a certified photocopy of a town birth register, or marriage record naming parents of the bride and groom.[133] A total of 1,433 individuals on the 2002 membership list had sufficient evidence to identify their parents' names. There were 29 individuals who did not have a complete birth certificate, or other record naming parents, to confirm parentage, and therefore did not have evidence to document the claimed parent or parents.[134] Ten of these 29 individuals had children and grandchildren, 38 in all; therefore, 67 individuals on the 2002 membership list lack the documentation to connect them to the claimed Mashpee ancestry. Also, there are 16 individuals in the petitioner's lineage who were born between 1920 and the 1950's, who lack a birth record or other evidence to connect them to the pre-1920 era parent. Among them, these 16 ancestors have 72 descendants who are members on the 2002 list. Therefore, these 72 individuals also lacked the evidence that connects them to the 1861 Earle Report. In all, a total of 139 individuals on the 2002 list (almost 10 percent, 139 of 1,462) have not provided the vital records or other evidence required by the group's own governing document, to document their descent from the Earle Report ancestors.

[133]See the analysis under criterion 83.7(d) for additional details concerning the petitioner's own requirement that the birth record be a "state certified."

[134]In at least one instance the member's ancestry chart identified both parents as having Mashpee descent, but the individual's birth certificate did not name the father. Without other evidence to support the information on the ancestry chart, only the mother's line counted as Mashpee.

In almost every instance, the membership file included ancestry charts that showed the member's descent from at least one individual who was identified on the 1861 Earle Report. Many of the ancestry charts were hand-written, but a large number were typed and may have been generated from a computer program; however, none of the charts listed the name of the preparer. Typically, the typed/computer-generated charts included a brief citation such as "1910c" or "1930c", which apparently referred to the years the individual was found in the Federal censuses, but gave no town, county, or page. Additionally, "BR" or "ER" identified the ancestors who were on the Briggs or Earle reports. Individual membership files did not include copies of the documents cited on the ancestry charts, thus, the membership file alone did not contain all of the evidence needed to verify the member's descent from the Indians on the Earle Report.

Ancestor Files

The petitioner also submitted a set of records in 2002 they labeled "Ancestor Files." These files for 522 deceased ancestors hold the ancestry charts that outlined the ancestry of a deceased member who were listed on the 1979, 1989, or 1995 membership lists to persons on the Earle report and may include the birth, marriage, and death records. (For example see: Tobey, Leona 1910.08.20 [AF] in FAIR. She was on the 1979 membership list, but died in 1990.) Some of the ancestry files represented historical Mashpee Indians who lived in the 18th or 19th centuries and included ancestry charts, a copy of the Earle Report showing the individual, and Mashpee Town records. The oldest deceased Mashpee with such a file is for Amos Babcock who was born about 1750 to and the youngest was Andrew Norman, who was born in 1981. The files for individuals who died in the 20th century, in particular individuals who had been on one of the 1979, 1989, or 1995 membership lists, are more likely to include their birth records and death certificates. Therefore, these ancestry files contain the evidence necessary to document descent from the historical tribe for their descendants who are on the current membership list. Not all of the ancestry files include birth, death, or marriage records or other evidence for each generation, although it appears that each file has at least one ancestry chart.

Some of the ancestor files [for example see Mark Frye (1959-2000) and James A. Peters (1957-1997)] include a form letter dated 2002 and signed by the chairman of the membership committee that stated the membership application had been reviewed and rejected by the MWT. "Deceased!" was written in the blank lines provided for listing the reasons for rejecting the application.

Previous Submissions: Ancestor Charts, Individual History Charts, Document Summaries

When the petitioner first submitted a documented petition, its 1989 membership list identified 815 members, for whom 201 ancestor charts, 197 individual history charts, and 181 documentation summary sheets were also submitted. These documents are identified as "Ancestry Charts" in the FAIR database and are filed by the member's name. (For example, see: Tobey, Leona 1910.00.00 [AC]. As noted above, there is a separate "Ancestor File" for this same woman.) Ancestor charts record a person's direct ancestry back to great-grandparents, and individual history charts record a person's spouse, children, parents, and siblings. The "documentation summary" sheets prepared by the petitioner listed the evidence used to document

the member's descent from a qualifying ancestor. The petitioner's January 24, 1996, submission of an updated membership list dated May 1, 1995, identified 1,001 members, but the submission did not include ancestor charts, individual history charts, or document summaries for the additional new members. This omission was corrected when the petitioner's submitted the membership files and ancestor files in December 2002. (See Appendix E for additional analysis of previous membership lists.)

Evidence from 1833 – 1861 that Demonstrates Descent from the Historical Tribe

The pre-1920 evidence submitted by the petitioner to support its claim of meeting criterion 83.7(e) was comprised of local, state, and Federal records, which were specifically mentioned in the regulations at 83.7(e)(1)(ii): "State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity." Generally described, these consist of Mashpee vital records recorded at the town (or district) level, state-mandated enumerations of Indians published in 1849 and 1861, and Federal decennial census records. Two other official records evaluated by OFA include an 1833 petition signed by 102 Mashpee Indians and submitted to the State of Massachusetts and an 1842 Mashpee proprietors list.

OFA created a separate database table for those 391 individuals appearing in Earle's enumeration of the "Marshpee Tribe."[135] All Earle Report data on the 391 individuals was entered into the table, except for personal and real estate information. This table was annotated, over the course of the petition evaluation, to reflect the appearance of these Earle Report individuals in other records, such as the 1833 petition, the 1840 Federal census, the 1842 proprietors list, the 1849 Briggs Report, and the 1860 Federal census.

A description follows of each type of record reviewed, whether submitted by the petitioner or gathered by the OFA. Where appropriate, a description of OFA's analysis of the record follows.

1833 Petition

The earliest record evaluated for its identification of Mashpee people at a given point in time is a petition "in behalf of the Marshpee Tribe," signed by 102 Mashpees on May 21, 1833 (Whitman 1833.05.21, 7). The petitioner provided the published petition, which included the transcription of the names of all 102 signers. OFA tentatively identified a total of 30 petition signers in 1833 (about 29 percent, 30 of 102), who were also enumerated in the 1861 Earle Report. Of those who were not on the Earle Report, 9 would have been over age 70 in 1859, 3 over age 80 in 1859, and 5 over 90 in 1859, if they were living. Given these ages, it is likely that many of the 1833 Mashpees were deceased before 1859.

[135]This database does not include the 14 individuals on the "Supplementary List," identified by Earle as Mashpee having "left previous to the division of the land" or their descendants "who are not recognized as having rights in Marshpee" (Earle 1861.03.00, xxxvii), or include the 14 "Marshpees" found in other tribes in Earle's report. Neither of these two categories of "Marshpee" Indians have descendants in the petitioner's membership.

If the analysis revealed that the 1833 signer had descendants in the 2002 membership, that fact was noted. The result of the analysis showed that at least 18 of the 1833 petitioners (about 18 percent, 18 of 102) have descendants in the MWT 2002 membership. These 18 were among the 30 signers who were tentatively identified as enumerated by Earle in 1861.

Mashpee District Vital Records: circa 1834

The following is a brief description of some of the pre-Earle Report vital records that identified the Mashpee/Marshpee Indians living in Mashpee District. The petitioner provided typed transcriptions of "Mashpee District and Town Meeting Minutes, 1834-1880," commencing with minutes of the first meeting held on May 5, 1834, just after the creation of the Mashpee District. A total of eleven marriage intentions appeared in the minutes of meetings held between June 1834 and October 1835 (Minutes 1834.00.00, 6, 8, 11; Minutes 1835.00.00, 15). The minutes also showed that, at a District meeting held on December 19, 1836, "the Clerk of the District [was] directed to make a record of all the coloured inhabitants of the District of Marshpee and also to record all future births, marriages and deaths hereafter as the law directs and to receive a fair compensation therefore" (Minutes 1836.00.00, 29).

The petitioner provided photocopies of all surviving pre-1870 Mashpee "district" records of births, marriages, and deaths (Vital Records, 1834.00.00-1870.00.00, 1-54). The earliest of these were two sets of records in which whole families' births were recorded, in alphabetical order, either in 1834 or, more likely, recorded later, but used 1834 as the date of record. Some entries showed the information was recorded as late as the 1840's. Both sets of records included columns for name, maiden name, age, the month and day of birth, parents' names, and year recorded, although some fields were left blank and some entries were obscured by the microfilming process.

The first recording of families included highly abbreviated column headers, one of which appeared to denote individuals who were "proprietors by marriage" or non-proprietors married to proprietors. A total of 249 individuals were recorded in this first set of records, although the first 18 individuals' names were lost, the right-hand part of the page, which included the parents' names, is still intact.

The second set of family records had a header that was visible although not clearly legible, which appears to read "A Record of Names & Ages of the People [missing words?] not Proprietors in Marshpee District for the year [illegible]." The parentage entries in this set of records were often accompanied by further description, such as "Mulatto" or "Indian & Negro" or "Mixture." Whether the creation of this second set of birth records, or both, stemmed from the 1836 District meeting directive to record all "coloured inhabitants," is not known. A total of 109 individuals were named in this second set of family records, after subtracting one (Charles DeGrasse) who appeared on both lists.

Irrespective of the 1836 District meeting directive for the District Clerk to record all future births, marriages, and deaths, the earliest surviving recorded Mashpee marriages (other than the few recorded 1834-1836 in the District meeting minutes) began about 1855. No recorded deaths

appeared in the Mashpee town records until 1862, which is the year when individual births also began to be recorded, and another set of family recordings was made.

1840 Federal Census

The 1840 Federal census schedules of the "District of Marshpee" were obtained by the OFA. In this census year, only the heads of households appeared by name, and the number of individuals in each household was totaled simply by gender and age range under the categories of "free white persons," "free colored persons," and "slaves." Nathaniel Hinckley, not a name associated with the Mashpee, served as the assistant marshal who enumerated the district, and found it to contain 309 individuals in 83 households. Hinckley recorded the 294 individuals in 80 of those households as "free colored," and the 15 individuals in the remaining 3 households as white. The names of the "free colored" heads of households can be found among those on the 1833 petition signed by the "Marshpee Tribe." None of the three white families appeared in the 1834 vital records of the Mashpee District (Federal Census 1840.00.00, 82-85).

A total of 34 heads of households in 1840 also appeared 19 years later, in 1859, in the Earle Report (Earle 1861.03.00). Twenty-seven of these 34 heads of house were identified as "Marshpee" Indians on the subsequent 1861 Earle Report and the remaining 7 were identified as "colored foreigners," a term Earle used to mean "not of Indian descent," married to Marshpee women (Earle 1861.03.00).

1842 Proprietors List

On March 3, 1842, the Massachusetts legislature passed an act providing for the partition of Mashpee, setting off 60 acres to each proprietor: "Sect. 1: A partition of the lands now owned and held in common by the proprietors of the district of Marshpee shall be made and the same set off in severalty to the said proprietors, to the extent and in the manner provided in this act" (MA General Court 1842.03.03, 522-527). The 1842 act defined who was to be considered a proprietor:

> Sect. 3. It shall be the duty of the said commissioners, as soon as may be, to ascertain, by the best evidence which the nature of the case will admit, the names and number of the legal adult proprietors of Marshpee, male and female, and of any minors who may be the descendants or children of a deceased proprietor or proprietors, according to the provisions of the act establishing the district of Marshpee, passed on the thirty-first day of March, in the year one thousand eight hundred and thirty-four; and, in addition to the persons described in the fourth section of said act as proprietors, every person of Indian descent who was born in said Marshpee, or within the counties of Barnstable or Plymouth, and who had resided, or whose parents or ancestors had resided in Marshpee for twenty years or upwards, previous to the passage of the act establishing the district of Marshpee, shall be taken and deemed to be the lineal descendant of a proprietor. (MA General Court 1842.03.03, 523)

The final list of proprietors, including 188 names, gained approval at the June 14, 1842, District meeting, and appears in the transcripts of the minutes thereof, which the petitioner provided (Minutes 1842.00.00, 105-108). The petitioner provided a typed transcription of the 1842 list of proprietors included nine names which the transcriber could not decipher, such as "Sh---- Edmunds" and "Lydia -------." The act allowed for children of deceased proprietors to be included in this listing; however, no person younger than 18 appears among the 153 individuals (of 188 total) which OFA was able to associate with individuals in the petitioner's genealogical database. Another partial name ("William Cet---") appeared to be the "William Ceturn/Cetum" seen as an infant in the 1834 family records; however, his mother, the only parent identified for him in 1834 is clearly noted as a non-proprietor.[136] He may be the child of a deceased male proprietor, but he is not listed in the petitioner's genealogical database and apparently does not have descendants in the petitioner's membership.

"Descendant outline trees," which were printed from the FTM genealogical database for each of the 153 identified proprietors of 1842, revealed that at least 67 of those 153 proprietors have descendants in the current petitioning group. The Earle Report table annotations show that a total of 82 of these 153 identified proprietors of 1842 also appeared 17 years later, in 1859, in Earle's report published in 1861. In addition, about 105 of these 188 proprietors of 1842 also appear among the 301 individuals on the 1849 Briggs Report, discussed next.

1849 Briggs Report

On February 21, 1849, George N. Briggs presented to the Massachusetts House of Representatives the "Report of the Commissioners" which had been authorized by the Legislature on May 10, 1848 (MA General Court 1848.05.10, 841-842).

In addition to a narrative description of the "Marshpee" tribe (Briggs Report 1849.02.21, 24-38), the report contained an every-person census, giving the names and ages of all individuals, arranged into what appear to be family groups, although no relationships among individuals are stated (Briggs Report 1849.02.21, 64-67). Nevertheless, Briggs provides totals for the numbers of families (57), as well as for "natives" (279) and "foreigners" (26). Briggs stated that "[u]nder the head of foreigners, we include all, one or both of whose parents are not of Indian blood" (Briggs Report 1849.02.21, 6).

The recording of the "Marshpee Tribe" individuals took place in 1848 (Earle Report 1861.03.00, 47), and thus their ages are calculated as of that date. The list ends with a stated total of 305; however, analysis shows that 306 names are listed, of which 5 are repeated, resulting in a total of 301 unique individuals. [The five repeated are Joseph Mills, presumed wife Dorcas, and presumed children William, James, and Elizabeth (Briggs Report 1849.02.00, 64, 66.)

A total of 200 of the 301 individuals enumerated in 1848 by Briggs also appeared 11 years later, in 1859, in Earle's report published in 1861. Of the 101 individuals on the 1849 Briggs Report not appearing on the 1861 Earle Report, 14 were age 60-69, 4 were 70-79, 3 were 80-89 [none

[136]The date and transcriber were not provided; however, the cover sheet identified the transcription as "Plaintiff's Exhibit 184," indicating that the town records were transcribed sometime before the 1978 court case.

90-99], and 2 were over 100 in 1849. It is likely that many of these individuals died before 1859.

1850 Federal Census

OFA reviewed the 1850 Federal census enumeration of "Marshpee" made on August 19, 1850, which included a total of 18 families in 16 dwellings (1850 Federal Census, Barnstable County, 847-849). The "color" column was left blank for all 102 individuals. Marshals and assistant marshals charged with taking this decennial census received instructions which, for the "color" column, specified that "in all cases where the person is white, leave the space blank" (Census 1979, 14). Thus, these 102 individuals are believed to have been white, and not of Indian descent. The census instructions further stated that "Indians not taxed are not to be enumerated in this or any other schedule" (Census 1979, 14). None of the names of Mashpee Indians as seen in the 1833 petition, the 1842 proprietor's list, or the 1849 Briggs Report appeared in this 1850 enumeration of "Marshpee."

On its face this information appeared to conflict with the other contemporary records which stated there were almost no whites living in the Marshpee Indian District at this time. However, OFA's comparison of the 1850 census enumeration labeled "Marshpee" with the 1860 Federal census enumerations of Marshpee Indian District, and the Towns Sandwich and Falmouth in Barnstable County, found that there is reasonable evidence to conclude that the designation "Marshpee" on the 1850 census pages probably did not refer the "Marshpee Indian District," but to the neighborhood of the South Sandwich P.O., in the political jurisdiction of the Town of Sandwich. (See OFA's work paper comparing the data from the 1850 and 1860 censuses, and photocopies of "Marshpee" in 1850 and South Sandwich, P.O., in 1860.)

The assistant marshal, G. W. Donaldson, who was a deputy sheriff and resident of Falmouth, concluded the enumeration of the inhabitants of Falmouth on August 17, 1850, ending with the dwelling #458/family #531. He enumerated the next households in sequence, with dwelling #459/family #532, in "Marshpee" on August 19, 1850, as if they were all a part of Falmouth, rather starting over with dwelling #1/family #1, which was the pattern when enumerating a different town or census district. It took him two days to record the 18 households (three pages) that he labeled "Marshpee," whereas it had taken him only one day to record 20 households (also three pages) in the preceding section for the Town of Falmouth. This indicated that the inhabitants of "Marshpee" were in a rural area where it took longer to get from house to house.

There were 16 adult males (farmers, mariners, master mariners, and carpenters) in "Marshpee" who owned land at the time of the 1850 census. OFA assumed that these land owners would also very likely be on the same land ten years later, and therefore, checked the 1860 Federal census for these men, or their widows and children. OFA's very limited search of the 1860 census found that at least 14 of the families reportedly in "Marshpee" in 1850 could be clearly identified living within a few households of each other in "South Sandwich, P.O.," Town of Sandwich in the 1860 enumeration (1860 Federal census, Barnstable County, Sandwich, 109-114). Two of the "matches" were adult men (and farmers) who had been teenagers in their father's house at the time of the 1850 census. Since it is highly unlikely that a whole neighborhood would pack up and move *en masse* to a new locality just a mile or two away, it appears that the name

"Marshpee" was misapplied in 1850 to what was actually that part of the Town of Sandwich, in the neighborhood of the South Sandwich, P.O., in 1860.

One of the other 1850 "Marshpee" residents was in the 1860 enumeration of the East Falmouth P.O., Town of Falmouth, and one was in the Town of Sandwich. Two of the men from "Marshpee" in the 1850 census appear to be residing in the Indian District in 1860. William Coleman, a 37-year-old mariner in 1850, was listed as living in the Marshpee Indian District in 1860, and the single, 25-year-old mariner, David Lovell, who had been in what appears to be his father's "Marshpee" household in 1850, may be the married, 33-year-old carpenter of the same name, who was in one of the few white households in the Marshpee Indian District in 1860 (1860 Federal Census).

OFA also found Abiather Crocker, who was one of the three heads of families of "free white persons" in the 1840 census of "Marshpee," listed as a 63-year-old farmer (real estate valued at $100) in "Marshpee" in 1850, and a 74-year-old farmer (real estate valued at $100) in the South Sandwich, P.O., enumeration in 1860.

The limited time allotted for this PF did not allow for additional research of the Sandwich and Falmouth vital records and land records or the census enumeration district maps to pinpoint on a map the location of the 18 "Marshpee" households in 1850. However, as the above evaluation shows, the vast majority of the households were located in the jurisdiction of the Town of Sandwich in 1860, and not likely to have been in the Marshpee Indian District in 1850.

1859/1861 Earle Report

The Massachusetts Act of April 6, 1859, charged a Commissioner "to examine into the condition of all Indians and the descendants of Indians domiciled in this Commonwealth, and make a report to the governor, for the information of the general court, on the following matters," which included "1. The number of all such persons, their place of abode, their distribution, whether by tribes or otherwise, classifying them by age and sex, and distinguishing between the married and single; and also the number of persons reputed Indians, who are of mixed or other race" (Earle Report 1861.03.00, 5).

The Commissioner, John Milton Earle, wrote a narrative description of the "Marshpee Tribe" (Earle Report 1861, 46-67) and an every-person census (Earle Report 1861.03.00, Appendix xx-xxxvii). Earle calculated that the "Marshpee Tribe" comprised 403 individuals in 93 families, with 371 "natives" and 32 "foreigners" (Earle Report 1861.03.00, 46); however, OFA analysis finds a total of 405 individuals: 391 on the main list, and 14 more on the "supplementary list." The appendix includes a footnote stating that the "term 'foreigner' is used, throughout, in the Indian sense, simply to designate one not of Indian descent" (Earle Report 1861.03.00, Appendix ii). Thus, Earle reserved the term "foreigner" for an individual without Indian ancestry, whereas Briggs's "foreigners" could have one Indian parent.

A further distinction made by Earle in his census is the use of a supplementary list to record 14 additional Mashpees "who either left Marshpee previous to the division of the land [in 1842], or

are descendants of such, but who are not recognized as having rights in Marshpee" (Earle Report 1861.03.00, Appendix xxxvii).

Earle's census includes the following column headers: Name, Age, Sex or Condition, Tribe or Race, Occupation, Residence, Personal Property [value], Acres of land in Severalty, Value of Land, Value of Land and Buildings. The individuals are arranged in what appear to be families, but no relationships are stated. Earle's narrative report stated that he had assistance in efforts to "examine" the Mashpees: "To Solomon Attaquin, one of the selectmen of Marshpee, for 1859, I am also under particular obligations, for the cheerful and ready aid he has afforded, and for the large amount of desirable information he has communicated" (Earle Report 1861.03.00, 67).

The 36 non-Mashpee individuals appearing in Earle's enumeration of the "Marshpee Tribe" are designated in the "Tribe or Race" column as "foreigner," "(for.) adopted," "African (for.)," "Colored (for.)," "unknown," and "white (for'gner)," or with tribal designations of "Chappequiddick," "Gay Head," "Herring Pond," and "Middleborough." Earle identified 14 "Marshpee" Indians in his recording of the Chappequiddick, Christiantown, Gay Head, Herring Pond, Middleborough, and Mamattakeeset tribes (Earle Report 1861.03.00, Appendix). Only one of the 14 is not in the genealogical database, namely "Mary A.," age 31, married to Ralph Blackwell of the Herring Pond Tribe.

Of the 13 other "Marshpees" recorded in tribes other than "Marshpee" who are found in the genealogical database, 12 do not have descendants in the current membership, and one does. Rhoda F. Attaquin who married (1) William R. Conet/Conant of the Herring Pond Tribe has two descendants from that marriage who are members. (These two members have 10 ancestors on Earle's enumeration of the "Marshpee Tribe" as well because their ancestress, the daughter of Attaquin-Conet/Conant, married another "Marshpee" Indian). Rhoda's second marriage was to William Sturgis, a non-Indian. Their only son married twice, both times to women who had a parent at "Marshpee" in 1859. There are 60 current members who descend from his two marriages. Thus, all of the descendants of the non-resident "Marshpee" Indian Rhoda F. Attaquin also have ancestors who were living at "Marshpee" in 1859.

OFA created a work-paper, in a table format, that included all 391 individuals appearing on Earle's census of the "Marshpee Tribe." OFA's work-paper did not include the 14 other Marshpee Indians on the "supplementary list," none of whom have descendants in the current petitioner, who Earle identified as "not recognized as having rights in Marshpee." As noted previously, this Earle Report table was annotated to reflect the appearance of these Earle Report individuals in other records, such as the 1833 petition, the 1840 Federal census, the 1842 proprietors list, the 1849 Briggs Report, and the 1860 Federal census, to the extent that the genealogical database provided sufficient evidence to make such identifications.

If analysis revealed that an Earle Report individual had descendants in the current membership, that fact was noted as well. The result of the analysis showed that at least 124 of the 391 (32 percent) Mashpee Indians on the Earle Report have descendants on the 2002 membership list. Since several generations of any given family may appear in the Earle Report, further analysis focused on eliminating the "redundant" or supernumerary older generation individuals, and

identifying those youngest Earle Report individuals who have descendants among the petitioner's current members. That analysis identified a total of 65 Earle Report "Marshpee Tribe" individuals from whom the current members trace descent. OFA's analysis found that there was one "new" Earle Report Mashpee claimed as an ancestor by two of the 612 additional members on the 2002 list. He was Frankie Hicks, age 7, was listed with his mother and siblings on the Earle Report. Two of his siblings have descendants in the 2002 membership list and they were also in the 1979, 1989, and 1995 lists.

Of the 223 Earle Report individuals recorded in 1859 as above age 17, and therefore alive in 1842, a total of 82 can be identified on the 1842 proprietors list (37 percent, 82 of 223).[137] Another 136 Earle Report individuals, although not all above age 17, are children of those 82 proprietors, and more still are grandchildren. Thus, the Earle Report shows that the same families identified as proprietors in 1842, continued to reside at Mashpee.

Of the 289 Earle Report individuals recorded as age 11 or older in 1859, or the adults whose ages were "not given," 199 are found on the 1849 Briggs Report, and 90 are not. One child recorded as under age 11 on the Earle Report may be identical to an infant on the Briggs Report. Thus, 68 percent (199 of 289) of those 11 years old or older on the 1861 Earle Report are also on the 1849 Briggs Report. Of the 90 who are not found on the 1849 Briggs Report, 23 had a parent, child, grandparent, or great-grandparent on the 1849 Briggs Report, 10 had a spouse (8) or parent-in-law (2), 47 had no known link, 2 had a possible spouse on the 1849 roll, and 6 had a parent, spouse, or were present themselves in the 1834 family records of the Mashpee district. Thus, the comparison of the Earle report to the earlier Briggs report shows that the majority of the families in 1849 continued to reside at Mashpee in 1859.

There is some evidence suggesting that the Briggs Report may have "missed" Mashpees, or that former residents were gone at that time and returned later, insofar as 11 people on the 1842 proprietors list were not on the 1849 Briggs Report, but were on 1861 Earle Report. A review of their families showed that a total of 28 family members associated with those 11 proprietors do not appear on the Briggs Report but do appear on the Earle Report.

1860 Federal Census

The OFA obtained photocopies of all 1860 Federal census population schedules for the "District of Marshpee," as enumerated by assistant marshal Frederick Freeman. [These census schedule pages were renumbered 121-129[b] and microfilmed in that order, which was not consistent with the order of the dwelling-family numbers. Pages originally numbered 1-4 (dwelling-family #1-part of #43) follow page 9, which has the last lines of dwelling #43.] Although there was one Indian Freeman family in Mashpee at this time, it did not include a Frederick Freeman, and any connection he may have had to the group is not known (Federal Census 1860.00.00, 1-9). However, it is clear that he was very familiar with the residents of the Marshpee District.

Freeman recorded 93 families in Mashpee (323 individuals), residing in 85 households in 1860.

[137] The total is 83, if the young William Ceturn/Cetum is included as a proprietor, but the percent remains at 37.

Although the categories for "color" in the personal description fields on the 1860 census were "white, black, or mulatto," 289 individuals in Mashpee were identified by Freeman as "Ind." for Indian (1860 Federal Census, Marshpee). The remaining individuals were 17 "white" (the field was blank, indicating "white" according to the written instructions), 12 "black", and 5 "mulatto." The white residents were the clergyman (6), a master mariner (3), a carpenter (5), a female school teacher from Ireland, the wife of a Mashpee Indian, and the wife of a man identified as "black" on the census. Children in the latter household were identified as "mulatto." In every other family in which the male head of house was identified as "black" or "mulatto" the wife (and children if present) were identified as Indian.

There were 15 individuals (3 family units and 5 single individuals) in the Earle Report who did not live in Marshpee in 1859 when Earle conducted his survey, but these same 15 individuals were recorded in Marshpee in the 1860 census.[138] According to the 1860 census, four of the adult men were mariners (2 with families), and one man (with a family) was the Baptist Church clergyman, John Amos, who was listed as residing on Nantucket according to the Earle Report. Two Indian women in Marshpee in 1860 were listed as the wives of mariners in the Earle Report, and another Indian woman was the wife of a shipwright, which more than likely explains their non-residence in the Earle Report, but their "usual place of abode" in Marshpee in 1860. According to both the 1860 census and the Earle Report, all but two of these Indians, Jesse Webquish Jr., and Mary Tobias Gardner, had real estate in Marshpee.

District Vital Records: 1862-1870

Beginning on May 1, 1862, another district-wide recording of families was made, consisting of ten double-pages. District Clerk Solomon Attaquin recorded each person's name, date of birth, age, the registration date [May 1, 1862, on the first page, and just "1862" thereafter], maiden name, number [assigned consecutively to each person in a nuclear family], and parentage.[139] No notations indicating proprietors appeared on these pages. About 130 families, from 1 to 12 members per nuclear family, were recorded in 1862 (Vital Records, 1834.00.00-1870.00.00, 37-47, 49).

Birth and death records begin in 1862, and continue until the end of the District period in 1870. Four marriages (including one which occurred in Barnstable in 1733) were recorded between 1855 and 1859, and 21 were recorded between 1860 and 1869. Marriage records from 1862 forward record the "color" of the bride and groom, although such "color" notations do not appear in the birth, death, or family records of this period.

[138]The instructions for the census enumerator were to record the "name of every person whose usual place of abode on the first day of June 1860, was with this family" (Census 1979, 16).

[139] Prior to 2002, the petitioner submitted photocopies of all surviving vital records for the District of Mashpee from 1834-1870 (Vital Records, 1834.00.00-1870.00.00), and in 2002 submitted microfilm of these same records and other vital records from the same era (Mashpee Microfilm TR-3, Mashpee Microfilm BMD-2).

Evidence from 1870 to 1930 Used to Demonstrate the Petitioner's Descent from the Historical Tribe Identified in the 1861 Earle Report

1870 Federal Census

The petitioner submitted photocopies of all 1870 Federal census schedules for the "Marshpee District," as well as selected schedule pages from surrounding jurisdictions including Plymouth, Falmouth, Barnstable, and Sandwich. The non-Mashpee assistant marshal, David Bussly, who enumerated Mashpee's population, recorded 348 individuals, only one of whom he noted as being "Indian." However, individuals identified as Mashpee Indians in earlier documents are included in these schedules, but were by classified by "color" as "black" or "mulatto."

1880 Federal Census

The petitioner submitted photocopies of all 1880 Federal census schedules for the "town of Marshpee," as well as selected schedule pages for Plymouth, Falmouth, Sandwich, Harwich, and Chatham; one schedule page photocopy bears a town name which is illegible. As with the 1870 Federal census photocopies, the 1880 Federal census photocopies for areas other than Mashpee were not annotated by the petitioner to draw attention to specific entries, but do contain individuals or families known, from other records, to be Mashpee Indians. The enumerator for Mashpee was Oliver F. Jones, who appeared on the 1861 Earle Report as a "Marshpee" Indian, but was "mulatto" in 1880. The census total in this year was 346 individuals: 83 "Indian," 180 "mulatto," 42 "black," 40 "white," and 1 "unknown" (1880 Census Mashpee, MA).

1890 Federal Census - Veterans Schedule

Most of the population schedules completed for the 1890 Federal census no longer survive, but its special "Veterans Schedules" survive for 33 states, including Massachusetts. The single-page schedule for Mashpee lists eight Civil War veterans and some details about their service (Federal Census 1890, Veterans Schedules, 1). The enumerator Charles H. Hammond was the son of Watson Hammond and Rebecca Amos who were "Marshpee Indians" in the Earle Report (Vital Records, 1834.00.00-1870.00.00); Rebecca's parents, Joseph Amos and Abigail Wicombs, were on the 1842 proprietors list (Minutes 1842, 105).

The OFA photocopied this schedule, and checked the eight veterans listed in the petitioner-provided genealogical database, and the 1861 Earle Report. Veterans Simeon Handy and Nathaniel D. Bearse were married to women identified as Mashpee Indians in the 1861 Earle Report, and veterans Darius Coombs, Jacob Cowett, Lysander Godfrey, Thomas L. Hicks, and James M. Godfrey appear as "Marshpee Indians" in the 1861 Earle Report. Any pre-1890 Mashpee connection for the eighth veteran John Gooch is unknown; a man of this name appeared in the 1880 census of Mashpee whose "color" was "black," and whose marital status was "widowed or divorced" (1880 Census Mashpee, MA, 79), and a John Gooch married Mrs. Elizabeth (Amos) Hicks circa 1900 (1900 Census Mashpee, MA dwelling 49/family 51).

1900 Federal Census

In this census year, two types of population schedules were available for use: general population schedules and Indian population schedules. Instructions to enumerators stated that "every family composed mainly of Indians should be reported *entirely* on this [Indian Population] schedule, and every family composed mainly of persons not Indian should be reported *entirely* on the general population schedule (Census 1979, 39). Lysander Z. Amos, the enumerator for Mashpee, recorded many families or households composed mainly of individuals he recorded as "Indian," but he placed them on the general population schedules rather than the Indian population schedules, the latter of which he did not use at all. Amos was a descendant of "Marshpee Indians" in the Earle Report, and recorded himself and his family as "Indian" (1900 Census Mashpee, MA, dwelling 19/family 19).

The petitioner also provided photocopies of selected general population schedules for Barnstable, Bourne, Bridgewater, Falmouth, and Plymouth on which Mashpee Indian names were seen by OFA during its review, but the petitioner did not indicate which families in those censuses where ancestral to the current group. No Indian population schedule photocopies for those jurisdictions were provided by the petitioner or found by OFA.

A total of 303 individuals in 71 families, in 68 dwellings, appear in the 1900 census of Mashpee Township. Lysander Z. Amos recorded 228 of these 303 as "Indian," 29 as "black," 45 as "white," and 1 unknown (illegible). Individuals identified as "Indian" appeared in 58 of the 71 households enumerated.

The typed ancestry charts in the petitioner's membership files sometimes included "1900c" after an individual's name, but did not include a citation to the county, town, or page where the family may be located in the census.

1910 Federal Census

The 1910 Federal census again provided two types of population schedules: general population schedules and Indian population schedules. In this census year, the Mashpee enumerator Joseph A. Peters utilized both types of schedules. Peters was a descendant of two Marshpee Indians in the Earle Report (Joseph Amos and his daughter Cordelia Amos). He also served as a Mashpee Town clerk, selectman, and on various committees between 1897 and 1913.

The petitioner provided photocopies of all "Mashpee Town" schedules, which consisted of eight pages of Indian Population schedules and three pages of general population schedules. The Indian population schedules enumerate a total of 160 persons: 159 "Indian" and 1 "white." Of those 159 individuals identified as "Indian," 157 were also designated as "Mashpee" and 2 as "Narragansett" in column #33 labeled "Tribe of This Indian." The general population schedules identify 110 other individuals also residing in Mashpee, 75 recorded as "mulatto," 10 as "black," and 25 as "white." Some of the names on the photocopy of the 1900 census pages for Mashpee were not legible; however, it was possible to identify at least 30 individuals in the general population who were Mashpee Indian descendants (1910 Census Mashpee, MA; MWT-OTH-

V002-D0015, 4-6 in FAIR). The total recorded population of Mashpee in 1910 was 270 individuals. The petitioner also provided photocopies of selected Indian population schedules of Barnstable and Falmouth.

Instructions for completing the Indian population schedules stipulated that "every family composed mainly of Indians should be reported entirely on this special schedule" (Census 1979, 49), on which was recorded, among other data, the "tribe" of the individual, the "tribe" of his/her father, and the "tribe" of his/her mother. Joseph A. Peters appears to have observed a standard other than Earle Report descent for determining whether an individual in 1910 was "Mashpee." For example, Charles H. Peters (a Christiantown Indian, and the enumerator's father) and his second wife Georgina/Georgiana Palmer (who has no known Indian ancestry) were both recorded as Mashpee (and as having two Mashpee parents) on the Indian Population schedule (1910 Census Mashpee, MA, 1B). Mary (Cheverie) Peters, the wife of Samuel Henry Peters, similarly has no known Indian ancestry but is listed as "Mashpee" (1910 Census Mashpee, MA, 1B).

Two Indians identified as Narragansett on the Indian population schedules in 1910 were a husband and wife (1910 Census Mashpee, MA, 3B). However, the wife in the Narragansett couple, Philena (Tobey) Brown, was Mashpee rather than Narragansett. Philena was the daughter of Ephraim Tobey and Philena Pocknett (Federal Census 1870 Mashpee, MA, dwelling 12/family 12), both of whom were on the Earle Report as Mashpees.

Peters placed on the general population schedule, and identified as "mulatto:" Silas A. Pells (who has six ancestors on the Earle Report, and five on the 1842 proprietors list); Isabella Jackson (six ancestors on the Earle Report and two on the 1842 proprietors list); Gertrude (Ockry) Boardley (self and three others on the Earle Report, and four on the 1842 proprietors list); Horatio Amos (self and five others on the Earle Report, and five on the 1842 proprietors list); Adeline Mills (seven ancestors on the Earle Report and six on the 1842 proprietors), and Hosea Pocknett (three ancestors on the Earle Report and two on the 1842 proprietors). Peters was distantly related by marriage (i.e., his wife's second cousin once removed or third cousin) to Pells, Boardley, and Mills.

The petitioner also provided photocopies of selected Indian population schedules for Barnstable and Falmouth, in which were noted a few individuals whose names revealed them to be Mashpee Indians. However, their "tribes" were recorded as "Pequot" or "South Sea" in Barnstable schedules. One individual in Falmouth, who was identified in other reliable records as a Mashpee Indian, was originally recorded on the census as "Massasoit," but that was crossed out and the substitute "tribe" was not decipherable in the copy provided.

Although generally very useful for identifying residences and other descriptive information of individuals and family units, the 1910 census returns in this case were not uniformly consistent or accurate in identifying the "race or color," or "tribe." The fact that no one on the general population schedules was recorded as "Indian" under "color or race" may be the effect of another census instruction, to record as mulatto "persons having some proportion or perceptible trace of negro blood" (Census 1979, 42).

1920 Federal Census

In 1920, the census did not have a separate Indian population schedule. The petitioner provided photocopies of all population schedules for "Mashpee Town," as well as two selected pages from "Barnstable Town." The enumerator for Mashpee was Nelson D. Simons, a descendant of seven Mashpee Indians in the Earle Report, who recorded himself as "Indian" (1920 Census Mashpee, MA, dwelling 1, family 1). Simons recorded 64 families in Mashpee in 1920, comprising 242 individuals of whom 161 were "Indian," 21 "mulattos," 24 "blacks," and 36 "whites." Forty-one of the 64 families included individuals Simons recorded as "Indian."

These schedules provided the raw material for a study to see how many of the current members born before 1920 were found among the children in Mashpee in 1920. There were 14 individuals on the 2002 membership list who were born before January 1, 1920 (1907-1919).[140] Of the 14 current members (in the 2002 list) who were born between 1900 and 1919, 6 were enumerated as Indian children and 1 as a white child in the 1920 census of Mashpee. Six of these 14 Indian children also have descendants in the 2002 membership.

1930 Federal Census

The population schedules of the 1930 Federal census were opened to the public on April 1, 2002, which coincided with the active initial, court-ordered consideration phase of this petition. Therefore, OFA photocopied all population schedules for "Mashpee," as enumerated by Edmund B. Amos, an "Indian" (1930 Census Mashpee, MA, 4B). Amos's father, Lysander Z. Amos, enumerated the Mashpee schedules for the 1900 census (1900 Census Mashpee, MA, dwelling 19 and family 19). Both Lysander and his wife Flora Bearse had Mashpee Indian ancestors identified in the Earle Report (Earle 1860.03.00, Federal Census 1870, 4-5).

Edmund B. Amos recorded 361 individuals in 93 families: 265 Indian, 4 Negro, 53 White, 38 Portuguese, and 1 Italian. The "Indian" veterans of the World War (WWI) noted on these schedules (including their dwelling/family numbers) were: 1/2 Lafayette R. Hicks, 11/12 Charles A. Peters, 13/14 Lawrence E. Hendricks, 24/26 J. Wheldon "Couett," 26/28 Willard Pocknett Jr., 32/34 Steven A. Peters, 56/60 George W. DeGrasse, and 58/62 Ernest R. Haynes.

The 2002 Membership List

The petitioner submitted a printed membership list dated November 15, 2002, with the full names (including maiden names), of 1,462 members, which is the current membership list (MW Membership List 2002.11.15). The petitioner also submitted an electronic version of this same membership list (MW Membership Roll 2002 Zip Disk). The 2002 list also included the gender, birth date, place of birth, address (street, city, state, and ZIP Code), father's name, and mother's name. In most instances, if one parent was non-Mashpee, "(NM)" appeared after the name. The list was printed in alphabetical order by the member's surname with a few exceptions. The petitioner provided a supplemental list of missing residential addresses, dated December 23,

[140]There were 39 individuals on the petitioner's 1995 membership list who were born before January 1, 1920 (1898-1919).

2005, which was received by the Department on January 6, 2006. Therefore, the November 15, 2002, list, as supplemented, complies with the requirements of criterion 83.7(e). Although the 2002 list included all of the elements of a membership list required under the regulations, it was not separately certified by the governing body as required by criterion 83.7(e)(2), and on February 10, 2006, the Department wrote the MWT requesting the proper certification. On March 2, 2006, the Department received a letter dated February 23, 2006, signed by 10 members of the MWT governing body, which certified the November 15, 2002, list of 1,462 members.[141]

The initial evaluation of the Mashpee petition for this proposed finding was based on evidence provided by the petitioner to the Department as of September 27, 2000, which included a 1995 certified membership list. As part of pleadings with the district court in 2001 and 2002, the petitioner's president, Glenn Marshall, filed a declaration that estimated the Mashpee group's membership was "1,500 members, 75 percent of whom live in and around the town of Mashpee in Barnstable County, Massachusetts, as their ancestors have done since time immemorial" (Marshall Declaration Filed 2001.09.10) The asserted 2001/2002 membership was about 50 percent (499 members) larger than the 1,001 members listed on the certified 1995 membership list in the petition documentation. By letter dated August 8, 2002, the Department contacted the MWT petitioner for an explanation of the discrepancy or to provide an updated membership list, certified by the governing body, which includes the additional 500 members (Smith to Marshall 2002.08.08). The petitioner responded with a new membership list dated November 15, 2002, which included 1,462 members.

The petitioner explained the increase from 1,001 members on the 1995 list to 1,462 members on the 2002 list was the result of updating the membership list to: remove 69 deceased members, remove 81 undocumented members [the membership file lacked vital records], and adding 611 members (MW Supplement 2005.10.31, Tribal Membership, 1). [OFA's analysis found 612.]

OFA compared the additional members' relationships to individuals on previous membership lists, and to the genealogies of other members on the 1995 or 2002 membership lists. OFA also analyzed whether the additional members were minors or adults, when and who completed the application forms, and where the new members resided. OFA's analyses of these additional members' documentation and genealogical relationships confirmed the petitioner's assertions that these new members were "newly documented, but not 'new' members." See appendix E for OFA's analysis of the 612 additional members.

About 54 percent of the members added in 2002 had a parent, sibling, or were themselves on one of the previous membership lists, but not the 1995 list, and over 22 percent of the added members had a grandparent, great-grand parent, or great-great-grandparent on previous lists. Almost all of the remainder of the added members did not have these close relatives on previous membership lists, but were documented descendants of the Mashpee on the Earle Report. About

[141]The petitioner also submitted a membership list dated February 3, 2003, with the same 1,462 names and other information in the 2002 list, although printed in a slightly different order, which appeared to be an attachment to the group's explanation of the enrollment procedures (MW Membership List 2003.02.03). The MWT did not certify the 2003 list and since it contained the identical names in the November 15, 2002, list, the Department considered the 2002 list to be the "current" membership list for purposes of evaluating the petition under criterion 83.7(e).

42 percent of the added members were under 16 years old when the 1995 list was compiled. About 72 percent of the added members (439 of 612) resided in Massachusetts: 118 in Mashpee, 51 in Hyannis, and about 140 in other Cape Cod towns. There is no evidence that the petitioner was recruiting new members from populations not already connected to it. See Appendix E for the analysis of the 1956-1960 council roster, and the 1979, 1989, and 1995 membership lists.

Individuals MWT "Deleted" from the 1995 List: Deceased Members and Incomplete Files

The petitioner submitted a report of "Deceased Mashpee Members Deleted from the 1995 Membership Roll – 69 Members." OFA compared the list with the names on the 1995 list and the names in the genealogical database and found that most of the individuals died after 1995. Some had death dates that were prior to 1995. In many cases, there was no death date in the record. OFA checked the petitioner's Ancestry Files and found that although there was a file for each of the 69 deceased individuals, very few of the files had a death record or obituary identifying the death date. The files checked usually had a birth record, ancestry charts, and a cover letter stating the application was rejected because the individual was deceased. These files did not have any other documentation confirming the individual's descent from a Mashpee Indian on the Earle Report.

The petitioner also submitted a report on the "Mashpee Members Deleted from the 1995 Membership Roll – No Vital Records – 81 Members." The report listed 81 individuals who had been on the 1995 list, but were not included in the 2002 membership list. This report included the individual's full name, birth date, and parents' names. OFA compared the names to previous membership lists and to the petitioner's genealogical database. Almost all of the names were on all three of the 1979, 1989, and 1995 membership lists and all of their family trees were found in the genealogical database. The vast majority of these names had a parent, sibling, or grandparent who had been on previous lists or who was also on the 2002 membership list.

These 81 individuals were from a variety of family lines and there does not appear to be a pattern of removing individuals for any reason other than a failure to provide the documentation required by the group's own membership criteria. It appears these removals were done on a case-by-case basis because the member/applicant did not submit a birth certificate or other vital record. Six of the individuals who were named in this report did not have any grandparents, parents, or siblings on any of the previous membership lists. Although these six individuals may have Mashpee ancestors, it appears that there may be some questions regarding "abandoning tribal affiliation" as a reason for the file being incomplete. However, there was no specific explanation in the current record.

Mashpee Ancestry of the Membership on the 2002 List

The petitioner submitted ancestry charts for each of the 1,462 individuals on the 2002 membership list. These charts outlined each member's descent from at least one individual who was identified as a Mashpee Indian on the 1861 Earle Report, or who was one of the two Christiantown Indian couples identified in the petitioner's 2004 constitution as qualified ancestors. The petitioner submitted photocopies of birth records for almost everyone on the 2002 membership list. Thus, each individual's parentage could be documented and the links between generations in the 20th century were confirmed.

The petitioner has provided documentation that the members on the 2002 list have the same ancestors on the 1861 Earle Report as the individuals on 1995 membership list, with the exception of two individuals, a father and daughter, descendants of Frankie Hicks, who was seven years old in the 1861 Earle Report. Frankie Hicks' mother, Eleanor B. Hicks, and sisters, Amanda and Mercy, were also on the Earle Report as Mashpee Indians living at Mashpee. His sister, Amanda (Hicks) Coombs, had many descendants on the 1979, 1989, 1995, and 2002 membership lists. Frankie Hicks' daughter, Corinda Hicks (1877-1918) was born in Mashpee and died there; however, her son Oswald Sanford (1899-1955), who was born in Mashpee, married in Providence Rhode Island (circa 1926) and apparently lived the rest of his life in Boston or Malden, Suffolk County, Massachusetts. His son and granddaughter, the current new members, were born in Boston in 1926 and 1953 respectively. It appears that this branch of the Hicks family has not lived in or near Mashpee for over 80 years. Their closest relatives on the current membership list are their third and fourth cousins. Although there is evidence for their Mashpee ancestry in the 1861 Earle Report, the petitioner has not explained how this branch of the Hicks family maintained tribal relations as required in the petitioner's governing document.

As a result of frequent intermarriage between Mashpee Indians, especially in the 19th and early 20th centuries, members on the 2002 list, especially the older adults, may have two, three, or four grandparents who were descendants of the Mashpee Indians on the Earle Report, rather than just one such grandparent. OFA took a non-random sample of 42 individuals, representing 12 different family names (from the last names beginning with "A" and "B") on the 2002 membership list,[142] and counted the total number of Earle Report ancestors in their family trees. No effort was made to select certain family lines or age groups. Thus, the non-random sample included parents and children, two of the adults with different last names who were second cousins to each other, and one woman who was the aunt to one, and great-aunt to four others. The individuals in the sample ranged in age from 12 to 90. The total number of Earle Report ancestors for each member ranged from 2 to 31.[143] The following table shows the number of current members in the sample and their total number of Earle Report Ancestors.

[142]Initially this non-random sample just used the first page of names on the 1995 membership list (48 names); however, since 1995, 4 of the individuals died and 2 others were removed from the membership list for lack of vital records, leaving 42 names in the sample.

[143]A statistical random sample of the entire membership may result in different conclusions.

This Number of Current Members	Have This Number of Earle Report Ancestors
1	2
6	5
1	7
1	8
11	11
10	12
1	16
4	17
7	28
1	31
Total: 42	

These totals do not reflect the number of times a particular Earle Report individual may appear in the member's ancestry. Due to cousins marrying one another, some Earle Report ancestors appear multiple times in an individual's family tree.

Potential Growth of Membership

The petitioner's 2004 constitution provides evidence that the petitioner has set boundaries for eligibility for membership that are based on descent from the Mashpee Wampanoag Indians identified on the 1861 Earle Report, or from the two couples who were Christiantown Indians (Peters-Palmer and Peters-DeGrasse), as well as on the maintenance of "tribal community involvement." However, since the constitution was adopted as recently as 2004, the petitioner has not submitted evidence, other than the 2002 membership list itself, to demonstrate how it is implementing the eight sections Article III that define and limit membership.

Every Federal census of Mashpee reviewed for this PF contained some Earle Report descendants in families which are not represented by current members. Modern day descendants of these families, or descendants of any of the Mashpee Indians identified by Earle, would meet the first part of petitioner's membership requirement. One of the queries in the 1910 Federal census required enumerators to note how many then-living children had been born to each of the mothers being recorded. A review of that information for the 45 dwellings or households appearing in the Indian Schedules found 28 mothers of then-living children, 7 of whom have no descendants among current members, and 21 who do have descendants among current members. There is no way to know the potential growth to the petitioner if those seven mothers' descendants, if they exist, seek to join the current membership.

The petitioner submitted a circa 1976 listing of 748 potential members, then living both in and beyond Barnstable County (MW 1976.00.00 ca). Since the petitioning group devised this list of potential members, it may have considered both membership aspects — descent and "tribal affiliation" — but this was not stated. The petitioner's 1979 membership list included 541 of those previously identified (circa 1976) potential members. The petitioner submitted no evidence or explanation of why these lists, made only three years apart, would reflect such a discrepancy in numbers. The petitioner's 2002 list had at least 61 more members who were previously identified as potential members circa 1976. OFA checked the names on the potential members

list against information in the petitioner's genealogical database and found that several others on the circa 1976 list are now deceased. However, the children and grandchildren of those deceased individuals, as well as the remaining potential members circa 1976, and their children or grandchildren, represent possible new members.

It is not required by the regulations, and the petitioner did not submit, a list of pending applications or other evidence identifying potential members. However, there are at least 10 children born since 1986 who were listed with their families in the genealogical database, but they are not listed on the 2002 membership list. Some of the MWT members who signed consent forms listed their children, but those children did not appear in the genealogical database, or on the 2002 membership list. It would appear that these children are potential members and, if they meet the petitioner's own membership criteria, are likely to be added to the membership list at some future date. It is also likely that several of the 81 individuals who had been on the 1995 list, but were not included on the 2002 list for a failure to provide the required vital records, may yet provide the petitioner with the necessary evidence and be eligible for membership in the group.

Summary

The petitioner has submitted a membership list dated November 15, 2002, with the full names, birth dates, and addresses for 1,462 members. The petitioner provided a supplemental list of missing residential addresses, dated December 23, 2005, which was received by the Department on January 6, 2006. This list was properly certified by a letter signed by 10 members of current governing body on February 23, 2006, which was hand-delivered to OFA on March 2, 2006. The November 15, 2002, the MWT membership list, as supplemented, complies with the requirements of a membership list under the criterion 83.7(e).

The petitioner claims that about 98 percent (1,427 of 1,462) of the current membership descends from at least one individual who was identified as a member of the successor entity of a historical Mashpee ("Marshpee") Indian tribe because they were identified in the 1861 Earle Report on Indians in Massachusetts. The remaining 2 percent claim to be descendants of two Christiantown Wampanoag Indians, who were also enumerated by Earle. Earle included in his report, without refutation, Benjamin F. Hallett's 1834 statement made before a committee of the Massachusetts legislature which traces the Mashpee Indians' population totals back to 1767 (Earle Report 1861.03.00, 47). The analysis for this PF shows that the Marshpee Indians identified by Earle were the same individuals, or descendants of the same individuals, who had been identified previously in 1849, 1842, and 1833 as members of the Marshpee tribe living in the Marshpee Indian District. Thus, the evidence supports Earle's identification of the Marshpee Indian entity as it existed in 1861. As explained in his initial description of the Mashpee, Earle made efforts to distinguish between those Mashpee Indians living outside the District of Mashpee who were maintaining relations with the group and those who were no longer recognized as members.

The evidence in the petitioner's membership files (birth records), ancestor files (birth, marriage, and death records), vital records (birth, marriage, and death records) primarily from the Town of Mashpee, Massachusetts, and the Federal censuses were used to document the ancestry of the

current membership to at least one ancestor identified as a Mashpee (or Christiantown) Indian in 1861. The petitioner's membership files also contained, in most cases, the applicant's written consent to be on the MWT membership list. The evidence in the record demonstrates that about 90 percent of the current membership has documented their claimed ancestry and meets the group's own membership requirements in its 2004 governing document. However, the remaining 139 individuals (10 percent, 139 of 1,462) have not yet submitted the necessary evidence to support their claimed ancestry. It is expected that the petitioner will be able to submit such evidence during the comment period.

The MWT petitioner is urged to update its membership list for the Final Determination, in particular to include the children of current members as described above, and any other pending applications that meet the petitioner's membership criteria. If a petitioner is acknowledged as a tribe, its membership list for the Final Determination will become its base tribal roll.

Conclusion

The MWT submitted a properly certified membership list, and has documented that 90 percent of its membership (1,323 of 1,462) consists of individuals who descend from the historical Mashpee tribe. Based on precedents, the Department finds that the MWT petitioner meets the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that

> **the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe.**

A review of the available documentation has revealed that the membership is composed principally of persons who are not members of any acknowledged North American Indian tribe.

Conclusion

The petitioner meets criterion 83.7 (f).

Criterion 83.7(g) requires that

> **neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.**

A review of the available documentation has revealed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe.

Conclusion

The petitioner meets the requirements of criterion 83.7(g).

APPENDIX A
TOWN OF MASHPEE SELECTMEN 1870-1970[1]

Selectmen-Town of Mashpee

Date	*First Name*	*Last Name*
1870	SOLOMON	ATTAQUIN
1870	WALTER	MINGO
1870	SILAS	PELLS
1871	WALTER	MINGO
1871	SOLOMON	ATTAQUIN
1871	SILAS	PELLS
1872	SILAS	PELLS
1872	DARIUS	COOMBS
1872	GEORGE	SEWALL
1873	DARIUS	COOMBS
1873	SILAS	PELLS
1873	WALTER	MINGO
1874	DARIUS	COOMBS
1874	AMOS	MATTHIAS
1874	SILAS	PELLS
1875	AMOS	MATTHIAS
1875	WALTER	MINGO
1875	SILAS	PELLS
1876	WALTER	MINGO
1876	AMOS	MATTHIAS
1876	SILAS	PELLS
1877	WALTER	MINGO
1877	AMOS	MATTHIAS
1877	FOSTER	PELLS
1878	NICHOLAS	KEETER
1878	WALTER	MINGO
1878	DARIUS	COOMBS
1879	WILLIAM	SIMONS
1879	NICHOLAS	KEETER
1879	WILLIAM	MYE
1880	WILLIAM	SIMONS
1880	NICHOLAS	KEETER
1880	WILLIAM	NYE
1881	WILLIAM	SIMONS
1881	WILLIAM	NYE
1881	NICHOLAS	KEETER
1882	WILLIAM	SIMONS
1882	WILLIAM	NYE

[1]Underlined names represent those selectmen who were neither group members nor their spouses.

Date	First Name	Last Name
1882	NICHOLAS	KEETER
1883	WILLIAM	SIMONS
1883	WILLIAM	NYE
1883	NICHOLAS	KEETER
1884	NICHOLAS	KEETER
1884	WILLIAM	SIMONS
1884	WILLIAM	NYE
1885	WILLIAM	SIMONS
1885	WILLIAM	NYE
1885	NICHOLAS	KEETER
1886	SILAS	PELLS
1886	HORATIO	AMOS
1886	DARIUS	COOMBS
1887	HORATIO	AMOS
1887	DARIUS	COOMBS
1887	SILAS	PELLS
1888	DARIUS	COOMBS
1888	SILAS	PELLS
1888	HORATIO	AMOS
1889	DARIUS	COOMBS
1889	SILAS	PELLS
1889	LYSANDER	AMOS
1890	LYSANDER	AMOS
1890	NATHANIEL	BEARSE
1890	DARIUS	COOMBS
1891	CHARLES	HAMMOND
1891	LYSANDER	AMOS
1891	NATHANIEL	BEARSE
1892	FOSTER	PELLS
1892	CHARLES	HAMMOND
1892	DARIUS	COOMBS
1893	CHARLES	HAMMOND
1893	DARIUS	COOMBS
1893	FOSTER	PELLS
1894	CHARLES	HAMMOND
1894	DARIUS	COOMBS
1894	LEONARD	PELLS
1895	CHARLES	HAMMOND
1895	DARIUS	COOMBS
1895	FOSTER	PELLS

Date	First Name	Last Name
1895	CHARLES	HAMMOND
1896	DARIUS	COOMBS
1896	FOSTER	PELLS
1897	CHARLES	HAMMOND
1897	HORATIO	AMOS
1897	ALTON	SANFORD
1898	LYSANDER	AMOS
1898	ALTON	SANFORD
1898	HORATIO	AMOS
1899	CHARLES	HAMMOND
1899	HORATIO	AMOS
1899	ALTON	SANFORD
1900	CHARLES	HAMMOND
1900	LYSANDER	GODFREY
1900	FOSTER	PELLS
1901	CHARLES	HAMMOND
1901	FOSTER	PELLS
1901	LYSANDER	GODFREY
1902	LYSANDER	GODFREY
1902	CHARLES	HAMMOND
1902	FOSTER	PELLS
1903	EZRA	CONANT
1903	LYSANDER	GODFREY
1903	CHARLES	HAMMOND
1904	HORATIO	AMOS
1904	EZRA	CONANT
1904	LYSANDER	GODFREY
1905	HORATIO	AMOS
1905	CHARLES	HAMMOND
1905	LYSANDER	GODFREY
1906	EZRA	CONANT
1906	LYSANDER	GODFREY
1906	JOSEPH	PETERS
1907	EZRA	CONANT
1907	LYSANDER	GODFREY
1907	JOSEPH	PETERS
1908	EZRA	CONANT
1908	LYSANDER	GODFREY
1908	JOSEPH	PETERS
1909	LYSANDER	GODFREY

Date	*First Name*	*Last Name*
1909	JOSEPH	PETERS
1909	OSCAR	SANFORD
1910	LYSANDER	GODFREY
1910	JOSEPH	PETERS
1910	OSCAR	SANFORD
1911	JOSEPH	PETERS
1911	LYSANDER	GODFREY
1911	DARIUS	COOMBS
1912	DARIUS	COOMBS
1912	LYSANDER	GODFREY
1912	JOSEPH	PETERS
1913	JOSEPH	PETERS
1913	DARIUS	COOMBS
1913	HORATIO	AMOS
1914	DARIUS	COOMBS
1914	LYSANDER	GODFREY
1914	HORATIO	AMOS
1915	HORATIO	AMOS
1915	IRVING	OAKLEY
1915	OSCAR	CHASE
1916	HORATIO	AMOS
1916	DARIUS	COOMBS
1916	OSCAR	CHASE
1917	HARRISON	FRYE
1917	DARIUS	COOMBS
1917	CLARENCE	EDWARDS
1918	WILLIAM	PETERS
1918	HARRISON	FRYE
1918	CLARENCE	EDWARDS
1919	WILLIAM	PETERS
1919	HARRISON	FRYE
1919	CLARENCE	EDWARDS
1920	WILLIAM	PETERS
1920	CLARENCE	EDWARDS
1920	HARRISON	FRYE
1921	HARRISON	FRYE
1921	OSCAR	SANFORD
1921	EDMUND	AMOS
1922	HARRISON	FRYE
1922	EDMURD	AMOS

Date	First Name	Last Name
1922	OSCAR	SANFORD
1923	OSCAR	SANFORD
1923	HARRISON	FRYE
1923	EDMUND	AMOS
1924	NATHAN	PETERS
1924	EDMUND	AMOS
1924	HARRISON	FRYE
1925	HARRISON	FRYE
1925	EDMUND	AMOS
1925	NATHAN	PETERS
1926	NATHAN	PETERS
1926	HARRISON	FRYE
1926	EDMUND	AMOS
1927	JOHN	HAYNES
1927	NATHAN	PETERS
1927	STEVEN	PETERS
1928	JOHN	HAYNES
1928	NATHAN	PETERS
1928	STEVEN	PETERS
1929	NATHAN	PETERS
1929	STEVEN	PETERS
1929	HARRISON	FRYE
1930	HARRISON	FRYE
1930	NATHAN	PETERS
1930	FERDINAND	MILLS
1931	NATHAN	PETERS
1931	FERDINAND	MILLS
1931	HARRISON	FRYE
1932	HARRISON	FRYE
1932	NATHAN	PETERS
1932	STEVEN	PETERS
1933	HARRISON	FRYE
1933	NATHAN	PETERS
1933	STEVEN	PETERS
1934	HARRISON	FRYE
1934	NATHAN	PETERS
1934	STEVEN	PETERS
1935	STEVEN	PETERS
1935	LEO	PETERS
1935	HARRISON	FRYE

Date	First Name	Last Name
1936	STEVEN	PETERS
1936	LEO	PETERS
1936	HARRISON	FRYE
1937	LEO	PETERS
1937	HARRISON	FRYE
1937	STEVEN	PETERS
1938	STEVEN	PETERS
1938	LEO	PETERS
1938	HARRISON	FRYE
1939	STEVEN	PETERS
1939	LEO	PETERS
1939	THEODORE	JONAS
1940	LEO	PETERS
1940	THEODORE	JONAS
1940	STEVEN	PETERS
1941	LEO	PETERS
1941	THEODORE	JONAS
1941	HARRISON	FRYE
1942	STEVEN	PETERS
1942	LEO	PETERS
1942	HARRISON	FRYE
1943	HARRISON	FRYE
1943	STEVEN	PETERS
1943	FERDINAND	MILLS
1944	HARRISON	FRYE
1944	FERDINAND	MILLS
1944	STEVEN	PETERS
1945	HARRISON	FRYE
1945	FERDINAND	MILLS
1945	STEVEN	PETERS
1946	STEVEN	PETERS
1946	FERDINAND	MILLS
1946	HARRISON	FRYE
1947	FERDINAND	MILLS
1947	FRANK	HICKS
1947	STEVEN	PETERS
1948	FERDINAND	MILLS
1948	FRANK	HICKS
1948	STEVEN	PETERS
1949	FERDINAND	MILLS

Date	First Name	Last Name
1949	FRANK	HICKS
1949	STEVEN	PETERS
1950	FRANK	HICKS
1950	FERDINAND	MILLS
1950	STEVEN	PETERS
1951	STEVEN	PETERS
1951	FRANK	HICKS
1951	FERDINAND	MILLS
1952	STEVEN	PETERS
1952	FRANK	HICKS
1952	FERDINAND	MILLS
1953	STEVEN	PETERS
1953	FERDINAND	MILLS
1953	FRANK	HICKS
1954	FERDINAND	MILLS
1954	FRANK	HICKS
1954	LEROY	AIKEN
1955	CLARA	PETERS
1955	FRANK	HICKS
1955	LEROY	AIKEN
1956	CLARA	PETERS
1956	FRANK	HICKS
1956	LEROY	AIKEN
1957	FRANK	HICKS
1957	CLARA	BIGELOW
1957	WILLIAM	MILLS
1958	FRANK	HICKS
1958	CLARA	BIGELOW
1958	WILLIAM	MILLS
1959	CLARA	BIGELOW
1959	WILLIAM	MILLS
1959	LEROY	AIKEN
1960	LEROY	AIKEN
1960	CLARA	BIGELOW
1960	ELWOOD	MILLS
1961	LEROY	AIKEN
1961	ELWOOD	MILLS
1961	FRANK	HICKS
1962	ELWOOD	MILLS
1962	FRANK	HICKS

Date	*First Name*	*Last Name*
1962	LEROY	AIKEN
1963	ELWOOD	MILLS
1963	FRANK	HICKS
1963	LEROY	AIKEN
1964	LEROY	AIKEN
1964	FRANK	HICKS
1964	LEO	SWEENEY
1965	LEO	SWEENEY
1965	FRANK	HICKS
1965	LEROY	AIKEN
1966	LEROY	AIKEN
1966	LEO	SWEENEY
1966	FRANK	HICKS
1967	FRANK	HICKS
1967	LEROY	AIKEN
1967	LEO	SWEENEY
1968	FRANK	HICKS
1968	LEO	SWEENEY
1968	KEVIN	O'CONNELL
1969	KEVIN	O'CONNELL
1969	PHILIP	ROLLINS
1969	FRANK	HICKS
1970	PHILIP	ROLLINS
1970	FRANK	HICKS
1970	KEVIN	O'CONNELL

APPENDIX B
RESIDENTIAL ANALYSIS OF CONTEMPORARY GROUP[1]

Summary

Mashpee and nearby towns	
Mashpee	418
1 to 5 miles by road[2]	62
6-10 miles by road	132
11-20 miles by road	237
21-30 miles by road	37
	886
Eastern Mass. and RI	
Plymouth	21
Boston area	88
Fall River/New Bedford	65
Other E. Mass.	38
Providence area	16
Other RI	4
	232
Other Mass.	
Other Mass.	15
All Other States	329
Total membership	1462

[1]Data is mailing address (i.e., post office) on the 2002 membership list.

[2]Approximate distances by road are to intersection of State 130 (Main Street) and Great Neck Road.

Detailed Figures

Location	*Number of Individuals*	*Distance by Road from Mashpee*
	Mashpee	
Mashpee town		
Mashpee	418	0
	Nearby Towns	
East of Mashpee (extending onto the middle Cape)		
Santuit	1	2
Marston's Mills	23	3
Osterville	12	6
W. Barnstable	12	7
Centerville	9	8
W. Hyannisport	3	9
Hyannis	95	12
W. Yarmouth	14	13
Yarmouthport	2	13
Yarmouth	2	14
S. Yarmouth	8	17
S. Dennis	9	17
Dennis	3	18
W. Harwich	1	21
Harwich	3	23
East Harwich	3	26
South of Mashpee		
Cotuit	15	3
Waquoit	8	5
Teaticket	10	10
East Falmouth	65	10
Falmouth	34	12
West of Mashpee (upper Cape and immediately west)		
West Falmouth	1	7
North Falmouth	1	11
Pocasset	32	14
Onset	6	15
Monument Beach	3	16
Buzzard's Bay	18	17

Bourne	8	18
E. Wareham	10	22
Wareham	18	24
W. Wareham	2	29
North of Mashpee		
Forestdale	15	3
Sagamore	3	9
Sandwich	11	10
E. Sandwich	6	10
Sagamore Beach	2	15

Elsewhere in Massachusetts

Plymouth	21	36
Boston metropolitan area numerous towns	88	55-85
New Bedford/Fall River	65	48-61
New Bedford 51		
Fairhaven 7		
Fall River 2		
Dartmouth 3		
S. Dartmouth 2		
Other Eastern Mass.	38	
Other Mass.	15	

Rhode Island

Providence metropolitan area	16	65-75
Other RI	4	

Other States

Total, states other than Mass. and RI	309

APPENDIX C:
OTHER PREVIOUS GOVERNING DOCUMENTS

Bylaws - circa 1974

The petitioner submitted one earlier governing document, entitled "By-Laws of the Mashpee Wampanoag [added by hand:] *Indian* Tribal Council, Inc." No date appears on the document, although the petitioner described it as "undated, circa 1974" (MW By-Laws 1974.00.00). The Department's OD letter noted that the agenda for a February 10, 1974, Mashpee meeting included, "Revision of By-Laws" (MWT 2/3/1974). Minutes of an executive committee meeting held on March 3, 1974, discuss the bylaws' lack of description of the executive director's duties and responsibilities (MW Minutes 1974.03.03), which is true of the "undated" bylaws furnished by the petitioner. A motion passed at the March 3, 1974, meeting required the board of directors to review the matter and submit a bylaws amendment. Insofar as the undated bylaws do not include a definition of the duties and responsibilities of the executive director, they do not appear to be bylaws adopted or amended after March 3, 1974. The petitioner's OD response, however, maintained: "[t]here is no set of bylaws prior to February 1974" (MW OD Response 1996.01.23, 87).

The membership criteria of the undated bylaws appeared in Article I, Section 1: "All members of the Council be descendants of the Mashpee Wampanoag Indian tribe or the husband or wife of a descendant" (MWT circa 1974, 1). The bylaws described bi-annual election of a president, vice-president, secretary, treasurer, and historian. The board of directors consisted of these officers plus "six members elected by the Council," and it appointed an executive director for a two-year term.

Constitution and Bylaws January 14, 1957

Despite the petitioner's OD response statement, that there was "no set of bylaws prior to February 1974," documents provided in its original petition submission indicated otherwise. Minutes of the "Mashpee Wampanoag Indian Tribe" dated January 14, 1957, stated "Article I Section 6 was changed to Section 5. The Constitution and By-laws were accepted by the Tribe" (MW Minutes 1956-1958, 12/16 (or 10)/1956 and 1/14/1957). In the same set of documents appears a two-page "Constitution" and "By-Laws," the latter of which showed a hand-drawn arrow from Section 6 to Section 5, as the minutes described (MW Minutes n.d. (b)).

The 1957 constitution identified the group's name as the "Mashpee Wampanoag Tribe." Membership "will consist of all descendents [*sic*] of the Mashpee Wampanoag Indians or the husband or wife of a descendant." Officers, including a "chief," "medicine man," secretary, treasurer, and historian, served for life unless they resigned or were removed. Regular meetings were to be held on the second Monday of each month. No age requirement was stated, although the language suggested children were not considered members: "Each member and their [*sic*] children shall receive an Indian name given by the Chief Sachem" (MW Minutes n.d. (b), 2).

APPENDIX D
MEMBERSHIP GROWTH ANALYSIS

ANALYSIS OF THE 612 MEMBERS ADDED IN 2002 TO THE 1995 MEMBERSHIP LIST

The petitioner submitted a report in December 2002 entitled "Mashpee Members Added to the 1995 Membership Roll – 611 Members." OFA compared the names on this report with the complete membership list and the data in the Family TreeMaker™ (FTM) genealogical database and found that one of the 611 individuals had been on the 1979 list, but not on the 1995 list. OFA also identified one individual on the complete Mashpee 2002 membership list (1,462 members total), who was new to the 2002 list, but who was not among the 611 identified in the Mashpee report. Thus, the following analysis was conducted based on a total of 612 members added since the 1995 membership list.

The petitioner's December 2005 submission included an explanation concerning the increase in membership from 1,001 in 1995 to 1,462 on the 2002 membership list.

> The newly documented members are those who have submitted completed documentation in accordance with the Constitutional requirements of Mashpee tribal membership. While they have always acted and been treated as part of the Tribe, they were not included on previous rolls because their documentation was incomplete. Thus, they are newly documented, but not "new" members." Each had to submit a membership application along with documentation. The latter was reviewed by the membership committee for completeness and accuracy. The records for all approved individuals have been previously submitted to the BIA. (MW Supplement 2005.10.31, Tribal Membership, 1)

Relationship of the 612 Additional Members to Individuals on the Previous Membership Lists

OFA added a field to its Mashpee membership database and identified the "Kin on Previous Lists" as: parent (father, mother, or both), grandparent (father's father, father's mother, mother's father, mother's mother or any combination), great-grandparent or great-grandparents, sibling, or none. The relative with the closest family connection was the one identified for these calculations. For example, if the new member had both a parent and grandparents on previous lists, then the parent was counted as the relative on the previous membership list. In a few instances, one branch of a family, such as a child (or children), the parent, and the grandparent all appeared together for the first time on the 2002 list. The following summarizes how the 612 additional members were related to individuals on at least one of the membership lists from 1979, 1989, or 1995.

Members with 1 parent on previous membership lists	292
Members with both parents on previous membership lists	23
Members with 1 grandparent on previous lists	131
Members with 2 grandparents on previous lists	5
Members with 1 great-grandparent on previous lists	25
Members with 2 or more great-grandparents on previous lists	8

Members with 1 or 2 great-great-grandparents on previous lists 4
Members with a sibling on previous membership lists 14
Members who were on 1979 but not on 1995 1
Members with no parent, grandparent, great-grandparent or sibling on previous lists 102
Connection not determined 7
Total 612

This analysis showed that over half of the added members (54 percent, 330 of 612) had one or both parents, a sibling, or were themselves on one of the previous membership lists. Another 136 of the additional members 22 percent, 136 of 612) had one or more grandparents on the previous membership lists. Although "great-grandparents" and "great-great-grandparents" sound many generations removed from the present, the Mashpee record showed that many families started having children at an early age and that the succession of teenage marriages in some family lines created four or five generations of a family living at the same time. Thus, the documentation showed that children born in the late 1990's and early 2000's had great-great-grandparents who were still living and on the current and previous membership lists. Thirty-seven of the added members, whose closest relative on previous membership lists was a great-grandparent or great-great-grandparent, fell into this characterization. The birth certificates or other records that documented the parents' names in each generation for these living members documented the links between generations from the individuals on the 2002 membership to ancestors living in 1920 whose descent from Mashpees on the Earle Report was documented (see "1995 Membership List" analysis later in this section).

One of the 612 added members appearing on the 2002 membership list who claimed descent from the DeGrasse family (a branch of the Pocknett family) was not in the petitioner's genealogical database. None of his parents, grandparents, or great-grandparents as listed on the hand-written ancestry chart in his membership file were in the petitioner's genealogical database. The ancestor chart did not have dates or places and was probably prepared by the applicant. Neither this member nor his parents or grandparents were on the 1979, 1989, or 1995 membership lists. None of the names on the applicant's hand-written ancestry chart matched the names on the typed ancestry chart in his membership file showing the pre-1900 DeGrasse-Pocknett lines, which was apparently prepared by the Mashpee membership committee. Although this individual was given a membership number and his name appears on the 2002 membership list, there is no authorizing signature or date on the membership application form and there is no evidence that he descends from the Mashpee DeGrasse-Pocknett family or any other Mashpee family line.

OFA identified 102 of the members added since 1995 who did not have a direct ancestor (parent, grandparent, or great-grandparent) or sibling on any of the previous membership lists, perhaps because the ancestor died before 1979, 1989, or 1995, or due to some unexplained reason.[1]

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[1]The OFA added fields relating to membership issues its FTM genealogical database. The first field contained each person's membership number, and the other fields indicated whether the person was listed on the petitioner's membership lists of 1979, 1989, 1995, or 2002. However, the earlier membership lists, discussed below, contained names of persons not found in the petitioner's genealogical database. OFA did not update the genealogical database to include those names because they did not have descendants in the 2002 membership.

However, despite the fact that the Mashpee parent or grandparent was not on any of the previous lists, evidence cited in the genealogical database showed that 100 of these individuals had at least one direct ancestor on the 1861 Earle Report, and some had more than a dozen direct ancestors on the Earle Report. Two of these 102 did not have Mashpee ancestors but descend from two Christiantown Indians, Charles and Leander Peters. See criterion 83.7(d) for the explanation of the petitioner's current membership requirements that allow the descendants of Charles and Leander Peters as eligible for membership in MWT.

Applications and Consent Forms for the 612 Additional Members: Minors and Adults

The petitioner's 1989 governing document stated that members age 16 and older could vote, and the application and consent forms stated that a parent or guardian could sign for children under age 16. Therefore, using the age 16 as the age of consent, OFA checked the applications in order to determine how many of the applicants were under the age of 16 when their applications were completed sometime between 1999 and 2002. Of the 612 additional members on the 2002 membership list, 226 were born after January 1, 1986, and therefore under age 16 in 2002 when the certified membership list was submitted. The dates on the applications or consent forms showed that were either completed, signed, or approved between 1999 and 2002.

Of the 226 minors who were added to the 2002 MWT membership list, OFA's review of the files showed:

Applications signed by the applicant's father	80
Applications signed by the applicant's mother	108
Applications signed by the applicant's grandmother	17
Applications signed by the applicant's grandfather	1
Applications signed by the applicant's great-grandmother	2
Applications signed by the applicant's aunt	4
Applications signed or initialed by an unknown adult	9
Applications signed by the minors themselves (ages 10-12)	3
Applications not signed [but were approved in 2000]	2
Total	226

In at least one instance, the child was a minor (under 16) when the "Membership Application" form was signed by a non-parental adult and approved by the MWT, but the member's file also included a copy of the consent form that was later signed by the member who was by then over 16 years old.

Of the 386 adults (over age 16) who were added to the 1995 membership list, OFA's review of the files showed:

Applications signed by the applicant[2]	310
Applications signed by the applicant's mother	39
Applications signed by the applicant's father	24
Applications signed by the applicant's grandmother	9
Application signed by the applicant's sister	1
Applications not signed, but approved by the MWT in 2000	3
Total	386

In the 73 cases in which a parent, grandparent, or sibling signed for the adult applicants, the ages of the applicants ranged from 17 to 57. In at least three instances, there was a consent form dated 2002 in the file indicating the member "acknowledged" that his/her name was on the Mashpee membership list. There was no consent or other explanation for the other 70 adults who did not apply in their own right.

Residences of the 612 Members Added Since 1995

The petitioner's document stated that 312 of the members added since 1995 were adults, of whom 103 lived within what the MWT described as the "Mashpee core," a geographic area within a 10-mile radius of the original "Mashpee Indian Plantation" (MW Supplement 2005.10.31, Tribal Membership,1). The petitioner stated that of the 141 adults living outside "of the core" had "primary kin" who lived inside the "core" and that another 37 adults living outside of the group's defined "core" had "secondary kin" who lived inside of the group's "Mashpee core" (MW Supplement 2005.10.31, Tribal Membership, 1). The so-called "residential core" which they defined for heuristic purposes, differs from the way these concepts have been used in past decisions because it did not define adults, primary kin, or secondary kin or otherwise analyze the social connections of these new members. OFA calculated that there were 386 new members who were over 16 (the age at which members can vote) in 2002, 363 who were over 18 in 2002, and 310 who were over 21 in 2002, but none of those figures matched the petitioner's total.

Of the 612 members added since 1995, 439 resided in Massachusetts.[3] See OFA's additional analysis on the residency issues under criterion 83.7(b) for community.

[2]This included 12 applications that did not include the date the applicant signed; however, the applications were approved in 2000.

[3]In its initial review of the 2002 membership list, OFA found 214 names with post office box numbers rather than the residential addresses required under the regulations (83.7(e)(2)). At OFA's request, the MWT provided a supplemental list (dated December 23, 2005, and received by OFA on January 6, 2006) that included the required residential addresses for all 214 individuals (MWT Residential Addresses 2005.12.05).

PREVIOUS MEMBERSHIP LISTS

The 1995 Membership List (n = 1,001)

The petitioner submitted a membership list dated May 1, 1995, representing 1,001 members, which OFA received on January 26, 1996. However, the 24-page list was not accompanied by the required separate certification, signed by all members of the governing body. On July 11, 2000, OFA received additional petition submissions, which included a computer diskette containing a membership list in Access database format. The accompanying certification, signed by all members of the governing body, stated that this electronic version of its membership information "represents enrolled members of the Tribe as previously submitted to the BAR, with no additions or deletions" (MW 2000.07.10).

The electronic membership table submitted by the petitioner included more fields, or columns, than were reproduced on the May 1, 1995, "list of members," the latter of which appears to have been a printout from a slightly different version of the electronic membership table. The column headings on the May 1, 1995, "list of members" include "LastName" (which includes maiden names in parentheses), "FirstName," "Roll#," "DOB" (date of birth), "Address," "City," "State," "Zip," "Father," and "Mother." The membership table has these fields, or columns, plus additional ones for "MaidenName," "Relationship," "Relatives," and "Born" (place of birth). Both the printed list submitted in 1995 and the electronic membership table submitted in 2000 contained the identical 1,001 people; however, a random check revealed three instances in which state or county of residence differed between the two lists.

OFA added fields relating to membership issues to its genealogical database, which includes the petitioner's initial genealogical submission and OFA's additional, documented connections. The first contains each person's membership number, and the other fields indicated whether the person was listed on the petitioner's 1979, 1989, 1995, or 2002 membership lists. However, the earlier membership lists discussed below contained names of persons not found in the genealogical database and OFA did not add them to it.

There are 613 members on the 1995 list (61 percent, 613 of 1,001) who are on the 1979 membership list. There are 738 individuals on the 1995 list (74 percent, 738 of 1,001) who are on the 1989 membership list. There are 816 individuals on the 1995 list (82 percent, 816 of 1,001) who are also on the 2002 membership list.

The October 1989 Membership List (n = 815)

The first page of this 79-page list had the header "Membership Roll of Mashpee Wampanoag Indian Tribe as of October 1989," although no subsequent page included this information [one page containing H and G surnames has the group's name as "Mashpee Wampanoag" and the date as "April 1978"] (MW Membership List 1989.10.00). The column headings for each member's entry included membership number, name and address, gender, birth date, birthplace, tribe, blood degree, names of parents, their birth dates, birthplaces, tribe, and blood degree. This

list included 851 names; however, after deducting 36 duplicates, the total of individuals represented was actually 815.

There are 604 individuals on the 1989 list (74 percent, 604 of 815) who are on the 1979 membership list. There are 736 individuals on the 1989 list (90 percent, 736 of 815) who are also on the 1995 membership list. Of the 815 members in the 1989 membership list, 800 (98 percent, 800 of 815) are on the group's 2002 membership list.

The April 1979 Membership List (n = 736)

The April 1979 list included an undated certification as to the completeness and accuracy of the submitted membership list and the accompanying ancestor charts (dated May 1979). These charts were prepared by the "Genealogy Committee of the Mashpee Wampanoag Indian Tribal Council, Inc." (MW 1979.04.00). The certification was signed by Hazel Oakley (as chair of the membership committee), Selena E. Coombs, Kenneth C. Coombs, and Russell M. Peters (as President, Mashpee Wampanoag Indian Tribes Council, Inc.). A space provided for Thomas N. Tureen (Council, Native American Rights Fund) to sign as a witness was left blank (MW Membership List 1979.04.00, 74).

The 1979 list's format is very similar to the 1898 list's format. The column headings for each member's entry included membership number, name and address, gender, birth date, birthplace, tribe, blood degree, names of parents, their birth dates, birthplaces, tribe, and blood degree. Information did not appear in all columns in all instances. Membership numbers were missing or partially typed or hand-entered, and street addresses did not appear at all. Both "blood degree" columns were left blank throughout the list and it is not a requirement for Federal acknowledgment. Dates and places of birth were incomplete or blank in some cases. Thirty-seven individuals on this 1979 list were not in the petitioner's genealogical database, nor were they on the 1989, 1995, or 2002 membership lists. OFA did not add them to its annotated FTM database.

OFA's analysis of this list concluded that it listed 736 different individuals, including some without membership numbers and excluding eight duplicate entries. Of those 736 individuals, 510 (69 percent, 510 of 736) appear on the petitioner's 2002 membership list.

Mashpee Wampanoag Council Roster of circa 1956-1960 (n = 93)

The petitioner's original submission included a single-page, (faint and difficult to read) typescript entitled "Roster — Wampanoag Council — Mashpee, Massachusetts," containing 93 names (MW Council Roster n.d.). The three office-holders identified at the top of the roster held those offices as of December 16 (or 10), 1956, according to meeting minutes of that date (MW Minutes 1956.12.160). A fourth presumed officer on the roster, listed with the other three, did not have an office title by his name, nor did his name appear in the meeting minutes cited. The genealogical database provided by the petitioner showed that one of the non-officers listed on the roster died in 1960, and that a woman listed by her maiden name on this roster married and presumably began using her married name in September 23, 1956. Thus, the council roster was likely created circa 1956, and definitely before 1960 (MW Council Roster n.d.).

Eleven of the 93 names were illegible, and three names that were legible appeared in the petitioner's genealogical database as non-Mashpee spouses, who were eligible for membership according to the constitution accepted on January 17, 1957. At least 36 of the individuals on this roster were found on the 2002 membership list; most of whom were also found on the 1995 membership list. In all, OFA was able to identify 41 individuals from the1956-1960 roster who were also on the 1995 list. OFA's review of the genealogical database found that 34 individuals on the 1956-1960 roster were deceased before 2002.

Proposed Finding

on the

MASHPEE WAMPANOAG TRIBAL COUNCIL, INC.

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