

Summary Under the Criteria and Evidence for  
Final Determination in Regard to Federal Acknowledgment  
of the  
Eastern Pequot Indians of Connecticut  
as a Portion of the  
Historical Eastern Pequot Tribe

Prepared in response to a petition submitted to the Assistant  
Secretary - Indian Affairs for Federal acknowledgment that this  
group exists as an Indian Tribe.

JUN 24 2002  
Approved: \_\_\_\_\_  
(date)

  
Assistant Secretary - Indian Affairs

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## INTRODUCTION

### Administrative History.

*Administrative History of the Proposed Finding.* The Bureau of Indian Affairs (BIA or Bureau) received a request for Federal Acknowledgment from the Eastern Pequot Indians of Connecticut (EP) on June 28, 1978 (EP Letter of Intent 6/28/1978), which was assigned #35. After consideration and notification of #35 and other petitioners on the “ready, waiting for active consideration” list, at the request of the Paucatuck Eastern Pequot Indians of Connecticut (PEP, petitioner #113), the Assistant Secretary - Indian Affairs (AS-IA) on April 2, 1998, waived the priority provisions of 25 CFR 83.10(d) in order to consider PEP simultaneously with this petition, under the authority granted to the Secretary in 25 CFR 1.2, and delegated to the AS-IA in 290 DM 8.1, based on a finding that the waiver was in the best interest of the Indians. The proposed finding for this case in favor of acknowledgment was signed March 24, 2000. The administrative history of the petition to that date was presented in the Summary under the Criteria for the proposed finding (EP PF) and summarized in the notice of the proposed finding published in the *Federal Register* on March 31, 2000 (65 FR 17299-17304).

### Administrative History since the Proposed Finding

*Extensions.* From the date of issuance of the proposed findings, the comment period under the regulations expired September 27, 2000. At the request of the State of Connecticut (Blumenthal to Gover 8/15/2000), the comment period was extended to March 26, 2001 (Bird Bear to Blumenthal 9/8/2000). Upon the request of the State for a second 180-day extension under the 25 CFR Part 83 regulations (Schaefer to McDivitt 3/6/2001), the Department extended the comment period to June 1, 2001 (McDivitt to Blumenthal and Baur 3/22/2001). The actual closing of the comment period, August 2, 2001, was established as part of the scheduling order entered by the Federal District Court for Connecticut as part of the litigation in this case (see below).

*On the Record Technical Assistance Meeting (OTR).* At the request of the State of Connecticut, the BIA held an On the Record Technical Assistance Meeting in regard to the EP and PEP proposed findings on August 8 and 9, 2000. The proceedings at this meeting were transcribed by a court reporter and made available to both petitioners and the interested parties. Since issuance of the proposed findings, the BIA has also provided informal technical assistance to both petitioners and to the State of Connecticut.

*Informal Technical Assistance Conference Calls.* At the request of the State of Connecticut, the BIA conducted informal technical assistance, in the form of a telephone conference call, on July 10 and July 11, 2001, each day from 1:00 - 4:30 p.m. Petitioners and other third parties participated in these conference calls. Both the State of Connecticut and attorneys for PEP

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provided transcriptions of this informal technical assistance to the Department in accordance with the Court's scheduling order.

The BIA additionally provided informal technical assistance to each of the petitioners and their researchers prior to the filing of the litigation (for the litigation, see below).

*Provision of Materials Requested under FOIA.* The State of Connecticut filed its first request under the Freedom of Information Act (FOIA) for copies of the petitions, exhibits and other materials concerning the petitioners by letter dated January 31, 1992, which was responded to on March 25, 1992. During the State's on-site review of the files on March 31, 1998, copies of documents were provided. Subsequent requests for documents under the FOIA from the State concerning these petitions occurred in 1998 (4/6/1998; 4/9/1998; 8/27/1998), twice in 1999 (3/2/1999 and 3/26/1999) and a number of times in 2000. Through counsel Perkins & Coie, certain towns in Connecticut requested documents under the FOIA in March 1998 and subsequently, in 2000, joined in the State's requests for documents. The Towns of North Stonington, Ledyard, and Preston reviewed documents on site on February 10 and 11, 2000. Similarly, petitioner PEP requested documents associated with the petitions in 1999 and 2000 and petitioner EP filed requests under FOIA in 2000. Due to the voluminous nature of the documents requested, and the requirements to protect certain privacy interests, the Department was providing the requested documents in installments.

On January 19, 2001, the State of Connecticut and the Towns of North Stonington, Ledyard and Preston filed suit *Connecticut v. Dept. of the Interior*, (D.Conn. 2001) (No. 3:01-CV-88-AVC) and both petitioners intervened. Negotiations for a time schedule to produce the remaining petition documents ensued, leading to a court ordered schedule for production of documents not otherwise exempt from disclosure by May 4, 2001. Final installments of documents were provided to the PEP and EP by letters dated April 13, 2001, and to the State and Towns by letter dated April 27, 2001. On May 3, 2001, the Department informed the court that it had complied with the scheduling order.

Under the regulations, interested parties must serve their comments on the proposed findings on the petitioners. 25 CFR § 83.10(j). The Department informed the two petitioners that they were considered interested parties in each other's petitions, and must serve their comments on each other. The two petitioners agreed among themselves to not serve certain material on each other (Stipulation dated July 9, 2001, Durocher, Jr., and Mirro), and the PEP agreed to serve non-confidential copies of its comments on the parties in the litigation (Durocher, Jr., to Coen 7/30/2001; Durocher, Jr., to Coen 8/28/2001).

The State of Connecticut filed on August 3, 2001, a request under the FOIA for the material submitted by the EP on August 2, 2001, as a comment on the proposed findings. The State filed an additional request for the reply comments submitted on September 4, 2001, by the EP. The State also requested the comments which PEP withheld from the State as privacy material. The Department was responding to these requests in installments (Coen to Blumenthal 8/13/2001;

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Coen to Blumenthal 8/28/2001; Coen to Blumenthal 10/15/2001) when the State, on November 2, 2001, put these requests on hold (except as to "Box 7 of the August 2 comments"), as the EP agreed to provide the State access and copies of certain of its submissions (Cobb to Coen e-mail 11/02/01; Cobb to Tobin 11/27/2001). PEP also requested copies of documents submitted by EP during the week of August 1, 2001, which request was narrowed substantially on December 13, 2001, and addressed through subsequent correspondence.

*Petitioner's Comments on the Proposed Finding.*<sup>1</sup> Petitioner submitted its Comments on the proposed finding on August 2, 2001. The Response consisted of a narrative, *Being an Indian in Connecticut: The Eastern Pequot Tribe of Connecticut's Comments on the Proposed Finding of the Branch of Acknowledgment and Recognition of March 2000*, several supplementary reports, and several boxes of supporting documents. The certification was signed only by Mary Sebastian as Chairperson (EP Comments 8/2/2001, Item G, "Certification of the Comments of the Eastern Pequot Tribe on the Proposed Finding of the Bureau of Indian Affairs on the Federal Acknowledgment Petition of the Eastern Pequot Indians of Connecticut 7/26/2001) and was accompanied by a resolution of the EP council of the same date signed only by Mary Sebastian as Chairperson and Darlene Hamlin as Tribal Secretary (EP Comments 8/2/2001, Item G, Resolution of the Eastern Pequot Indians of Connecticut 7/26/2001). Both of these items had raised seals.

*EP and PEP Comments on their own Proposed Findings also Utilized as Comments on the Proposed Finding to the Other Petition.* The Department determined that since petition #35, EP, and petition #113, PEP, were being considered simultaneously and because the issues in each case, such as whether there was a single tribe and whether the Sebastians were part of it, directly affected the other, each petitioner's response to its own proposed finding would also be treated as comments on the other petitioner's proposed finding. PEP submitted its Comments on July 31, 2001, formally dated August 2, 2001, consisting of an introduction, several supplementary reports, and numerous binders containing supporting documents (PEP Comments 8/2/2001).

*Third Party Comments.* The State of Connecticut submitted *State of Connecticut to United States Department of the Interior. Bureau of Indian Affairs. Branch of Acknowledgment and Research. In re Federal Acknowledgment Petition of the Eastern Pequot Indians of Connecticut. In re Federal Acknowledgment Petition of the Paucatuck Eastern Pequot Indians of Connecticut. Comments of the State of Connecticut on the Proposed Findings . . . August 1, 2001* with an appendix and a single binder of supporting documentation.

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<sup>1</sup>BAR prepared detailed preliminary inventories of all submissions. Copies of these preliminary inventories are available to the public upon request.

Both petitioners and the Towns had also submitted materials which were received by the BIA prior to issuance of the proposed findings, but too late to be used by the BIA staff in preparing the evaluations and recommendations for those proposed findings. Those materials have been used in preparing the final determinations on the EP and PEP petitions.

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The Towns of North Stonington, Ledyard, and Preston, Connecticut, submitted comments consisting of a narrative and a box of exhibits (*Analysis of the Eastern Pequot and Paucatuck Eastern Pequot Tribal Acknowledgment Petitions under 25 C.F.R. Part 83 and Comments on the Proposed Findings. A Report Submitted to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, by the Towns of North Stonington, Ledyard, and Preston, Connecticut. August 2001*). The Towns of North Stonington, Ledyard, and Preston had previously submitted materials which are being considered for the final determinations.<sup>2</sup>

In an undated letter to R. Lee Fleming, Branch Chief, BAR, associated with a submission on its own behalf made in September 2001, petitioner #228, the Wiquapaug Eastern Pequot Tribe requested "interested party" rather than "informed party" status in regard to petitions #35 and #113 (Wiquapaug to Fleming [c. 9/1/2001]). The BIA has prepared a preliminary inventory of petitioner #228's submissions on its own behalf.<sup>3</sup> To the best of the BIA's knowledge, petitioner

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<sup>2</sup>On December 18, 1998, the law firm of Perkins Coie submitted comments on both petitions (#35 and #113) on behalf of the Towns of Ledyard, North Stonington, and Preston, Connecticut (Baur and Martin to Fleming 12/15/1998). This comment consisted primarily of a report by James P. Lynch, "A Report on the Lineage Ancestry of the Eastern and Paucatuck [*sic*] Pequot Indians: An Independent Survey and Analysis . . ." (Lynch 1998a). Perkins Coie submitted additional material on February 5, 1999, which consisted primarily of an extensive reworking of the Brushel family section of the Lynch report (Lynch 1999; Martin and Bauer to Fleming 2/5/1999). The towns also submitted documentary exhibits (Lynch 1998 Ex.).

The Summaries under the Criteria (EP PF 2000, PEP PF 2000) for the proposed findings took into consideration only materials from the petitioners and third parties submitted through April 5, 1999 (see also *Towns August 2001*, 2). The submissions subsequent to that date were held by the BIA and are considered in this final determination. The submissions from the Towns in this category consisted of the following, as received by the BIA:

April 19, 1999: Martin and Baur to Fleming 4/16/1999; "Genealogical Record of the Paucatuck Eastern Pequot Indians: An Independent Research Report of the Gardner Lineage prepared by Kathleen Siefer On the Behalf of the towns of Ledyard, North Stonington and Preston. April 1999"; Exhibits, Items 2-58.

May 26, 1999: Martin and Baur to Fleming 5/20/1999; "Genealogical Record of the Eastern Pequot Indians. Independent Research report of the Sebastian (Brushel) Lineage Prepared by Kathleen Siefer On the Behalf of the Towns of Ledyard, North Stonington and Preston. May 1999"; Exhibits, Items 1-62.

July 8, 1999: Martin and Baur to Fleming 7/1/1999; "A Report on the Lineage Ancestry of the Eastern and Paucatuck [*sic*] Pequot Indians: An Independent Survey and Discussion of the Fagins Lineage prepared by James P. Lynch On the Behalf of the Towns of Ledyard, North Stonington and Preston. June 1999"; Documents; "Historical Chronology Eastern Pequot/Paucatuck [*sic*] Pequot 1638-1993 by James P. Lynch (Updated July 1, 1999).

July 19, 1999: Martin and Baur to Fleming 7/12/1999; list of documents; "Chronology of Stonington/N. Stonington Pequot Ancestry by years Reported"; Documents.

August 2, 1999: Congdon, Johnson and Mullane to Fleming 8/2/1999; attachments.

<sup>3</sup>Preliminary Inventory of Material Submitted to BIA. Wiquapaug Eastern Pequot Petition #228. Material received by BIA 9/15/2000. Supplementary submission received by BIA 9/20/2000. Supplementary submission received by BIA 10/10/2000. Supplementary submission received by BIA 3/29/2001. Compiled by

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#228 did not serve these items on petitioner #35 and petitioner #113. Therefore, they do not constitute formal comments on the proposed findings.

*Petitioner's Response to Third Party Comments.* The petitioner submitted the *Response of the Eastern Pequot Indians of Connecticut to the Comments of the Interested Parties* (EP Response to Comments 9/4/2001) on September 4, 2001. This consisted of one three-ring binder containing several reports, additional analysis of the data, and some errata.<sup>4</sup>

*Impact of Litigation.* On January 19, 2001, the State of Connecticut and the Towns of North Stonington, Ledyard and Preston filed suit against the Department of the Interior in the District Court of Connecticut making allegations regarding procedural deficiencies at the proposed finding stage of the Eastern Pequot and Paucatuck Eastern Pequot Federal acknowledgment process and allegations under the Freedom of Information Act. Complaint for Declaratory and Injunctive Relief, *Connecticut v. Dept. of the Interior*, (D.Conn. 2001) (No. 3:01-CV-88-AVC).

The Paucatuck Eastern Pequot filed a motion to intervene on February 27, 2001, and on March 2, 2001, filed a motion for a temporary restraining order, seeking to prevent the withdrawal or amendment of the proposed findings concerning their tribal status and seeking to prevent an extension of the comment period. The Eastern Pequot also filed a motion to intervene as a defendant on March 2, 2001.

The Department, State, and Towns proposed to the Court a schedule for the Department to respond to the outstanding FOIA requests. Under the subsequent March 30, 2001, court order, the Department was to respond to outstanding FOIA requests by May 4 and the comment period was to close 90 days from the FOIA response. The Court ordered defendant intervenors 30 days in which to file their reply to the comments and ordered a final determination within 90 days. The Department moved to dismiss the lawsuit on April 16, 2001. The Department responded to outstanding FOIA requests by April 27, informed the Court of its compliance on May 3, 2001, and extended the comment period to July 26; consistent with the court order. Federal defendants also moved for reconsideration of the March 30, 2001, order. At the initiation of the State of Connecticut, the parties stipulated on July 7, 2001, with approval of the Court, that the comment period would close August 2, 2001.

On August 21, Judge Covello denied in part the Department's motion for reconsideration of the Court's scheduling order. Without addressing any of the legal arguments, the Court left intact the requirement that the Department start consideration for the final determination within 30 days of the close of the reply period, but modified the order as to the date for the final determination. As modified, the order provided that the Department would file a status report

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Virginia DeMarce. 23 February 2001; updated 3 April 2001.

<sup>4</sup>On December 19, 2001, untimely, EP submitted an Index to their Response to the third party comments.

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projecting the date of the final determination. If the date fell beyond 60 days, the report was subject to comment by the parties and a court ordered status conference.

The Eastern Pequots requested an additional 30 days in which to respond to the comments from the State and Towns on August 30, 2001. Judge Covello denied this request. Thus, the response period closed on September 4, 2001, and the BIA, as obligated by the court order, began consideration within 30 days of the close of the comment periods.

On October 24, 2001, the Department submitted a status report to the Court, under the Court's modified March 30<sup>th</sup> order, projecting a date of June 4, 2002, for issuance of the final determinations on EP and PEP petitions for Federal acknowledgment. The Federal defendants agreed to submit a second status report on April 23, 2002, informing the Court whether the Department continued to project June 4, 2002, as the date for issuance of final determinations. None of the other parties objected to the Federal defendants' projected date.

On March 29, 2002, the Court issued an order denying the Federal defendants' motion to dismiss without prejudice to its re-submission after the defendants have issued the final determination on the two petitions for Federal acknowledgment. On April 9, 2002, the Department filed a motion to amend the March 29, 2002, court order which motion was granted.

*Preparation of Final Determination.* The BIA, upon evaluating other responsibilities and obligations to other petitioners, indicated to the court a projected date of June 4, 2002, for issuance of the final determinations on petitions #35 (EP) and #113 (PEP). Subsequently, on May 23, 2002, the BIA notified the Court that the projected date was modified to June 25, 2002.

### Overview of the Proposed Finding

*Determinations as to Weight of the Evidence.* The AS-IA's proposed finding to recognize the groups (EP and PEP) was based in part on the continuous existence of a state-recognized group with a reservation. On this basis, he concluded that greater weight should be given to the evidence than would otherwise be the case. The proposed finding stated this conclusion in part as:

*Impact of Continuous Historical State Acknowledgment since Colonial Times upon the Evaluation of the Evidence.* Because the petitioners are, singly and together, the continuation of a historically state-recognized tribe whose relationship with the state of Connecticut goes back to the early 1600's, possessing a common reservation, this evidence provides a common backbone and consistent backdrop for interpreting the evidence of continued tribal existence. When weighed in combination with this historical and continuous circumstance, evidence on community and political influence carries greater weight that would be the case under circumstances where there was not evidence

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of a longstanding continuous relationship with the state based on being a distinct political community. Members of the tribe occupied a somewhat different status than non-Indians within Connecticut. The greater weight is assigned for the following reasons in combination: (EP PF 2000, 63).

- The historical Eastern Pequot tribe has maintained a continuous historical government-to-government relationship with the State of Connecticut since colonial times;
- The historical Eastern Pequot tribe had a state reservation established in colonial times, and has retained its land area to the present;
- The historical Eastern Pequot tribe had members enumerated specifically as tribal members on the Federal Census, Special Indian Population Schedules, for 1900 and 1910 (EP PF 2000, 63).

Past Federal acknowledgment decisions under 25 CFR Part 83 provide no precedents for dealing with a tribe which is presently state recognized with a state recognized reservation and has been so continuously since early colonial times. The closest parallel is Maine, where the Federal government in the Passamaquoddy case stipulated to tribal existence, based on the historical state relationship. That precedent provides guidance in this matter. The Department is not applying a different standard of tribal existence. Rather, the evidence, when weighed in the context of this continuous strong historical relationship, carries greater weight. (EP PF 2000, 63)

The proposed findings invited and urged the petitioners and third parties to comment on the added weight given to evidence based on continuous state recognition under the above narrowly defined circumstances.

*Proposed Finding's Conclusions under the Mandatory Criteria.* The proposed finding reached the following conclusions under each of the mandatory criteria under 25 CFR Part 83:

- Criterion 83.7(a). Since 1973, there are regular identifications of the Eastern Pequot tribe, the overwhelming majority of which simultaneously mention both the Eastern Pequot Indians of Connecticut (petitioner #3 The Eastern Pequot tribe is regularly identified as an American Indian entity from 1900 through 1973. 5) and the Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113) as subgroups of that historical tribe. The petitioner meets this criterion (EP PF 2000, 62).
- Criterion 83.7(b). The historical Eastern Pequot tribe, including the antecedents of both petitioners, meets the criterion through 1973.

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For the period since 1973, the evidence now in the record is not sufficient to determine that there is only one tribe with two factions (these being the Eastern Pequot Indians of Connecticut (petitioner #35) and the Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113)), or whether the dissensions of the period since 1973 have resulted in the evolution of two separate bands from the historical tribe (EP PF 2000, 62).

There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe after 1973. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient information to determine that there is only one tribe with political factions . . . (EP PF 2000, 100).

The historical Eastern Pequot tribe, which includes the petitioner as one of its component groups, meets criterion 83.7(b) through 1973.

A decision on the period subsequent to 1973 is deferred to the final determination (EP PF 2000, 101).

- Criterion 83.7(c). The historical Eastern Pequot tribe, including the antecedents of both petitioners, meets the criterion through 1973.

For the period since 1973, the evidence now in the record is not sufficient to determine that there is one tribe with two factions (these being the Eastern Pequot Indians of Connecticut (petitioner #35) and the Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113)), or whether the dissensions of the period since 1973 have resulted in the evolution of two separate bands from the historical tribe (EP PF 2000, 62).

There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe since 1973. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient information to determine that there is only one tribe with political factions . . . (EP PF 2000, 120).

The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(c) through 1973.

A decision on the period subsequent to 1973 is deferred to the final determination (EP PF 2000, 120).

## Final Determination- Eastern Pequot Indians of Connecticut

- Criterion 83.7(d). On April 3, 1996, the petitioner provided copies of the current revised and amended by-laws, which include a statement of membership qualifications and enrollment procedures (EP PF 2000, 121).

The petitioner meets this criterion (EP PF 2000, 62).

- Criterion 83.7(e). The evidence indicates that the ancestors of both petitioners, using essentially parallel documentation acceptable to the Secretary, were members of the historical Eastern Pequot tribe in the 19<sup>th</sup> century, and that the current members of both petitioners thus descend from the historical Eastern Pequot tribe. In many cases, Connecticut's state records, overseer's reports, petitions, and similar records carried the names of direct and collateral ancestors of both petitioners on the same documents. The petitioner meets this criterion (EP PF 2000, 62-63).

- Criterion 83.7(f). [T]he membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe (EP PF 2000, 134).

The petitioner meets this criterion (EP PF 2000, 63).

- Criterion 83.7(g). There is no evidence that the petitioner is subject to congressional legislation that has terminated or forbidden the Federal relationship (EP PF 2000, 134).

The petitioner meets this criterion (EP PF 2000, 63).

The proposed findings invited and urged the petitioner and third parties to comment on the issues of whether there were, for the period since 1973, one or two tribes and whether the Department had authority to recognize two tribes, given the situation analyzed for criteria 83.7(b) and 83.7(c) (EP PF 2000, 61). The Department provided, in the appendices to the proposed finding, suggestions for research and analysis that the petitioners and third parties could pursue in regard to the period from 1973 to the present.

### Bases for the Final Determination

The evidentiary basis for the final determination consists of all documentation utilized for preparation of the proposed finding, comments and documentation submitted by the petitioner and third parties before the proposed findings were issued but received too late for use in the proposed findings, the petitioner's response to the proposed finding, third party comments on the proposed finding, the petitioner's response to the third party comments, and other pertinent material collected by the BIA staff.

#### Final Determination-- Eastern Pequot Indians of Connecticut

Petitioner #35 has not challenged the basic evidentiary analysis that underlay the positive proposed finding -- namely that there was a single historical Eastern Pequot tribe through 1973, of which its direct antecedents were a component. Therefore, except in so far as that conclusion was commented upon by the third parties, it has not been necessary to reanalyze the material for the period prior to 1873 for the final determination. For the century from 1873 to 1973, petitioner #35 submitted evidence to strengthen its petition, especially under criteria 83.7(b) and 83.7(c) for the period from 1873 through 1920. This evidence has been included in the evaluation for the final determination, as have the comments by the third parties and by petitioner #113. The final determination contains a full analysis for the period since 1973.

The summaries of the Towns' and other parties' comments may not reflect every possible twist, turn and variation that the parties put into them, but they have nonetheless been reviewed and considered. The State and the Towns have reiterated negative specific factual conclusions stated in the proposed findings or the accompanying charts, as part of their argument that continuous State recognition with a reservation should not accord greater weight to the existing evidence. Their comments also quote discussions of these conclusions which appear in the transcript of the two lengthy technical assistance meetings. Each of these specific conclusions, and the data in the record for the proposed finding, were reevaluated in the light of the additional data, arguments submitted, and a more complete review of the BIA interview data. Consequently, this final determination's review of the third party comments focuses on the new data and arguments, as presented by the petitioners and third parties.

**Final Determination- Eastern Pequot Indians of Connecticut**

**Abbreviations and/or Acronyms Used in the Final Determination**

AS-IA	Assistant Secretary - Indian Affairs.
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs.
BIA	Bureau of Indian Affairs.
CIAC	Connecticut Indian Affairs Commission.
DEP	Connecticut Department of Environmental Protection.
Doc.	Document, abbreviation used for Ex. in #113 Pet. 1996.
EP	Eastern Pequot Indians of Connecticut (petitioner #35).
Ex.	Documentary exhibit submitted by petitioner or third parties.
FD	Final Determination.
FR	<i>Federal Register.</i>
Narr.	Petition narrative.
NP App.	Narragansett Petition for Federal Acknowledgment, Appendix.
OD	Obvious deficiencies letter issued by the BIA.
OTR	On the-Record Technical Assistance Meeting.
PEP	Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113).
PF	Proposed Finding.
TA	Technical assistance letter issued by the BIA.

Standardized Spellings

When discussing Indian tribes and bands, place names, and names of individuals, this Summary uses the current standardized spellings. Where specific historical documents are quoted, these names are spelled as found in the original. One concrete example of this is the variation between the standardized spelling of the name “Fagins,” while historical documents often spelled it “Fagans” or even “Phagan.” Similarly, the maiden name of EP ancestress Tamar (Brushell) Sebastian appears as Brushel, Brashel, Bruschel, Brussels, and many other variants.

Additionally, direct quotations from colonial documents are not furnished with a *sic* after every obsolete or variant spelling of a word. In direct quotations, punctuation and spelling remain “as is.”

Important 20th Century Figures in Relationship to Family Lines

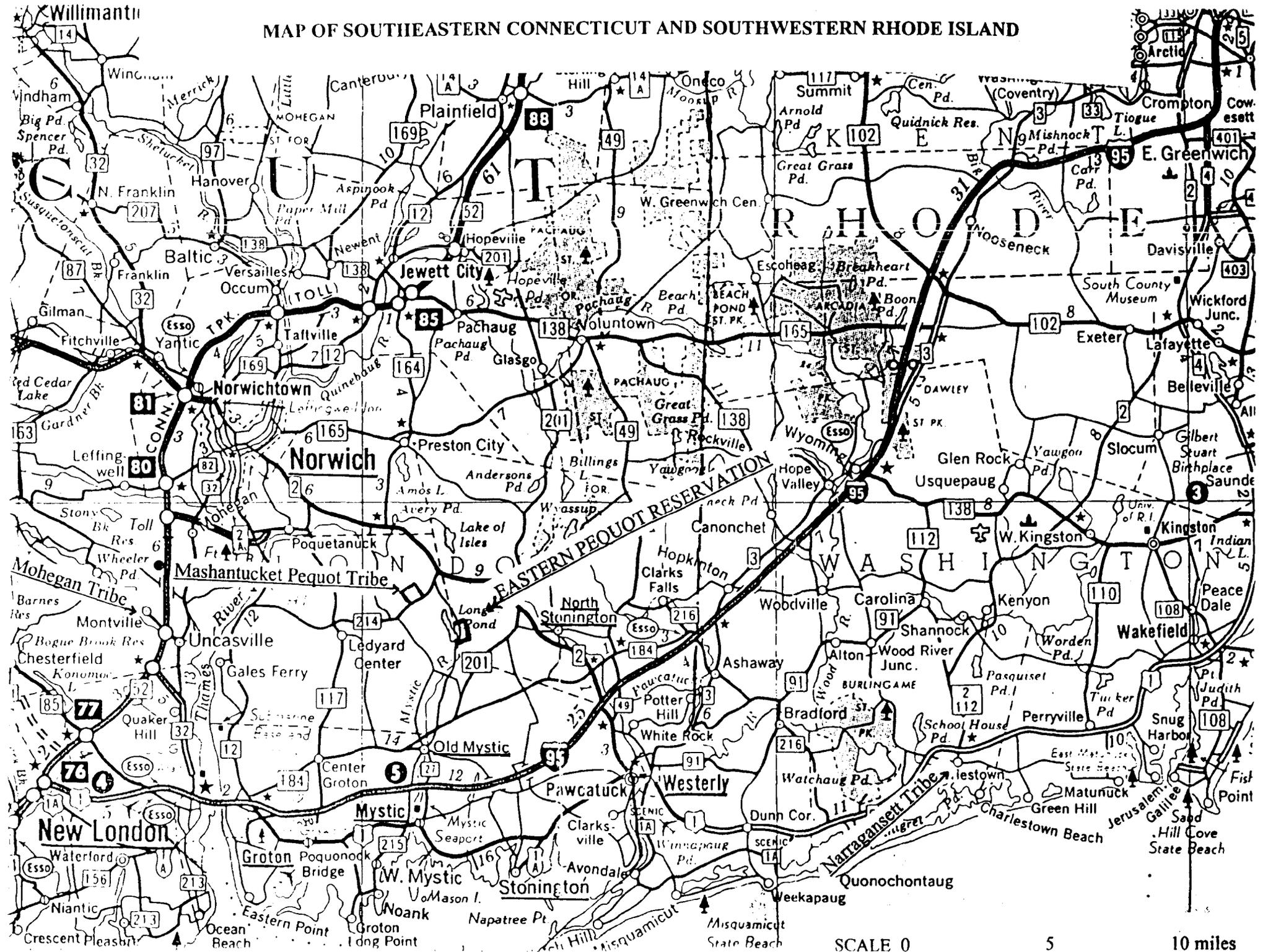
*Eastern Pequot Petitioner*

<u>Brushell/Sebastian</u>		(85% of total)*		
[By children of Tamer Sebastian]				<u>Important Figures</u>
Francisco I (broken into sublimes)		(57% of total)		
Francisco II	178	18%		Roy Sebastian Sr., Roy Sebastian Jr., William Sebastian, Mark Sebastian, Larry Sebastian, Ashbow Sebastian, Marcia Flowers
Phebe	119	12%		Alton Smith, Sr.
Calvin(sorne also via Benjamin)	118	12%		
Katherine	78	8%		"Aunt Kate" (Catherine Harris)
Charles	40	4%		
Ella	28	3%		
Albert	141	14%		
Solomon	72	7%		Solomon Sebastian, Arthur Sebastian Jr., Lillian Sebastian, Idabelle Jordan
Moses	61	6%		
Mary	29	3%		Alden Wilson, Lawrence Wilson
Sylvia Steadman	0	0%		"Aunt Syl" (Sylvia Steadman)
Emeline Williams	0	0%		"Aunt Liney" (Emeline Williams)
<u>Fagins/Randall</u>	98	10% (of total)		
<u>Fagins/Watson</u>	49	5% (of total)		

\* Approximate numbers and percentage of descendants in the present EP membership as of July 18, 2001. Figures do not reflect ancestry through more than one Sebastian line. Subtotals rounded upwards in the percentages; results in a total of greater than 100%.



# MAP OF SOUTHEASTERN CONNECTICUT AND SOUTHWESTERN RHODE ISLAND





**SUMMARY CONCLUSIONS CONCERNING THE HISTORICAL  
EASTERN PEQUOT TRIBE**

*Introductory Statement.*

The proposed findings concluded that EP and PEP met the requirements of the regulations as a single tribe until 1973. They did not reach a conclusion as to whether there was a single tribe or two tribes after that point, but did conclude that the two petitioners overall met the requirements of 25 CFR Part 83. After a review of the Comments on the proposed findings and the Responses to the Comments, the evidence demonstrates that the two petitioners comprise a single tribe and together meet the requirements for Federal acknowledgment as the historical Eastern Pequot tribe which has existed from first sustained contact with Europeans until the present. This final determination therefore acknowledges that the historical Eastern Pequot tribe, comprised of the membership of the two petitioners (EP #35 and PEP #113), exists as a tribe entitled to a government-to-government relationship with the United States.

Although the two petitioners represent portions of the historical tribe which have grown somewhat separate socially in recent decades, this partial separation resulted from political conflicts which provided some of the strongest evidence in much of the 20th century that the tribe as a whole continued to have significant political processes which concerned issues of great importance to the entire body of Eastern Pequots.

The Paucatuck Eastern Pequot submitted a response to the proposed finding which argued that the Secretary did not have the authority to merge two tribes together. This determination does not merge two tribes, but determines that a single tribe exists which is represented by two petitioners. This determination acknowledges that tribe, which has existed continuously since first sustained contact with non-Indians.

The Department takes this action of acknowledging two petitioners as a single tribe because that is what the evidence demonstrates concerning the circumstances of these petitioners. Two organizations were established in recent times from the membership of a single historically and continuously existing state recognized tribe resident on a state reservation which it has occupied since 1683. Although the regulations call for the presentation of petitions from groups seeking acknowledgment as a tribe, and for the Department to evaluate those petitions, the fundamental purpose of the regulations is to acknowledge the existence of tribes. The Secretary does not have the authority to acknowledge a portion of a tribe, where that portion does not substantially encompass the body of the tribe. The Secretary does have the authority to recognize a single tribe in the circumstance where the tribe is represented by more than one petitioner.

*Interpretation of Evidence about the Two Petitioners.*

The evidence in the combined record shows that there has been from first sustained contact until the present only a single Eastern Pequot tribe socially and politically. Evidence about leaders, visiting, or gatherings that involve only the ancestors of one or another petitioner is evaluated as information about that group, in the context of a single tribe, because the overall body of evidence shows a single tribe. This information is not evaluated separately as evidence for or against one or the other petitioner in this conclusory section because doing so would interpret the past in terms of an alignment which only took its present form after the 1970's.

*Consideration of Continuous State Recognition with a Reservation.*

This final determination concludes that the State relationship with the Eastern Pequot tribe, by which the State since colonial times has continuously recognized a distinct tribe with a separate land base provided by and maintained by the State, and which manifested itself in the distinct, non-citizen status of the tribe's members until 1973, provides an additional form of evidence to be weighed. This evidence exists throughout the time span, but is most important during specific periods where the other evidence in the record concerning community or political influence would be insufficient by itself. The continuous State relationship, although its nature varied from time to time, provides additional support in part because of its continuity throughout the entire history of the Eastern Pequot tribe.

There is implicit in this state-tribal relationship a recognition of a distinct political body, in part because the relationship originates with and derives from the Colony's relationship with a distinct political body at the time the relationship was first established. Colony and State laws and policies directly reflected this political relationship until the early 1800's. The distinct political underpinning of the laws is less explicit from the early 1800's until the 1970's, but the Eastern Pequot remained non-citizens of the State until 1973. The State after the early 1800's continued the main elements of the earlier relationship (legislation that determined oversight, established and protected land holdings, and exempted tribal lands from taxation) essentially without change or substantial questioning throughout this time period.

The continuous State relationship with a reservation is not evidence sufficient in itself to meet the criteria. It is not a substitute for direct evidence at a given point in time or over a period of time. Instead this longstanding State relationship and reservation are additional evidence which, when added to the existing evidence, demonstrates that the criteria are met at specific periods in time. This is consistent with the approach taken in the regulations that in most circumstances a combination of evidence is used to demonstrate that a criterion is met.

### ***Summary Discussion of the Evidence Under the Mandatory Criteria***

#### **Criterion 83.7(a)**

External identifications by the State of Connecticut and others have identified a single Eastern Pequot tribe from 1900 until the present. There are no identifications of a separate EP or PEP entity until the creation of the now-existing organizations during the 1970's. Before 1973, the antecedents of the current petitioner were mentioned, if they were distinguished at all, as subgroups with internal conflicts within the Eastern Pequot tribe. Since the 1973-1976 period, the majority of external identifications, particularly by the State of Connecticut, have continued to be identifications of a single Eastern Pequot tribe, with internal conflicts.

Summary Conclusions for Criterion 83.7 (a). The historical Eastern Pequot tribe, comprising both petitioners, meets the requirements of 83.7(a).

#### **Criterion 83.7(b)**

From the assignment of Momoho as governor of the Pequots removed from Ninigret (1654) to the present, the Eastern Pequot tribe as a whole, but not the individual EP and PEP petitioners, has maintained a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name. This is evidence for community under section 83.7(b)(1)(viii) of the regulations. On the sequence of petitions submitted to the State of Connecticut from the 1670's through the 1880's (see the proposed finding for detailed descriptions of each), the tribe clearly identified itself, whether as "Mamohoe and the Pequits with him" in 1678 or "wee the subscribers in behalf of ye Rest of Mo-mo-hoe's men & their Posterity" (1723) or "Pequod Indians of ye Tribe of Momohor & living in ye Town of Stonington in New London County" (1749). In 1764, the petition was from the "Pequot Indians living at Stonington, in behalf of themselves and the rest of said Pequots," while in 1788 the petition to the Connecticut legislature came from "Petition of us the Subscribers Indians of the pequod Tribe in Stonington." In 1839, the "Petition of the undersigned respectfully sheweth that they are of the Pequot tribe of Indians in the Town of North Stonington," while in 1873, they termed themselves the "members of the Pequot tribe of Indians of North Stonington." This evidence has been used throughout in combination with the individual evidence analyzed for community each time period.

#### *Colonial Period Through 1873.*

The proposed finding concluded, consistent with precedent, using evidence acceptable to the Secretary, that the historical Eastern Pequot tribe met criterion 83.7(b) from the colonial period through 1873. A review of the evidence in the record at the time of the proposed finding and submitted for the final determination indicated that no significant new evidence was submitted in

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regard to the nature of the historical Eastern Pequot community in the colonial period or from the era of the American revolution into the third quarter of the 19<sup>th</sup> century. The argumentation presented by the third parties was essentially the same as at the time of the proposed finding. It was not persuasive, in that throughout this time period, there remained a reservation community with a majority of the tribal members resident in it, if not continuously, at least regularly, with the remainder of the tribe maintaining contact. Such evidence is sufficient under 83.7(b)(2)(i). There is evidence, specifically petitions and overseers' reports, that the direct antecedents of both current petitioners were a part of that historical community in the 19<sup>th</sup> century. The proposed finding is affirmed for this period.

### *Community 1873 to 1920.*

Significant new evidence was submitted for the final determination concerning community between 1873 and 1920. New data included a legible copy of the June 26, 1873, petition in which the "members of the Pequot tribe of Indians of North Stonington" remonstrated against sale of lands and requested removal of Leonard C. Williams as overseer. The list of signers shows a connection between Tamar (Brushell) Sebastian and her children and other members of the historical Eastern Pequot tribe. Additional overseers' reports were added to the record which filled in the time span from the 1880's through the early 20<sup>th</sup> century. These submissions provide further evidence that there was a distinct Eastern Pequot community and that this community included the Sebastian family.

This final determination affirms the conclusions of the proposed finding that there was a high degree of marriage among the Eastern Pequot and in culturally patterned marriages of Eastern Pequots with Narragansetts, Western Pequots, and other local Indians during this time period. No evidence or argument was presented which changed the basic conclusions that this pattern existed strongly. No substantial evidence or persuasive arguments were submitted to change the proposed finding's conclusion that for this time period intermarriage provided substantial evidence of community. The kinship ties resulting from this intermarriage linked all of the component family lines which are represented in the current Eastern Pequot tribe today.

The proposed finding concluded that the geographical concentration of the membership during this time period was close enough to facilitate social interaction and that interaction actually occurred. Additional data submitted with the proposed finding concerning the geographical distribution of all of the Eastern Pequot confirmed the factual conclusions for this time period.

Substantial evidence showing patterns of social association within the Eastern Pequot was presented in new analyses submitted in response to the proposed finding and additional documentary and interview evidence. New evidence in the form of data from the journals of Sarah (Swan) Holland and Catherine (Sebastian) Carpenter Harris provided contemporary data concerning social interactions which supported and was consistent with data from interviews. This evidence was particularly significant in confirming that the social alignment of the various

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families, antecedent to the formation of the current petitioners, was not strictly divided in the pattern that the current petitions indicate.

*Community 1920 to 1940.*

In the time period from 1920 to 1940, there continued to be strong evidence for community, with additional evidence submitted. This final determination affirms the conclusions of the proposed finding that community was strongly shown by the high degree of marriage among the Eastern Pequot and in culturally patterned marriages between Eastern Pequots and Narragansetts, Western Pequots, and other southeastern Connecticut and southwestern Rhode Island Indians during this time period. No evidence or argument was presented which changed the basic conclusions that this pattern strongly existed.

Additional evidence about visiting patterns among the Sebastians during this time period confirms the existence of social cohesion among that portion of the Eastern Pequot. A review of existing and additional documentary and interview evidence also clearly indicates social ties between the Sebastians and other major family lines, the Jacksons and Fagins/Randall lines, during this period.

Substantial additional evidence concerning Fourth Sunday meetings, prayer and social gatherings, was submitted in response to the proposed findings. This evidence demonstrated that the meetings occurred regularly and involved a cross section of the Eastern Pequot tribe. Attendance by members of the Brushell/Sebastian, Fagins/Randall, and Hoxie/Jackson lines was independently corroborated. The Fourth Sunday meetings were held from the mid 1910's through at least the later 1930's. They appear, further, to be a continuance of religious meetings of a similar character, which had been held for some time previously, organized by leader Calvin Williams who died in 1913. Although these meetings were not strictly limited to Eastern Pequot tribal members, they were essentially meetings of Eastern Pequot, and Western Pequot and Narragansett to whom they were related or with whom they were otherwise socially affiliated. They were not regularly attended by non-Indians. The meetings occurred in the context of social connections with church affiliated Eastern Pequots in nearby towns, with overlap in attendance. The Eastern Pequots who attended included Sebastians, Randalls, and to some extent Jacksons, though by all evidence not the other major family line, Gardners. Thus the proposed findings' conclusion that Fourth Sunday meetings were evidence of community is affirmed.

*Community 1940 to 1970.*

Community from 1940 to 1973 is demonstrated more strongly than for the proposed finding because of the submission of new evidence. There was a stronger demonstration of social cohesion among the families antecedent to the EP petitioner for the final determination than for the proposed finding because substantial new interview and documentary data has been presented, and additional analyses made, which demonstrates visiting patterns and small scale gatherings which crossed family sublines and which drew in and occurred between residents of

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the reservation and those in Mystic, Old Mystic, Groton, Westerly and Hartford between the 1920's and the 1960's, with substantial long term connections with Providence.

Evidence of this type from 1960 to 1970 is less plentiful. Evidence pertained to the annual picnics organized by Alden Wilson from 1940 to 1960 and gatherings at the reservation residence of Catherine Harris which included substantial portions of the Sebastians and probably the Fagins/Randall line in the same time period. Better and more detailed geographical data confirmed the patterns identified in the proposed finding as providing supporting evidence for community among the EP and PEP memberships and thus for the Eastern Pequot tribe as a whole.

The main antecedent family of the PEP petitioner, the Gardners, was a very small social unit during this period and closely related enough to assume social cohesion among them. In addition, there was evidence of social gatherings among the Gardners, organized by Atwood I. Williams, Sr., and Helen LeGault, for this small kinship group.

In the 1970's, because there was still a body of adult Jacksons in the tribe, there was not the same separation that appears today. Instead, this line played a bridge or connecting role between the two lines that today are numerically predominant in the two petitioners, the Sebastians (for EP) and the Gardners (for PEP), and had done so since at least the early 1900's. The evidence reviewed for this final determination demonstrated substantial social links between the Sebastians and the Jacksons, and for the Jacksons with the Gardners from the beginning of the 20th century into the 1970's, indicating one community.

Additional evidence for community before 1973 is found in the political events of the subsequent decade. These events, in reaction to the formation of the Connecticut Indian Affairs Commission (CIAC) and changes in Connecticut policies beginning in 1973, provide substantial evidence that community existed before that time. The social connections, social distinctions, and political issues shown by events from 1973 through 1983 are of a strength and character that indicate they were already in existence before that time. The events from 1973 through 1983 are consistent with the evidence of family line divisions, residence patterns, and conflicts immediately before the 1970's.

In addition, the process by which EP developed its initial membership list, provided to the State in 1976, demonstrates that social ties which had carried over from previous eras continued to exist. The process was one of enrolling individuals who were connected to the initially active group, rather than being a recruitment of unconnected descendants. The early EP lists represented a broad cross section of the Sebastian part of the tribe, with subsequent lists drawing on the social ties of this initial group.

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*Present Community.*

From 1973 to the present, the evidence for community as presented to the Department by the two petitioners reflects increasing polarization of social ties. This evidence is delineated for each petitioner below. However, the overall picture demonstrated by the evidence is that there continues to be one tribe, albeit now with two demarcated subgroups.

The geographic pattern of residence past and present among the EP portion of the tribe is sufficiently close to be supporting evidence of more direct evidence of social connections.

The regulations, and the precedents in interpreting them, allow evidence of political processes to also be used as evidence to demonstrate community. Community among the EP membership in the present day is demonstrated in part on the basis of the strong political evidence of control of and allocation of most of the reservation land by the EP organization. It is also relevant that PEP exercises parallel functions of allocation of resources on the portion of the Lantern Hill reservation which it occupies.

Section 83.7(c)(2)(i) of the regulations defines as sufficient evidence for the existence of political authority and influence instances where a political mechanism exists which allocates “group resources such as land, residence rights and the like on a consistent basis.” Although the regulations envision that this allocation process would apply to the entirety of the petitioning group in order to be sufficient evidence, by itself, for political processes, nonetheless this process within both portions of the tribe provides strong evidence of community for a substantial portion of the entire Eastern Pequot tribe. The precedent in interpreting the regulations allows evidence of political processes to be used also as evidence to demonstrate modern community (see Snoqualmie PF and FD). In this instance, strong political processes are demonstrated by allocation of reservation resources, both among the EP and PEP memberships. This is not sufficient evidence of political processes in itself under 83.7(c)(2)(i), because the processes are parallel rather than a single process. Although it is therefore not automatically sufficient evidence in itself under 25 CFR 83.7(b)(2)(v), which allows evidence which is sufficient in itself to demonstrate political processes to be used also as sufficient evidence for community, this is strong evidence for community within the tribe as a whole. This determination concludes that the evidence of control and allocation of the Lantern Hill reservation resources by EP and PEP is evidence for the existence of political processes and supporting evidence for the existence of community.

The PEP membership is small and fairly closely related, with 90 percent drawn from the two Gardner family sblines.<sup>5</sup> There is direct evidence that kinship relations are recognized within

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<sup>5</sup> The balance of PEP’s membership, from the Hoxie/Jackson (not Gardner) line, currently consists of only 10 persons: an elderly, childless, woman and a niece of the latter who was placed in foster care during childhood and did not resume contact with the tribe until the 1990’s, with her children and grandchildren. These numbers are too small to require specific analysis here.

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its two main subdivisions, the Gardner/Edwards and the Gardner/Williams and to a degree between them. The interview evidence for the proposed finding indicated that there were social contacts maintained between the most socially connected portion of the PEP membership and those living at a distance. The present geographic pattern of residence of the PEP portion of the Eastern Pequot tribe, the Gardner family line, is close enough that significant social interaction is feasible but is not so concentrated as to provide supporting evidence of community in itself. However, there is direct evidence. PEP also presented an analysis of relationships within the overall Gardner line, based on defining a core social group with which approximately 90 percent had demonstrable close kinship ties and/or social contacts. This analysis was generally consistent with available interview information about social contacts.

Because the political processes of the entire Eastern Pequot bridge the two petitioning groups in that their crucial focus of both organizations is on controlling and maintaining access rights to a single historical reservation established for a single historical tribe, this final determination concludes that the whole tribe, encompassing both current petitioners, meets the requirements for demonstrating social community from 1973 to the present, even though, from 1973 to the present, the petitioners have developed into increasingly separate social segments. Each of the major segments, EP and PEP, has significant internal social cohesion. The segments are united by the overall political processes, even when these are illustrated primarily by political disagreements over the common Lantern Hill reservation. There is no requirement in the regulations that social relationships be distributed uniformly throughout a community (Cowlitz PF Summ. Crit. 1996, 19) nor that they be amicable (see discussion, Cowlitz OTR 11/23/1998, 177). Rather, community is to be interpreted in accord with the history and culture of a particular group (25 CFR § 83.1).

Summary Conclusion for Criterion 83.7(b). The evidence demonstrates that the historical Eastern Pequot tribe maintained a distinct social community within which significant social ties existed historically and continue through the present. These ties within the membership encompass the members of both petitioning groups, even after the development of their separate formal political organizations. The historical Eastern Pequot tribe, comprising both current petitioners, meets the requirements of criterion 83.7(b).

### Criterion 83.7(c)

#### *Political Influence from the Colonial Period through 1873.*

The proposed finding concluded, consistent with precedent and using evidence acceptable to the Secretary, that the historical Eastern Pequot tribe, which included the antecedents of both current petitioners, met criterion 83.7(c) from the colonial period through 1873. Much of the argumentation presented by the Towns for the final determination reiterated topics which had already been considered in the proposed finding (including the nature of an aboriginal tribe; whether more than one modern tribe may have evolved from an aboriginal tribe). No significant

**Final Determination - Eastern Pequot Indians of Connecticut**

new evidence in regard to this early period was presented for the final determination by either petitioner or by the third parties. The conclusions of the proposed finding for this period are affirmed.

*Political Influence from 1873 to 1913.*

Political influence from 1873 to 1920 is demonstrated in part by a sequence of Eastern Pequot petitions from June 1873 through 1883 which were presented to the Superior Court by the “members of the Pequot tribe of Indians of North Stonington.” The first remonstrates against the overseer’s request for permission from the General Assembly to sell a portion of the Lantern Hill reservation and then requests his removal. The June 26, 1873, petition contained the name of Tamar [(Brushel) Sebastian] and mentioned her nine children without naming them; it was also signed by members of the Hoxie/Jackson family (one of the antecedent family lines of petitioner #113) and by members of the other two lines ancestral to EP, Fagins/Watson and Fagins/Randall, all in common with Amanda (Nedson) Williams, Leonard Ned/Nedson/Brown, and other members of historical Eastern Pequot families that have since become extinct.

The March 31, 1874, “Remonstrance to Superior Court, New London, against sale of land” contained the names of Calvin Williams, Amanda (Nedson) Williams, Abby (Fagins) Randall and her children, the children of the late Laura (Fagins) Watson, Rachel (Hoxie) Jackson and her children, and Marlboro Gardner. No Brushell/Sebastian family members were among the signers of the December 3, 1883, petition, but it did contain the names of Calvin Williams and his wife, plus Gardner, Hoxie/Jackson, Fagins/Randall, and Fagins/Watson signers. Thus in 1874 and 1883, the Gardner and Jackson families (antecedent to petitioner #113) appear in common with Calvin Williams and the members of the Fagins/Randall, and Fagins/Watson families (antecedent to petitioner #35) signing the same document for the same purpose.

The proposed finding noted that there was no clear evidence of political processes or leadership between 1880 and 1920, although the evidence demonstrating community was very strong and was thus good supporting evidence. New evidence submitted for the final determination shows that during the first decade of the 20<sup>th</sup> century Calvin Williams functioned as a leader, dealt with by the overseer, representing the Eastern Pequots to the overseer, and consulting with the membership on decisions.

Supporting evidence that he was a leader came from interviews indicating Williams’s relative prosperity and from a further analysis of kinship patterns which showed that Williams was related by marriage and through collateral lines to many of the Eastern Pequot families. Kinship ties often provide a basis for the position of informal leaders (see, for example, the proposed finding concerning the Poarch Band of Creeks) (Poarch PF 1983, 5).

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*Political Influence or Authority from 1913 to 1940.*

The strong character of the community, especially based on intermarriage ties, provides strong supporting evidence for the existence of significant political processes between 1913 and 1940.

Atwood I. Williams, Sr., was the state-recognized leader for all of the Eastern Pequots from 1933 until his death in 1955. There is limited evidence, from documents and interviews, that he was elected, by a portion of the membership at least, and that the State took notice of this election. Even though Williams took a stance against the membership of the Brushell/Sebastian portion of the Eastern Pequots, he was recognized by and dealt with by the State as leader of the entire tribe (which at this point also had a membership list approved at the same time and by the same judge through whom Atwood I. Williams's position was formalized). He continued to be consulted by State representatives of the Park and Forest Commission on matters concerning the tribe and its reservation through the late 1930's.

For this time period, particularly from 1913 to 1929, between the death of Calvin Williams and the appearance of Atwood I. Williams as an influential leader, the continuous State relationship with the Eastern Pequot as an Indian tribe provides additional evidence which, in combination with the limited direct evidence, demonstrates continuity of political processes throughout periods in which there is not sufficient positive evidence by itself, but in which positive evidence does exist.

That evidence includes the role of Tamar Emeline (Sebastian) Swan Williams, the widow of Calvin Williams. The EP proposed finding concluded that she was an informal political leader for the EP antecedent families during this period. This final determination does not affirm this conclusion, which is not supported by much direct evidence. The evidence does, however, support a conclusion that she was a social leader whose religious activities were well-known and that these activities, particularly hosting the Fourth Sunday meetings, provided a focal point for the tribe's members to interact with one another (see criterion 83.7(b)). The few pieces of evidence that might directly indicate the exercise of political influence on her part, such as an endorsement of an application for residence on the Lantern Hill reservation, are not present in sufficient numbers to show that this was the case.

In its comments for the final determination, PEP asserted that Phoebe (Jackson) Spellman was an informal leader between her return to the reservation from Providence about 1912 and her death in 1922. This claim was not supported by direct evidence. Limited evidence indicates that the tribe during this period was not ignored in matters of membership, even when there was internal controversy (in this instance between Phoebe (Jackson) Spellman and her brother) over the question of what the membership boundaries should be. An oral history account described an occasion when her brother, William Henry Jackson, one of the older reservation residents, swore, reportedly for the overseer and before a court, that an individual from the Sebastian lineage was an Eastern Pequot and entitled to reside on the Lantern Hill reservation, an action which angered his sister and apparently other Jacksons.

*Political Influence from 1940 to 1973.*

Atwood Williams, Sr. continued as the state-recognized leader for all of the Eastern Pequots until his death in 1955, although there was no documentation of his activity between 1941 and 1947. Even though Williams took a position against a portion of the Eastern Pequots, he was recognized by and dealt with by the State as leader of the entire tribe, once it was, in the late 1940's, reminded of the 1933 *In re Ledyard Tribe* Superior Court order. Although State implementation of his status was inconsistent and varied, it existed throughout the time span.

Political processes during this period were not limited to the activities of Atwood I. Williams, nor to the Eastern Pequot lines with which he identified himself. Additional evidence of political processes is provided by a 1953 expedition of Eastern Pequots, mainly Lantern Hill reservation residents, to Hartford to oppose a bill to "detritalize" Connecticut's Indians. This group was led by Catherine (Sebastian) Carpenter Harris, and included Jacksons as well as Sebastians.

The evidence is not entirely clear that the actions by Helen LeGault in complaining to the State authorities about the presence and activities of the Sebastians on the reservation during the 1950's and 1960's, and her appearance as a witness in 1961 State legislative hearings to seek amendments which would have limited their residence, represented only her opinions or also those of a body of public opinion among a portion of the Eastern Pequots. She clearly had the support of her siblings, effectively the entire Gardner/Edwards portion of the Gardners and there is some interview evidence to indicate that her opinions exerted influence among the children of the late Atwood I. Williams, Sr., (whose wife was her aunt) (the Gardner/Jackson subline) as well as among the Gardner/Edwards subline. There is also some evidence of opposition to her by both Jacksons and Sebastians, evidence which shows political processes.

This final determination does not find sufficient evidence to support the EP and PEP proposed findings' conclusion that Roy Sebastian, Sr., Arthur Sebastian, Jr., Catherine Harris, and Atwood Williams, Jr., taken singly, were informal leaders of various portions of the Eastern Pequot tribe between 1940 and 1973. Neither is there clear indication that during this period Paul Spellman of the Hoxie/Jackson line served as an informal leader as asserted by PEP, although he was well known to outsiders and there is documentation of some limited communication between him and the State in regard to the management of the Lantern Hill reservation. The data submitted by EP for the final determination does not provide sufficient evidence that Alden Wilson was an influential informal leader, as the proposed finding had found.

Compiled together, the whole complex of individual leaders' activities, sometimes formal, sometimes informal, coming from the antecedent family lines of both petitioners, with fluctuating alliances of the different family lines supporting them, provides some evidence of political influence.

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The political events of the subsequent era, from 1973 through the 1980's, provide substantial evidence that political processes and community existed before that time. The form the political processes took in response to the State's legal and policy changes and the intensity of these actions in response to the changes indicate preexisting political issues and opinions as well as preexisting social connections, distinctions, and alignments. Rather than being newly created, they indicate preexisting community and political processes. In addition, the activities of Helen LeGault provide part of the thread connecting the 1970's and the immediately preceding period. There is no question that social community, in part defined by significant social divisions based on family lines and disputes with considerable historical depth, existed throughout this period.

For this time period, and particularly from 1955 to the early 1970's, the continuous state relationship with the Eastern Pequot as an Indian tribe provides additional evidence which, in combination with the other evidence, demonstrates continuity of political processes throughout a period in which there is not otherwise sufficient positive evidence, but in which positive evidence does exist. When combined with the continuing State relationship and continuing existence of the Lantern Hill reservation, these activities demonstrate political influence in the Eastern Pequot tribe throughout the span of time.

### *Political Influence in the 1970's.*

The political events of the 1970's clearly demonstrate that a single Eastern Pequot tribe with political processes existed. In the conflict from 1973 onward, three different subgroups sought to obtain official approval as representing the Eastern Pequot tribe or as being the Eastern Pequot tribe. However, the alignments were not strictly along family lines, since the Jacksons had the support of Alton Smith, a leading Sebastian. At the same time, the conflicts of this period were a continuation of the distinctions and political issues that structured the tribe before 1973.

Because there was still a body of adult Jacksons in the tribe in the 1970's, there was not the same separation that appears today. Instead, since this line played a bridge or connecting role between the two lines that today are numerically predominant in the two petitioners (Sebastian for EP and Gardner for PEP), and had done so since at least the early 1900's, their presence demonstrates that there was a single political field in the 1970's within which the conflict was played out, rather than a conflict between two completely separate groups. It was not until 1989 that PEP asked the Jacksons to join them. The recentness of this request indicates that the alignments among the Eastern Pequot subgroups were still being adjusted in 1989. At the same time, the Sebastians initially presented themselves as representing the interests of part of a tribe, which was being threatened by the activities of Helen LeGault's Authentic Eastern Pequots in regard to CIAC representation, rather than as a separate tribe. This was quite clear in the way they

defending the position of the Sebastian family within the Eastern Pequot tribe and their rights to residence on the Lantern Hill reservation.

Indicative of the existence of a single tribe with shifting political alliances is that, in the late 1970's, the antecedents of the two current organizations were in fact organizations of two of the family lines of the Eastern Pequot tribe (Gardner and Sebastian) – neither the Hoxie/Jacksons who were not also Gardner descendants nor the either of the two Fagins descendant lines were initially included in either one. The Sebastians in particular viewed the initial conflict as one in which they needed to have their own family's interests represented – demonstrating that the conflict was one of interest groups within a particular political system.

The events of the 1970's which led to the formation of the two organizations demonstrate a high level of political processes within the tribe which involved the main kinship segments, the Sebastians, Jacksons and Gardner/Edwards. The events reflect the on-going political issues of access to and control of the reservation lands and the internal dispute over the legitimacy of the Sebastians as members. The formation of the CIAC and the beginnings of transfer of power over the reservation to the Eastern Pequot tribe triggered this high level of political conflict because it provided an opportunity, not previously existent, for one of the contending Eastern Pequot subgroups to seek to obtain designation as the Eastern Pequot tribe or status as the Eastern Pequot tribe's sole representative. State actions amounted to an opportunity by which one of the contending Eastern Pequot subgroups might be recognized by the CIAC as the only legitimate group and thereby gain control of the reservation. Helen LeGault's action on behalf of her own small segment brought counter-reactions from both the Sebastians and the Jacksons. These events mobilized large portions of the relatively small number of adult individuals then alive. The events were clearly a contest for power, resting on the preexisting social context and alignments, and by definition show political process. These conflicts, as conflicts typically do, showed which issues are important, how widespread the interest is, and in general provide data about political processes and community which a quiet period does not.

*Political Authority and Influence since 1973, Including Present Day Political Processes.*

Both EP and PEP as separate organizations in the modern period demonstrate substantial political processes within their own membership. Each petitioner has shown political involvement, beyond mere attendance at meetings, by a substantial portion of its adult membership, both by percentage and by distribution across family sublines, throughout the entire time period from 1973 to the present. Each deals with the same issues -- control over portions of the reservation and whether the Sebastians are part of the tribe. These issues have existed as an unbroken continuity from at least as early as the 1920's, a point in time for which there is strong evidence for the existence of a single community. The division into two political organizations is a recent development, and the evidence demonstrates a single political entity with strong internal divisions. The alignment in its present form, which did not exist in the 1970's, represents the results of a historical political process which is not now complete.

The importance of reservation access and residency rights to the membership of both EP and PEP is supported by the history of visiting with reservation residents and association with the reservation which was widespread among the non-resident Eastern Pequots (both EP and PEP) past and present and not limited to a small group of reservation residents. Reservation access and residency rights are issues of importance because they involve the loss or potential loss of significant resources, membership, and access to the reservation, which are current for the membership. They do not represent a claim for lands lost or treaties abrogated long before the lifetime of the current membership. There is more than sufficient evidence of visiting the reservation, residence there by close relatives, hunting and the like to conclude these are political issues of importance.

In addition, the EP council has exercised effective control over much of the reservation, regulating residence and land use, from the early 1980's to the present. This function was exercised regularly and consistently, and was followed by the membership. There was evidence of political communication because of regular membership meetings which voted on key issues, rather than such issues simply being voted on by the council group itself, although there was not strong evidence about communication from membership to the leadership except for the past several years. This is supporting evidence for political influence.

In the PEP, political processes were shown by dealing with the issues of importance to the membership – the same issues as in EP to a considerable extent, and also that of whether the two organizations should merge. There were also internal conflicts over other issues, specifically the method of governance, which mobilized political support and opposition along the lines of family subdivisions. The PEP organization also controls and allocates a portion of the reservation land, on a more limited basis than EP, among its membership.

Section 83.7(c)(2)(i) defines as sufficient evidence to show political processes where a group political mechanism exists which allocates “group resources such as land, residence rights and the like on a consistent basis.” Each petitioner has controlled allocation of reservation resources, among their respective memberships. This is not sufficient evidence of political processes in itself under 83.7(c)(2)(i), because the processes are parallel rather than a single process, but it is strong evidence of political processes.

The Eastern Pequot tribe, comprising both petitioners, demonstrates political processes in which the same political issues and conflicts that occurred earlier continue today. In this context, the evidence for each petitioner, in combination, demonstrates that only a single tribe, a tribe with significant political processes, exists today, notwithstanding the present organization of those processes into two distinct segments. One petitioner, the EP, has supported the creation of a single tribal organization encompassing the membership of both. The PEP from time to time has negotiated with the EP on this issue, manifesting an internal division of political opinion within its own membership as to whether PEP should organize together with the EP as a single tribe. A political issue for the PEP membership is that the larger size of the EP means that the EP membership, if it acted as a bloc, would predominate politically in a unified tribal government.

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The continuous historical State recognition and relationship are based on the existence of a single Eastern Pequot tribe, resident on a single land base which the tribe has occupied since colonial times and continues to occupy jointly. These facts provide added evidence that the petitioners meet the regulations as a single political body, notwithstanding current divisions and organization.

Summary Conclusions for criterion 83.7(c). The Eastern Pequot have existed as a distinct community within which political influence has been exercised since first sustained contact with Europeans. The historical Eastern Pequot tribe, comprising both current petitioners, meets the requirements of 83.7(c).

### **Criterion 83.7(d)**

Each petitioner met the requirements for criterion 83.7(d) separately by submitting a governing document which described its membership eligibility provisions. Given the present division into two organizations, the historical Eastern Pequot tribe does not presently have an overarching governing document, although all members are covered by the two documents presented. The presentation of two governing documents is sufficient to meet the requirements of this section of the regulations to submit copies of the governing documents of the group.

The historical Eastern Pequot tribe, comprising both current petitioners, under the above defined provisions, meets criterion 83.7(d).

### **Criterion 83.7(e)**

The proposed findings examined the evidence and concluded, on the basis of evidence acceptable to the Secretary, that the Brushell/Sebastian, Fagins/Watson, Hoxie/Jackson, and Gardner lines descend from the historical Eastern Pequot tribe within the meaning of the regulations.

The EP proposed finding postponed examination of the evidence in regard to the Fagins/Randall line pending identification of descendants within the current membership. For the final determination, EP identified such descendants on its membership list. Examination of the evidence in regard to Abby (Fagins) Randall and her sons leads to the conclusion that, on the basis of evidence acceptable to the Secretary, the members of this family line descend from the historical Eastern Pequot tribe within the meaning of the regulations. The arguments submitted by the Towns that the petitioners' families had not demonstrated Eastern Pequot ancestry within the meaning of the regulations are not supported by the evidence. The regulations provide that evidence acceptable to the Secretary includes "State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe" (83.7(e)(1)(ii)). The Connecticut State overseers' reports are such records.

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Therefore, this final determination concludes that all the current members of both petitioners descend from the historical Eastern Pequot tribe. The membership lists of both petitioners, as submitted to the Department for evaluation for the final determination, shall together form the base roll of the Eastern Pequot tribe acknowledged by the Federal government.

The historical Eastern Pequot tribe, comprising the membership of both petitioners, meets criterion 83.7(e).

**Criterion 83.7(f)**

The proposed finding concluded that a predominant portion of neither petitioner's members were enrolled with any federally acknowledged tribe. The same conclusion is applicable to the Eastern Pequot tribe as a whole. No new evidence was submitted. The proposed findings' conclusions are affirmed.

The historical Eastern Pequot tribe meets criterion 83.7(f).

**Criterion 83.7(g)**

The proposed findings concluded that neither petitioner had been the subject of legislation terminating a Federal relationship. The same conclusion is applicable to the Eastern Pequot tribe as a whole. No new evidence was submitted. The proposed findings' conclusions are affirmed.

The historical Eastern Pequot tribe meets criterion 83.7(g).

**Overall Conclusion**

The historical Eastern Pequot tribe, represented by two petitioners, EP and PEP, meets all of the criteria for Federal acknowledgment as a tribe stated in 25 CFR § 83.7 and therefore meets the requirements to be acknowledged as an Indian tribe with a government-to-government relationship with the United States.

## GENERAL ISSUES<sup>6</sup>

### **Introduction: Status of the Relationship Between the Eastern Pequot and the Colony and State of Connecticut.**

The proposed finding characterized the continuous relationship between the Colony and State of Connecticut and the historical Eastern Pequot tribe from colonial times to the present as a government-to-government relationship, indicating that this relationship was one aspect of the reasoning used in the proposed finding to accord greater weight to certain evidence for continuous community (criterion 83.7(b)) and political influence (criterion 83.7(c)).

This final determination, after a review of the evidence and the arguments offered by the two petitioners and the third parties, revises and clarifies this characterization. The Colony and State of Connecticut defined a distinct status for the Eastern Pequot as a tribe of Indians from the time that the Colony established a land base for them until the present, without interruption. There is implicit in this relationship a recognition of a distinct political body, in part because the relationship originates with the Colony's relationship with a distinct political body at the time the relationship was first established. Colony and State laws and policies directly reflected this political basis until the early 1800's. The laws are less explicit after that point until the 1970's, but the Eastern Pequot remained non-citizens of the State until 1973 and the State continued the main elements of the earlier relationship essentially without change or substantial questioning. This relationship defined the Eastern Pequot tribe as a group with a distinct status not shared by any non-Indian groups in the State, and was based on their status as a group rather than being a racial classification of individuals. By contrast, Connecticut treated individual, non-tribal, Indians the same as the remainder of the population.

This analysis is based on the statutes and on the reports and actions of the Colony or State or those exercising authority delegated to them by the State. However, the record for this determination does not contain documents which give the explicit rationale for the State's relationship in the sense of court decisions or other legal analyses. No such evidence was offered by any party in support of their various positions.

Several major elements existed throughout the relationship which define the distinct status of the historical Eastern Pequot tribe. First, a separate land base was established in 1683 which

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<sup>6</sup>The Towns do not concede the authority of the Executive Branch to acknowledge Indian tribes in the absence of delegated power from Congress (*Towns August 2001*, 1n1). The 25 CFR Part 83 regulations have been upheld by the courts (see *Miami* and *United Houma Nation v. Babbitt*).

The State of Connecticut's argumentation in regard to the role of former Assistant Secretary - Indian Affairs Kevin Gover in the issuance of the proposed findings (*State of Connecticut August 2001*, 1-2, 3-5) does not fall within the scope of this final determination.

For a summary of the State's overall understanding of the acknowledgment regulations and standards for Federal acknowledgment, see *State of Connecticut August 2001*, 8-14.

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continues to the present. This land had special status in that it was not subject to taxation and specific provision was made that it could not be lost through adverse possession as could other land in Connecticut. The land and the funds derived from it were defined as the tribe's land and funds, although title was effectively held by the State.

Second, after 1764, the State specifically appointed overseers or other authorities to have supervision and authority over the tribe's reservation land and funds and to be responsible for the welfare of its members. These obligations varied at different periods. These appointed authorities had the power and obligation to protect these resources and use them for the benefit of the tribe's members.

Third, the Indians who were members of the tribes with which the State had a relationship were not considered citizens of the State until 1973. They were not, according to the law, eligible to vote in State and local elections. This distinction only applied to members of the specific tribes recognized by the Colony and State and not to other Indians living within the State.

Fourth, the earliest laws clearly reflect the idea that the tribes had a distinct political status in that it was considered necessary to explicitly legislate that certain of the Colony's laws, such as criminal laws, applied to the Indians--*i.e.*, they were not considered to apply otherwise. This legislative treatment reflects the tribes' origins as distinct polities outside the Colony. The Connecticut laws in which the titles refer to "Indians" make clear in the body that they refer to tribes. This idea is expressed in law until 1808. After that point, the tribes' distinct status continues in the form of the overseers' protection and responsibility, the distinct status of the land, and the noncitizenship of the members of these tribes.<sup>7</sup>

There are significant periods at the beginning and the end of the historical span which partake of a Colony or State relationship with a distinct political community. Through most of the intervening period from the American Revolution to 1973, the relationship was less explicitly based on the status of the tribes as distinct political communities. However, the tribes continued to be based on a distinct status not shared by non-Indians, and not a welfare relationship as argued by the third parties.

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<sup>7</sup>As late as the 1830's, the issue of the extension of state authority over Indian tribes within states was still unsettled (Prucha 1962).

**Whether the Secretary Should Issue Amended, Revised, or Supplementary Proposed Findings for Criteria 83.7(b) and 83.7(c) for the Period from 1973 to the Present.**

The proposed finding stated:

The 25 CFR Part 83 regulations provide that: "A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria" (83.6(d)). The reason that this provision of the regulations is not now resulting in two proposed negative findings is that the major question currently remaining to be decided does not pertain to the availability of evidence that the petitioners meet the criteria, but to the nature of the potentially acknowledgeable entity for the period from 1973 to the present. Following an evaluation of evidence and arguments submitted during the comment period, the Department will complete the analysis under criteria 83.7(b) and 83.7(c) from 1973 to the present (EP PF 2000, 61-62).

*Comments.* The proposed findings did not consider the idea that amended, revised, or supplementary proposed findings should be issued. This issue was raised by the Towns in litigation as well as during the comment period. The Towns state as follows:

Position of the Towns.

The proposed findings fail to provide BIA's analysis as to whether the petitioners satisfy the acknowledgement [*sic*] criteria for the period 1973 to the present. As a result, there has been no opportunity for the Towns to review and comment on findings for the period. It is the Towns' position that a public review opportunity still must be held on the BIA's findings for that period. Thus, the Towns assert that proposed findings must still be published on the period from 1973 to the present (*Towns August 2001*, 3).

Since there has been no proposed finding issued for these criteria for the modern period, the BIA should be required to issue such a proposed finding. The petitioners and interested parties should then have the same opportunity to comment and rebut the proposed finding on the two criteria since 1973 that they would have in regard to any usual proposed finding in accordance with the Acknowledgment regulations (*Towns August 2001*, 297).

Position of the State of Connecticut. The State did not address the issue of opportunity to comment on amended proposed findings specifically. The most relevant passage follows:

Several aspects of the proposed findings are remarkably unusual: . . . Second, proposed findings to acknowledge were issued despite the express finding that the

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Department did not have “sufficient information and analysis to determine” whether the petitioners satisfied the mandatory criteria for the period from 1973 to the present (*State of Connecticut* August 2001, 1).

Position of EP. The EP Response to Comments 9/4/2001 did not specifically address either the issue raised by the Towns as to how the proposed finding dealt with the period after 1973 or the lack of an opportunity to comment on the findings for the post-1973 period that would be made in the final determinations.

Position of PEP.

The Towns indicate in their comments that they believe the regulations require that the Department provide them with an additional opportunity to comment on any evidence adduced for the period from 1973 to present . . . The regulations, however, do not provide such an additional comment period (Eberhard and Karns 25; PEP Response to Comments 9/4/2001).

The regulations neither require nor authorize the Department to issue a separate Proposed Finding on the evidence later submitted which may result in a positive or negative Final Determination. In fact, there are several Proposed Findings for which the Department found evidence to be lacking during a given time period or with respect to a given criterion, and the Department went straight to issuing a Final Determination upon the consideration of the comments and other materials received after the Proposed Finding was issued (Eberhard and Karns 25; PEP Response to Comments 9/4/2001).

*Analysis of Comments and Responses.* Petitioners and third parties were, in the proposed findings and in the appendix to each proposed finding, given sufficient information concerning the issues to be considered for the period from 1973 to the present in regard to criteria 83.7(b) and 83.7(c) that they could comment upon them during the regulatory comment period. The appendices provided a “road map” of where additional evidence might be located and where additional analysis of existing evidence could be useful. Petitioners and third parties did comment on these issues and submitted additional analysis.

The State’s comment asserts that the proposed findings were not completed through the present because there was not sufficient evidence to determine whether the petitioners met the mandatory criteria. However, the focus of the postponement was the need to determine the nature of the groups during that time period in order that the evaluation could be completed on the appropriate entity. It was not, as the State phrased it, an “express finding that the Department did not have ‘sufficient information and analysis to determine’ whether the petitioners satisfied the mandatory criteria for the period from 1973 to the present” (*State of Connecticut* August 2001, 1).

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The petitioners and interested parties had the same notice as to the issues and evidence before the Department and the same opportunity to comment and present their arguments and analysis on this petitioner as in other proposed findings which proceed to a final determination under the regulations. The two day formal on the record meeting and the informal technical assistance gave full opportunity for the parties to inquire into the evidence and analysis for the proposed findings, thereby permitting the extensive comment, analysis, and new evidence submitted in the comment periods on the proposed findings.

**Conclusion.** It is appropriate to issue final determinations in this matter rather than to issue amended, revised, or supplementary proposed findings.

**Whether the Secretary Has Authority to Acknowledge Two Separate Tribes that Have Evolved from a Single Historical Tribe. Whether the Secretary Has Authority to Acknowledge a Single Tribe when Two Separate Petitions Are before the Department.**

The proposed finding stated:

In addition to evidence and argument on the proposed findings in general, petitioners and interested parties, and informed parties may submit comments as to the Secretary's authority, under the circumstances of recent separation of the two petitioners, to acknowledge two tribes or only one tribe which encompasses them both as the continuation of the historic tribe. On the basis of the evidence currently before the Department, the petitioners may be able to present a stronger case as one entity rather than as two. However, for the proposed finding, neither petitioner presented an analysis of the conflict between the two groups, focused around the relationship with the state, which might provide useful evidence of a political conflict between two parts of one group or mobilization of political sentiment within two separate groups (EP PF 2000, 61).

*Invitation to Comments.* The proposed findings specifically invited the submission of comments on the issue of the Secretary's authority (EP PF 2000, 61). Petitioners and third parties submitted comments, as follows.

Position of EP. The question of the Secretary's authority was not specifically addressed in the EP Comments 8/2/2001 or EP Response to Comments 9/4/2001.

Position of PEP.

As explained in further detail below, the Secretary is not authorized to merge separate petitioners, or to require the two petitioners to merge themselves (Ayer to McCaleb 8/2/2001, [1]; PEP Comments 8/2/2001).

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Notably, no statutes permit the Secretary to merge, terminate or abolish tribes nor do any regulations set forth how the Secretary would do so. Thus, the Secretary has no such authority. The only regulations on the recognition issue are 25 C.F.R. part 83, the *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*. No provisions in those regulations states, or even implies, that the Secretary has the authority to merge two petitioners into one tribe (Ayer to McCaleb 8/2/2001, 3-4; PEP Comments 8/2/2001).

Quite to the contrary, the regulations limit the Secretary's options in processing petitions to making either a positive or a negative Final Determination [fn11]. There is no allowance for combining petitioning groups; it is simply a positive grant of federal recognition or a denial of federal recognition. If a petitioner meets the seven mandatory criteria in 25 C.F.R. § 83.7, the Secretary *must* acknowledge the petitioner's existence as an Indian tribe [fn12]. Thus, the regulations make clear that the Secretary must deal with each petitioning group and address the merits of each petition separately (Ayer to McCaleb 8/2/2001, 4; PEP Comments 8/2/2001).

Merging Petitioner #113 and Petitioner #35 would be an egregious violation of the recognition regulations extending well beyond the scope of the Secretary's legal authority (Ayer to McCaleb 8/2/2001, 4-5; PEP Comments 8/2/2001).

A summary of PEP's argument (Ayer to McCaleb 8/2/2001, 5-9) is as follows. The petitioner asserts that: (a) PEP meets the common law definition of a tribe (p. 5); (b) a forced merger would require one or both of the petitioners to cease to exist (p. 6); (c) "The petitioners, as they currently exist, would be abolished, and since the Paucatuck Eastern Pequot Tribe is a tribe, the Secretary's act would abolish both a tribal government and independent tribal existence" (p. 6); (d) "The Secretary lacks the power to abolish a tribal government" (p. 6); (e) ". . . without an unambiguous express delegation of authority from Congress, the Secretary can neither terminate nor abolish a tribe's existence" (p. 7); (f) it would be a taking (p. 7-8); (g) it would be arbitrary and capricious (pp. 8-9) (Ayer to McCaleb 8/2/2001; PEP Comments 8/2/2001).

### Position of the State of Connecticut.

The proposed findings note that the split between the two petitioners "evolved in recent times." *Id.* At 17295, 17301. Unable to make a finding whether after 1973 the petitioners became two separate tribes, whether they represented two factions of one tribe, or whether they even satisfied the criteria at all for this period, the Department expressly declined to make proposed findings as to criteria (b) and (c) for the post-1973 period. *Id.* At 17297-98, 17302. Despite the absence of a finding as to these two critical criteria, the Department proposed that acknowledgment was appropriate. This flies in the face of the requirement that a

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petition should be denied if even one of the criteria is not satisfied. 25 C. F. R. § 83.6(d) (*State of Connecticut August 2001*, 2-3).

The regulations specify that organizations “**of any character that have been formed in recent times may not be acknowledged.**” *Id.* § 83.3(c) (emphasis added) (*State of Connecticut August 2001*, 9).

There is absolutely no authority to acknowledge two groups that became independent of each other only in 1973. “Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations.” 25 C.F.R. § 83.3(c). The regulations are “intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.” *Id.* Groups which have become separate and distinct in relatively recent years have been neither historically autonomous (independent of the control of any other Indian entity) as required by mandatory criterion (c) nor historically distinct from nonmembers, as required by mandatory criterion (b) (*State of Connecticut August 2001*, 55-56).

Finally, as to the question of whether there are two tribes or one tribe with factions, the State submits that the proposed findings actually miss the real significance of the serious and continuing factional dispute between the petitioners. There is absolutely no basis for recognizing two tribes merely because of divisiveness between the two groups. Indeed, the inability of the petitioners to internally resolve their disputes – and their repeated efforts to seek resolution by outside authorities – demonstrates a continuing lack of the political autonomy required for federal recognition [7n3 Discussed below at § VI] (*State of Connecticut August 2001*, 7).

Position of the Towns. The Towns state:

Moreover, there is nothing in the acknowledgment regulations that allows the BIA to take such action on its own initiative. The regulations are driven by petitions filed by individual groups. While the BIA may consider two petitions together, it cannot compel a result that combines two petitioners into a single tribe. That is a power that is not vested in the Executive Branch (*Towns August 2001*, 304).

The Towns also argue that the Secretary has no authority to acknowledge more than one modern tribe that derives from the same historical tribe:

At the time of first sustained contact in the early 1600s, there was no Eastern Pequot Tribe. Although there was a single Pequot Tribe, the existence of that

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tribe cannot lead to the acknowledgment of splinter groups of Pequots that, even if one accepted their claim to Pequot ancestry, did not exist at the point of first contact.

To hold otherwise would establish a precedent that allows multiple tribes to form out of a single historical tribe simply because they separated later in time. This problem is nowhere more apparent than in connection with the Pequot Tribe, from which two acknowledged tribes (Mashantucket Pequot and Mohegan) have already been derived . . . . (*Towns August 2001*, 6).

*Analysis of Comments and Responses.* The Secretary has authority to acknowledge tribes – not to acknowledge petitioners *per se* -- as defined most pertinently in the following portions of the regulations:

**§ 83.1**

*Petitioner* Means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe (25 CFR § 83.1).

**§ 83.2 Purpose.**

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes (25 CFR § 83.2; see also § 83.10 (a) and § 83.10(k)(2)).

**§ 83.3 Scope.**

(a) This part applies only to those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present (25 CFR § 83.3).

The function of a petition is to get an Indian group's case before the Department. The intent of the regulations is not to acknowledge a portion or faction of an unacknowledged tribe, apart from the remainder of the tribe, simply because the original petitioner excluded the remainder of the tribe. In the case of unrecognized groups the regulations do not authorize acknowledgment of only part of a group that qualifies as a continuously existing political entity. Substantially all of the acknowledgeable group must be acknowledged in order for there to be a complete political unit. Based on this premise, there is an implied limit as to how recent a separation into two or more distinct entities may be, but there is no statement in the regulations as to how recent a division may be.

The State misinterprets § 83.3(c) of the regulations which states that groups of any character that have been formed in recent times may not be acknowledged under the 25 CFR Part 83 regulations. This section refers to groups which literally have been formed recently. The

division of an existing historical unacknowledged Indian group into two separate tribes or into two petitioners does not mean they are "newly formed" within the meaning of this section of the regulations any more than the combination or amalgamation of two historical tribes creates a "recently formed" entity within the meaning of the regulations.

The acknowledgment regulations do not speak directly to the issue of historical division of tribes, noting only that a group cannot separate from a recognized tribe and now be separately recognized as a tribe (83.3(f)). The language of § 83.3(f) pertains to petitions submitted by groups whose membership is composed principally of persons who are currently enrolled with acknowledged North American Indian tribes.

Interpretation of the regulations generally follows precedents established in law and past policies, unless the regulations are explicitly different. It is well settled that the U.S. can recognize more than one successor to a historical tribe. This precedent is well-established among federally acknowledged tribes, both those that have not gone through the acknowledgment process (the Eastern Band of Cherokee and Cherokee Nation of Oklahoma, for example) and those which have (Poarch Creek, Huron Potawatomi, Jena Choctaw).<sup>8</sup>

The Poarch Creek Band, which was acknowledged under these regulations, derived from the historical Muscogee (Creek) Nation. The Snoqualmie Tribe, also acknowledged under these regulations, is one band derived from the historical Snoqualmie tribe, the other Snoqualmie having merged with other tribes to form the Tulalip Tribes. The date at which division took place in regard to tribes acknowledged through the 25 CFR Part 83 process has varied. In neither of these cases was a specific "cut" made concerning when the group which subsequently petitioned for acknowledgment became separate, but the Poarch Creek separated from the Creek Nation in the early part of the 19th century and the Snoqualmie Tribe from the rest of the Snoqualmie no later than the 1920's.<sup>9</sup> Thus neither historical division was recent as the proposed findings concluded the Eastern Pequot division might have been. It is additionally noted that in cases where more than one tribe deriving from a single historical tribe has been acknowledged through 25 CFR Part 83, the historical division was shown to have taken place not only over the course of time but also geographically.

The argument submitted by PEP that the Secretary does not have the authority to merge two tribes together might apply only if two separate tribes in fact exist. This determination concludes that two tribes do not exist within the meaning of the regulations and thus does not

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<sup>8</sup>These examples are not intended to be an exhaustive list of tribes that fall into these categories.

<sup>9</sup>Additionally, there is the distinction, not applicable to these petitions, that both Poarch Creek and Snoqualmie separated from tribes recognized at the time--the Snoqualmie continued to be recognized as a separate band for some years afterwards; the Poarch Creek were not recognized after they separated. See also relevant discussion in HPI and MBPI.

merge two tribes. Rather, this final determination acknowledges a single tribe which is represented by two petitioners.

The precedent under the regulations is that the Secretary has the authority to acknowledge more than one petitioner deriving from a historical tribe. Existing precedent does not speak directly to the issue of the “recentness” of the division in cases to date that involved historical separations.

**Conclusion.** The Secretary has the authority to acknowledge more than one modern tribe that derives from a single historical tribe as it existed at the time of first sustained contact with non-Indians. Such acknowledgment has been done previously in cases when a historical tribe had divided into two separate tribes. This issue concerning the Secretary’s authority is separate from the determination as to whether there are, in this instance, two tribes within the meaning of the 25 CFR Part 83 regulations.

Although the precedent under the regulations is that the Secretary has the authority to acknowledge more than one tribe deriving from a historical tribe, precedent from previous acknowledgment decisions does not define a limit as to how recent the separation may be which would allow for acknowledgment of two separate tribes. This final determination does not reach the issue of whether the Secretary has the authority to acknowledge two tribes that split in 1973 or only the authority to acknowledge one, because the evidence demonstrates only that there is a division within a tribe and that only a single tribe exists within the meaning of the regulations.

The Secretary’s authority to acknowledge is not limited by the format in which the petition or petitions were presented.

### **Whether, in this Instance, One or Two Tribes Exist.**

The proposed findings stated:

The two petitioners derive from a single historical tribe with a continuous state relationship since colonial times. As such, the modern conflicts between the two, which have focused on their relationship with the State of Connecticut, are relevant evidence for political influence, although it is unclear if it is as one tribe, or as two. Petitioner #35 (EP) has taken the position that there was only one tribe, but has not presented sufficient evidence to demonstrate that this was the case after 1973, although there is some evidence that only one tribe exists within the meaning of the regulations. Petitioner #113 (PEP) has taken the position that the EP families were not of Eastern Pequot ancestry and were never part of the tribe. The proposed finding for EP concludes that the PEP position is not correct. Both groups derive from the historical Eastern Pequot tribe which was recognized by the State of Connecticut. The State continues to recognize a successor to the

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historical Eastern Pequot tribe, but has not taken a position as to the leaders of that successor (EP PF 2000, 61).<sup>10</sup> [footnote added]

For the period since 1973, the evidence now in the record is not sufficient to determine that there is only one tribe with two factions (these being the Eastern Pequot Indians of Connecticut (petitioner #35) and the Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113)), or whether the dissensions of the period since 1973 have resulted in the evolution of two separate bands from the historical tribe (EP PF 2000, 62).

For the period since 1973, the evidence now in the record is not sufficient to determine that there is only one tribe with two factions (these being the Eastern Pequot Indians of Connecticut (petitioner #35) and the Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113)). The Department consequently makes no specific finding for the period 1973 to the present (PEP PF 2000, 63).

There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe after 1973. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient information to determine that there is only one tribe with political factions . . . (EP PF 2000, 100; PEP PF 2000, 120).

This appendix contains descriptions and BIA analysis of the material currently in the record for petitioner #35 under criteria 83.7(b) and 83.7(c) for the period from 1973 to the present. It describes what evidence was in the record for the period since 1973, with some review of the petitioner's arguments, to provide the petitioners and third parties with guidance to prepare comments and evidence in

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<sup>10</sup>PEP interprets this State approach as follows:

Mikki Aganstata (Indian Affairs Coordinator, DEP) wrote a letter to Lawrence Sebastian advising him to sit down with Helen LeGault and Richard Williams and talk about their differences "coherently and rationally" (see letter from Mikki Aganstata to Lawrence Sebastian, February 13, 1979). It is evident from the letter to Sebastian that Ms. Aganstata was of the opinion that there was one Eastern Pequot Tribe which included both the Paucatuck Eastern Pequot Tribe and the Sebastians. She advised the use of a mediator to help the two sides reach an agreement.

Ms. Aganstata was new to her Department of Environmental protection position and the conflict between the Paucatuck Eastern Pequot Tribe and the Sebastians, and did not realize the historical depth or character of the problem. She assumed there could only be one tribe per reservation and that the Sebastians had a legitimate claim to membership in the Tribe. She was naive in assuming a mediator would be able to help the Paucatuck Eastern Pequot Tribe resolve a century of conflict with the Sebastians. This is another instance in which a State official was meddling in the internal affairs of the Paucatuck Eastern Pequot Tribe (Austin, Political Authority 9/4/2001, 29; PEP Response to Comments 9/4/2001).

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response to this proposed finding. It gives some of the evidentiary context to the proposed finding that leaves open the question of whether there is one tribe or two. The petitioner's evidence, even in conjunction with that presented by petitioner #113, is insufficient for the Department to determine if there is one tribe or two. For these reasons, *it does not present an evaluation* under these criteria for this time period (EP PF 2000, 135; see also PEP PF 2000, 139). [emphasis added]

*Invitation to Comments.* The proposed findings specifically invited the submission of comments on this issue (EP PF 2000, 61). Petitioners and third parties submitted comments, as follow.

### Position of EP.

In creating the CIAC, Connecticut Public Law 73-660 recognized the existence of only one Eastern Pequot Tribe (Marks IIIB, 122; EP Comments 8/2/2001).

The actions of the state government, in the form of the formation of the CIAC, exacerbated tensions within the tribe, which were largely racial in nature, such that a formal split resulted between the majority of the tribal members (the present Eastern Pequot Tribe) and the LeGault faction (the present Paucatuck Eastern Pequots). Since that time, the Eastern Pequots have made repeated efforts to reconcile with the Paucatucks, and remain hopeful that the tribe eventually will be reunited (Introduction 2; EP Comments 8/2/2001).

In 1981, the State Legislature amends Connecticut Public law [*sic*] 73-660 to change the name of the Eastern Pequot Tribe to the Paucatuck Eastern Pequot. This change was not intended as a recognition of the Paucatuck, but rather use, in the State's view of the more historical name of the Eastern Pequot Tribe. The State at no time recognized the existence of more than one Eastern Pequot Tribe. At a March 30, 1981 [*sic*], on the 1981 legislation, then called Raise Committee Bill No. 7272, Commissioner Stanley Pac of the Connecticut Department of Environmental Protection explained; "first, this bill recognizes each tribe by the historical name deemed appropriate by the tribe rather than that of a descriptive label applied by a state agency in the distant past and continuing in the current statutes" (Marks IIIB, 123; EP Comments 8/2/2001).

The specific nature of factionalism in the Eastern Pequot community and the nature of relationships between the Eastern Pequots and the Paucatuck Eastern Pequot faction is discussed in Simmons (Report IVC) and Bragdon (Report IVA) . . . political power as control over resources has been the primary cause of this factional dispute (see Den Ouden, Report I'VE, this volume). The original leader of the faction, Helen LeGault, succeeded in rallying support around these issues, largely from members of her own family. Membership in the LeGault or

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Paucatuck faction has fluctuated, and many Paucatuck members might have rejoined the Eastern Pequot group on LeGault's death, had not the animosities engendered by the heavy-handed dealings of the CIAC and other state officials prevented it. New economic motivation from outside, has also furthered or strengthened the original dispute (see Reports IIIG and IIIH, this volume) (Introduction 6-7; EP Comments 8/2/2001; see Bragdon IVA, 490; EP Comments 8/2/2001 for a restatement of this position).

The history of the LeGault/Cunha group is only the one that they share with the Eastern Pequot Tribe. They claim the same reservation, the same historical relationship with the state government, the same oral traditions, the same Fourth Sunday meetings, the same leaders, and many of the same ancestors . . . They have provided no documented evidence of separate identity. They have no separate history, and are therefore an Indian entity only insofar as they are a part of the Eastern Pequot Tribe (Introduction 12; EP Comments 8/2/2001).

This report argues that the tribe is a single entity, that leadership has always been in the hands of the Eastern Pequot tribe (petitioner #35), and that the racially motivated secession of the LeGault/Cunha faction has been wrongfully supported by the State of Connecticut (Bragdon IIIJ, 459-460; EP Comments 8/2/2001).

Part IV. The Eastern Pequots: One Tribe, Two Factions. (EP Comments 8/2/2001, IV, [485a]).

. . . . .  
This section, written in response to the finding of the BAR that, with respect to the dispute between the Eastern Pequot tribe and petitioner # 113, there was "insufficient evidence to determine whether there is a single tribe with two factions," reiterates the tribe's longstanding assertion that it alone represents the historic Eastern Pequot tribe, and that the dispute with the Cunha group (petitioner # 113) is an example of a factional split of the kind common to tribal politics in many parts of North America and elsewhere. . . . In combination, the reports of this section<sup>11</sup> provide evidence that the kinship and social ties between the Eastern Pequot tribe and petitioner # 113 are numerous and complex, that they share a history and a reservation, and that their split is typical of those that occur in face-to-face communities around the world (EP Comments 8/2/2001, IV, 486).  
[footnote added]

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<sup>11</sup>Report IVA. Factionalism in Anthropological Perspective, Kathleen Bragdon; Report IVB. A History of Factionalism in Connecticut Indian Tribes, Paul J. Grant-Costa; Report IVC. Interfactional Cooperation and Conflict, William Simmons; Report IVD. Kinship and Controversy over CIAC Seat, with Examples of Kinship Charts Showing Relations Between Eastern Pequots and Paucatuck Eastern Pequots, Marcia J. Flowers; Report IVE. The Impact of Racism on Political Process and Community among Eastern Pequots in the 20<sup>th</sup> Century.

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This response also addresses BAR queries regarding the factional dispute between the Eastern Pequot tribe and petitioner # 113, demonstrating that such a split is not evidence that two tribes exist, but rather that the split reflects factional politics common in small-scale societies (Conclusions 554; EP Comments 8/2/2001).

Several branches of evidence merge to suggest that there is, as the Eastern Pequot tribe (petitioner 35) has always maintained, only one tribe with two factions. The Eastern Pequots have made repeated, documentable efforts to maintain connections with the LeGault/Cunha faction. The two groups share the same reservation, the same ancestry, and the same history. The LeGault/Cunha faction have served a positive function in mobilizing political action, a function that factions often serve. Their persistent racist remarks, however, alienate them from the main body of the group, and undermine their claims to separate status (Conclusions 557; EP Comments 8/2/2001).

#### Position of PEP.

The central issue requiring clarification is that there is not, and never has been, a political, tribal relationship between the PEP and the descendants of Tamar Brushell Sebastian, who are presenting a separate petition for Federal acknowledgment as an Indian tribe, as petitioner #35 (Austin Introduction 8/2/2001, 3; PEP Comments 8/2/2001).

It is critical that the AS - IA accurately understands the evidence in this case, which demonstrates the fact that the Paucatuck Eastern Pequot Tribe and the members of Petitioner #35 have never, **at any point in time**, constituted a single Indian tribe. Logically, to be considered factions of a single tribe, there would have to be some evidence that the two petitioners would have had to have been part of the same whole at some point in time. There would have to be evidence that the PEP and Petitioner #35 shared a common tribal social community AND a common political leadership. If this were a case of two factions within a single tribe, the various leaders of the factions would disagree with each other, but at some point there would have to be political relations and cooperative social interaction between them. This has never been the case. Indeed, the evidence clearly demonstrates that there has never been a political relationship between the two petitioners and no more than nominal social communication (Austin Introduction 8/2/2001, 5; PEP Comments 8/2/2001). [emphasis in original]

The Paucatuck Eastern Pequot Tribe has always maintained its political and social distinctiveness from the individuals currently organized under the name "Eastern Pequot Tribe" (Petitioner #35), in terms of tribal affairs. The evidence discussed in these comments clearly shows that the PEP has always had its own separate tribal community and its own political leaders. With regard to the critical

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evidence on political leadership (which is what factions are all about), the fact that the PEP and Petitioner #35 have never been unified is particularly clear (Austin Introduction 8/2/2001, 6; PEP Comments 8/2/2001).

Collectively, PEP tribal members have always held the opinion that Tamar Brushell Sebastian was non-Indian. Therefore, those who claim descent from Tamar Brushell have never been viewed as members the [sic] historical Eastern Pequot Tribe by the Paucatuck Eastern Pequot Tribe's ancestors or current members [fn4: The Paucatuck Eastern Pequot Tribe's members do not accept that the two petitioners are actually two separate tribes, either. PEP tribal members do not think that Petitioner #35 has met its burden of proof that it exists as a Tribe on its own merits.] In fact, when considering all of the available evidence, there is no support for the idea that the Paucatuck Eastern Pequot tribe and Petitioner #35 are two factions of a single tribe at any point in time, before or after 1973. Particularly, for those members born since the 1940 [sic], there is no reliable evidence that the Paucatuck Eastern Pequot tribe and the Sebastians constituted a single social and political entity (Austin Introduction 8/2/2001, 8; PEP Comments 8/2/2001).

... there is no credible evidence that the Paucatuck Eastern Pequot tribe is a faction of petitioner #35, since no single political or social system encompassing both members of Petitioner #35 and the Paucatuck Eastern Pequot Tribe has ever existed; ... the Sebastians and the Paucatuck Eastern Pequot Tribe have always inhabited separate social spheres, and cannot be accurately characterized as two factions of a single tribal entity (Cunha to McCaleb 9/4/2001, 2; PEP Response to Comments 9/4/200).

### Position of the State of Connecticut.

Section VI. There is only One Eastern Pequot Group with Two Divided Factions that Are Not United in a Community under a Single Leadership or Government (*State of Connecticut August 2001*, 55-59).

... the State submits that the evidence, when properly viewed, demonstrates that there is but one group. This group is split by two divided factions that are not "united in a community under one leadership or government," as required for tribal existence. *Montoya v. United States*, 180 U. S. 201 (1901). Although there is unquestionably a serious, unresolved conflict between the two petitioners, they are historically part of the same group, claiming genealogical ties to each other. The State and the Federal government have viewed them as one group that has been unable to settle its differences. For the reasons discussed above, neither faction, together or separately, can satisfy the mandatory criteria for recognition (*State of Connecticut August 2001*, 55; see also discussion of current Connecticut

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statues, a Connecticut Appellate Court decision/ and HUD's treatment of the proposed Paucatuck Eastern Pequot Housing Authority, *State of Connecticut August 2001*, 56-59).

Thus, the question is not whether there is one tribe or two. Because of the continuing and unresolved factional dispute, as well as the other deficiencies discussed above, neither petitioner can meet the judicial or BIA requirements for recognition as a tribe (*State of Connecticut August 2001*, 59).

Position of the Towns.

While the BIA found that there was only one tribe prior to 1973, its consistent conclusions in the findings that there were two major subgroups that have not interacted socially or politically with each other since the 1920s argue against the "one tribe" finding. If the two petitioners were separate and distinct from that time on, as in fact the Paucatuck petitioner claimed, however, the BIA could not have made a positive finding up to 1973 (*Towns August 2001*, 301).

The Summary Under the Criteria notes that there is "strong evidence" of disputes between these families "that goes back well before Atwood Williams's action in the 1930s (BIA, Summary Under the Criteria, EP, p. 86). The Jackson line, the family that accounted for most of the reservation residents between 1880 and 1920, had kinship links to both the Gardner and Sebastian lines. Gradually over the course of the 20<sup>th</sup> century, the Jackson line separated from both of the other family lines before realigning with the Gardner line and the Paucatuck petitioner rather recently (BIA, Summary Under the Criteria, EP, pp. 91-96) . . . The proposed finding maintains that these were merely internal factional divisions prior to the organization of distinct political entities (the two petitioners) in the 1970s. (BIA, Summary Under the Criteria, EP, pp. 86, 96). But where is there evidence of an integrated tribal entity prior to 1973? (*Towns August 2001*, 306-307).

Separate Eastern Pequot political organizations emerged in the mid-1970s not because the separation took place then, but because of the establishment of the CIAC . . . the political and cultural climate at that time permitted and encouraged long-divided families to establish formal and distinct governing structures (*Towns August 2001*, 307-308).

As much as the Assistant Secretary may have desired to effect a merger of the petitioners, this cannot and will not happen because their separation and distinction is, in fact, longstanding and because each now also has separate and distinct economic backers who have a vested interest in seeing their petitioner acknowledged (*Towns August 2001*, 304).

*Analysis of Comments and Responses.* This analysis begins with a summation of the status as it exists after issuance of the proposed findings.

- a. The threshold factual issue as posed in the proposed findings on petitioners #35 and #113 is whether two separate tribes that have derived from the historical Eastern Pequot tribe now exist.
- b. If the threshold issue is answered affirmatively, the second question becomes the point in the past at which the two tribes became separate.
- c. After determination of the effective date of separation, the third question then becomes whether the separation is of such depth and significance as to preclude the acknowledgment of a single Eastern Pequot tribe under the regulatory requirement for continuous existence.

(1) In regard to the threshold issue, the proposed finding concluded, based on the evidence in the record, that there was one tribal unit that comprised the antecedents of both current petitioners through 1973. A review of the data for the final determination affirms this conclusion. Two groups exist, in the sense that there are currently two petitioners. The determination of whether the two petitioners form a single North American Indian tribe or are in fact two tribes is more complex.

EP accepts the premise that both groups stem from a single historical tribe and that acknowledgment of a single tribe comprising both groups would be acceptable. The letter of intent submitted by EP in 1978 referenced Tamar Brushell and Mary Eliza Watson specifically, while mentioning several other of the historical Eastern Pequot surnames. It was accompanied by a non-exclusive constitution which did not bar descendants of any lines of the historical tribe from membership and a copy of the 1889-1890 and 1890-1891 overseer's reports that listed individuals from all the family lines in both current petitioners.

PEP continues to maintain the position that there was a historical tribe, but that the antecedents of EP (which it refers to as the "Sebastian family," without reference to the Fagins/Randall and Fagins/Watson lineages) never belonged to that tribe. In essence, PEP (petitioner #113) defines its own direct antecedents as having been the "historical tribe." PEP asserted in its original petition and asserts in its comments on the proposed findings both (1) that its antecedents at no time were part of an entity that included the antecedents of petitioner #35, and (2) that the separation between the two groups, along the current alignments, took place as early as the late 19<sup>th</sup> century. The evidence does not support PEP's claim that its antecedents were never part of a common historical tribe that included the antecedents of petitioner #35.

(2) The process of separation or division has been gradual, and is not as complete as may appear from the petitioners' present status represented in the petitions, Comments, and Responses to Comments. Although there was clearly social separation between the two most distant lineages

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(Gardner/Edwards and Brushell/Sebastian) in 1973, and to some extent from the late 1920's onward, the other families (Gardner/Williams, Hoxie/Jackson, Fagins/Randall) continued to provide a sequence of linkages between both ends of the spectrum into the 1980's. Throughout, the existence of the Lantern Hill reservation provides a common focus of concern for both groups, which means that although each petitioner now has a separate formal organization, the concerns of those organizations as reflected in their minutes focus largely on opposition to the other petitioner in regard to issues that impinge on both of them. Connecticut has, historically, recognized only a single tribal entity associated with the Lantern Hill reservation. See, for example, the 1989 statement of the Appellate Court that, "[t]he named Plaintiff is one faction of a tribe and the individual plaintiffs claim to be the true members" (*Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council* 55 A.2d 1003 (Ct. App. 1989); PEP Comments 8/2/2001, Ex. 60). The essential focus of many of the post-1973 membership controversies has been the question of how the representation of that single state-recognized tribal entity is to be determined.

(3) Since 1973, the two petitioning groups have been evolving in different directions, but there was not a sudden and complete split as of that year, nor does the evidence indicate that a complete split has occurred. It is the general policy of the Department not to encourage splits and divisions within federally acknowledged tribes. Section 83.7(f) reflects this policy. A reasonable extrapolation of this policy and of the intent of the regulations to acknowledge historical tribal units, is that the Department does not and should not encourage splits and divisions within groups which may become federally acknowledged. In instances where the evidence is ambiguous, or in cases where an apparent split appears to be the result of fluctuation in activity levels or the existence of factionalism, and yet a single entity continues to exist, the Department will acknowledge the entire tribal unit.

**Conclusion.** The conclusion reached in the proposed findings that there was a single historical tribe that comprised the antecedents of both current petitioners through 1973 is affirmed. The body of each final determination discusses the evidence and reasoning for this conclusion.

More than 300 years of common history and common occupancy of a single reservation by both current petitioners until the present day indicate in this instance that there is only one tribe within the meaning of the regulations. Further, the two petitioners define themselves and their issues in relation to each other and to their common resources. The separate formal organizations that the two petitioning groups have maintained since 1973 do not offer a sufficient reason to conclude otherwise. As discussed under criteria 83.7(b) and 83.7(c) below, these organizations do not represent a complete separation into two tribes, but rather an internal division within one tribe.

**Whether Continuous State Recognition since Colonial Times, in Combination with the Continuous Existence of a Reservation since Colonial Times, Adds Weight to the Evidence.**

The AS-IA's decision to issue positive proposed findings for both EP (petitioner #35) and PEP (petitioner #113), notwithstanding certain evidentiary weaknesses described in the BIA's recommendation, relied in part on the continuous existence of a state-recognized tribe with a reservation since colonial times. In light of this, the AS-IA concluded that greater weight should be given to the existing evidence than would otherwise be the case. The proposed finding stated this conclusion in part as:

*Impact of Continuous Historical State Acknowledgment since Colonial Times upon the Evaluation of the Evidence.* Because the petitioners are, singly and together, the continuation of a historically state-recognized tribe whose relationship with the state of Connecticut goes back to the early 1600's, possessing a common reservation, this evidence provides a common backbone and consistent backdrop for interpreting the evidence of continued tribal existence. When weighed in combination with this historical and continuous circumstance, evidence on community and political influence carries greater weight than would be the case under circumstances where there was not evidence of a longstanding continuous relationship with the state based on being a distinct political community. The greater weight was assigned for the following reasons in combination:

- The historical Eastern Pequot tribe has maintained a continuous historical government-to-government relationship with the State of Connecticut since colonial times;
- The historical Eastern Pequot tribe had a state reservation established in colonial times, and has retained its land area to the present;
- The historical Eastern Pequot tribe had members enumerated specifically as tribal members on the Federal Census, Special Indian Population Schedules, for 1900 and 1910 (EP PF 2000, 63).

*Invitation for Comments.* The proposed finding specifically invited comment on this issue for the final determination (EP PF 2000, 61). Both petitioners, the State, and the Towns provided such comments.

Position of EP.

. . . we agree that evidence of continuous state recognition since the 1600's should be entitled to greater weight, . . . (Introduction 15; EP Comments 8/2/2001).

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... the State's relationship with the Eastern Pequot Tribe mirrors, in many respects, the relationship that the federal government has had with federally recognized Indian nations (Marks IIIB 115; EP Comments 8/2/2001).

A review of Connecticut's Indian statutes and policies reveals striking similarities between those State Indian laws and policies and the Indian laws and policies of the United States during similar time periods (Marks IIIB, 116; EP Comments 8/2/2001).

The Eastern Pequots believe that Government's interpretation of the significance of state recognition is both accurate and appropriate, and that a reasoned analysis of precedent shows that such recognition is always given weight in BAR interpretations (Bragdon [1]; EP Response to Comments 9/4/2001).

Position of PEP. The PEP Comments 8/2/2001 did not address this issue. It is considered in the PEP Response to Comments 9/4/2001 (Eberhard and Karns 3-21).<sup>12</sup>

Eastern Pequot leaders interacted with colonial leaders as representatives of one government to another (Duryea 17; PEP Response to Comments 9/4/2001).

It is appropriate for the Assistant Secretary and the Bar [*sic*] to consider state recognition issues, in their proper context, as evidence under criteria (a)-(c) (Eberhard and Karns 6; PEP Response to Comments 9/4/2001).

Position of the State of Connecticut. The State of Connecticut presented a specific section on the topic, "The History of State Relations Does Not Support Acknowledgment," which summarized the State's interpretation of its relation to the Indian tribes within its borders from the colonial period to the present. (*State of Connecticut August 2001* Appendix, 1-9). Additionally, the State advanced the following statements:

... the proposed findings suggested that, contrary to the regulations and precedent, the history of relations between the petitioners and the State could be used to make up for what otherwise would be insufficient evidence under the criteria. 65 Fed. Reg. At 17294, 17300. Specifically, the proposed findings assert that state recognition and the existence of a state reservation are "unique factors"

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<sup>12</sup>PEP has also addressed the issue of state recognition in contexts that are not relevant to the issue of the weight of the evidence for tribal continuity. For example, PEP asserts that the seating of Helen LeGault as Eastern Pequot representative on the CIAC, with Richard Williams as her alternate, on August 2, 1977, "shows that the Paucatuck Eastern Pequot Tribe was maintaining a government-to-government relationship with the State, and ... [t]here is no evidence that the CIAC treated the Sebastian family in the same manner at this time" (Austin, Political Authority 9/4/2001, 28; PEP Response to Comments 9/4/2001).

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that “provide a defined thread of continuity through periods when other forms of documentation are sparse or do not pertain directly to a specific criterion.” *Id.* As demonstrated below, the proposed findings are incorrect both in terms of their characterization of the nature of State relations and of their proper treatment under the acknowledgment regulations (*State of Connecticut August 2001*, 3).

The proposed findings’ reliance on state recognition to augment or excuse the absence of otherwise insufficient evidence is misplaced. The State’s relationship with the petitioners was not based on a recognition of the Connecticut Indian groups as sovereigns exercising autonomous political authority and having bilateral political relationships. Moreover, judicial precedent does not support the Department’s misuse of the history of the State’s relations with the petitioners. Indeed, a long line of judicial decisions demonstrates the distinct difference between federal recognition – which assumes a government-to-government relationship – and state recognition, which does not [6n2, Discussed below at § III] (*State of Connecticut August 2001*, 6).

Section III. State Recognition of an Indian Group Cannot Make Up for the Lack of Proof Required under the Mandatory Criteria (*State of Connecticut August 2001*, 15-23).

The evidence of the petitioners’ relationships with State government does not support recognition of either petitioner as an Indian tribe under federal standards. For most, if not all, of the historical period from colonial times to the present, the State never treated the Indian groups under its jurisdiction as distinct social communities having political authority or sovereignty. Indeed, the evidence reflects a profound lack of State standards or evaluation similar to that required by the federal acknowledgment regulations (*State of Connecticut August 2001*, 15).

Throughout most of the colonial and state periods, Connecticut lacked a specific definition, statutory or otherwise, of “Indian” or “Indian tribe” and had no process for making determinations of such status. Instead, the record indicates that overseers were appointed on a more or less ad hoc basis for Indian groups. This lack of standards – and the lack of relevance to federal standards – continues through the present (*State of Connecticut August 2001*, 16).

Turning to the present petitioners, there is no evidence that the contacts between the colony and the State after the Pequot War with the Eastern Pequot Group were based on any determination that they exercised political influence or authority within the meaning of the acknowledgment regulations. To the contrary, the colony viewed the Eastern Pequot Group as subordinate to English rule. Subsequently, the colony and the State regarded the Eastern Pequot Group as

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unable to govern, protect or provide for itself without outside assistance. Although the colony provided a reservation for the group and the State has allowed that reservation to continue, the fact that the land is held in the name of the group does not prove political influence or authority. Collective rights in land can also exist for religious organizations, estates, trusts and voluntary associations, none of which necessarily exercise any significant governance over its members or beneficiaries (*State of Connecticut August 2001, 17*).

The State legislation and other colonial and State actions, when properly viewed, demonstrates that these petitioners were never viewed as sovereign political entities. For a detailed discussion of colonial and State legislation and relations with the Eastern Pequot Group, see Appendix § I (*State of Connecticut August 2001, 17*)

Section III. Subsection B. Under the Regulations, State Recognition does not Augment or Supplement Evidence for the Other Mandatory Criteria (*State of Connecticut August 2001, 20*).

Evidence of relationships with state government is considered under the regulations only with regard to criterion (a), identification as an Indian entity. It is not listed as appropriate evidence with regard to any other criteria and cannot be used as a substitute for such evidence as a basis for giving greater weight to such evidence (*State of Connecticut August 2001, 20*).

The acknowledgment regulations reduce the burden of proof as to the other criteria only when there was prior *federal* recognition for a tribe, 25 C.F.R. § 83.8; 59 Fed. 9282, *not* for state recognition (*State of Connecticut August 2001, 20*).

Most tellingly, if it was intended that state recognition should have a similar role in replacing or supplementing evidence required for the other criteria, the regulations could and should have expressly provided for such treatment (*State of Connecticut August 2001, 21*).

The State also submitted an affidavit, dated July 27, 2001, from Edward A. Danielczuk (*State of Connecticut August 2001, Ex. 60*). The document is retrospective rather than being contemporary evidence. In it, Danielczuk states that in the 1960's and early 1970's, he worked for the Connecticut Welfare Department as a supervisor in the Resource Department, with one of his responsibilities being "to oversee the State's four Indian Reservations" (Danielczuk 7/27/2001, 1). Danielczuk stated:

8. We did not view the various Connecticut Indians as governments or sovereigns but instead viewed them as groups of individuals who could meet the

one-eighth blood requirement and who might need assistance (Danielczuk 7/27/2001, 2; *State of Connecticut August 2001*, Ex. 60).

Position of the Towns.

The second section [of the Towns' comments] provides an [*sic*] historical account of the relationship between the State of Connecticut and the petitioners. This analysis is in response to the fiction imposed upon the proposed findings by former Assistant Secretary Gover that state recognition is sufficient to cure the deficiencies in both petitions . . . The second section of this report demonstrates that there is no basis upon which the State's relationship with the Eastern Pequots can be transformed into a "government-to-government" relationship and used to fill gaps in the petitioners' social and political continuity over time (*Towns August 2001*, 3-4).

The BIA has never before in its acknowledgment findings used the terms [*sic*] "government-to-government relationship" to describe the interaction between a petitioner and a State. The phrase "government-to-government relationship" is a rather recent construct or term-of-art that was coined during the 1970s era of tribal self-determination to describe the trust relationship between the Federal Government and Indian tribal entities that are recognized by the United States (*Towns August 2001*, 17-18; see also extensive discussion *Towns August 2001*, 22-35, 42-44).<sup>13</sup>

Applying this interpretation to the State of Connecticut goes beyond a mere description of the history and nature of governmental interaction with these tribal groups. It imposes a political concept on the State and assumes that its government continuously considered Eastern Pequot tribal groups to be separate and/or equal sovereigns. This interpretation then takes the additional leap to allow that the State relationship should be used to prove continuous tribal community and political influence or authority (*Towns August 2001*, 18).

This section . . . concludes that most of the more than 300-year old relationship between the parties neither resembled nor approached the model of a government-to-government relationship on which the BIA's proposed findings are based. As a result, this relationship cannot serve as the basis for satisfying acknowledgment criteria 83.7(b) and (c) . . . Connecticut's relationship was most often that of a welfare provider and fiduciary agent to its Indian dependents (*Towns August 2001*, 19).

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<sup>13</sup>The Towns assert that the BIA adopted this language from the EP petition, Bragdon and Simmons July 1998, 3 Ex. 1 (*Towns August 2001*, 18).

## Final Determination-- Eastern Pequot Indians of Connecticut

This limited contact with the Connecticut government and that government's total lack of recognition of the existence of a tribal political entity on the Stonington reservation throughout the 18<sup>th</sup> century does not reasonably constitute evidence of a continuous government-to-government relationship. To interpret that there was such a relationship, based merely on the continued existence of the Pequot reservation in Stonington, is to assume erroneously that Connecticut's governance of that reservation fits the model of the Federal trust relationship. It also mistakenly ascribes to the Colony/State an intent to acknowledge the existence of a Pequot tribal political entity (*Towns August 2001*, 104).

In contrast to the Federal model, the Stonington reservation was not created by any enactment, such as a treaty, which recognized the inherent sovereignty of the Pequot. Rather, it was established by the Colony for the welfare of the remnant members of a tribe that it considered, since the Pequot War, to no longer exist. The land was set aside largely to protect the towns from having the entire burden of providing for the care of these Indian people, not in recognition of the existence of a tribal political or social entity (*Towns August 2001*, 105).

In the case of Connecticut, an entirely different model was followed than in the federal case. For the colony/State, there was no recognition of tribal independence or autonomy. Instead, the colony and then the State was treating the Indians as conquered subjects, appointing their leaders, managing their internal affairs (to the extent the colony/State paid attention), and providing a welfare function (*Towns August 2001*, 106; see also discussion *Towns August 2001*, 47-32).

Thus, during the period from the formation of the Articles of Confederation through the end of the 19<sup>th</sup> century, considerable documentation evidenced the Federal understanding, acceptance and approval of Connecticut's continued jurisdiction over its indigenous Indians. No contemporary documents from this period have been found to describe the nature of this jurisdiction as a "government-to-government relationship." To the contrary, it was considered to be a welfare or social maintenance function (*Towns August 2001*, 94).

Both primary Federal documents and secondary historical accounts provide consistent evidence of the Federal government's understanding, acceptance, and approval of the Connecticut government's continued jurisdiction over Indians within the State. These documents are also consistent in describing the relationship between the State and its Indians as a provider-to-dependent relationship. No Federal documents have been found for the period prior to 1900 that describe the nature of the relationship as a government-to-government one or one that was based upon the existence of a tribal political entity (*Towns August 2001*, 106).

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In comparison to the evidence of political influence and authority demonstrated by the Mohegan during the colonial period, the evidence for the Eastern Pequot is almost non-existent. Even as interactive as Mohegan representatives were with both colonial and English governments, this political contact was never described as a government-to-government relationship by either the Mohegan acknowledgment petitioner or by the BIA in either its proposed findings [*sic*] or final determination on the Mohegan petition. Certainly, such a relationship cannot be ascribed to the Eastern Pequot tribe, which demonstrated no internal political affairs or political interaction with Connecticut government during this period (*Towns August 2001*, 109).

Subsidiary Issue: Reliance upon *Passamaquoddy v. Morton*.

The proposed finding cited the stipulation of tribal existence by the U.S. in *Passamaquoddy v. Morton* (1975) as a precedent for using continuous state recognition to give greater weight to evidence of tribal existence.

The proposed finding stated:

Past Federal acknowledgment decisions under 25 CFR Part 83 provide no precedents for dealing with a tribe which is presently state recognized with a state recognized reservation and has been so continuously since early colonial times. The closest parallel is Maine, where the Federal government in the *Passamaquoddy* case stipulated to tribal existence, based on the historical state relationship. That precedent provides guidance in this matter. The Department is not applying a different standard of tribal existence. Rather, the evidence, when weighed in the context of this continuous strong historical relationship, carries greater weight (EP PF 2000, 63).

The Towns and State strongly challenged whether this stipulation provided an adequate precedent (*Towns August 2001*, 21, 35-41; *Towns August 2001*, Ex. 6; *State of Connecticut August 2001*, 22-23).

Neither the EP Comments 8/2/2001 nor the EP Response to Comments 9/4/2001 addressed this matter.

PEP argues that this is an appropriate precedent (Eberhard and Karns 16-19; PEP Response to Comments 9/4/2001).

Analysis of Comments and Responses re: *Passamaquoddy v. Morton*. The action in the *Passamaquoddy* case, which predates the acknowledgment regulations, was cited because of the absence of precedents in previous acknowledgment cases. The Department stated in technical assistance meetings that a detailed consideration of the *Passamaquoddy* actions had not been

made before the proposed findings. The Department subsequently provided to the parties documentation from that case that was not available at the time the proposed findings were issued.

Conclusion re: *Passamaquoddy v. Morton*. Because state recognition, even state recognition from the colonial era, varies substantially in character from state to state, and because of the difference in circumstances of the cited legal action from acknowledgment decisions, the Maine case does not clearly establish a controlling precedent for the Connecticut petitioners under the acknowledgment regulations. The EP and PEP final determinations, instead, focus on the particular historical relationship of the Eastern Pequot and other Connecticut tribes with the State of Connecticut and the significance of that relationship under the acknowledgment regulations.

Subsidiary Issue: Applicability of State Recognition as Evidence under Criteria 83.7(b) and 83.7(c). The Towns present a secondary argument that since state recognition is specifically listed as an acceptable form of evidence only under criterion 83.7(a), it cannot be used for criteria 83.7(b) or 83.7(c) (*Towns August 2001*, 20).

The State also asserts that: "Evidence of relationships with state government is considered under the regulations only with regard to criterion (a), identification as an Indian entity. It is not listed as appropriate evidence with regard to any other criteria and cannot be used as a substitute for such evidence as a basis for giving greater weight to such evidence" (*State of Connecticut August 2001*, 20); "Instead, the regulations expressly limit the relevance of state relations to criterion (a)" (*State of Connecticut August 2001*, 21).

Analysis and Conclusion with Regard to Use of State Recognition as Evidence under Criteria 83.7(b) and 83.7(c). There is no such express or implied limitation. The regulations do not provide exhaustive listings of the only types of evidence acceptable under each criterion, but rather adduce examples of the types of evidence acceptable to the Secretary. Both 83.7(b)(1) and 83.7(c)(1) provide that the criterion may be demonstrated by some combination of the listed evidence "and/or by other evidence," while § 83.6(g) states:

(g) the specific forms of evidence stated in the criteria in § 83.7(a) through (c) and § 83.7(3) are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions (83.6(g)).

The evaluation process takes all forms of extant evidence into account for each of the criteria.

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*Survey of the Nature of the State Relationship under Connecticut Statutes from Colonial Times to the Present.*<sup>14</sup> This section is organized topically. The purpose of this section is to provide information concerning the nature of the State of Connecticut's historical relationship with its recognized Indian tribes, to determine whether the nature of that relationship justifies giving added weight to the evidence. Specifically, the question has been raised as to whether the phrase "government-to-government" used to describe that relationship in the proposed finding is a necessary component of assigning added weight to the existing evidence for tribal continuity during periods when documentation is sparse.

General Comments. The laws of the Colony and State of Connecticut contain some basic elements concerning the status of Connecticut tribes and the Colony and State's relationships with and responsibility for them. The record available for this finding is, for the most part, silent as far as discussions of the legal rationale for the relationships. There were no records submitted concerning legislative history, legislative debates, or court rulings on Indian tribal status before 1939. Overseers' reports, unlike 19<sup>th</sup> century Federal Office of Indian Affairs reports, do not contain extended discussions of issues concerning individual and tribal status. The analysis here rests on the texts of the law themselves, and documentation of how the laws were applied.

The Colony and State for the most part passed laws which addressed the status of Connecticut's Indian tribes without enumerating the specific tribes. However, that did not mean that there was an undefined field of tribes with which the Colony or the State was dealing. Laws since the 1750's commonly refer to tribes for which the State held land, or a similar phrase, thus delimiting the field of application. As described, the laws define overseers and their responsibility for land and funds which were for the benefit of particular tribes. However, where particular issues arose, tribe-specific legislation was enacted. In the case of the Eastern Pequot, there is the 1650 act defining governance, the 1675 Laws for the Pequots, and the 1873 act authorizing the sale of all but 100 acres of the reservation. Other tribe-specific legislation addressed, for example, the detribalization of the Mohegan and Western Niantic. The Eastern Pequot were never detribalized.

Land Status. A common element in Connecticut legislation is the provision in the 1930 revised statutes which states that "Except as otherwise expressly provided, all conveyances by an Indian of any land belonging to or which has belonged to, the estate of the tribe, shall be void" (Ch. 272, Sec. 5060, *Rev. Stat. Conn.*, Title 51, 1930). The following section, 5061, states that in any

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<sup>14</sup>EP presented its own overview of the significance of state relations – for the purpose of this section, mostly in the report written by Patty Marks (EP Comments 8/2/2001, Marks IIIB, 117-126).

The State provided its own survey, "I. The History of State Relations Does Not Support Acknowledgment" (*State of Connecticut Appendix August 2001*, I:1-9).

The Towns submitted discussion under the topic heading "Federal Understanding of Connecticut's Jurisdiction Over Indian Affairs, 1777-1899" (*Towns August 2001*, 82-94).

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action brought by an Indian to recover lands owned by Indians, or sequestered for their use by the general assembly, "the defendant shall not plead the statute of limitations," unless the conveyance is authorized by law. Similar provisions occur in all of the state and colonial laws back to 1666: "what land is allotted or set apart for any parcells of Indian within the bounds of any plantation, it shall be recorded to them the same shall remain to them and their heirs forever. No power of any such Indian to make any alienations thereof" (*Pub. Rec. Conn.* 56-57, item 113). Under the law, if an Englishman purchased "any such lands layd out or allotted to said Indian, he shall forfeit treble the value" to the public treasury and the bargain to be void." These provisions continue to be in effect, in some form, until today (*Pub. Rec. Conn.* 56-57, item 113).

In 1717, a law was enacted which said, "all lands . . . are holden of the King of great Britain as lord of the fee; and that no title to any lands in this Colony can accrue by any purchase made of Indians on pretence of their being native proprietors thereof, with the allowance or approbation of this Assembly. So it is hereby resolved, That no conveyance of native right or Indian title, without the allowance or approbation of this Assembly as aforesaid, shall be given in evidence of any man's title or pleadable in any court" (6 *Pub. Rec. Conn.* 13-14). These statutes are parallel to the Federal Non-Intercourse acts, requiring the permission of the sovereign for Indian lands to be sold and declaring the ultimate title of land to be in the Crown in this case, or in the United States as successor in the case of the Non-Intercourse Acts.

The 1866 act in section 12 specifically refers to the reservation lands as tax exempt, stating "All the property and funds of said tribe shall be exempt from taxation" (*Rev. Stat. Conn.*, Title 33, 522-524). The lands remain exempt from taxation.

The lands set aside for the Eastern Pequot are not defined in current statutes but were without question obtained for the tribe through a sequence of actions on the part of the governing body of the Colony of Connecticut. On May 13, 1678, Momoho and his Pequots requested from the Court of Election held at Hartford, Connecticut: "2. That they may have land assigned to them as their own to plant on, and not that they be allwayes forced to hire . . . To the second proposition for land certayn, as their own, to plant on, is referred to ye consideration of ye Court." Minutes of Committee for hearing Indian complaints; Indians, I. 36 (Trumbull 1859, 8n). The same session of the Court of Election appointed "a committee to consider where may be a suitable tract of land for Mamohowe and the Pequits wth him to plant in, and to contrive that the same may be as convenient as may be, and near the sea if it be to be procured on reasonable termes. of which they are to make return to the Court in October next" (Trumbull 1859, 8-9).<sup>15</sup>

Negotiations aimed at obtaining land for Mamoho and the Pequots continued for four years. The May 1679 Court of Election Held at Hartford recommended to Stonington that the town "lay out

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<sup>15</sup>No return by this committee was located in 1761 (IP, II:118).

## Final Determination-- Eastern Pequot Indians of Connecticut

to Mamohoe and his company a sufficient tract of land for them to plant on as neer the sea as may be, five hundred acres at least" (Trumbull 1859, 31).<sup>16</sup> The town declined to act (Hurd 1882, 32).<sup>17</sup> Therefore, at the October 1679 session of the Generall Court Held at Hartford, "16. This Court appoynts Mr. Willys, Major John Tallcott and Captn John Allyn to treat with Major John Pynchon and to purchase of him some land from him for Mamaho to live on" (Trumbull 1859, 42-43).<sup>18</sup> The efforts of the committee appointed in 1679 failed of result, so Momoho revived the issue in May 1680: "Mamoho propoundes to ye Court that their promiss and grant of that ground engaged may be layd out to him for his people to liue and plant on, and says he had promiss at Court twice, but nothing done, and if it cannot be obeyned he shall speake noe more about it" (Trumbull 1859, 54n; citing Indians, I. 39, a & b). The General court replied that the negotiations had been under way, and would be continued: "2. As to Mamohoe, some of or Gentn have been treating with major Pynchon to buy some land for them neer the sea, and he hath taken it into consideration. If that can be procured, it will be for them. If that fayles, other lands as convenient as can be procured them shall be layd out to them" (Trumbull 1859, 54).

In May 1681 the Court of Election instructed: ". . . that Capt. James Avery, Mr. Witherlee, captn Mason and Mr. Nehemya Palmer doe speedily inquire out, seek after and procure a tract of land that may be suitable for the accommodation of Momohoe and the Pequots with him in those parts, as comodicus as may be, either by exchange or moderate purchase" (Trumbull 1859, 81-82).<sup>19</sup> In May 1682, the court appointed another committee for the same purpose, with somewhat more specific instructions to purchase "a suitable tract of land for Mamohoe & the Pequott's under the sayd mamohoe's government" (Trumbull 1859, 100). In May 1683, the General Court's direction was even more precise, "to move the people of Stoneington lay out to the Pequots under Mawmohoe's government a suitable tract of land that may be sufficient for them to plant upon" (Trumbull 1859, 117).<sup>20</sup> By a deed dated May 24, 1683, the committee

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<sup>16</sup>No return of committee action found in 1761 (IP, II:118).

<sup>17</sup>This entire series of negotiations was summarized by Wheeler (Wheeler 1887, 17) and by Hurd, who stated that the town refused to make any provision that would look to their permanent location in Stonington (Hurd 1882, 32).

<sup>18</sup>Misdated as 1680 by Wheeler (Wheeler 1887, 17).

<sup>19</sup>No return by committee located in 1761 (IP, II:118).

<sup>20</sup>"This Court doth appoynt Capn James Fitch, Captn James Avery and Lnt Tho. Leffingwell to be a committee in behalfe of this Court to move the people of Stoneington to lay out to the Pequots under Mawmohoe's government a suitable tract of land that may be sufficient for them to plant upon; and if they neglect to doe it, the sayd committee are hereby ordered to use utmost endeavours to suit them with a sufficient tract of land, which if they can procure by exchange of cuntry lands they may, or by setleing them on some cuntry land, or on some unimproved land in Stoneington if no other provision of land can be procured for them, the law requireing every towne to provide for their own Indians. If any perticular persons propriety should through the necessity of the case be improved for their supply, he shall be repayred out of the cuntry lands or by the towne of Stoneington" (Trumbull 1859, 117).

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purchased a tract of land from Mr. Isaac Wheeler containing about 280 acres, in Stonington a little way south of Lantern Hill.<sup>21</sup> Wheeler conveyed it to the committee in trust for the benefit of said Indians, reserving the herbage for Mr. Wheeler (Hurd 1882, 32). The payment was 500 acres of colony land (Wheeler 1887,17). The committee provided an extensive report to the October 1683 General Court:

Capt. Fitch, Captn James Avery and Lnt Tho. Leffingwell being appoynted to procure some lands for Mamohoe and his company, by this Court, May last, returned a writeing or deed of two hundred and eighty acres of land which they bought of isack Wheeler, for the use of mamohoe and his company &c. Which deed is recorded in the records of the towne of Stoneington, . . . and this Court doth approve of the sayd deed, and grant that the land shall be for the use of mamohoe and his company dureing the Court's pleasure" (Trumbull 1859, 125).

"The land was conveyed to 'Capt. James Avery and Lieut. Thomas Leffingwell, a committee in behalf of the General Court, it being for the use of Momoho and the Indians under him;' May 24, 1683" (Trumbull 1859, 125n; citing CSL, Towns & Lands 1<sup>st</sup> Series, Vol. 1, Part 2, Doc. 210. "Towns & Lands, I. 210 (original deed); Col. Records of Deeds &c. 11:228).

On May 19, 1873, the Eastern Pequot overseer petitioned the General Assembly for permission to sell a portion of the Lantern Hill Reservation (Bassett 1938 citing *Conn. Special Acts 1873-1877*, 8: 53-54; House File No. 29, committee Bill, House Petition No. 99, House of Representatives, June 6, 1873; Resolution Empowering Overseer of Pequot Indians to sell Lands, May Session, A. D. 1873; #35 Pet. Petitions). The legislature enabled the overseer to survey and sell all of the Lantern Hill reservation but 100 acres and invest the money for the benefit of the Indians:

Upon the petition of Leonard C. Williams, overseer of the eastern tribe of Pequot Indians, located in the town of North Stonington, praying for reasons therein stated, for power and authority to sell a portion of the lands reserved by the State for the use of said Indians. Therefore:

*Resolved by this Assembly:*

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<sup>21</sup>The editor of the *Public Records of Connecticut* commented: "The 'utmost endeavors' of this committee were crowned with success, and the miserable remnant of the Pequots and eastern Nianticks, under Mamoho's government, at last found a resting place. The committee's report will be found in Col. Records of Deeds &c. II.228. In exchange for a grant of five hundred acres of colony land, Isaac Wheeler, of Stonington, conveyed to the committee, for the use of Mamoho and the Indians under him, a tract of two hundred and eighty acres in (North) Stonington, south of Lantern hill. Towns & Lands, I.210. See Record of October session, page 125, post" (Trumbull 1859, 127n).

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Section 1. That Leonard C. Williams, Esq, of Stonington, the overseer of said Pequot Tribe of Indians, and his successors in said office, be, and are hereby authorized and empowered, to sell by public auction, all of the lands reserved by the State for said Indians (except one hundred acres of the same), first giving notice . . .

Sec. 3. The avails of the sale or sales of said land, when received by the said overseer, shall be invested in one or more of the savings banks in said county, in his name and his successor in said office, in trust for the use and benefit of said tribe and the interest and income arising therefrom shall be applied to and for the support and comfort of said Indians, as may be, from time to time, needed.

Sec. 4. Said overseer, and his said successors, shall give bonds to the Treasurer of the State, to the acceptance of the Superior Court for said county, for the benefit of said tribe, conditioned for the faithful discharge of his trust, and in compliance with the orders of said court in relation to the same, and shall make return thereto of his doings in the premises, and shall also make an annual report of the condition of his trust to the said Superior court, at its March term in said county (House File No. 29, committee Bill, House Petition No. 99, House of Representatives, June 6, 1873; Resolution Empowering Overseer of Pequot Indians to sell Lands, May Session, A. D. 1873; #35 Pet. Laws).

A newspaper article covering a minor incident in 1947, involving dogs on the Lantern Hill reservation, indicates that someone had notified a North Stonington selectman, who in turn notified the dog warden, but that, “[t]he dog warden, having previously been advised that he had no jurisdiction of the reservation, took the matter to the town legislative representatives, asking them to notify the Department of Public Welfare . . .” The complaint was referred to Mr. Clayton Squires of the Welfare Department, who “heard the complaint and agreed to go down and look out for the pups” (Stallman 5/5/1947; PEP Comments 8/2/2001, Ex. 52). This sequence of events, in a minor matter, indicates that the reservation was outside the authority of the Town officials.

The State over the years,<sup>22</sup> and the Towns in regard to the current petitioners (*Towns August 2001*, 63-65) have expressed varying interpretations of the nature of the legal title to this land.<sup>23</sup>

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<sup>22</sup>John J. Bracken, Attorney General, by Ernest H. Halstedt, Asst. Attorney General, *Letter to Thomas E. Rose, Assistant Director, Board of Fisheries and Game. November 4.* [opinion] pp. 115-118, Twenty-Ninth Biennial Report of the Attorney - General for the two years ended January 5, 1957. Connecticut Public Document Nol. 40.

<sup>23</sup>In 1852, DeForest, in regard to the Pequots, stated: “It was doubtful whether the latter held property in fee simple or only had the right to cultivate. The case had been repeatedly tried and the courts had decided different ways. . . . the land that on which the Pequots lived had not been given them as their own but only to be used for their support” (cites Indian Papers, vol. II, Doc 123; Colonial Records, Vol. IX). None of the submissions for these

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The current provisions of the Connecticut statutes, passed in 1989, define it as a “trust in perpetuity” responsibility of the State:

Sec. 21. Section 47-60 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any reservation land held in trust by the State on the effective date of this act shall continue to be held in trust in perpetuity to prevent alienation and to insure its availability for future generations of Indians. Except as otherwise expressly provided, all conveyances by any Indian of any land belonging to, or which has belonged to, the estate of any tribe shall be void.

A tribe shall exercise on reservation land all rights incident to ownership except the power of alienation (CT P.A. 89-368 1989).

Subsequent sections of the 1989 legislation regulate the management of and jurisdiction over reservation land (Sec. 23, 24, 25, 26, 27, 28).

Supervision and Governance. In May of 1763, Connecticut appointed Israel Hewit, Jr., of Stonington, to act with Ebenezer Backus, Esq., of Norwich, as overseers of the Lantern Hill Reservation (IP, II:250). This was the first indication of appointment of overseers by the General Assembly since the 1725 act that had remanded the Indian tribes to the supervision of the governor and council (IP, I:120). In subsequent years, in response to petitions from the inhabitants of the reservation, the General Assembly appointed overseers (JP, II:251). The statute enacted in 1808, and many of those before it, was styled "An Act for well-ordering and governing the Indians in this State, and securing their Interest" or in similar language (*The Public Statute Laws of the State of Connecticut. Book I. Title XC "Indians"* Hartford, CT: Hudson and Goodwin; CT FOIA #69; EP PF Com. Notebook H, Ex. 15).

The subsequent act, in 1821, which first defined an overseer's specific obligations, and subsequent acts until 1961, were titled "An Act for the Protection of Indians, and the Preservation of their Property" or similar language. The 1821 statute stated:

Sect. 1 . . . That an overseer shall be appointed to each tribe of Indians living within the limits of the state, by the county court, in the county in which such tribe resides, who shall have the care and management of their lands, and shall see that they are husbanded for the best interest of the Indians, and applied to their use and benefit (An Act for the Protection of Indians, and the preservation of their property; *Stat. Laws Conn.*, Title 50, 278-279; #113 Pet. 1996, HIST DOCS II, Doc. 48).

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cases contained such repeated trials and decisions on the nature of land title.

**State Citizenship.** Connecticut's tribal Indians did not have State citizenship without a specific grant thereof. The Historical Technical Report for the Mohegan proposed finding described the process of granting citizenship in that instance as follows:

The Mohegan apparently petitioned the General Assembly in 1872 to terminate the State's guardianship (see Kingsbury 1872, the actual petition has not been found). In response to this, the legislature passed an act in July of that year conferring all the privileges of citizenship upon the Mohegans and granting them title, in fee simple, to the individual allotments made in 1861. This action may also have been part of a general re-evaluation of citizenship which many states experienced during and just after the Civil War. Neighboring Massachusetts, for example, had extended citizenship to many of its Indian groups in 1862. . . . The stated aim of this legislation - to make the Mohegans "a part of the people of the state . . . entitled to all the rights . . . of natural born citizens" - made it clear that Connecticut had heretofore considered these Indian people to be separate and distinct (CT General Assembly 1872). They were, however, the first of the State's Indian groups to be granted citizenship (CAG 1985, 23) (Mohegan PF, HTR 32).

The detribalization of the Mohegan was followed by that of the Western Niantic. The other tribes under Connecticut's guardianship were not detribalized in the 19<sup>th</sup> century. In other New England states, such as Massachusetts<sup>24</sup> and Rhode Island (Narragansett PF 1982, 4), it was also the case that during the second half of the 19<sup>th</sup> century, Indians were granted state citizenship when detribalized.

The Towns in their comments acknowledge that the Indians were distinct from other residents of Connecticut, stating:

Lack of town citizenship meant, among other things, that Indians could not testify against a citizen, bring suit, or secure a bondsman. They could own property, including real estate, but they had to pay taxes unless they lived on a reservation. Tribal members were not only segregated socially and politically, they were also prohibited from conducting certain trade activities for fear that they might impede colonial settlement. In effect, Connecticut Indians were not truly considered citizens or accepted inhabitants of the State until 1924 when they were finally recognized as having full civil rights (*Towns August 2001*, 61).

It is not clear, however, that the granting of Federal citizenship to Indians in tribal relations in 1924 was considered by Connecticut to automatically extend to State citizenship. In 1939, at the

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<sup>24</sup>See: Plane, Ann Marie, and Gregory Button, The Massachusetts Indian Enfranchisement Act; Ethnic Contest in Historical Context, 1849-1869, *Ethnohistory* 40 (1993): 587-618.

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hearings in regard to the proposed sales of Lantern Hill reservation land, someone identified as "First Representative for Mr. Filley, Secretary of State Park and Forest Commission," presented the following statement: "I want to point out that this reservation is held in trust for the Indians. . . This is the Indians land, not the State's. We simply hold it in trust for them. . . . These Indians are not citizens of the town; they do not get much help from the town in the way of relief," subsequently adding, "They are not citizens of the town; they are state wards. We are looking after the interests of the Indians, and believe it is contrary to public interest if this sale is made" (CT Hearing 1939 re: HB No. 347, 6; PEP Comments 8/2/2001, Ex. 55).

In regard to Alfred Boss and Grace (Jackson) Gardner Boss, in 1941 a State official distinguished between a member of the Eastern Pequot tribe and her non-Indian husband's citizenship status. Noting her residence on the "Eastern Pequot Indian Reservation 1905 to date," the author of the report added: "Grace is not a voter, however, her husband is a voter and has to pay Old Age Asst. Taxes" (Connecticut Office of Commissioner of Welfare, Report 2/5/41; PEP Comments 8/2/2002, Ex. 111). During the same year, the General Assembly passed an act reimbursing the Town of North Stonington \$978.91 for sums expended by it for the support and care of Benjamin Sebastian and Family, William Jackson, Mildred Spellman, and Grace Boss, which clearly indicates that the tribal members were not considered to be the responsibility of the Town in which the reservation was located (State of Connecticut, General Assembly, January Session A.D. 1941, An Act Concerning a Claim of North Stonington, against the State; *Towns August 2001*, Ex. 124).

In 1953, Senate Bill 502, sponsored by Sen. Lowell, was introduced into the General Assembly, but not passed. Section 2 gave the following "STATEMENT OF PURPOSE: To end the second class citizenship of Connecticut's few remaining Indians and to reduce the administrative burden on the commissioner of welfare by returning their lands to the Indians" (CT Senate Bill 502 1/30/1953, 2) and further specified:

2. On and after the first day of October, 1953, the tribe of Indians known as the Eastern Pequot tribe and the several members thereof residing in the town of North Stonington, or in any other town in this state, shall form a part of the people of this state, and shall be entitled to all of the rights, privileges and immunities and subject to all the duties, obligations and liabilities of natural born citizens (CT Senate Bill 502 1/30/1953, 1; EP Comments 8/2/2001, Box 2, Item 4).

6. All property, real and personal, belonging to the said Indians, or to any of them, and which, if owned by any other person or persons, would be liable to taxation, shall be subject to assessment and taxation in the same manner, to the same extent and for the same purposes, as the real and personal property of other persons. And all provisions of law which exempt the same from taxation are hereby repealed (CT Senate Bill 502 1/30/1953, 2; EP Comments 8/2/2001, Box 2, Item 4.)

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The language in this 1953 bill, proposing to extend citizenship to the Eastern Pequot, was identical to the language in the 1872 Mohegan bill. The statement by Albert C. Hoover, Acting Director, Public Welfare Council, specifically noted: "We have had complaints from the towns that if these reservations were to be abolished, they would probably have the responsibility of the Indians instead of the State" (CT Hearing 3/18/1953, 4; EP Comments 8/2/2001, Box 2, Item 4). Two representatives from North Stonington, Frank White and Irving Main, registered opposition to the bill (CT Hearing 3/18/1953, 7; EP Comments 8/2/2001, Box 2, Item 4).

However, it is not clear that all State officials held the views on citizenship in the language of the 1953 proposed legislation. On December 19, 1956, an official of the Division of Welfare stated: "Tribal members on the Reservations have all the rights of American Citizens and when not on the reservations are subject to the same laws as other citizens. Children residing on a Reservation attend public schools in the town wherein the reservation is situated" (Barrell to Commissioner 12/19/1956; *Towns August 2001*, Ex. 123). This memorandum referred to the transfer of jurisdiction from the Park and Forest Commission to the Welfare Commissioner in 1941 and commented that:

since then no written policy has been developed and the actual handling of reservations, Indian problems and care of needy Indians was limited to what was expedient at the time and with the thought of discouraging tribal members from returning to or settling on the reservations even though geneologies [*sic*] are maintained to prevent imposters from availing themselves of the privileges of the reservations (Barrell to Commissioner 12/19/1956; *Towns August 2001*, Ex. 123).

In 1961, on the hearing in regard to H.B. 2421, The Management of Indian Reservations, Rep. Fisher, speaking as Chairman of the Subcommittee of the Interim Committee on Public Welfare, stated: "It should be remembered that Indians in Connecticut have full citizenship privileges and they reside on these reservations only by their own choice. I received numerous letters accusing us of herding people on to these reservations which is not the case at all. They do not need to live there if they do not wish to" (CT Hearing 3/23/1951, 24).

While practices may have changed, the evidence submitted showed no legal change in the citizenship status of Connecticut's tribal Indians between the 1872 Mohegan Act and 1961, however. The 1973 act by which Connecticut established the Indian Affairs Council (CIAC) specifically addressed the issue of citizenship:

Section 1. (NEW) It is hereby declared the policy of the state of Connecticut to recognize that all resident Indians of qualified Connecticut tribes are considered to be full citizens of the state and they are hereby granted all the rights and privileges afforded by law, that all of Connecticut's citizens enjoy. It is further recognized that said Indians have certain special rights to tribal lands as may have been granted to them in the past by treaty or other agreements (CT Public Acts, #660 1973).

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At the hearing on Substitute House Bill 1919, Rep. Pugliese, preparing to “quickly explain the bill section by section,” stated that it, “establishes a state policy that Connecticut Indians are considered to be full citizens with all the rights and privileges of other citizens” (CT Hearing 5/16/1973, 61).

This 1973 provision in regard to citizenship was repeated unchanged in Sec. 47-59a of the 1975 Connecticut Revised Statutes and was still carried in Sec. 16 of the 1989 act (CT Public Acts, #368 1989).

*Legal Definitions of the Nature of the State Relationship.* This section is organized chronologically.

Colonial Legislation. Essentially all of the legislation in the earliest colonial times concerns the period after the defeat of the Pequots and hence does not relate to a period when Connecticut’s Indian tribes were independent of the Colony and the Crown. The statutes imply that the Colony was concerned to legislate for and apply its laws to the tribes and their members. Thus the act of 1721 directs the authority and selectmen of each town in which Indians resided to assemble and convene them annually, acquaint them with the laws for the punishment of “immoralities,” and inform them that they were not exempted from the penalties (see discussion below).

The code compiled under the Commissioners of the United Colonies in 1650 made reference to the “Sagamores” of the tribes, requiring that tribes that lived near the English declare who their leaders were. It declared that satisfaction of debts could be demanded of the Sagamore and if not received, the English were then empowered to seize goods. The code in 1650 appears to indicate the beginning of the extension of colony laws into the internal affairs of the Indians, specifically providing that for certain crimes, they shall appear before the constables. However, the 1650 document describes itself as a compilation of earlier acts, hence reflects earlier acts. None appear in the record for these cases nor does the 1650 compilation indicate specific earlier acts or their date of passage (*Conn. Code of Laws*, 529-533). The new “Indian governors” in 1654 received instructions which were a briefer version of the better-known “Laws for the Pequots” issued 20 years later, in 1675 (Pulsifer 1968, 2:142-143).<sup>25</sup>

Just before the outbreak of King Philip’s War,<sup>26</sup> on May 31, 1675, Connecticut issued a set of “laws” for the Indians under Cassasinamon and Harmon Garret (Wheeler 1887, 16). The act of 1675 goes on to proscribe a variety of behaviors and actions by the Indians (apparently Indians

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<sup>25</sup> Captain George Denison and Thomas Stanton were to assist them in the government. This was continued for several years. (Haz. 2. 334, 345, 359, 382-7, 447-9, 465.)” (Potter 1835. 64). When Cassicinamon and Garrett were reappointed in 1656, Mr. Winthrop, Maj. Mason, Capt. Denison were appointed to assist them, while Thomas Stanton continued to collect the tribute (Hurd 1882, 29-30; Pulsifer 1968, 2:153-154; Pulsifer 1968, 2:168; see also Wheeler 1887, 13) (EP PF 2000, 23).

<sup>26</sup> June 24, 1675, opening of King Philip’s War (Swansea, Rhode Island) (Haynes 1976, 22).

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in general) and to assert that certain actions were punishable according to the colony laws by actions of its magistrates, suggesting at least that action and behaviors not specifically mentioned were still under the authority of the tribes. Witchcraft and “powwow” were proscribed and murder, stealing and adultery were to be tried by the English. The law also establishes constables, under the direction of the leaders appointed by the colony, presumably to carry out the dictates of the law. The act calls for “publishing” the act “at a great concourse” among the Pequots (Laws for the Pequots 1675; Trumbull 1852, 574).

The Act of 1675 provided in part for the specific governance of the Pequots, Eastern and Western. It was enacted, according to its text, “in answer to Robbin Causacinnamon’s petition to the Generall Court of Connecticut,” and provided “order & appoyntment was by the sayd Court made . . . to draw up some lawes & orders for the present well governing of the Pequitt Indians that were captives to the English Colonyes in generall and were by their Commissioners put under the gouernment of this Colony, to be both ruled and accomodated by them suitably . . .” (Laws for the Pequots 1675; Trumbull 1852, 574). The act declared that Robin Cassacinnamon was to continue “in the place of their deputy or principle officer amongst & over all those Indians who had beene put under him formerly” and: “In like manner, Herman Garrett be principall officer over those put under him, and Momohow shall be his second or chiefe Counsellor (Laws for the Pequots 1675; Trumbull 1852, 574-575). The costs of this government was to be paid by an annual five-shilling levy on each Indian man over the age of 16. The law directed that “. . . their lawfull commands are duely to be obeyed and observed by all of the Indians respectively” (Laws for the Pequots 1675; Trumbull 1852, 575).

The laws after 1675 do not describe tribal leadership functions, although the general court subsequently appointed successors to both Cassacinnamon and to Harmon Garrett through the end of the 17<sup>th</sup> century. The 1675 “Laws for the Pequots” were republished early in Momoho’s tenure (*i.e.*, shortly after 1677) (Trumbull 1852, 576).

During the later 1720's, Connecticut passed three pieces of legislation that pertained to its supervision of Indian tribes. The act in 1721 stated that the authority and selectmen of each town “wherein there are any Indians living or residing” were directed to assemble and convene such annually and acquaint them with the “Law of the government made for punishment of such immoralities . . . and they are not exempted from such penalties.”<sup>27</sup> In October 1725, it resolved: “That till the Session of this Assembly in May next, the Care of the Indians in their Severall Tribes in this government be under the Inspection of the Governr & Councilll from time to time to regulate, restrain, Set at Large &c as to them shall Seem best” (IP, I:120). In October 26, it passed an act to prevent the quiet title act being used to assert claims to “several tracts of land sequestred for several tribes of Indians within this government . . .” (7 *Pub. Rec. Conn.* 71-72;

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<sup>27</sup> Similar phraseology occurs in subsequent laws until 1808, but is not repeated in 1821 (which is the point at which the titles of the acts refer to the protection rather than the governance of the Indians).

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IP, I:130). In 1727, it passed an act regulating how Indian children bound out to the English were to be instructed in Christianity, to read English, etc. (IP, I:131).

Subsequent acts also call for meetings and the like to remind the Indians that English laws apply, and the extent to which those laws applied. Two separate acts were passed in 1750 (Acts and Laws of Conn. 1750, 79, 95-99). The first Act of 1750 focused on the subjection of Indians to the laws of the Colony, including those of Sabbath observance, and prohibited trade in firearms with the Indians (there was no specific mention of tribes). It provided that the murder of one Indian by another was to be punished under English law, but made an exception where the murder was of “those among whom they are at war with.” The Act stated that, “no person shall be allowed. . . . to recover before any court . . . any action of debt . . . for any good sold, lent or trusted out to any Indians whatsoever.”<sup>28</sup>

The second 1750 Act was titled, “Foreigners Not to Trade with the Indians. An Act for Preventing Foreigners Trading with, and Corrupting the Indians; and Carrying on Other Evil and Dangerous Designs in this Colony” (“Acts and Laws” N.P. A-2, 79; #113 Pet. HIST DOCS I, Doc. 38, 79). It seeks to avoid sedition or the estrangement of the Indians from the government and refers to “evil and dangerous designs” by French and Dutch. The act references “any Indian or Indians” and does not specifically use the term “tribe.” No historical context was provided for the passage of this act, although the implication is that there was an expectation that the Indians might act independently of the colony's authorities.

Legislation from the American Revolution through the End of the 19<sup>th</sup> Century. In 1796, the Connecticut Assembly passed “An Act for well-ordering and governing the Indians in this State; and securing their Interest,” which provided again that it was the responsibility of the civil authorities and selectmen of such towns in which there was any tribe of Indians to enforce the state criminal laws pertaining to them and reenacted provisions concerning the binding out of Indian children and for the protection of Indian lands (#113 Pet. 1996, HIST DOCS II, Doc. 47; *Acts and Laws of Conn.* 237-239).

In 1808, the Connecticut General Assembly reenacted an “Act for well-ordering and governing the Indians in this State, and securing their interest” with essentially no changes (*The Public Statute Laws of the State of Connecticut. Book I. Title XC “Indians”* Hartford, CT: Hudson and Goodwin; CT FOIA #69 EP PF Com Notebook H, Ex. 15). In May 1819, it was enacted that the overseers of the respective tribes of Indians in this State shall annually settle their accounts of the concerns of said tribes with the respective County Courts in the counties in which said tribes are situated (IP, 2<sup>nd</sup>, II:167, 167b). The 1821 act required that in the future, overseers were to be appointed to each tribe by the County Court (#113 Pet. 1996, HIST DOCS II, Doc. 48; citing *Stat. Laws Conn.*, Title 50, 278-279, “An Act for the Protection of Indians, and the

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<sup>28</sup>Similar language appears in subsequent acts until 1902. The provision in the 1866 act stated in section 5 that “No judgment shall be rendered against an Indian, for any debt, or on any contract, except for the rent of land hired and occupied by such Indian.”

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Preservation of their Property”). Shortly after that date, in 1822, annual overseers’ reports for the Lantern Hill Reservation began to be recorded.

During the period between 1822 and the Civil War, Connecticut enacted several pieces of legislation that affected the administration of Indian tribes within the state, without specifying the names of the individual tribes. In 1824, Title 51. “Indians. An Act for the Protection of Indians, and the Preservation of their Property” provided that overseers must be bonded, and continued the provision for annual settlements with the county court. The remainder of the provisions dealt primarily with property (#113 Pet. 1996, HIST DOCS II, Doc. 49; citing *Stat. Conn.*, Title 51, 233-234). The 1849 act of the same title made no significant changes (#113 Pet. 1996, HIST DOCS II, Doc. 50; citing *Rev. Stat. Conn.*, Title 26, 441-442), but in 1850 “An Act in Addition to and in Alteration of ‘An Act for the Protection of Indians, and the Preservation of their Property’” provided that an overseer should be appointed for each “tribe of Indians living within the limits of the state,” by the “county court in the county in which such tribe resides.” The county court of each county should have jurisdiction of applications for the sale of lands belonging to members of such tribe, who, at the time of such applications, were about to remove from Connecticut or actually resided outside the boundaries of Connecticut (#113 Pet. 1996, HIST DOCS II, Doc. 51; citing *Public Acts* (1850), Ch. 51, 37-38).

The 1850 act was repealed two years later. The 1852 act which repealed it (#113 Pet. 1996, HIST DOCS II, Doc. 52; citing *Public Acts*, Ch. 55, 66-67) established provisions under which overseers could, under county court jurisdiction, regulate sales or exchanges of land and other property by members of the state’s tribes. This was, in turn, altered in 1855, voiding any sales made by individual Indians of “conveyances of any land . . . belonging to or which have belonged to the estate of such tribe . . .” (#113 Pet. 1996, HIST DOCS II, Doc. 53; citing *Public Acts*, Ch. 65, 79-80). The 1866 act was somewhat expanded. The “Pequot” reference in Section 9 was to the Mashantucket Pequot, not to the Eastern Pequot (*Rev. Stat. Conn.*, Title 33, 522-524; #113 Pet. HIST DOCS II, Doc. 54). In these mid-19th century statutes, the duties of the overseers were clearly specified as being to tribes – not to individual Indians.

The 1888 Connecticut laws re-enacted the prior provisions that in those counties where Indians resided, with the exception of Litchfield County, the superior court should annually appoint the overseer, who should “have the care and management of their lands and money and see that they are used for the best interests of the Indians, and that the rents, profits, and income thereof are applied to their benefit” (#113 Pet. 1996, HIST DOCS II, Doc. 58; citing *Rev. Stat. Conn.*, Title 4, Ch. 6). The 1888 legislation made no significant changes in the prior statute.

The only legislation in the 19<sup>th</sup> century sequence that specifically named the Eastern Pequot was the 1873 bill that authorized the sale of part of the Lantern Hill reservation (see discussion above under land).

Legislation and Legal Opinions in the 20<sup>th</sup> Century. In 1902, Connecticut re-enacted the 1888 legislation that provided that the superior court “in any county, except the county of Litchfield,

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in which a tribe of Indians resides” should annually appoint an overseer for such tribe (Connecticut Revised Statutes 1902, Chapter 242, pp. 1063-1064; #113 Pet. 1996, HIST DOCS II, Doc. 59). These provisions were contained in the 1918 Connecticut Statutes (see 1930 statement by overseer, below) and in the 1930 Connecticut Statutes (Connecticut Revised Statutes, 1930, Title 51, Chapter 272, Section 5057, pp. 1580-83). In 1930, the Eastern Pequot overseer wrote:

At the conclusion of the hearing I sought the advice of the Honorable Allyn L. Brown of the Superior Court and thereafter ruled that Section 5167 of the General Statutes, Revision of 1918, makes no distinction whatever between several branches of the same tribe, and that a recognized member of this tribe is not debarred from the occupational right of the Reservation simply because either for convenience, or expediency, or other reasons, the tribe may have been divided into separate branches. My conclusion was that the petitioner, Franklin C. Williams, had the right, with the approval of the overseer, to erect a dwelling on the lands belonging to the Eastern Branch of Pequot Indians (#113 Pet. 1996, HIST DOCS I, Doc. 41).

It was under the legislation assigning supervision of the State’s tribes to the county superior courts that Judge Allyn Brown, on June 9, 1933, issued the *In re Ledyard Tribe of Pequot Indians, Eastern Tribe of Pequot Indians* order:

Ordered and decreed that the persons whose names are listed as members of the respective tribes as they appear in the Annual Reports of the Overseer on file herein, and this day allowed, are hereby recognized by the Court as members of said Tribes at this date. Applicants apply to overseer and to Atwood I. Williams of Westerly, R.I. for the Eastern Tribe and Mr. John George of Stonington, Conn. for the Ledyard Tribe (*In re Ledyard Tribe* 1933).

The ruling listed forty members of the Eastern Pequot tribe, and also stated:

Ordered and decreed that any person who may hereafter claim to be listed as a member of either tribe shall present his or her application in writing to the Overseer who shall mail copies thereof to the recognized leaders of the tribes, or their successors, the present leader of the Eastern Tribe being Mr. Atwood I. Williams of Westerly, R.I., and the present leader of the Ledyard Tribe being Mr. John George of Stonington, Conn. (*In re Ledyard Tribe* 1933).<sup>29</sup>

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<sup>29</sup>Twenty years later, a memorandum indicates that the Office of the Commissioner of Welfare was aware of the 1933 Superior Court decision in regard to the Eastern Pequot. On August 11, 1954, Clayton S. Squires, Division Chief, recorded “PROCEDURE to be followed on Applications from Indians to reside or build on any of the four Reservations” (*Towns August 2001*, Ex. 131). It contained the following provision:

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In June 1934, the Superior Court renamed Raymond as Pequot overseer for another year (Renamed Overseer of Pequot Indians, *The Day*, New London, Connecticut, 6/5/1934). In November of the same year, he met with the State Park and Forest Commission:

Pequot Indians. Mr. Peale introduced their Overseer, Mr. Raymond, who outlined in some detail the present condition of the tribe, domiciled on two reservations and in other towns of Connecticut and Rhode Island, with complicating circumstances. Their dwindling funds and increasing need for assistance, refused by the towns affected, obviously call for the attention of the coming Assembly, and after some discussion Mr. Peale was requested to take up the matter with Judge Allyn Brown, of the Superior Court, for further investigation and report (Connecticut, State of. State Park and Forest Commission. Minutes 11/14/1934; #113 Pet., Folder A-2).

In 1935, Connecticut placed the Indian tribes under the jurisdiction of the State Parks and Forest Commission, using the phraseology:

The state park and forest commission is authorized to act as overseer of all tribes of Indians residing in the state, and said commission shall annually settle its account of the affairs of each tribe with the comptroller, . . . Said commission, as such overseer, shall have the care and management of the lands and money of such Indians and cause the same to be used for their best interest, . . . and is authorized to sell or exchange any real or personal property belonging to any member of any such tribe of Indians (*Connecticut General Statutes* 1935, Title 51, chapter 272, Section 1587).

The State Parks and Forest Commission adopted rules for tribal membership in 1936 (Connecticut State Parks and Forest Commission 1936). The Towns argue that it is significant that, "this action by the Commission represented the first time in the course of its 300-year relationship with its indigenous Indians that the central government of Connecticut established eligibility requirements for the determination of tribal membership" (*Towns August 2001*, 214). In 1939, the Connecticut General Assembly held public hearings concerning the reservations (Connecticut General Assembly Hearing 1939; #35 Pet., Laws; Second Criterion (a) Folder; #113 Pet. Narr., Ex. X; #113 Pet. 1996, ETH DOCS III, Doc. 58). The main result of these hearings was the submission of a proposal to transfer authority over the State's Indian Reservations to the Commissioner of Welfare (Connecticut Act 1939; #35 Pet., State; #113 Pet.

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4. Applicant to obtain from Mr. Williams (if Eastern Pequot) authorization or permission to be allowed to reside on the Eastern Pequot Reservation; or from Mr. John George if a Western Pequot member desiring to reside on the Reservation at Ledyard. See Superior Court Order (New London County) [sic] dated June 9, 1933 (Squires Procedure 8/11/1954).

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A-2; #113 050 File; CT FOIA #18). This transfer was enacted but did not take effect until after November 1940.

Apparently as a secondary result of the hearings, on May 18, 1939, Francis A. Pallotti, Attorney-General of Connecticut, by Joseph P. Smith, Assistant Attorney-General, issued an opinion to the State Board of Fisheries and Game, to the attention of R. P. Hunter, Superintendent, in response to the Board's request for an opinion as to "whether full-blooded Indians have a right to hunt, trap and fish in this State without a license" (*Towns August 2001*, Ex, 122; Lynch 1998, 5:126-127). The opinion referenced the fact that "[w]e do not find that the State of Connecticut or the Federal Government ever made a treaty with any of the Indian tribes inhabiting the State of Connecticut" and found that the Connecticut statute of 1796 provided in part that, "[i]t shall be the duty of the Civil Authority and Selectmen of such towns wherein are any tribes of Indians, to take care that they be well acquainted with the laws of the State made for the punishment of immoralities as they may be guilty of; and make them sensible that they are liable to the penalties, in case they transgress the laws" (Pallotti to State Board of Fisheries and Game 5/18/1939). The opinion continued:

Whatever the status of the Indian tribes may have been in the early days of this commonwealth by virtue of treaties or laws, it is apparent that we do not have at the present time any Indian tribal organizations. Their political and civil rights can be enforced only in the courts of this State, and they are as completely subject to the laws of this State as any of the other inhabitants thereof. While Indians are expressly exempted from the Fish and Game Laws of some of the States of the Union, no such exemption exists in this State.

Excepting such rights as the Indians may have on their reservations, we are of the opinion that Indians do not have the right to hunt, fish or trap in this State without a license therefor (Pallotti to State Board of Fisheries and Game 5/18/1939).

The 1941 act which transferred jurisdiction over Connecticut Indian tribes to the Commissioner of Welfare used precisely the same terminology in regard to the duties of the office designated as overseer as had been used by the 1935 act (Supplement to the Connecticut General Statutes, Title 51, Chapter 272, Section 592f). These provisions continued in the Connecticut statutes through the 1958 revision (Rev. Stat. Conn., Sec. 47-59, 171).

In 1961, on the hearing in regard to H.B. 2421, The Management of Indian Reservations, Rep. Fisher, speaking as Chairman of the Subcommittee of the Interim Committee on Public Welfare, stated:

We defined our responsibility as that of clarifying the responsibility of the state and the authority of the state for the four Indian reservations and for the persons who choose to reside on them. There are four of them and they are defined in the first Section of the bill.

....

Now, the present law provides only that the Commissioner of Welfare shall act as overseer of all tribes of Indians residing in the state, and the attorney General has ruled that this section does not give the Welfare Commissioner the authority to establish regulations for the administration of these reservations. The Welfare Commissioner does receive and extend an appropriation made by the General Assembly for the care of Indians. He also is responsible for the administration of the tribal funds . . . . (CT Hearing on H.B. No. 2421 3/23/1951, 23).

The 1961 Act not only gave the general definition of "Indian" as "a person of at least one-eighth Indian blood of the tribe for whose use any reservation was set out" but also continued that, among the four Connecticut reservations enumerated: "'reservation' means the Eastern Pequot reservation in the town of North Stonington, assigned to the use of the Eastern Pequot tribe; . . . ." and noted in Sec. 5 that, "Tribal funds shall be under the care and control of the welfare commissioner . . . Said commissioner shall annually settle his accounts of the affairs of each tribe with the controller, . . . ." (CT Public Acts, #304 1961).

In 1973, Connecticut established the CIAC and transferred jurisdiction over the State's Indian affairs from the Welfare Department to the Department of Environmental Protection (CT Public Act No. 73-660; signed into law June 22, 1973; effective October 1, 1973).

On November 8, 1979, Ella Grasso, Governor of Connecticut, in a letter to Fred Williams, Intergovernmental Relations, made the following statements while declaring the Paucatuck Eastern Pequot Tribe to be a Connecticut governmental unit eligible for revenue sharing:

. . . the Paucatuck Eastern Pequot tribe has a recognized tribal governing body which exercises substantial governmental functions. Data provided to my office by the Connecticut Indian Affairs Council indicates that the Paucatuck Eastern Pequot tribe exhibits the following governmental functions: maintenance of a formal governing structure with appropriate executive offices. Determination of tribal membership and assignment of reservation land in accordance with the regulations of the Indian Affairs Council. Operation of small tribal businesses. Maintenance of revenue for internal tribal operations. Planning and implementation of economic development projects. Because of existing statutes, tribal governments relate directly to the state and are not an integral part of local government. Connecticut tribes appoint a representative to serve on the Indian Affairs Council which is the principal state administrative body dealing with Indian matters. The relevant tribal population by county, location of tribal trust land and chief executive officer for the tribe is listed below. I request that this tribe be included as a unit of Connecticut local government for revenue sharing

purposes (Grasso to Williams 11/8/1979; PEP Response to Comments 9/4/2001, Ex. 44).<sup>30</sup>

In 1981, the CIAC prepared a bill which was stated by Department of Welfare Commissioner Stanley Pac to recognize “each Tribe by the historical name deemed appropriate by the Tribe rather than a descriptive label applied by a State agency in the distant and past and continuing into the current Statues” (Testimony on Raised Committee Bill 7272, An Act Concerning Connecticut Indians before the Government Administration and Elections Committee 3/30/1981). The testimony did not indicate the basis upon which the name “Paucatuck Eastern Pequot” was deemed appropriate.<sup>31</sup> The change of the state-recognized tribe’s name to “Paucatuck Eastern Pequot Tribe” was incorporated into the Connecticut General Statutes 47-59a in 1982.

In 1989, Connecticut passed Public Law 368, An Act Implementing the recommendations of the Task Force on Indian Affairs” (Ex. 44, Notebook H, EP Response to Comments 8/2/2001).

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<sup>30</sup>See also PEP’s analysis of the significance of this letter (Austin, Political Authority 9/4/2001, 31; PEP Response to Comments 9/4/2001).

<sup>31</sup>EP stated to the Governor of Connecticut in 1992:

Because there has been some confusion regarding the tribe’s name in the past, we would like to advise you that the tribe has historically been known as the Eastern Pequot tribe, however, in 1982 and again in 1989, the state legislature changed the name of the tribe in the Connecticut General Statutes. The name Paucatuck refers to the original location of the tribe in and around Stonington (formerly known as Paucatuck) and the Paucatuck River. We did not approve of the legislature’s change of the historical name and we have chosen to use the name which we have always used (R. Sebastian to Weicker 3/10/1992, 2).

The language in the Senate Report for the Federal bill in regard to Mashantucket Pequot land claims used both terms: “Section 2(e) finds that the Mashantucket Pequot Tribal Council as now constituted is the sole successor in interest to the aboriginal group known as the Western Pequot tribe. This finding is intended to make it clear that the Mashantucket Pequot Indian Claims Settlement Act in no way affects the interests, whatever they may be, of the Paucatuck Pequot Tribe (also known as the Eastern Pequot Tribe) (98<sup>th</sup> Congress, 125 Session, Senate Report No. 98-222, Calendar No. 369, Authorizing Funds for the Settlement of Indian Claims in the Town of Ledyard, Conn. September 14, 1983, 10; PEP Comments 8/2/2001, Ex. 104). Identical language appeared in the House Report dated March 21, 1983 (98<sup>th</sup> Congress 1<sup>st</sup> Session, House of Representatives Report No. 98-43, 5; PEP Comments 8/2/2001, Ex. 104).

“The Connecticut Indian Affairs Council (CIAC) appealed to the State Legislature to have certain tribal names changed on the State Law books. The request was to ‘reflect their historically accurate names, rather than the State imposed designation.’ The major part of this request (House Bill 7272) was to put the land in Colchester into trust status for the Golden Hill Paugussett Tribe. The bill passed and the land became State trust land; the tribal names changed are: Golden Hill to Golden Hill Paugussett; Eastern Pequot to Paucatuck Pequot; Western Pequot to Mashantucket Pequot” (Sarabia to Sebastian 3/30/1985; PEP Response to Comments 9/4/2001, Ex. 40).

The 1989 legislation once more modified the name from “Paucatuck Pequot” to “Paucatuck Eastern Pequot” (CT P.A. 89-368 1989, Sec. 22).

Most of this act dealt with the protection of archaeological artifacts and sites. Beginning with Sec. 16, the statute repealed Section 47-59a of the general statutes; it continued the prior language in regard to citizenship (paragraph (a)) and added the following provision:

(b) The State of Connecticut further recognizes that the indigenous tribes, . . . the Paucatuck Eastern Pequot, . . . are self-governing entities possessing powers and duties over tribal members and reservations. Such powers and duties include the power to determine tribal membership and residency on reservation land, (2) determine the tribal form of government, (3) regulate trade and commerce on the reservation, (4) make contracts, and (5) determine tribal leadership in accordance with tribal practice and usage (CT Public Law 368, Sec. 16 1989).

The Towns note a sentence in Sec. 17(b) which states: “Nothing in this chapter shall be construed to confer tribal status under federal law on the indigenous tribes” (*Towns August 2001*, 265-266). PEP argues that the use of the term “Paucatuck Eastern Pequot” indicates that petitioner #113 is the state-recognized tribe (Austin, Political Authority 9/4/2001, 38; PEP Response to Comments 9/4/2001). Sections 17, 18, and 19 regulate the relationship between the state-recognized tribes and the State of Connecticut.

In 1995, an Official Statement by John G. Rowland, Governor, designating November 1996 as Native American Month in the State of Connecticut continued to use the terminology of the 1989 Act: “WHEREAS, Connecticut further recognizes that the indigenous tribes, the Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett are self governing entities possessing powers and duties over tribal members and reservations; . . .” (Rowland 1996, PEP Response to Comments 9/4/2001, Ex. 57).

*Government-to-Government Relationship.* The State and Towns note that, unlike the Federal government, the State and colony did not have criteria for determining that an Indian group was a tribe. However, the State dealt with a fixed and defined set of tribes., which changed only through formal derribalization procedures under supervision of the legislature. Federal recognition generally required that a tribal political entity existed and that there was a specific Federal action, e.g., a law or treaty, which authorized Federal relations. In the case of Connecticut, the equivalents of those actions in relation to all the State’s tribes occurred in the colonial period.

The State’s Comments combined discussion of two topics. One, asserted in various ways, is that, “State recognition cannot and did not control the decision to place an Indian tribe in a government-to-government relationship with the United States” (*State of Connecticut August 2001*, 15; see also *State of Connecticut August 2001*, 17-20). This assertion is beside the point, since the proposed findings did not do this. Rather, the proposed finding concluded that a specifically defined form of State relationship (continuous recognition from colonial times to the present combined with continuous existence of a State reservation), provided the basis to assign additional weight to other evidence. The State’s second topic that, “Under the Regulations, State

Recognition Does Not Augment or Supplement Evidence for the Other Mandatory Criteria” is relevant to this general issue.

Even though the State varied in its opinion concerning ownership of or legal title to the Lantern Hill reservation, the State consistently defined its obligation toward the Eastern Pequot tribe as being that of a trustee, looking out for the tribe’s best interests. In 1939, at the legislative hearings in regard to a proposed sale of camp sites on the Lantern Hill reservation to the non-Indian lessees, someone identified as “First Representative for Mr. Filley, Secretary of State Park and Forest Commission,” presented the following statement: “I want to point out that this reservation is held in trust for the Indians. . . . This is the Indians’ land, not the State’s. We simply hold it in trust for them. . . . These Indians are not citizens of the town; they do not get much help from the town in the way of relief,” subsequently adding, “They are not citizens of the town; they are state wards. We are looking after the interests of the Indians, and believe it is contrary to public interest if this sale is made” (CT Hearing 1939 re: HB No. 347, 6; PEP Comments 8/2/2001, Ex. 55).

In 1941, Connecticut legislation transferred the supervisory authority over the State’s tribes and reservations from the Parks and Forest Commission to the Office of the Commissioner of Welfare. Clayton Squires, Director of that office, wrote a memorandum requesting clarification of his authority to Ernest E. A. Halstedt, Assistant Attorney General, on December 13, 1949; Halstedt replied to Squires on May 24, 1950. In regard to the authority and responsibility of the Commissioner of Welfare (PEP Comments 8/2/2001, Ex. 57; *Towns August 2001*, Ex. 37),<sup>32</sup> he stated: “Broad authority is given by Section 7168 of the General Statutes, Revision of 1949, to the Commissioner of Welfare, as overseer of all the tribes of Indians residing in the state, to cause the property of such Indians to be used for their best interest” (Halstedt to Squires 5/24/1950, 1). In regard to the Eastern Pequot, Halstedt’s memo specifically referenced the 1683 land purchase as recorded in the *Public Records of the Colony of Connecticut* 3:117 (Halstedt to Squires 5/24/1950, 1-2) and the statute of 1824 (Halstedt to Squires 5/24/1950, 2), leading to a conclusion that:

This same protective tenor runs through the present applicable statutes. It therefore appears that the lands comprising the Indian reservations of Connecticut do not belong to the various tribes, but are merely set aside for their use and benefit so long as there shall be an Indian to reside thereon, after which these lands will revert to the state (Halstedt to Squires 5/24/1950, 2).

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<sup>32</sup>As a general principle, the BIA is aware that many documents have been submitted multiple times in the course of the processing of this petition. The BIA will not attempt to cite to every occurrence of a document in the record, but will cite to either the first occasion upon which it was located and used or, in certain circumstances, to the best copy available. The evidentiary content of the document remains the same, no matter who submitted it, or when.

Although this opinion was somewhat at variance with the concept of trusteeship that had been expressed by the Director of the Parks and Forest Service at the 1939 hearings, both effectively stay that the land was owned by the State, effectively in trust for the Indian tribes. This is consistent with the text of the various 19<sup>th</sup> and 20<sup>th</sup> century statutes.

Analysis of Comments and Responses: Federal Views of the Status of State-Recognized Tribes.

The Towns submitted documents from the Congressional debate immediately proceeding passage of the 1830 Removal Act which commented on the status of Indians in the original 13 Colonies (*Towns August 2001*). They also cite later correspondence from the Department of the Interior which states that Department's view that the Indians in the 13 original states were not under Federal jurisdiction and had become citizens of those states, with the exception of certain tribes with whom the Federal government had treaties (e.g., Cherokee and Iroquois).

The Federal view in the 19th century was that the members of non-federally-recognized tribes in the 13 original states had become citizens and were the responsibility of the states in which they were located, and therefore, by the definition at that time, not in tribal relations. This fact in itself made them not a Federal responsibility, even when, as can be seen in the case of Connecticut and some others of the original 13 colonies, the members of the tribes under state guardianship were not considered by the states themselves to be citizens of the state in which they resided.<sup>33</sup> This point of view held even where the Federal government knew that tribes existed for which it had not acknowledged a responsibility (e.g., in Maine, and elsewhere).

For these reasons, the material cited by the Towns concerning Federal views of State Indians in the 19th century is not relevant for purposes of evaluating the Eastern Pequots' status in relationship to the State of Connecticut as it pertains to the acknowledgment regulations. The evidence concerning a distinct State citizenship status for Indians from the tribes for which Connecticut maintained reservations is discussed above.

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<sup>33</sup> Massachusetts, Rhode Island, Virginia, and South Carolina were typical cases. Members of state-recognized Indian tribes were not necessarily (or even usually) viewed by a given state as being state citizens, even when the Federal government classified them as such.

For Massachusetts, consult Ann Marie Plane and Gregory Button, *The Massachusetts Indian Enfranchisement Act; Ethnic Contest in Historical Context, 1849-1869*, *Ethnohistory* 40 (1993): 587-618; for Rhode Island, see the sequence of reports issued by the Commissioners on Narragansett Indians from 1881-1883, in particular, as to determinations as to maintenance of tribal relations, if a man had voted other than in tribal elections, whether in Rhode Island, Connecticut, or Massachusetts (*Report of Commissioners on Narragansett Indians 1881*, 86-86, 103).

For Virginia, consult the legislation and debates in regard to the detribalization of the Gingaskin and Nansemond. In regard to the Catawba as non-citizens of the State of South Carolina, see D. M. Browning, Letter From the Commissioner of Indian Affairs to R. V. Belt 8/28/1896 (reprinted in *The Catawba Tribe of Indians*, Senate Document 144, 54<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3-10); Office of Indian Affairs, Report to Commissioner of Indian Affairs on Catawba Indians of South Carolina 1/5/1911 (original NARA RG 75, 8990-1908-052, pt. 1; Reprinted in *Hearings on HR 2399, to Provide for the Settlement of Land Claims of the Catawba Tribe of Indians in the State of South Carolina and the Restoration of the Federal Trust Relationship with the Tribe*. Serial No. 103-34. Government Printing Office).

**Analysis of Comments and Responses: Precedents for Using State Recognition.** In no previous acknowledgment case was there continuous state recognition since early colonial times (essentially since the tribe first was no longer independent of a non-Indian political entity) up until the present. To that extent, the parties' comments on precedents from previous acknowledgment decisions are not applicable, since it is both the State's actions and the continuity throughout history that provided the rationale for giving greater weight to the evidence in the proposed finding.

The Towns and State additionally argue that because the regulations only specifically mentioned state recognition under criterion 83.7(a), concerning external identification as an Indian entity, that it cannot be otherwise used as evidence. The regulations clearly state that the specific kinds of evidence mentioned in § 83.7 are not proscriptive lists (see statements in §§ 83.6(g) and 83.7(b) and (c)).

They also cite the 1997 *Official Guidelines* to the effect that state recognition does not carry any special weight. This advice was meant to address the idea on the part of some petitioners that any kind of state recognition was in effect an initial step towards Federal recognition. The advice was not meant to foreclose the approach taken here.

It is true that giving state recognition greater weight was considered and rejected in the early process of formulation of the original, 1978 regulations. However, this rejection rested in part of the great diversity in character of state recognition, particularly the then-recent phenomenon of new state recognitions made on an uncertain basis. These recognitions are distinguishable from a consistent course of actions towards a distinct group, deriving from the point, more or less that the independently governed tribe came under the control of the Crown and Colony. The preamble to the 1978 regulations commented that "It should also be noted that recognition by State government officials or legislatures is not conclusive evidence that the group meets the criteria set forth herein" (43 FR 39361). [emphasis added]

**Analysis of Comments and Responses: Government-to-Government Relationship.** In the on-the-record technical assistance meeting, BIA staff indicated specifically that a "government-to-government relationship" parallel to the Federal relationship with tribes lay behind the assignment of greater weight to the evidence for criteria 83.7(b) and 83.7(c) in the proposed finding. "Government-to-government" is indeed a modern term. It did not come into usage until the 1970's, but is consistent with and derived from Federal views on tribal status dating from the early 19<sup>th</sup> century which rested in part on the existence of tribes as distinct political communities (*i.e.*, dependent domestic nations) within the United States. The central issue for the AS-IA in the proposed finding was not a specific relationship with a governing body of the Eastern Pequot tribe but rather the continuous nature of the State relationship with the tribe defined by the existence of the reservation, the oversight responsibility of the State, and the unique status of the tribes under Connecticut laws, distinct from all other Connecticut residents.

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*Summation of Analysis of Comments and Responses.* Connecticut's relationship with its recognized tribes was not a racial classification based on Indian descent of individuals. Non-tribal Indians living in Connecticut (whether they were from other States, such as Rhode Island or New York, or themselves natives of Connecticut and descendants of aboriginal Connecticut tribes), even those living in New London County, and even those living in Stonington/North Stonington were not under state-appointed overseers and not under local guardians unless there was some other factor, such as mental incompetency, to be considered. The following major components show that there was a special relationship based upon the distinct nature of the tribes for which the colony/state bore responsibility. The relation between the State of Connecticut and the Eastern Pequot comprised the following elements:

Historicity. The State inherited its obligation from the Colony and the evidence does not show that the State ever questioned that it had such an obligation. The various items cited by the Towns in their section on Federal agreement with jurisdiction by Connecticut and other States succeeding to the original 13 colonies over their tribes during the first half of the 19th century actually reinforce this point of view. There is no requirement in Federal law that such a relationship must be established by treaty.

Legislation. Beginning in the colonial era, Connecticut has regularly legislated concerning the tribes within its borders, including modifying the statutes as recently as 1989.

Regularity. When there was no immediate activity, the laws remained in force and the reservation continued to exist. When issues came up that required the legislature to take notice, it did so. Changes in State policy over time do not undermine this continuity, because no relationship continuing for over 350 years can be expected to remain static -- it may be affected by local circumstances, and sometimes even by ignorance upon the part of people trying to carry out the laws.

Fiduciary Responsibility. A fiduciary responsibility began in the colonial era and included but was not limited to legal protection of tribal lands and funds, with certain consistent requirements, such as no sale of Indian land without consent of the legislature. While the State has expressed differences of opinion about the exact nature of its responsibility for its tribes and the exact nature of the land titles over the course of time, it has never denied that this obligation existed. The argument that Indians were solely the responsibility of the locality is completely unsupported by the evidence. When a Superior Court or a Town had an obligation, it held it by delegation from the State. Much of the time, the Towns did not recognize any obligation to the tribes within their borders -- as instanced by their appealing to the State for reimbursement from the Indian funds when they did extend assistance. The argumentation that there were long periods of time when the State appeared to take only minimal notice of the Eastern Pequot is not valid in light of all forms of documentation taken together, including the regular enactment or reenactment of statutes.

Oversight. The oversight function of the State operated continuously and generated large numbers of records. Beginning in the colonial era and involving at various times the publication of laws, appointment of indigenous governors operating in cooperation with non-Indian overseers, remand to the care of the governor and council, direct legislative appointment of overseers, delegation of oversight to the Superior Court of the county in which the tribe was located, and resumption of direct State oversight.

Special Nature of the Continuous State Relationship Based on the Existence of Tribes. While organizations that were not Indian tribes certainly had right to petition the government, as the Towns point out, their argumentation is inapplicable in that non-tribes were not petitioning about reservations and overseers for which the State bore responsibility. Neither did the State have to "detritalize" and allot private clubs or charitable organizations in order to shed a fiduciary and oversight responsibility, nor did it need to specifically grant State citizenship to the members of such voluntary organizations.

Citizenship. The actions of the State indicate that members of the State recognized tribes were not, at least under law, fully citizens of the State until legislation passed in 1973. The detribalization of the Mohegan and Western Niantic in the second half of the 19<sup>th</sup> century had the granting of State citizenship specifically tied to it. The State was at best uncertain of the applicability of the 1924 Federal act granting citizenship to all Indians native to the United States, continuing to grant tax exemptions to reservation residents and limit their voting rights.

*Conclusion*. A detailed review of the history and documents indicates that Connecticut has maintained an uninterrupted, continuous relationship with the Eastern Pequot tribe from colonial times to the present. Some of the aspects of that continuous relationship, such as the tax exempt status of the reservation land and the citizenship status of tribal members until 1973, indicate that Connecticut, throughout the period, defined its tribes as distinct political entities.

The nature of Connecticut's relationship with the Eastern Pequot tribe from the colonial period to the present, even without application of the modern phrase "government-to-government," has been such as to provide an additional form of evidence to be weighed together with other evidence. This evidence exists throughout the time span, but is most important during specific periods where the other evidence in the record concerning community and political influence would be insufficient by itself.

## ANALYSIS OF EVIDENCE UNDER THE CRITERIA

### 83.7(a-g)

**83.7(a) 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.**

The Summary under the Criteria for the proposed finding and the associated chart for criterion 83.7(a) analyzed evidence for external identification of petitioner #35 as an Indian entity from 1900 to the present. The proposed finding concluded that the combination of the various forms of evidence, taken in historical context, provides sufficient external identification of the historical Eastern Pequot tribe as an American Indian entity from 1900 until the present, including, from 1973 to the present, additional identifications of the petitioner as a subgroup within that entity.

No comments were received<sup>34</sup> or new evidence submitted specifically designated as relevant to criterion 83.7(a) for petitioner #35. New assertions specifically applicable to PEP are analyzed in the final determination for petitioner #113. Petitioner #35 submitted some additional external identifications of the historical Eastern Pequot tribe since 1900, such as the field notes made about 1913-1914 by George Grant McCurdy, Curator of the Yale Peabody Museum, and an additional set of notes made about 1920 by Frank G. Speck, anthropologist, University of Pennsylvania. A 1924 newspaper article mentioned that members of the Eastern Pequot tribe (giving a list of names taken from a past overseer's report, not all of whom resided on Lantern Hill at the time) "attended the services of the placing of the memorials to the Narragansetts" (*The Evening Day*, New London, CT, 8/5/1924).

Some additional evidence, such as newspaper articles, provided additional instances of identification of EP as an American Indian entity since 1973. The majority of these identifications continued to be of EP in the context of the full Eastern Pequot tribe and the Lantern Hill reservation; a few distinguished between EP and PEP.

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<sup>34</sup>One passage in the Towns' comments may have been meant to pertain to criterion 83.7(a), but was not designated as such: "One of the few descriptions by an outside observer during that period was made by local historian Richard Anson Wheeler, who stated in 1900 that the reservation did not contain 'a residence of any Pequot descendants,' which can be interpreted as meaning that Wheeler did not consider its residents to be Pequot descendants" (*Towns August 2001*, 335; no citation to source). This passage was already discussed in the proposed finding (EP PF 2000, 79; citing Wheeler 1900, 195, as quoted in Lynch 1998a, 5:96).

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Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(a) is affirmed.

See also the conclusory section of this document.

**83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.**

*Introduction.*<sup>35</sup> The proposed finding stated:

The two petitioners derive from a single historical tribe with a continuous state relationship since colonial times. As such, the modern conflicts between the two, which have focused on their relationship with the State of Connecticut, are relevant evidence for political influence, although it is unclear if it is as one tribe, or as two. Petitioner #35 (EP) has taken the position that there was only one tribe, but has not presented sufficient evidence to demonstrate that this was the case after 1973, although there is some evidence that only one tribe exists within the meaning of the regulations. Petitioner #113 (PEP) has taken the position that the EP families were not of Eastern Pequot ancestry and were never part of the tribe. The proposed finding for EP concludes that the PEP position is not correct. Both groups derive from the historical Eastern Pequot tribe which was recognized by the State of Connecticut. The State continues to recognize a successor to the historical Eastern Pequot tribe, but has not taken a position as to the leaders of that successor (EP PF 2000, 61).

Petitioner #35 accepted the above conclusion in regard to criterion 83.7(b) and, in addition, submitted additional documentation for the final determination designed to strengthen its assertion that its own current members and their direct antecedents have maintained community throughout the 20<sup>th</sup> century and maintain community at present.

The Towns challenge the finding that there was a historical Eastern Pequot tribe which maintained community from historical times through the third quarter of the 19<sup>th</sup> century: “This section . . . discusses . . . the groups’ failure to develop meaningful or continuous political and social interactions” from first contact with European colonists through the present (*Towns August 2001*, 44).

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<sup>35</sup>“*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” (25 CFR § 83.1).

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For the final determination, the petitioner, petitioner #113, and third parties submitted additional documentation and comments in regard to the issue of maintenance of community by EP from 1883 to the present.

### *Response to Other Comments by Petitioners and Parties.*

The State's brief (*State of Connecticut August 2001*, 5) quotes a staff statement from the July 11, 2001, technical assistance meeting that the Assistant Secretary had directed the researchers to "not look quite as deeply into the petitioner's claims [*sic*]" (7/11/2001 TA transcript at 202). The cited comment reflected the general views expressed by the AS-IA about the acknowledgment process, that BIA researchers conducted research in more depth than was necessary. No direction of this kind was given with specific regard to the evaluation of the EP and PEP petitioners. As further stated at the TA meeting, the AS-IA's views were incorporated into policies in the February 2000 Directive (7/11/2001 TA transcript at 202).

The State (*State of Connecticut August 2001*, 28) disagrees with the proposed finding's statement that occupation of a distinct territory by a portion of a group is evidence of community, even if it is less than 50 percent of the group's membership. The State cites 25 CFR 83.7(b)(2)(i) in support of this, saying that the PF's statement "contravenes" the regulations. The quoted section of the regulations refers to evidence which is sufficient in itself to establish community. The regulations permit the use of any evidence to show community, most often in combination with other evidence. The existence of a territorially distinct community encompassing part of the group, but less than 50 percent, is evidence towards demonstrating community, even where not sufficient in itself.

The State's brief at several points discusses a particular portion of the evidence, such as the Fourth Sunday meetings (*State of Connecticut August 2001*, 35), concluding that they are insufficient evidence to show community. This approach differs from those of the regulations, which in most instances call for evaluating a combination of different forms of evidence.

### *Reliance on Interview Data.*

Town and State Comments. The State of Connecticut raises a variety of concerns about the utilization of interview evidence, especially focusing on the interview materials submitted by EP because they did not supply complete transcripts of the interviews they used (*State of Connecticut August 2001*, 33). The State and Towns commented that important portions of the proposed findings' conclusions concerning both petitioners were based primarily on interview information about events that happened more than 25 years ago (*State of Connecticut August 2001*, 34; *Towns August 2001*, 273-282). The State and Towns also made specific comments about the use of interview evidence concerning specific topics such as Fourth Sunday meetings, Alden Wilson's picnics, and some of the activities of Atwood Williams, Sr., based on their assessment of the interview evidence in the record. These specific critiques are addressed in the topical sections below.

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In July 2001, in response to a request by the State, the BIA provided a discussion of the standards and methodology used by the BIA in evaluating interview materials in a recorded informal technical assistance meeting conducted by conference call. The parties were also provided with a letter describing the BIA's approach and listing a selection of methodological works in anthropology that provided the methodological framework for the BIA's evaluation of interview materials (George Roth, Acting B.Ch, to Richard Blumenthal 7/6/2001). They were also provided with citations to previous acknowledgment findings, specifically the Snoqualmie and Cowliz final determinations, and provided with relevant portions of the Department's brief before the Administrative Law Judge in the proceedings in Greene v. Babbitt for further guidance.

The State commented in response to the proposed finding that "interview evidence can vary widely in its validity and caution is required in evaluating its reliability. In particular, professional standards should be followed in the conducting of interview evidence [*sic*] and the collection of oral histories" (*State of Connecticut August 2001 Appendix, 10*). The State's general comments cite some of the references provided by the Department to them, quoting cautionary language concerning interview information. The State's Comments cite comments by H. Russell Bernard, that "informants are inaccurate" and "there appears to be systematic distortion in how informants recall just about everything" (*State of Connecticut August 2001 Appendix, 10*).

The cautions expressed in the literature cited, and in the other literature referenced by the Department, are appropriate and consistent with the Department's views, but the discussion of the professional literature in the State's comments omits the discussions of how these problems may be compensated for and what areas of inquiry are most likely to be less reliable. The State presents only the negative comments and does not discuss differences in reliability depending on method and subject matter, among other factors. The professional literature cited in the Department's letter and July 2001 technical assistance meeting describes how the issues in gathering and interpreting interview evidence may be dealt with. The cited author, Bernard in a recent work on methodology in cultural anthropology, notes that methods such as using prompted recall by specifics, comparison of information from different interviews, repeat interviewing, and the like can be valuable in providing more specific and more accurate information (*Social Research Methods* 218-220; see also methodological discussion by Schensul (Schensul, Schensul, and LeCompte 2001).

The State also cites cautions from another article included in the references provided by the Department, by Vidich and Bensmen (*State of Connecticut August 2001 Appendix, 11*). These authors go on to describe commonsense measures which can compensate in substantial measure for distortions in interview evidence (Vidich and Bensman 1954, 20-27). Other references provided by the Department also discuss techniques for improving accuracy (see Langness and Gelya 1981, 43-59).

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Some of the literature cited by the State is not directly applicable here, since it refers to circumstances where field workers are trying to develop highly precise counts of events and participation, and specific recall of dates. The studies are, further, ones in which surveys and structured interview techniques rather than key informant, in depth interviewing was done. Such techniques are preferable for quantifiable data but provide less opportunity to compensate for limitations in the accuracy of initial responses. The State quotes Bernard's statement in a 1984 article reviewing the literature on accuracy of interview information, as saying that memory decays exponentially (*State of Connecticut August 2001 Appendix, 10*). The cited article is primarily discussing short-term time periods between events and interview, such as less than a year, and does not directly address accuracy over substantially longer periods of time (Bernard, H.R., P.D. Killworth, D. Kronenfeld and L. Saler 1984).

The BIA interviews were conducted for the purpose of evaluating and verifying the data presented in the petition, including but not limited to the interview data. As such they are not intended to be a substitute for ethnographic research on the part of the petitioners. The Towns stated that interviewers "did not stay on point" to ask followup questions in some cases and did not ask the same basic questions of each interviewee (*Towns August 2001, 273*). Although more extended interview time, such as multiple interviews on the part of the petitioners' anthropologists would have allowed the development of additional and clearer information, the BIA interview information was useful in evaluating and augmenting the interview and documentary evidence presented by the petitioners. The cautions, and the factors described in the literature as necessary in evaluating interview information have been applied here.

As the BIA stated in the OTR and other technical assistance meetings, any evaluation of an interview poses some basic questions, such as how well it was conducted, whether leading questions were avoided, in what degree of specificity the information was provided, whether the individual was in a position to know the facts, if there are factors which would lead to distortion, and the interviewee's own style, approach, and ability in responding (OTR 2000, 136-138). To this may be added the observation from the cited anthropological literature, that some items, such as public events, physical location and the like are more likely recalled accurately than attitudes, beliefs, and the like (see Poggie 1972, 23-30; also cited by *State of Connecticut August 2001 Appendix, 10*). The State notes a portion of the BIA comments in the OTR meeting that there was at least some distortion of information obtained and that the degree of precision in information obtained varied, depending on the interviewee (*State of Connecticut August 2001, 32*).

The acknowledgment findings and the literature cited by the State (*State of Connecticut August 2001 Appendix, 10-11*) note the importance of what some of the anthropological literature refers to as "triangulation," of the interview data. This is simply the approach that greater validity is obtained by drawing information from a variety of sources, interview and non-interview. In acknowledgment findings, as the cited portion of the Samish brief sent to the State notes, the interview data is placed in the context of an enormous volume of documentary data which

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provides context, support and corroboration of the interview evidence. The interviews in turn often inform what is known about events and individuals known from documents. The State overstates the language in Cowlitz final determination, indicating that this determination stated that, “BIA standards require that interview evidence be ‘corroborated by written materials such as meeting minutes, correspondence and newsletters’” (*State of Connecticut August 2001, 33*). The passage in question was descriptive.<sup>36</sup> Corroboration through written documentation is a methodological rather than a regulatory requirement, and is most crucial when the interview information contains hearsay information in regard to long-past events in regard to which the interviewee has no direct knowledge.

Certain kinds of information are much more likely to be found in the documentary record: e.g., records that meetings were held, conflicts arose, lawsuits ensued, and the like. At the same time, the documentary record is unlikely to provide the complete picture of the conflict, exactly what the issues were, who supported whom, and maybe some of the interests at stake. In this way, interview and documentary information reinforce and cross check each other.

Connecticut incorrectly describes the Department's position concerning the use of key informants, misstating the criticism of the Indiana Miami petition in the Miami final determination (*State of Connecticut August 2001, 34*). In that instance, the criticism was that the information on the subject area was gained incidentally to interviews on other, unrelated, topical areas rather than being part of a systematic interviewing scheme to discover the facts about the topic in question, maintenance of social contacts. It was not a criticism of the use of key informants but of the focus of the interviewing. Key informants are individuals who can be expected on the basis of age, experience, position within the group etc. to be knowledgeable about a particular question, area, subject, etc. Use of key informants is not a survey, in the sense of a statistically valid sampling of the entire membership, where each respondent is effectively a unit of information and a uniform set of inquiries is made. The Snoqualmie final determination provides a definition and description of the importance of the use of key informants as one methodology--that the ethnographic approach is not a statistical survey, but involves finding knowledgeable individuals with a substantial body of knowledge about the subject areas being investigated. Examples of these are political leaders, who, even though having strong specific points of view and specific motivations, are the ones with the greatest familiarity with political processes (Snoqualmie FD, 1997, 122-127).

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<sup>36</sup>The actual statement in regard to Quinalt's challenge to the Cowlitz interviews read:

No single individual knew or remembered everything that occurred. They only related what they saw and remember during their interviews. The interviews rarely contradicted one another, and they were corroborated by written materials such as meeting minutes, correspondence and newsletters. As a whole, all of these sources tended to extend the description of events beyond what a single individual may remember (Cowlitz FD 2000, TR 26).

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Although the Towns' comments conclude that the interviews, referring to the those conducted by the petitioners as well as the BIA's, were not a significant research tool, the Towns themselves offer extensive conclusions based on these materials (see *Towns August 2001*, 274-285). These conclusions are not limited to the absence, weakness or unclarity of evidence, but include positive conclusions about the character of events. The Towns' comments indicate that they applied fairly standard approaches to this material and in some, but by no means all, cases reached similar conclusions as this determination. (Under the regulations, the Towns and State did not have the opportunity to comment on the additional interview materials submitted by the petitioners as Comments on the proposed finding.)

The State focuses primarily on the limitations of the EP interviews rather than those conducted by the BIA, thus, apparently, not rejecting the use of interview evidence *per se*, but raising caution flags. The BIA staff in the August 2000 OTR noted the desirability of seeing the actual text of interviews rather than summary notes. The State noted that much or most of EP's interview data submitted by the petitioner that was included in the record for the proposed finding was in the form of notes or abstracts. The shorter form, such as extracts, is not entirely useless as evidence, though less desirable than full transcripts, if the extracts are specific abstracts rather than apparent "glosses" of, or interpretations of, what the individual said. In addition, it was possible to cross check with other interviews and other data sources, to evaluate the adequacy of the abstracting and to apply measures of reliability such as whether the interviewee was in a position to know about what he reported and what some likely biases are.

In response to the proposed finding and the technical assistance provided by the Department, EP submitted a substantial number of complete interview transcripts, although for the most part they did not provide detailed transcripts behind the summary notes submitted with the initial petition.

During preparation of this final determination, the BIA requested the full text of the interview materials submitted by EP in 1998 which were excerpts from interviews by Burgess and by other EP researchers because they were referenced again in the EP Comments on the proposed finding. The BIA also requested full texts of interviews for which extracts were submitted with the response to the proposed finding which were dated 2000. The BIA also renewed its request for the notes of EP researcher Kathleen Bragdon's 1998 research, which had been requested before completion of the proposed finding but not received. The BIA also asked for the full body of interview material cited by Bragdon in the narrative portion of EP's Comments on the proposed finding. The materials submitted in response to these requests was not substantially more complete than the original submissions.

The Towns' comments on the interviews are generally parallel to the State's, but add the charge that the EP influenced the BIA interviews by distributing materials to members, holding lectures and the like, so as to "project a uniform story to the BAR researchers" after being coached (*Towns August 2001*, 165). The Towns provide copies of a packet that essentially put forward the EP position concerning its history as stated in its 1998 petition narrative (*Towns August 2001*, Ex. 96). The materials are referenced in the EP's newsletter to members. Some particular

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sections are very parallel to the EP petition claims, and thus are perhaps pertinent to influencing the interviews, though most of the material is not pertinent. None of the documents supplied are explicitly framed to urge individuals to answer in particular ways.

The Towns' claim that the EP mailing created a uniform story is belied by their analysis of the information from the BIA interview tapes (see *Towns August 2001*, 274) which focuses on actual and apparent conflicts between different interviewee statements as an indicator, in their view, that the information is not useful or reliable. There are differences, as there are in any body of interview materials, but much of the difference reflects differences in experience, age, orientation and approach to responding to interview questions as well as other factors. The descriptions elsewhere in this report of Fourth Sunday meetings, Alden Wilson picnics, and other events are careful reconstructions of these events, insofar as possible, noting where information is sufficient or insufficient, whether it differs in substantial ways and why, and whether it is reliable or unreliable, using ethnographic and ethnohistorical methodology.

PEP also cites the documents presented by the Town to support their argument that EP attempted to influence the responses of interviewees interviewed by the BIA (McMullen, Response to Comments from Third Parties, 16-17, PEP Response to Comments 9/4/2001). PEP further notes that the EP response to the Proposed Finding (Analysis of the George Roth Interviews, EP Comments 8/2/2001) submitted a list of citations to BIA interviews which the EP concluded contained materials which supported their position on their history in various specific respects and which remarked on the "consistency" of responses as a supporting feature. PEP does not present a review of the specific passages cited by EP. A review of the passages cited by EP indicates that while the information in these interviews is generally consistent, the statements are in fact quite diverse and provide different information from different points of view. Some aren't even clearly pertinent to the claimed subject. The "similarities" cited by the EP submission are so general as to be as explainable by a somewhat shared experience and common understanding within a group. They reflect a normal range of variation expectable in interview materials. Since to a large extent the questions at issue were answered idiosyncratically, they are unlikely to have been affected.

There were no signs of deliberate tampering with or falsifying of information, as opposed to tendencies common to interviewing in a high stakes situation, to want to put up a good face, avoid appearance of conflict, and similar expectable tendencies.

Transcription of Interview Data for the Final Determination. The proposed finding stated concerning the BIA interviews:

Completion of the finding within the expected time frames meant that detailed transcripts were not made of the tapes of most of the field interviews. The interviews contain additional information which may, based on a detailed analysis of complete transcripts, and supplementation by additional interviews and documentation, help demonstrate past and present community and political

process not found to have been shown by the petitioner. Alternatively, there may be data in the field interviews which conflicts with the petitioner's data (EP PF 2000, 79).

Parties were urged, in the July 2000 OTR meeting, to review the BAR data as well as to gather their own. Complete transcripts of those BIA interviews not fully transcribed for the proposed finding were prepared by the State and provided to the Department, as well as transcripts of a videotape of an interview for EP of Alton Smith, Sr., and others, and a videotape interview for PEP of Barbara (Spellman) Moore.

#### Specific Analysis for Criterion 83.7(b)

*Historical Eastern Pequot Community Prior to 1873.* The proposed finding concluded that, prior to 1873, "On the basis of precedent, the available material is sufficient to meet 83.7(b) for a tribe during the colonial period" (EP PF 2000, 72) and "Because the community as a whole, throughout this period [from the American Revolution to 1883], had a residential focus on the reservation, and still maintained a very high rate of intermarriage and patterned outmarriage, particularly with the Western Pequot and with the Narragansett, the Eastern Pequot tribe meets criterion 83.7(b) for the period through 1883" (EP PF 2000, 79). [footnote in original omitted]

Petitioner #113, which defines itself as having been the historical Eastern Pequot tribe in the past and as the only successor to the historical Eastern Pequot tribe in the present, has strongly challenged the proposed finding's conclusion that there was a historical Eastern Pequot tribe which included the antecedents of petitioner #35 at any time, before or after 1883:

Chapter One also provides a detailed historical analysis of how the descendants of Tamar Brushell Sebastian came to reside on the historical Eastern Pequot Tribe's reservation at Lantern Hill, and the process by which some of them got the State of Connecticut's agents to place them on the Eastern Pequot membership list over the objections of the Tribe's leader and the Tribe's members. This process was lengthy, marked by disregard for the Tribe's actions to determine its own membership and a number of seemingly innocuous policy changes on the part of the State with regard to the management of the State's Indian reservations and maintaining lists of the tribes' members. But ultimately, these policy changes and decisions made by state officials made it much easier for the members of Petitioner #35 to be granted permission to reside on the Lantern Hill Reservation, and for some of them to be put on the State's list of Eastern Pequot tribal members (Austin Introduction 8/2/2001, 8-9; PEP Comments 8/2/2001).

PEP, which defines "Tribe" to denote itself and its direct antecedents, *i.e.* the ancestors of the present PEP families, did not present any significant new evidence on this topic, but simply reargued the position it had taken at the time of the proposed findings.

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The Towns challenged the finding that an Eastern Pequot community as a whole existed prior to 1883 within the meaning of the 25 CFR Part 83 regulations (*Towns August 2001*, 110-111, 119-120, 124-125, 132-143). More of the Towns' discussion prior to the 20<sup>th</sup> century was devoted to criterion 83.7(c) than to 83.7(b). This was wholly the case for the discussion of the period from the end of the Pequot War to 1677 (*Towns August 2001*, 47-58), the period under Momoho from 1677 to 1695 (*Towns August 2001*, 58-67), the period from the death of Momoho through 1725, in which the primary focus is that the "Stonington Indians" were not a tribal entity (*Towns August 2001*, 67-74), from 1725-1789 (*Towns August 2001*, 75-82), and from 1789-1800 (*Towns August 2001*, 94-101). This material will therefore be addressed under criterion 83.7(c). The Towns' summary recapitulation stated: "There is scant evidence of any meaningful interactions among this group throughout this period. That decline in the existence of a group of identifiable families was hastened by the Brothertown movement . . . Such a small remnant group as existed at that time could not endure such departures to any degree and be able to maintain viable internal political and social functions" (*Towns August 2001*, 107).

The Towns' discussion of the period from 1800 to 1900 also concentrated primarily on the political and legal status of the Eastern Pequot Indians (*Towns August 2001*, 109-155), tying the issue of community, phrased as, for example, "a functioning political and social entity with any degree of internal cohesion" (*Towns August 2001*, 110) where raised implicitly, to the political function or, as in the discussion of the appearance of new surnames on petitions and overseers' lists,<sup>37</sup> to criterion 83.7(e) (*Towns August 2001*, 111). The Towns did not submit new evidence for this period, but rather advanced once more their interpretation of materials already evaluated in the proposed finding.

The BIA takes this opportunity to point out that in some instances, the Towns misrepresent the BIA's work, as in such statements as, "As the Technical Report confirmed, '[t]he others of the Tribe have scattered because the heads of the families are dead. Some are in Ledyard, some in Preston, others in Providence, and then throughout various parts of the country'" (*Towns August 2001*, 137). This was not a conclusion reached by the author of the non-peer-reviewed draft technical report, but rather was a quotation from a mid-19th century book on Connecticut Indians (DeForest 1852).

*From 1873 to the 1920's.* The proposed finding concluded that, "The documentation throughout this period contributes to a showing of community under 83.7(b)(1)(vii) [*sic*, should have been viii], 'The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name'" (EP PF 2000, 79-80). It surveyed the existing overseers' reports for the period and noted that, "No overseer's reports were submitted by either petitioner or by the third parties for the period from 1891 through 1910, and none were in the records provided by the State of Connecticut (CT FOIA)" (EP PF 2000, 80-81). For the final

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<sup>37</sup>The appearance of new surnames is frequently a consequence of outmarriage by women in a tribe rather than evidence that a family has died out; the 25 CFR Part 83 regulations do not require descent through the male line only.

determination, the petitioner submitted overseers' reports that covered much of this period (see below).

The documentation submitted by EP in its response to the proposed finding addresses the issue of whether Tamar (Brushell) Sebastian maintained contact with the Eastern Pequot community on the Lantern Hill reservation during the period between the mentions of her in the overseers' reports when she was a child and her return to the reservation as an elderly woman.

The petitioner submitted a better, more legible, copy of a document that was discussed in the proposed finding. On May 19, 1873, Leonard C. Williams of Stonington, Overseer, petitioned the General Assembly for permission to sell a portion of the Lantern Hill reservation (Bassett 1938; #35 Pet. Petitions; see EP PF 2000, 109, for details). The proposed sale engendered protests by the Indians who would be affected by it. On June 26, 1873, the "members of the Pequot tribe of Indians of North Stonington" remonstrated against the sale of lands and requested removal of Leonard C. Williams as overseer (Lynch 1998a 5:81-82; Grabowski 1996, 114). The proposed finding indicated that, "The names of signers on photocopy submitted to the BIA (#35 Pet. Petitions) were nearly illegible" (EP PF 2000, 109) but stated that by combining the transcriptions in petition #35, petition #113, and by the BIA researchers, the names had been deciphered as:

Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson, Fanny ", Irean ", Phebe ", Lucy ", Wm. H ", Jane M J, Leonard Brown, [illegible], [illegible], Janes [James?] M Watson, Sarah J Watson; [following page, may or may not represent a continuation] Mercy Williams her mark, [illegible], [illegible], [illegible] Hill ( (#35 Pet. Petitions; Lynch 1998a 5:81-82; Grabowski 1996, 114) (EP PF 2000, 109).

EP, petitioner #35, submitted a better copy of this document for use in the final determination. Comparing the old copy to the new one submitted in 2001, the names now appear to be:

Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson, Fanny J, Irean J, Phebe J, Lucy A J, Wm. H J, Jane[y?] M J, Leonard Brown[e?], Tamar S and Har nin children [takes up two lines], James M Watson, Sarah J Watson; [next page] Mercy Williams her x mark, [illegible] H x, [illegible] x, George W Hill x, [illegible]san Randall, A. B. Randle [sic] (photocopy in "Errata and Addendum for Comments on the PF 'Being an Indian in Connecticut' submitted August 2, 2001," contained in Response of the Eastern Pequot Indians of Connecticut to the Comments of the Interested Parties, September 4, 2001, Item 3: June 26th 1873 Petition, 2 pages with signature of 'Tamar S and Har Nin Children' to be added to 'being an Indian in Connecticut, Report IIC, Samples of Handwriting Used to Identify Writing of Signatures, page 156.").

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The better copy provides significant evidence that Tamar (Brushell) Sebastian's connection to the Eastern Pequot reservation community was known to its other members in the 1870's. The presence among the names listed on the 1873 petition of "Tamar s and Har nin cheldren" (EP Comments 8/2/2001, Glaza and Grant-Costa Report IIC, 134, Figure 2; captioned "Close up of signature on June 26th 1873 petition") provides a documented connection between Tamar (Brushell) Sebastian and the Eastern Pequot tribe between her childhood and her subsequent residence on the reservation, thus providing an answer to the question posed by the Towns: "Similarly, if Tamer Brushell Sebastian was a tribal member, then why is her name conspicuously absent from all of these four documents and all other reservation records from 1831 to 1889?" (*Towns August 2001*, 147; see also *Towns August 2001*, 210).

Petitioner #113 asserts that the above evidence is not valid:

In an attempt to position their lineage on the reservation, petitioner #35 also claims to present new documentary evidence concerning Tamer Brushel Sebastian (1822-1915) through the suggested inclusion of "Tama [*sic*] s and Har nin children" on the June 26, 1873 petition to the overseer, . . . (Sebastian Comments, August 2001, pp. 134-35). These claims are interesting for a number of reasons, not the least of which is the fact that no other reader of the 1873 petition has ever notice the inclusion of a reference to Tamer Brushel Sebastian (McMullen 6; PEP Response to Comments 9/4/2001).

The proposed finding specifically stated that: "The legible portions of the document did not contain the names of Tamar (Brushell) Sebastian or of any of her older children; or of Marlborough or Eunice (Wheeler) Gardner or any of their collateral relatives. The BIA is not prepared to reach any conclusion on what may have been contained in the illegible portions" (EP PF 2000, 109). The "notice" of the additional names on this document is the result of there now being a better photcopy in the evidence.

The June 26, 1873, petition was also signed by members of the Hoxie/Jackson family (antecedents of petitioner #113) and by Abby (Fagins) Randall, one of her children, and the children of Laura (Fagins) Watson (antecedents of petitioner #35). Petitioner #113 asserts that the evidence offered by the above petition does not indicate that their antecedents were part of a common tribal social community or political community with the other signers:

. . . Dr. McMullen concludes, among other things that: the State appointed tribal overseers were not always and equally knowledgeable about the tribes whose interest they were supposed to care for; there is no credible evidence that the Paucatuck Eastern Pequot Tribe is a faction of Petitioner #35, since no single political or social system encompassing both members of petitioner #35 and the Paucatuck Eastern Pequot Tribe has ever existed; . . . the Sebastians and the Paucatuck Eastern Pequot Tribe have always inhabited separate social spheres,

and cannot be accurately characterized as two factions of a single tribal entity (Cunha to McCaleb 9/4/2001, 2; PEP Response to Comments 9/4/2001).

Petitioner #113 did not offer specific comments on the appearance of names antecedent to both current petitioners on another June 27, 1873, document that did include the Gardners (#35 Pet. Overseers Reports; Lynch 1998, 5:83-84; better copy submitted EP Comments 8/2/2001, Items ACDE; for text see under criterion 83.7(e)), nor did PEP comment on the March 31, 1874, "Remonstrance to Superior Court, New London, against sale of land,"<sup>38</sup> although these are the first Eastern Pequot documents on which the name of PEP ancestor Marlboro Gardner appears and are, therefore, of some significance in understanding the development of the current petitioner.<sup>39</sup> On both these documents, the Gardner and Jackson families (antecedent to petitioner #113) appear in common with members of the Sebastian, Fagins/Randall, and Fagins/Watson families (antecedent to petitioner #35) signing the same documents for the same purpose.

The Eastern Pequot overseer's report filed April 4, 1883, by Charles Chipman noted, "That the present number of members of said tribe as known to said Overseer is now Thirty Three – two having been added the past year by order of Chief Justice Park" (EP Comments 8/2/2001, Box 1, Folder 9). The sequence of reports preceding this event is summarized here.<sup>40</sup> No copy of the

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<sup>38</sup>March 31, 1874, "Remonstrance to Superior Court, New London, against sale of land": "We the undersigned most respectfully state that we are members of and belong to the Pequot tribe of Indians of North Stonington." This petition again requested the removal of Leonard O. Williams as overseer. Signers were:

Calvin Williams, Amanda Williams, Mercy Williams her X, Eunice Cottrell her X, Leonard Brownne, Abby Randall, Florance Randall, Ellice Randall, John Randall Jr., Jesse L. Williams, Sophia Williams, Elizabeth Williams, Harriet E. Williams, William L Williams, Jane M. [James M.?] Watson, Augustus E. Watson, \_\_\_\_\_ Watson, Francis Watson, Mary A Potter X, Emily Ross?, Rachel Jackson X, Issac Tracy X, Fannie Jacson X, Ireine Jackson, X, Phebe Jackson X, Lucy Jackson X, Wily Jackson X, Permick? Jackson X, Fansos Jackson X, Molbrow Gardner X. (#35 Pet. Petitions; Lynch 1998, 5:82-83).

<sup>39</sup>The immediately subsequent overseers' reports did not include Marlboro Gardner or Eunice (Wheeler) Gardner: 2 August 1876 - 1 April 1877, C. P. Chipman as Overseer for the North Stonington Tribe of Pequot Indians. "And report makes that the following is a list or schedule of the members of said Tribe, as nearly as can be ascertained, viz: Eunice Fagan 1, Abby Randall & two Children 3; Amanda Williams 1; Lucy Hill 1; Rachael Jackson & 6 Childrer, 7; Leonard Nedson, 1; Calvin Nedson 1; Joseph Fagan 1; James Kinness, 1; George W. Hill, 1; Andrew Hill, 1; 5 Children of Laura Watson, 5; Total 24. Goods furnished to: Amanda Williams, Eunice B. Cottrell, Leonard Nedson, Lucy Hill" (EP Comments 8/2/2001, Box 1, Folder 9).

<sup>40</sup>1878: Chas. P. Chipman, Overseer of Eastern Tribe of Pequot Indians Town of North Stonington: Eunice Cottrell, Leonard Nedson, Amanda Williams, Lucy Hill, Mary E. Watson Sebastian (#35 Pet. Overseers Reports).

1879 March Term, New London County Superior court, Cha. P. Chipman, Overseer of Eastern Tribe of Pequot Indians. Supplies furnished Eunice Cottrell, for Leonard Nedson or Gallows (#35 Pet. Overseers Reports).  
March 1881, Chas. P. Chipman overseer's account, Eastern Tribe of Pequot Indians, Town of N. Stonington: Amanda Williams, Eunice Cottrell, Leonard Nedson, [different handwriting] Eliza Sebastian (#35 Pet.

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pertinent court order was included in the evidence submitted by petitioner #35, by petitioner #113, or by the interested parties. At the request of the BIA, the United States Attorney's Office in Connecticut attempted to locate the referenced order, but was unable to do so. The BIA thus does not have direct information as to the two names added by this order, or on what basis they were ordered to be added. However, the two names which appear on the sequence of overseer's reports immediately after 1883 that did not appear earlier are those of Marlboro Gardner<sup>41</sup> and his sister, Harriet (Gardner) Simons.<sup>42</sup>

On December 3, 1883, the "Pequot Tribe of Indians in the Town of North Stonington" presented another petition:

To the Hon John D. Park Chief Justice of the Supreme and Superior Courts of Connecticut. We the undersigned inhabitants of and belonging to the Pequot Tribe of Indians in the Town of North Stonington would respectfully represent to your honor that Mr. Chipman our former overseer being dead We would request your honor to appoint Charles H. Brown of North Stonington for overseer . . . . Signed: Eunice Cottrel her mark, Calvin Williams, Molbro Garner, Mrs. Rachel Jackson, Phebe Jackson, Fannie Jackson, Irene Jackson, Henry Jackson, William Jackson, Jennie P. Jackson, Mrs. Abby X Randall, Mrs. Amanda Williams, Mrs. Mary E. Bastian, Wm. A. Bastian, Ella J. Bastian, Edgar W. Watson, Amon Potter, Harriet Potter, Ned [Sesos?] Williams, Francis Watson (#35 Pet. Petitions; Lynch 1998, 5:91-92).

This document again shows antecedents of petitioner #113 (Gardner and Jackson) signing together with antecedents of petitioner #35 (Abby (Fagins) Randall and the children of Laura (Fagins) Watson).

The proposed finding also stated that, "Because of the missing overseer's reports from 1891-1909, it is not clear when other members of the Sebastian family -- in addition to Tamar

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Overseers Reports).

<sup>41</sup>April 1882 - April 1883. Charles Chipman, Overseer of Eastern Tribe of Pequot Indians Located in the Town of North Stonington. "That the present number of said Tribe as Known to said Overseer is now Thirty-Three--two having been added the past year by order of Chief Justice Park." . . . Receiving goods and services: Marlbro Gardiner, Amanda Williams, Eunice Cottrell, Leonard Nedson (EP Response, Box 1, Folder 9).

<sup>42</sup>March Term A.D. 1884, "Comes Charles H Brown Overseer of Eastern Tribe Pequot Indians in the Town of North Stonington Conn. "That the members of said Tribe are the same as reported by former overseer namely 33. Receiving goods and services: Eunice Cottrell, Harriet Symonds, Molbro Gardiner" (EP Response Box 1, Folder 9).

The Towns referred to "children of Margaret Gardner Simons (Marlboro's aunt)" (*Towns August 2001*, 148). Marlboro Gardner did not have an aunt named Margaret Gardner Simons: it is not clear whether this was intended as a reference to his sister, Harriet (Gardner) Simons.

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(Brushell) Sebastian and her daughter, Tamer Emeline (Sebastian) Williams -- began to appear in the records pertaining to the reservation" (EP PF 2000, 82). This question has been clarified by submission of additional reports in the petitioner's response (EP Comments 8/2/2001, Box 1, Folder 9), which do not, for this period, include other members of the Sebastian family (except Mary Eliza Sebastian, nee Watson, who was a Fagins descendant). The sequence of newly submitted overseers' reports mentioning the name of Tamar Sebastian is summarized here.<sup>43</sup>

In addition to the written materials, EP submitted a photograph with notation on the back: "Sa Apes, Aunt Emaline Apes, Leona Thomas, Grandmother Tamer N. Stonington 1890." While the petitioner did not provide analysis to accompany the photograph, identification of the persons shown, by use of the BIA's FTM genealogical data base, indicates that these persons were all Indian, and that the photograph provided documentation for a social network of which Tamar (Brushell) Sebastian was a member. Those portrayed were Gad W. Apes,<sup>44</sup> a Western Pequot and nephew of the Pequot preacher William Apes; his wife (nee Emeline Waity Tanner), and Emeline's niece. Gad W. Apes, at the time of the 1880 census, lived next door to Marlboro and Eunice (Wheeler) Gardner; he provided an affidavit for the Civil War service of John Noyes Hoxie, brother of Rachel (Hoxie) Jackson; at the time of the 1910 census, he was boarding with Eunice (Wheeler) Gardner. Leona Thomas was the daughter of Emeline (Tanner) Apes's sister,

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<sup>43</sup>April 1888 - April 1889, Gilbert Billings Overseer. List of Tribal members: Abby Randall, John J. Randall, Flora Randall, Lucy Hill, Francis Watson, Mary Watson, Edgar Watson, Munroe Watson, Malbro Gardiner, Phebe Jackson, Irene Jackson, Jenny Jackson, Lucy Jackson, William Jackson, Fanny Jackson, Ed. Jackson, Grace Jackson, Maria Simons, Mary Simons, Herman Simons, Lucy A. Sawant, Russel Simons, Dwight Gardiner, Calvin Williams, Tamar Sebastian. Paid or receiving goods or services: Lucy Hill Reynolds, Calvin Williams, Tamar Sebastian, Malbro Gardiner (EP Comments 8/2/2001, Box 1, Folder 9, "Systematic Survey"; no photocopy located in the evidence submitted).

1890-1891, Report of Gilbert Billings, overseer. List of members same as prior years, except that the name of Jesse Williams inserted between Calvin Williams and Tamar Sebastian; goods and services furnished to Malbro Gardiner, Calvin Williams, Tamar Sebastian, Leonard Nedson, Jesse Williams, Mary Ann Potter (EP Comments 8/2/2001, Box 1, Folder 9).

Eastern Tribe Pequots Indians North Stonington In account with Gilbert Billings overseer 1901-1902, 27 June 1902. Members of Tribe: Abby Randall, John J. Randall, Alexander Randall, Lucy Hill, Frances Watson, Munroe Watson (dead), Mary Watson, Phebe Jackson, Irene Jackson, Jennie Jackson, Lucy Jackson, William Jackson, Fanny Jackson, Ed. Jackson, Maria Simons, Mary Simons, Herman Simons, Lucy A. Sawant, Russel Simons, Dwight Gardner, Calvin Williams, Tamar Sebastian, Jessie Williams, Ed. Watson (dead), Leonard Ned (EP Comments 8/2/2001, Box 1 Folder 9).

Eastern Tribe Pequot Indians North Stonington in account with Gilbert Billings Overseer 1904-1905: Members of Tribe: John Randall, Alexander Randall, Phebe Jackson, Irene Jackson, Jennie Jackson, Lucy Jackson, William Jackson, Fannie Jackson, Ed Jackson, Maria Simmons, Mary Simmons, Herman Simmons, Russell Simmons, Dwight Gardner, Calvin Williams, Jesse Williams, Mary Watson (EP Comments 8/2/2001, Box 1, Folder 9). Tamar (Brushell) Sebastian was not included in the above list of "members" but there was a notation "paid for Mrs. Sebastian 4.59" (Billings account 21 June 1905; EP Comments 8/2/2001, Box 1, Folder 9).

<sup>44</sup>On Apes, see also Stone, *Cracker Barrel Chronicle* 1985 [1948].

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Fidelia (Tanner) Thomas. Leona's father, Benjamin Thomas, was a prominent Narragansett leader; Leona's brother, Marshall Thomas, subsequently married Maybell George, a granddaughter of both Eunice (Wheeler) Gardner and of John Noyes Hoxie. Other visual documentation, such as copies of late 19<sup>th</sup> century photographs of Manuel Sebastian and Tamar (Brushell) Sebastian, were obtained by the BIA anthropologist during his site visit.

The controversy over the affidavit supposedly sworn by William Henry Jackson to the effect that Tamer Emeline (Sebastian) Swan Williams was a Pequot (Moore Interview 12/8/1991, 55-56, 74-75)<sup>45</sup> should most probably be dated to the period shortly after Calvin Williams's death. Neither petitioner #35, petitioner #113, nor the third parties submitted a copy of the referenced affidavit. At the request of the BIA, the United States Attorney's Office in Connecticut attempted to locate a copy, but was unable to do so in the most likely sequence of archival records.

The proposed finding stated that, "The documentation throughout this period contributes to a showing of community under 83.7(b)(1)(vii) [*sic*, should be viii], 'The persistence of a named, collective Indian continuously over a period of more than 50 years, notwithstanding changes of name'." (EP PF 2000, 79-80).

*1920's to 1973: Introduction.* In regard to the period from 1920 to 1940, the proposed finding stated:

The historical Eastern Pequot tribe as a whole meets the requirements of criterion 83.7(b) for the time period between 1920 and 1940. There continued to be kinship based social ties which derived from the number of marriages in existence in this time period which linked the several family lines and from marriages in the previous generations. . . . There was also substantial solidarity within the two segments which may have subsequently separated into the two petitioners with

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<sup>45</sup>MS. MOORE: (inaudible) This Lonnie must've been related to Fannie Jackson then; you know, when she was a Sebastian, my uncle. But this is the one that - - she had my Uncle Will to go to the - - I don't know whether they went down to the Manes, or whether they went up to see a judge up in Norwich, the overseer. But she had him to swear that she was a Pequot and he did.

MR. MEISNER: Lonnie had your Uncle Will?

MS. MOORE: No, Fannie, my Uncle Will's wife Fannie had Lonnie sworn that she was a Pequot.

MR. MEISNER: Was she a Pequot?

MS. MOORE: No.

MR. MEISNER: Lonnie?

MS. MOORE: No. That's a - - because I could remember I was back there with little kids and all of them around there, all the time that's all you could hear was their fussing about Fannie Jackson and Will was such a - - you know, such a weakling to do a thing like that and to betray us all, you know, in that way. And so there was always talk about it. But after a while, they was friendly. They were friendly with Aunt Lonnie, and we used to go up to their house, and she was nice to us. So we didn't carry no bad feelings, but that has been so many years after that. But she was sort of a young - - real young person. But it was - - I think she was really related to Fannie, you know" (Moore Interview 12/8/1991, 55-56; see also 47, 74-75).

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the JACKSONS, to a considerable extent, constituting a bridge between the Sebastians and the Gardners in the 1930's and early 1940's, . . . . (EP PF 2000, 99).

In regard to the period from 1940 to 1973, the proposed finding continued:

The evidence in the record indicates that the Eastern Pequots as a whole, including the family lines of both petitioners, remained essentially a single social group in this time period. There remained, to a somewhat diminished degree, social ties based on past marriages between family lines and intertribal marriages. There was substantial solidarity within the two segments which may have subsequently separated into the two petitioners. However, this finding does not reach a conclusion that the families ancestral to the petitioning groups had separated into two communities before 1973. The available interview data is insufficient to establish at what point in time they may have become two separate communities. Many individuals who grew up in the era when there was clearly a single tribal community were still alive between 1940 and 1973, and a few are still alive today. Available interview data from the petitioners and BIA interview data do not indicate any informal social interaction between the Sebastians and the Gardners among members in their 60's or younger (born after 1940). Further, there was no substantial data found in the available interviews to indicate significant social connections of the JACKSONS in recent eras with either the Gardners or the Sebastians, notwithstanding the marriages of both Atwood Williams and his aunt, Grace Jackson, in the previous generation, with Gardners (see Moore 1991) (EP PF 2000, 100).

As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(b) from 1940 to 1973, based on the conclusion that there was a single tribal community, including but not exclusively composed of, the Sebastian descendants (EP PF 2000, 100).

In its Comments, EP focuses on its own direct antecedents:

In response, we present arguments that the Eastern Pequots represent a continuous community related through both social and kinship ties, and that representatives of all progenitors' lines have played significant roles in the Eastern Pequot community since 1883 (Introduction 8/2/2001, 9; EP Comments 8/2/2001).

These Comments included a "systematic analysis of Eastern Pequot kinship and marriage patterns up to and including living members of the Eastern Pequot community (Report IIA and Appendix I)" (Introduction 8/2/2001, 9; EP Comments 8/2/2001).

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This portion of the final determination tends to follow, where necessary, the directions laid out by the reports of the two groups, and deal subsequently with the analysis of the issue of one community or political system. PEP's Comments, by design, are focused only on their claimed lineages. EP, though accepting the conclusion of the proposed finding in the matter of one tribe through 1973, has, at least post-1950, in practice focused on its own members. Even the older oral histories done by EP do not direct much attention to the Jacksons and the Gardners.

Geographical Data. The proposed finding stated concerning community from the 1920's through 1973, with reference to the reservation and the surrounding towns of Norwich, Groton, Mystic and Old Mystic, that:

There is no systematic discussion in the Eastern Pequot petition of who or how many were living elsewhere than in these locations at this time period. It is clear from overseers records, birthplaces and oral histories that not all of the members lived in one of these areas between 1920 and the present but that at least a few families had moved to Providence and Hartford (BIA interviews; Burgess 1997 and 1998 interviews; Connecticut lists of members). It is also clear that some, at least, returned from these areas to visit relatives, and in some instances, returned to live. A clearer picture of this portion of the historic membership would support the petitioner's position concerning community, that social and other ties were responsible for the continued concentration of members in the immediate region (EP PF 2000, 93).

The petitioner's 1998 petition narrative described the area in a 10 mile radius around the reservation as the "cultural, spiritual, and geographic center of the Eastern Pequot Tribe." It went on to state that:

the reservation has been a home to the tribe's more distant ancestors and a place where the great-grandparents, grandparents, and parents of the current membership have lived and managed to survive in the face of decades of oppressive and antagonistic policies and actions of colonial and state officials. The Eastern Pequot reservation has also served the tribe as a central place for over 300 years, where tribal members have gathered for social events, economic pursuits, mutual aid, and to conduct political business (EPNarr. 7/98, 107).

In their Comments on the proposed findings, PEP cites the Snoqualmie proposed finding which stated that because a substantial portion of their members lived within a 50 mile radius, this was precedent for finding that a community existed (Austin, Chapter Two, 20-21, PEP Comments 8/2/2001). However, that finding stated that the radius was such as to not provide evidence against the existence of a social community, but did not provide evidence for it either.

The Snoqualmie proposed finding stated that:

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The geographical distribution of the Snoqualmie membership has not changed substantially from that of the previous decades. There are no distinctly Snoqualmie settlement areas. About 70 percent lives within a 50 mile radius of Tolt/Carnation, most between Marysville and Monroe on the north and Auburn on the south, a distance of about 50 miles. This is not close enough to raise any presumption of significant social interaction, but is close enough that social interaction at a significant level is easily possible. A highly geographically dispersed membership would require evidence to overcome a presumption against maintenance of community based on the geographic dispersion of a group's members over great distances with no concentrations in smaller areas. (Snoqualmie PF 1993, Summary Under the Criteria, 15).

The statement was context for detailed and specific evidence of the maintenance of community among the Snoqualmie. (The PEP geographical data is dealt with in that report).

The State refers to the proposed findings as using the Snoqualmie proposed finding inaccurately, stating that, "*Snoqualmie* does not, therefore, stand for the proposition that social interaction can be assumed by any level of geographical proximity" (*State of Connecticut August 2001*, 29). This is not a claim made by the Eastern Pequot proposed finding. The proposed finding stated that simply arguing that the presence of members in a circumscribed area isn't particularly significant evidence by itself of community, because this residence pattern could, and has at times, resulted from the past existence of a community, some of whose descendants have remained in a general area (EP PF 2000, 136). However, the geographical patterns in regard to the historical Eastern Pequot tribe and the two current petitioners provide supporting evidence of community under 83.7(b)(1) in combination with other forms of evidence, even during the time periods when the residence patterns are not at the "sufficient in itself" level of 83.7(b)(2)(i).

In regard to the following data presented by EP, it is noted that "core" here is not used by the EP reports clearly in the sense of a "social core" but to compare residents in a defined geographic "core area" with those in peripheral geographic areas. The EP reports define this geographic "core" as consisting of "that territory surrounding the Lantern Hill reservation within a radius of 10 to 15 miles" (Flowers and Grant-Costa IIC, 78; EP Comments 8/2/2001).

The EP Comments contain two reports that address residential patterns. One reviews census data from 1850 to 1920 and birth information from the current EP membership list to develop data as to residence patterns from 1850 to the present (Flowers and Grant-Costa IIC with related charts, appendices, and data; EP Comments 8/2/2001). A second report, based solely on the current membership list, further analyzes historical residence patterns, from the perspective of those on the current membership list (limited to living members) as opposed to patterns from historical documents (Flowers IID; EP Comments 8/2/2001).

This portion of the EP submission basically confirms with a greater quantity of specific data the geographic patterns described in the proposed finding. These include the relatively early

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presence of some families in Hartford and Providence (Flowers and Grant-Costa IIC, 79; EP Comments 8/2/2001). The reports add attention to families, mostly with Narragansett connections, in Westerly, Rhode Island (Histogram 10, Flowers and Grant Costa IIC, 102; EP Comments 8/2/2001).

The geographical data is presented in Report IIC in a very summarized form which did not identify family-line related patterns of residence or other specifics, such as generational differences. A separate EP report, on community and political leadership, 1870 to 1920, includes tables surveying data from the street directories of New London, Groton and Stonington, 1887-1921, which gives specific name and street locations (in most cases) (IIIC, 152-155, EP Comments 8/2/2001). Though relatively few individuals are listed, the data supports the oral histories and census based data. The EP findings were generally consistent with data in the BIA's genealogical data base in regard to birth and death locations of Eastern Pequots for the relevant time period. For this final determination, the BIA did not prepare an analysis of the specific data summaries drawn from the census.

The most frequent unit of measurement in EP Report IIC, the "family" appears to be the nuclear family, though the report doesn't specify this and the census charts (Flowers and Grant-Costa IIC, 82-85) are more probably based upon household units. The universe for the first section is, based on inspection, the complete set of historical Eastern Pequot family lines, *i.e.*, includes the PEP as well as the EP lines. The developed patterns are presented as charts which are consistent with each other and the proposed finding.

The first set of charts, based on the census, indicates that all of the families lived within the geographic core (defined as the expanded core area) between 1850 and 1880 (Flowers and Grant-Costa IIC, 82-83; EP Comments 8/2/2001). The census based data presented by EP shows 100 percent resident in the Towns of Groton, North Stonington, and Stonington (Groton and Stonington include Mystic and Old Mystic) from 1850 to 1880. In 1900, there was 21 per cent residence "other" and in 1910, 27 per cent "other", but the presentation was not consistent, in that on these two charts, "other" included Stonington (Flowers and Grant-Costa IIC, 84; EP Comments 8/2/2001). The chart for 1920 showed 30 per cent in Groton, 30 per cent in North Stonington, four per cent in Stonington, and 36 per cent "other" (Flowers and Grant-Costa IIC, 84-85; EP Comments 8/2/2001). The EP charts and reports provide no details as to locations or numbers of people, only percentages.

The other set of data presented is derived from birthplaces of members on the current EP membership list, using the birthplaces as a means of identifying where families were residing in the past (Flowers and Grant-Costa IIC, 93-103; EP Comments 8/2/2001). These charts (Report IIC, Section III) give percentages (no total numbers) of families living within the core, in the core periphery, and outside. Leaving aside the figures before 1920, which are based on too few individuals to be useful, the distribution for 1920 to 1929 is 77 percent core, 15 percent periphery and 8 percent outside (Flowers and Grant-Costa IIC, 94; EP Comments 8/2/2001). With significant fluctuations, these shift to 51 percent core, 34 percent core periphery and 15 per

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cent outside by 1960-69 (Flowers and Grant-Costa IIC, 96; EP Comments 8/2/2001) and 42, 28 and 30 per cent in 1980-89 (Flowers and Grant-Costa IIC, 97; EP Comments 8/2/2001). Separately, the report state, based on an earlier membership survey, that 42 percent of the adults on the current roll were born outside the 10-15 mile radius, with the distribution of these, not surprisingly, skewed towards those born after 1950 (Flowers and Grant-Costa IIC, 106; EP Comments 8/2/2001).

A second set of charts, designated as Histograms (Flowers and Grant-Costa IIC, 98-104; EP Comments 8/2/2001) which contain more specific geographic information, gives the number of families in specific towns during each decade, ratifying the conclusion of the proposed finding that, after about 1960, increasingly large numbers of EP families resided in New London (Histogram 3) and Hartford (Histogram 2) (Flowers and Grant-Costa IIC, 98-99; EP Comments 8/2/2001), as well as Providence, Rhode Island (Histogram 8) (Flowers and Grant-Costa IIC, 101; EP Comments 8/2/2001). The rest of the chart data does not present immediately understandable patterns and the accompanying narrative (Flowers and Grant-Costa IIC, 78-79; EP Comments 8/2/2001) presents no specific commentary or interpretation of them.

The purpose of the analysis is to support EP's thesis that most of the group remained within some kind of core area, under a now expanded definition, until recently. The analysis in Report IIC does not provide guidance as to which families were where and when they were there, which would have made clearer the discussion in the other reports of visiting patterns, reservation residence and the like based on interviews and other documentation. The much briefer analysis of birthplaces by family line in Report IID does confirm the proposed findings more general analysis that the pattern of residence in certain cities was not random, but rather focused within individual sublines, such as the concentration of descendants of Phebe (Sebastian) Smith in Hartford, the descendants of Laura Fagins in Providence, Rhode Island, and the descendants of Albert Sebastian in South Kingstown, Rhode Island (Flowers IID, 106; EP Comments 8/2/2001).

The geographical data shows that quite a few Eastern Pequots were and are close enough to interact but the geographical patterns do not in themselves show such interaction. Substantiation for EP's thesis that it was a "core" area in a social sense lies in the interview data, to the extent "core" in this portion of their comments was intended to be entirely equivalent to a social core (Introduction 16-17; EP Comments 8/2/2001).<sup>46</sup>

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<sup>46</sup>EP elsewhere defines a "social core" as, "those people who were (a) born on the reservation or within a ten to fifteen-mile radius; (b) participate actively in Pequot social events, (c) participate actively in the political process, (d) have multiple kin-ties with other Eastern Pequots, (e) identify themselves as Eastern Pequots, and (f) maintain strong social ties with other Eastern Pequot members" (Introduction 16-17, EP Comments 8/2/2001). This definition is not used in the geographical analysis nor is data presented which actually describes such a core as opposed to presenting a theoretical definition.

Fourth Sunday Meetings. The proposed finding said:

*“Fourth Sunday” Meetings.* The first of these were referred to as “4th Sunday Meetings,” gatherings which were “both religious and social in nature” (EPNarr. 7/98, 50-51). These were prayer meetings, at which families gathered for religious ceremonies, followed by a social gathering and a meal. According to the petition, the adults “discussed tribal matters and gossiped.” The reported topics of discussion were any problems residents or other members were having with State or local officials regarding either reservation land use or assistance, trespassers on the reservation, and problems with the “LeGault faction.” The meetings took place for the most part on the reservation, at the home of “Aunt Liney,” Tamer Emeline (Sebastian) Williams, daughter of Tamar (Brushell) Sebastian (EP PF 2000, 94).

The meetings are described by the EP petition as beginning “sometime prior to 1921,” with the precise date not known. According to the petition text, the meetings were first held on High Street in Mystic, at the home of Sylvia (Sebastian) Stedman and then shifted to the reservation. There are some inconsistencies in the reported date of this shift, the main petition narrative saying 1921, while Burgess says “towards the end of the 1920’s” (Burgess 1998, 11). The oral history accounts of the High Street meetings which reportedly preceded those on the reservation do not indicate whether they were as large as those on the reservation (BAR/Lillian Sebastian; Burgess 1998, 11). The available descriptions suggest they were smaller, and more limited in character to religious services. They may have changed in character with the shift in location and in “sponsorship” between the two sisters, or there may not be a connection between the two. Thus it is not established that the High Street meetings were as important gatherings to demonstrate community as the Fourth Sunday meetings on the reservation (EP PF 2000, 94).

According to the petition, there was a larger “Fourth Sunday” meeting in July, attended by about 40 people (EPNarr. 7/98, 50). The petition characterizes this as about 20 to 25 percent of the membership. No source was given for this figure. The available oral histories were too limited to establish the character of this meeting as different than the other meetings. BIA interviews did not provide information to support this. (EP PF 2000, 94-95).

EP Response to Comments. The EP Response to Comments addresses the Towns’ and the State’s Comments in regard to the estimate that the EP consisted of 60-100 people during the period when the meetings were held and that these meetings drew at least 12-25 people (EP Response to Comments 9/4/2001, 40). They also argue that the amount of attendance was significant given the small size of the group, attendance across family lines, and the limited transportation during this period.

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The Response states that the EP did not claim that the meetings were not religiously based nor that these were formal tribal meetings (EP Response to Comments 9/4/2001, 42) and also presents an explanation why interviewee accounts differ, without being unreliable, such as differing experiences by different individuals (EP Response to Comments 9/4/2001, 41). They present an argument that such an event, bringing different people from different families together, provided an opportunity to discuss family and political matters.

PEP Comments. The PEP Comments provided some additional information in regard to the dates when the meetings were held and the participation of the Jackson family. Barbara (Spellman) Moore, daughter of Phebe (Jackson) Spellman, whose mother lived on the reservation from about 1912 until her death in 1922, recalled Sunday meetings on the reservation, led by “a Dixon that used to live up over the hill from Aunt Lonnie Williams [Tamer Emeline (Sebastian) Swan Williams] too” . . . , “and he used to have those Sunday meetings and all, we’d go to. But I don’t know of any Gardner’s belonging. Maybe I’m wrong, I don’t know. I don’t know everything” (Moore Interview 12/8/1991, 47; see also 84-85, 108). Moore several times referred to Tamer Emeline (Sebastian) Williams as “Aunt Lonnie” (i.e., Aunt Liney) (Moore Interview 12/8/1991, 47, 56).

Third Party Comments. Connecticut raises the issue of the meetings being open to other than members of the group (*State of Connecticut August 2001*, 34-35) and states there is no evidence that there was a larger Fourth Sunday meeting, noting the BIA staff’s observation, also stated in the proposed finding (EP PF 2000) that there was not good evidence for a distinct Fourth of July or July Fourth Sunday meeting which was larger other meetings (*State of Connecticut August 2001*, 35). The State mainly focuses on the issue of the quality of interview information (*State of Connecticut August 2001*, 34-35; *State of Connecticut August 2001* Appendix, 15-16).

The State argues that, “In any event, the meetings did not appear to involve a predominant number of members, meaning at least half of the membership. 59 Fed. Reg. 9287. Therefore these meetings are insufficient evidence of community relations under criterion (b)” (*State of Connecticut August 2001*, 35) and makes the same argument in regard to the Alden Wilson Picnics and other gatherings and meetings as “insufficient evidence” for criteria 83.7(b) and 83.7(c). The regulations provide that evaluations of community are made on the basis of combinations of evidence under 83.7(b)(1). Each type of evidence is evaluated together with other evidence, not separately, except for those specialized instances, stated in 83.7(b)(2) and 83.7(c)(2) where certain evidence is sufficient in itself.

The State's comments focus on the oral descriptions of these meetings which characterize them primarily as religious or as prayer meetings. The State cites one individual's statement that the talk was about religion, “not Indians,” on indications by others that what was discussed was “not any different than ordinary family issues,” and on Roy Sebastian, Jr.,'s statement that the leaders kept the problems to themselves and then resolved them (*State of Connecticut August 2001*, Appendix 15-16).

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The Towns assume, incorrectly, that the Fourth Sunday meeting material in the proposed finding was added at the last minute, because it did not appear in the draft technical reports (*Towns August 2001*, 163). The anthropological portion of the work on these petitions resulted only in language for the Summary Under the Criteria, because, under the February 2000 Directive, no further technical reports were to be written. The portion of the draft technical reports which had been completed before the Directive by the historian/genealogist was provided to parties. The BIA anthropologist did not draft a separate technical report for the Pequot findings, but did the Fourth Sunday meeting analysis as part of the main analysis in the Summary.

The Towns raise issues about the reliance on oral history in this instance (*Towns August 2001*, 163), because many of the events under discussion occurred long in the past and “due to the self-serving interest of the petitioners in producing a positive result” (*Towns August 2001*, 163-164). The Towns suggest that the EP shaped the interviews by distributing materials to members, holding lectures and the like, so as to “project a uniform story to the BAR researchers after being coached on the appropriate ‘spin’” (*Towns August 2001*, 165). (For further discussion, see the general discussion of the use of interview materials, above).

One of the key conclusions stated by the Towns concerning the evidence for the Fourth Sunday meetings are that there is not evidence in the interviews to substantiate the proposed finding's conclusions that these meetings were political in nature or that political issues were discussed at them. The Towns conclude that the evidence showed them to be religious and familial social functions (*Towns August 2001*, 177). They also focus on the fact that some sources stated that the meetings were open to non-Indians and thus could not be considered “tribal.” The Towns also note evidence that Ephraim Williams, a Western Pequot, led the prayers rather than Tamer Emeline (Sebastian) Williams and that a non-Indian church woman “played a key role in these meetings” (*Towns August 2001*, 177). The Towns noted the absence of references to participation by the family lines of the PEP, specifically criticizing the absence of comment concerning participation by the Jackson family line (*Towns August 2001*, 176). The Towns also concluded that the evidence did not show these meetings as occurring except during the span of the late 1920's to 1937 (*Towns August 2001*, 172), *i.e.*, a limited period of time.

The Towns also conclude that the number of participants was not in fact “substantial” in terms of the regulations (*Towns August 2001*, 173). The Towns also argue that the meetings did not constitute evidence of distinct cultural patterns under 83.7(b)(1)(vii) or a shared sacred or secular ritual activity, under 83.7(b)(1)(vi), because it did not encompass “most of the group” as the regulations require and were not distinct from non-Indian culture.

Analysis of Comments and Responses. EP provided additional oral history references to the Fourth Sunday meetings (Introduction 11; EP Comments 8/2/2001). The interviewees describe Liney as a very religious woman, with a small organ in her house, presumably for the services. Additional documentation of meetings was not provided, except for Sarah Swan's diary's reference to going to Fourth Sunday at Ephraim Williams's in 1909. The petitioner's researchers did not indicate that they had looked into local church records for possible data concerning the

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Fourth Sunday meetings, even though it is fairly well established that members of the Union Baptist church in Mystic also attended these from time to time, that ministers of one or another church sometimes preached and sometimes visited and that a “church woman” apparently from Mystic, Mrs. Button, was involved, being mentioned in several accounts and noted as close to Liney [Tamer Emeline (Sebastian) Swan] Williams, who in turn was noted as quite devout (see discussion in EP Response, Report IID, Burgess).

The dating of these meetings is not precise, but in all likelihood does reach back to after Calvin Williams was incapacitated (about 1910), before his death in 1913, and to Williams's own services. The chronology can be constructed from several items of unrelated evidence coming from different sources, and from both petitioners. The proposed finding noted that a “Samuel Dixon” was mentioned as a Narragansett preacher who took over running the Eastern Pequot “Fourth Sunday” meetings after the death of Calvin Williams (EP PF 2000, 95). Barbara (Spellman) Moore recalls that a “Reverend Dixon” ran the meetings that her family attended (Moore Interview 12/8/1991, 47). The EP Comments provide the additional information that there was a Simeon F. Dickson listed on the 1910 and 1920 censuses for North Stonington. His name appeared on the schedules immediately before the Lantern Hill reservation households of Vinard and Sarah (Swan) Holland, which included Tamer Emeline (Sebastian) Swan Williams, and Rachel (Spellman) Silver. He was listed as “B” and age 62.”<sup>47</sup> Alton Smith, Sr.,<sup>48</sup> remembers these meetings as a very young child, which would have been as early as 1922. Smith, who dates things fairly carefully, provides support that these continued into the 1930's (A. Smith 1999a).

The additional evidence submitted and a review of that available for the proposed findings, indicates these meetings were contemporaneous with the religious meetings on High Street in Mystic, with substantial overlap at the least between who attended each (see also discussion of the High Street meetings).

The descriptions for the most part are actually the interviewee's experience, which limits its information, since the individual was usually a child or at best a teenager, and not well acquainted with what the adults were doing. However, Harold Jackson (born 1915) (Harold Jackson 1999), Lillian Sebastian (born 1906) (Lillian Sebastian 2000) and Kenneth Brown Congdon (born 1920) (Congdon 1988) were at least older teenagers. A certain amount of oral history which was transmitted from the participant to a younger individual is presented as well. The accounts suggest these events were something talked about a great deal, even after they had

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<sup>47</sup>The censuses provided information that he was from Bridgeport and had a wife, Mary, age 62. A cousin, Emeline Moore, lived with him, and an adopted daughter, Lillian Dickson (Censuses of North Stonington, CT, 1910 and 1920; I:26, EP Comments 8/2/2001).

<sup>48</sup>All of the references in the PEP materials to Alton Smith or Alton Emery Smith in fact refer to Alton Smith, Sr., aka Alton W. Smith, the father of Alton Emery Smith, aka Alton Smith, Jr. The younger man's involvement in EP affairs does not begin until the early 1990's.

ended. Alton Smith's careful descriptions add that the meetings were held on the reservation largely in the summer, by his understanding (but he notes he was in North Stonington only in the summers). Arthur Sebastian, Jr., makes a similar observation (A. Sebastian 1998).

Several different individuals are noted as preachers, although the accounts indicated that various "lay" attendees spoke when moved to do so. The preachers and the involvement of members of other area churches puts these events in the broader context of religious activity of Eastern Pequots in the area. Two preachers were frequently mentioned. The first was Ephraim Williams, who died in 1929, a Western Pequot who lived on the Ledyard reservation, married to Sarah "Sally" Sebastian (an Eastern Pequot). The other was the Reverend Vinard S. Holland, a non-Indian who was the husband of Tamar Emeline (Sebastian) Swan Williams's daughter, Sarah "Sadie" Swan (Roy Sebastian 1988). Holland died in 1935.

The accounts confirm that a Fourth Sunday meeting was also a big social event, with a lot of cooking, eating and socializing afterwards. There was no information which would characterize these meetings as political in nature. The closest is the idea that the older people, family heads did sit around and talk about events and family problems.

Several accounts do indicate that Fourth Sunday meetings were not held exclusively at Liney Williams house, but moved among the houses of different people that attended. Harold Jackson said that they went to seven or eight different houses, mentioning Gardners and Williams. Alton Smith said that they were always held at Liney's but, unlike Smith, Jackson's residence on the reservation was year-round. It would not be a surprising practice if they rotated, since in some churches, the Fourth Sunday is an occasion to get together with other congregations. At least one of the venues was at Ephraim Williams' house, on the Western Pequot reservation (see above, Sarah Swan diary entry; see also Congdon 1988).

There was no evidence to support PEP's 1996 claim that these meetings were hidden from view, (PEP did not renew this claim in its Comments), since all of the interview accounts are from insiders, and local non-Indians were aware of the meetings, their nature, and their participants, as indicated by the *Cracker Barrel Chronicle* written by North Stonington storekeeper George H. Stone in 1948, which referenced both Calvin Williams and Jack Randall by name and described the style of preaching (Stone 1985, 77-78). The PEP Comments do not renew their statement that PEP's family lines had attended different Fourth Sunday meetings than the EP had (Grabowski 1996, 191). A brief mention is to the effect that the Fourth Sunday meetings were "family" events of the Sebastians in which the PEP antecedents did not participate rather than "tribal" events (McMullen 9/4/2001, 13, 19; PEP Response to Comments 9/4/2001). The proposed finding noted that, absent specific evidence, it was unlikely that PEP's oral history referred to a separate set of Fourth Sunday meetings, also held on the reservation during the same time period (EP PF 2000, 95-96). The evidence discussed for the final determination, including some from current PEP members, indicates that the Jacksons, at least, did participate in them.

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Nothing specific was found in the available interviews, nor cited in the EP Comments to support the idea, discussed in the proposed finding, that those in attendance discussed the “LeGault faction” (EP PF 2000, 94). While the cited terminology is obviously a modernization, the conflict, judging by Moore's interview, would have been quite a live topic at the time. While it could have been a topic of discussion, there was no specific evidence it was.

Both the State and the Towns raise the issue of the extent of participation in the Fourth Sunday meetings, in the sense of what percentage of the Eastern Pequots attended (*State of Connecticut August 2001*, 35; *Towns August 2001*, 172-173). The State holds that, if the meetings did not involve at least half of the membership, they would not be evidence for community (*State of Connecticut August 2001*, 35); this misstatement of the distinction between ordinary levels of evidence and sufficient evidence under 83.7(b)(2) has been addressed above.

This final determination does not revisit the estimates of the number attending in relation to the total number of potential attendees. The proposed finding noted that there was conflicting evidence in the interviews (EP PF 2000, 95). There was only limited evidence in the additional oral histories submitted for the final determination on which to base an precisely estimate of the number of individuals who characteristically attended Fourth Sunday meetings. An approximate estimate based on the existing descriptions suggests 10 to 20 adults.

It is possible that the character of the meetings differed over time, and, hence, the character of the attendance. Descriptions of attendance indicate that it was by and large drawn from the Indian population of the area, including some Western Pequot (apparently through kinship connections) and Narragansetts (again probably through kin connections). The best picture is that while non-Indians in the area sometimes came, these were primarily Indian functions and centered around the Eastern Pequot families. Burgess's report and some other evidence indicates that Eastern Pequots came from Norwich, Old Mystic and Mystic, and included attendees from the Old Mystic Baptist church and Union Baptist church in Mystic (Burgess IIID; EP Comments 8/2/2001). Both Moore and Harold Jackson indicate that some of the reservation Jacksons, including Moore's family had attended at least some, but the descriptions are too limited to indicate how much or how frequently. Jackson specifically remembered Ephraim Williams preaching and indicated there were others but could not recall their names. Jackson noted specifically that Franklin Williams and Grace Jackson had attended (Jackson 1995a). Moore, however, states specifically that none of the Gardners attended the meetings her family went to which by best reconstruction were part of the same series (Moore Interview 12/8/1991, 47).<sup>49</sup>

Burgess's report on EP community states that there were "prayer meetings" at Catherine Harris house which she identifies as probably Fourth Sunday meetings (Burgess IIB, 40-41, EP Comments 9/4/2001). One interviewee, a granddaughter of Catherine Harris, reported Fourth

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<sup>49</sup>The journal of Sarah (Swan) Holland for 1909 indicated contacts with Mr. and Mrs. Ralph Powers, Grace G [probably Grace (Jackson) Gardner], Tamar (Brushell) Sebastian, Tamar Emeline (Sebastian) Williams, Calvin Sebastian, and a number of Western Pequot (Glaza and Grant-Costa IIIC, 145; EP Comments 8/2/2001).

Sunday meetings at Catherine's house 1944 to 1948, noting them as mostly in the summer (cited in Burgess, IID, 41, EP Comments, 8/2/2001) Her account is not entirely reliable, since she reports the meetings alternated between Harris's and Liney Williams's, but Williams had died in 1942. Notably the account does mention again Mrs. Button. A second account, by another granddaughter identifies Ephraim Williams as a preacher at such meeting, in the 1930's and 1940's. Williams, however, died in 1929. Both for the period when Liney [Tamer Emeline (Sebastian) Swan Williams] was still alive and later, there is insufficient interview evidence and no documentary evidence to establish that these were Fourth Sunday meetings. There was no mention of such gatherings in Harris's "journal" (EP Comments 8/2/2001, Box 1, Folder Harris) – no mention, that is, that Harris either attended Fourth Sunday meetings at Tamer Emeline (Sebastian) Swan Williams's house or hosted such meetings herself.<sup>50</sup>

The Comments and Responses did not provide further data about a Fourth of July Fourth Sunday meeting that was bigger than the regular meetings. The proposed finding concluded that there was not evidence to establish this. The accounts of a larger meeting may be a mixing of recollections of a variety of events, such as the Alden Wilson Fourth of July events, with Fourth Sunday meetings.

High Street Meetings. The EP petition asserted that religious meetings held on High Street in Mystic, at the home of Sylvia (Sebastian) Steadman were precursors of the Fourth Sunday meetings, which subsequently shifted to the reservation. The proposed finding did not reach a specific conclusion on this question. The proposed finding concluded that:

There are some inconsistencies in the reported date of this shift, the main petition narrative saying 1921, while Burgess says "towards the end of the 1920's" (Burgess 1998, 11). The oral history accounts of the High Street meetings which reportedly preceded those on the reservation do not indicate whether they were as large as those on the reservation (BAR/Lillian Sebastian; Burgess 1998, 11). The available descriptions suggest they were smaller, and more limited in character to religious services. They may have changed in character with the shift in location and in "sponsorship" between the two sisters, or there may not be a connection between the two. Thus it is not established that the High Street meetings were as important gatherings to demonstrate community as the Fourth Sunday meetings on the reservation (EP PF 2000, 94).

Analysis of Comments and Responses. EP developed additional interview data for the final determination. There is no documentary data for these meetings. The pattern of information indicates that these High Street meetings were in part contemporaneous with the Fourth Sunday meetings on the reservation. One account noted that "In the 1920's there were house meetings

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<sup>50</sup> The journal is not a diary but rather a ledger which contained a variety of information ranging from comments on her activities, addresses, clippings, recipes, and other materials.

on Starr St. Lane at Aunt Sylvia Steadman's. At these meetings there would be prayers. Sarah Williams, and David and Johnny Sebastian" (Lillian Sebastian 1998). The same white church woman who was linked to Tamer Emeline (Sebastian) Swan Williams and the Fourth Sunday meetings, Mrs. Button or Butten, who took an active interest in the tribe, also reportedly attended these. Mrs. Butten was close to Bertha (Williams) Brown and Liney Williams. According to the oral history, "[t]here would be singing at these meetings and a collation [sic] was served. Neighbors from High Street would sometimes come. People from the reservation would also come to these prayer meetings" (Arthur Sebastian 1998). None of the accounts provide specific information concerning leadership or discussion of issues of concern to the members.

Catherine Harris Gatherings. The proposed finding did not specifically address gatherings other than High Street, Fourth Sunday and those organized by Alden Wilson. It noted that, "[a]s evidence for historical community, the petition gives brief descriptions of other social events between the 1930's and the present that may have brought together members of different families" (EP PF 2000, 97). It concluded that there was insufficient information to show that these provided substantial evidence concerning community.

The EP Comments focus attention on Catherine (Sebastian) Carpenter Harris, usually referred to as "Aunt Kate." Harris, born 1907, was the daughter of Francisco Sebastian, Sr., one of the sons of Tamar and Manuel Sebastian. Among the activities discussed were social gatherings at Harris's house on the reservation. EP did not provide a detailed specific response which focused on these gatherings, although they are mentioned in the context of describing the activities of Catherine Harris (Burgess IIID; EP Comments 8/2/2001).

The Towns raised questions as the adequacy of the interview information about these gatherings, in particular questioning the descriptions given by Roy Sebastian, Jr., of a larger and more highly organized "tribal powwow" which did not accord with other accounts (*Towns August 2001*, 190). The Towns also asserted that the interview information concerning gatherings at her home was not specific and that the events were difficult to date (*Towns August 2001*, 276-277; see also 177-178).

Analysis of Comments and Responses. Accounts of gatherings at Catherine Harris's place on the reservation are common and detailed enough to substantiate their existence. However, the accounts are fewer and less detailed than for the Fourth Sunday meetings at Tamer Emeline (Sebastian) Swan Williams's home. These gatherings are not clearly dated. Harris lived on the reservation as early as 1930 and left the reservation in 1957, so they would continue no later than that. Frequency data is also missing. Although it is reasonably clear from the interviews that attendance went beyond her subline of the Francisco Sebastians, to also include the Francisco II branch, Francisco/Calvin, and Ben, and Phoebe Sebastian Smith (Alton Smith Sr.'s family), there is no information beyond these sublines.

Catherine Harris's place on the reservation was used by Eastern Pequots for gatherings after Harris moved to Norwich, at least through the 1950's and later, perhaps until the early 1970's

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(Alton Smith and Justine Miller 1995, 66-69). Alton Smith, Sr., describes setting them up. He said that "the place was jammed," and that they were not formally organized, but that he just put the word out to certain specific people and they would get the word out and "the crowd would come." He did not provide an explicit description, but implied that this went beyond his immediate family. Some interview accounts are not clear if they are referring to these gatherings or the earlier ones organized by Harris herself. The evidence concerning these meetings does not provide evidence in regard to community for the petitioner as a whole.

Alden Wilson's Picnics and Gatherings. The proposed finding stated in part:

*Alden Wilson Picnics.* From approximately 1940 to 1960, annual summer picnics were held in Mystic at a farm owned by Alden Wilson, a relatively prosperous individual who was one of the Pequot leaders. The petition at one point describes these events as "purely social" (EPNarr. 7/98, 51). Wilson was a descendant of Mary Marillo Sebastian, one of Tamar Sebastian's children. His picnics were [sic] attended by individuals from several branches of the Francisco Franco branch, and members of the Solomon Sebastian branch, as well as his own. Attendance was not limited to those living in Mystic (EP PF 2000, 96).

The petition states that the number of participants ranged between 80 and 150 people, a figure which included non-Pequots and non-Indians. This attendance was estimated to be "one-third or more" of the total members. Given the present membership of 600 plus, the membership forty or more years ago would have been much smaller, making these estimated percentages plausible. However, no specific calculation has been made for this finding of the size of the membership in past decades (EP PF 2000, 96).

The proposed finding also discussed gatherings at "Little Rest," with which Alden Wilson was also associated. In discussing "other social gatherings," it stated:

The evidence was strongest for dances at "Little Rest," near Old Mystic, which are described as occurring from the 1920's up until the Depression. These were organized by Alden Wilson, who later organized the tribal picnic gatherings (Burgess 1998, 11). Wilson was economically successful, and is widely reported to have used his resources to aid members and, thus to hold these social events. BIA interviews provided evidence consistent with the petitioner's description, but not enough detail to further evaluate them and conclude that they were held consistently enough and with a substantial enough attendance to be good evidence for community (EP PF 2000, 97).

The State notes the lack of documentary evidence about the picnics, the proposed finding's factual conclusion that it was not substantiated that the cooperation of many families were

involved, that these were once a year events and that it wasn't shown that at least 50 percent of the membership participated (*State of Connecticut August 2001*, 35-36).

The Towns, after reviewing the available interviews, assert that was that there was not consistent information about the gatherings at Little Rest, since the interviewees failed to distinguish between these dances, the picnics, and gatherings that were religious in nature (*Towns August 2001*, 274). Elsewhere the Towns state that the club at Little Rest was owned by Alden Wilson and was his main source of income (*Towns August 2001*, 208), but provide no source for these statements. The Towns' review noted some instances where detailed questions were not asked by the BAR or EP interviewers on this topic (*Towns August 2001*, 241-242, 274). They also state that the Little Rest was not a "family or Indian-oriented operation" (*Towns August 2001*, 208).

EP responded to the Towns Comments about the gatherings at Little Rest, by asserting that, although open to non-Indians, they were, nonetheless attended by many Eastern Pequots and were occasions for social interaction among those Eastern Pequots who attended (EP Response to Comments 9/4/2001).

Analysis of Comments and Responses of the Alden Wilson Gatherings. The picture of the various gatherings organized by Alden Wilson is imprecise. Interview accounts of the picnics are limited and not very detailed. There is one indication that they may represent a continuation of even earlier gatherings. Alton Smith, Sr., referred to: "1924-1929-the years that picnics occurred at Wheeler's Grove in Stonington every August. The picnics were to mark Henry Wilson's birthday. Mary Murillo Sebastian put them together. All the Wilson's, Alton Smith's family from Hartford, and the Old Mystic and Mystic Sebastian families would go to these picnics" (Smith and Miller 1995).

Much of the detailed interview data is from members of the Alden Wilson and Lawrence Wilson, Sr., families. There were at least two main kinds of events, in addition to smaller, less organized gatherings. One was "picnics" at Little Rest, a riverside location in Old Mystic and the other were the Fourth of July gatherings at Alden Wilson's "farm" in Mystic. There was insufficient information to assign more than the general date ranges for these events given below.

The interview information indicates that many EP as well as Narragansetts attended the Little Rest events but that they were not limited to EP or to Indians. They were at least semi-commercial gatherings for which admission was charged. Three flyers announcing the gatherings were submitted by the EP in response to third party comments. These indicate events in the 1930's, at least two of them on July 4th. The interview data gives similar dates, but extends it into the early 1940's, and refers to Little Rest as a "dance hall" run by the Wilsons. The EP Proposed finding (EP PF 2000, 96) dated the range for the Fourth of July picnics as 1940 to 1960, placing them after the Little Rest picnics. Since several of the Little Rest events were

held on the Fourth of July, the logical assumption is that the Fourth of July events at Alden Wilson's place in Mystic came later.

The proposed finding stated that Wilson's "picnics were attended by individuals from several branches of the Francisco Franco branch, and members of the Solomon Sebastian branch, as well as his own (Alden Wilson was a descendant of Mary Marilló Sebastian), attendance was not limited to those living in Mystic" and noted that the "petition states that the number of participants ranged between 80 and 150 people, a figure which included non-Pequots and non-Indians" (EP PF 2000, 96).

A review of the limited interview data generally substantiates this picture. However, an older member of the Catherine (Sebastian) Carpenter Harris branch of the Francisco Sebastian, Sr., subline indicated that while she knew about the Alden Wilson picnics, her family had not attended them and did not have a lot of contact with the Wilsons (C. Eccleston, V. Lancaster 1999)<sup>51</sup>. One individual simply stated that those that attended the Fourth of July picnics were those "in close proximity" of Alden Wilson's farm (which was on the west side of Mystic) specifically Groton, Mystic and Stonington (and presumably Old Mystic) (L. Wilson 2001). However, Alton Smith, Sr., from Hartford, reflecting his family's close ties to the Mystic families, also attended as did the DeBarros and Randalls, from the Fagins/Randall line, from Norwich (Lillian Sebastian, 2000). There was no evidence that non-Indians other than spouses attended in any significant numbers, nor is there mention of Narragansetts attending.

It is particularly difficult to determine attendance numbers, since it is difficult to distinguish in some interviews between indicated figures for the Little Rest gatherings and those at Alden Wilson's farm, the latter presumably being the family or "tribal" events. One account included in the petition narrative suggested that there was substantial cooperative effort among different tribal members in organizing these picnics (Roy Sebastian, Jr., 1988). It stated that all of the men and boys fished and clammed, etc., as part of the preparation. This characterization of the picnic as involving the cooperation of many families was not substantiated by other petitioner interviews submitted nor by BIA interviews.

The weakest data is anything suggesting political processes involved with any of the Wilson gatherings. One interview suggests that the older members congregated and people could bring problems to the elders, congregated together (L. Wilson/K. Sebastian 2001). However, from the available data, the picnics were purely social events which provide some supporting evidence for community, but which do not provide evidence in regard to political influence or authority.

Visiting Patterns. The EP Comments (Burgess IIID; EP Comments 8/2/2001) have substantially expanded the data on visiting between different areas and among different families, drawing on

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<sup>51</sup>Nonetheless, Alden Wilson and others are credibly reported to have visited Catherine Harris (CIAC 1983a, 35).

additional interviews done. A review of the BIA's and previously submitted EP interviews also confirms the frequent visiting and gatherings in a variety of venues described by Burgess. The time range covered by the interviews is the 1920's to the 1960's, with some later information. This information is in addition to descriptions of particular types of gatherings, such as the Fourth Sunday meetings and gatherings at Catherine Harris's. The interview data as cited by Burgess described visiting and informal gatherings to and on the reservation by a variety of individuals, as well as in Groton, Mystic, Old Mystic and Hartford.

Notably, much of the visiting patterns in part reflect the link of the third and fourth generations to the children of Tamar (Brushell) Sebastian—to aunts and uncles or great aunts and great uncles. Of these, Sylvia (Sebastian) Steadman in Mystic (died 1943) and her sister and Tamar Emeline (Sebastian) Swan Williams on the Lantern Hill reservation (died 1942) appear to have been the most frequent focus.

Analysis of Comments and Responses. The description of the Wheeler's Grove picnics illustrates the underlying pattern of Sebastian visiting--that the children of Tamar (Brushell) Sebastian and their children and grandchildren generally seemed to maintain contact with each other. Much of the description of visiting patterns, 1920 to the 1960's, falls into this pattern (Burgess IID, database extracts; EP Comments 8/2/2001). Particular events and visiting didn't necessarily bridge the family line widely, but overall the visiting pattern does so. The descriptions are particular rather than broad generalizations about "we always visited kinsmen." Rather, they have the character of, "we had picnics at Ben and Hattie's before and after they moved to Groton," and the like, and are drawn from a variety of individuals. Post-1960 interview data on this topic is much sparser.

Additional interview information supports the conclusion that the Abby Fagins (Fagins/Randall) line was involved with the Sebastians. Detailed information of interaction in Norwich among, for example the Perrys, Randalls, and DeBarros was shown (Burgess IB, 45, EP Comments 8/2/01). Various Sebastians and Randalls went to the same church (Perry and Perry, 1999, 2). A supporting link is Alton Smith's grandmother, a non-Pequot who was first married to his grandfather (Brushell/Sebastian) and then to Jack Randall (Fagins/Randall).<sup>52</sup> The Randalls and DeBarros attended Alden Wilson's picnics (Lillian Sebastian, 2000) and also visited with the Catherine Harris family (Burgess IID, 222; EP Comment 8/2/02).

Intermarriage and Kinship Links. The proposed finding provided statistics on intermarriages of Eastern Pequots, as part of the demonstration of community (EP PF 2000, 89-91). In its Comments, EP submitted a very detailed report describing all marriages between EP and other

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<sup>52</sup>It should be noted that frequent non-Eastern-Pequot (Narragansett, Western Pequot, Block Island) kinship links among these families reinforced the strictly Eastern Pequot family ties: thus, the sister of Alton Smith's grandmother was married to the brother of Rachel Hoxie (Hoxie/Jackson) whose daughter by his first marriage to a Western Pequot married a son of Eunice (Wheeler) George, who subsequently married Marlboro Gardner (Gardner/Williams and Gardner/Edwards).

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Eastern Pequot, Western Pequot, Narragansett and other (IIA, Appendix I; EP Comments 8/2/2001). This was essentially directed at reinforcing and perhaps extending the analysis in the proposed finding.<sup>53</sup>

PEP claims that separating out the EP and PEP lineages would provide a different picture (Austin Introduction 8/2/2001, 13-15; PEP Comments 8/2/2001). This is not the case in regard to whether there were substantial rates of marriages of the Sebastians with other Eastern Pequots, with the Western/Mashantucket Pequots, or with nearby tribes. The EP Comments make the point that all but one of the children of Tamer Brushell Sebastian married individuals who were Indian or of Indian descent (IIA, 69; EP Comments 8/2/2001). More generally, the Sebastian, the Fagins/Watson, the Fagins/Randall, the Hoxie/Jackson and the Gardner/Williams (but not Gardner/Edwards except through Eunice Wheeler) lines all had significant links to other non-Eastern-Pequot Indian families and these non-Eastern-Pequot Indian lines frequently linked them to one another through kinship.

PEP argues that the BIA, because it put all of the genealogical data on all of the historical Eastern Pequot (by the BIA's definition) families into a single FTM database, distorted the results and prevented an analysis showing that the PEP antecedent families (Hoxie/Jackson and Gardner) were separate from the Sebastians (Austin Introduction 15; PEP Comments 8/2/2001).<sup>54</sup> PEP provided no assertions in regard to the other antecedent lines of #35 (Fagins/Watson and Fagins/Randall). PEP iterates that there is only one known marriage between Sebastians and anyone whom they define as a member of the historical Eastern Pequot tribe (Austin Introduction 8/2/2001, 15; PEP Comments 8/2/2001). The comments also discount any significance to indirect connections between the Sebastians, Jacksons, and Gardners through less direct links such as Calvin Williams's marriage to Eunice Wheeler, who subsequently married Marlboro Gardner (Chapter One, 16-17, PEP Comments 8/2/2001).

The Towns critiqued the use of evidence of intermarriage with Narragansetts, Western Pequots, and others as evidence for community (*Towns August 2001*, 207) and challenged the statement that these were "patterned outmarriages" as required by the regulations (*Towns August 2001*, 207). The Towns specifically assert that, "The Summary under the Criteria did not cite any examples of interaction between the Eastern Pequot and the Shinnecock, and did not provide any systematic analysis of intermarriage between Eastern Pequot and Western Pequot and Narragansett after 1936" (*Towns August 2001*, 207).

The Towns assert that: "The BIA finding, however, did not contain an analysis of marriage patterns or kinship ties between 1936 and 1973. An analysis of any continuing links between the

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<sup>53</sup> The proposed finding incorrectly calculated the 54 out of 167 total marriages which were between two Eastern Pequots as 39percent, rather the correct calculation which is 32 percent.

<sup>54</sup> For more detailed discussion of the nature of the combined data base, see the PEP proposed finding under Bases for the Final Determination.

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Sebastian, Gardner, and Jackson descendants during this period should have been an essential part of any finding that concluded that these families continued to constitute one tribal entity, but it is conspicuously missing from the BIA finding” (*Towns August 2001*, 207).

Analysis of Comments and Responses. Kinship is one way of demonstrating community, but it is not the sole way of demonstrating community. Certainly, in large federally acknowledged tribes, there are not necessarily close kinship ties among entities that number many thousand members.

During the 19<sup>th</sup> and first part of the 20<sup>th</sup> century, the Eastern Pequots were immersed in a larger web of links with Western Pequots, Narragansetts and other Northeast Indians in a long-standing pattern that qualifies as “culturally patterned.” The term is meant to capture that aspect of Indian society which is intertribal, a common if not universal aspect of American Indian cultures (*see Snoqualmie Proposed Finding, Anthropological Technical Report, Suttles and Lane 1990 (Handbook of North American Indians, Volume 15, Northwest;) Suttles 1963, Bean, California Indian Society*).

No analysis has been made here of the degree of connectedness through the multiple marriages with Narragansetts, that is, whether a particular set or sets of related Narragansetts married Eastern Pequots, especially the current lines. However, the intermarriage patterns and statistics, which have not been recalculated for purposes of this final determination, show significant rates of patterned outmarriages, leading to strong kinship links, supporting the existence of community.

Enclaves. The proposed finding concluded that the EP petition’s assertions in regard to geographical and social enclaves as showing community prior to 1973 had not been demonstrated, but that it was not necessary to demonstrate them because there was other data for this time period (EP PF 2000, 94). The EP Comments do not discuss enclaves in the context of the geographical data in Reports IIC and IIC. Report IIC does not spell out in further detail, and the BIA did not develop further analysis of, particular family and residence patterns in the surrounding towns. The proposed finding stated:

The “enclaves” composition as described by petitioner #35 never includes individuals from the Marlboro Gardner family line. It does not consistently include members of the Jackson line, except as intermarried, even on the reservation, where the Jacksons were a strong presence in the first three decades of the 20th century (see Grabowski 1996, 138, 149-157, 159-160, 162-165) (EP PF 2000, 93).

The term “enclave” is inaccurate in that what is described are not territorially separate communities of Eastern Pequots. The petitioner's descriptions only state that there were petitioner families in each of these fairly small areas. The descriptions and supporting interview data indicate that while some members

(excluding immediate relatives) may have lived near each other, they did not live in segregated areas of Pequots alone in the towns (EP PF 2000, 93).

Thus the "enclaves" as described do not provide substantial evidence of community in themselves. What descriptions do show are that many of the petitioner's members between 1900 and the present lived near enough to each other to interact. As evidence, this geographic data must be interpreted together with the other evidence about community, particularly the evidence of social gatherings and the context of the kinship relationships between residents of the different areas (which has not been systematically described) and within the tribe more generally (EP PF 2000, 93).

To evaluate whether the claimed "enclaves" corresponded to actual social subgroupings would require considerable staff time to assemble all the necessary data about residence patterns and kinship and other social relationships in the 20th century and analyze it in relation to the claimed enclave pattern. The description and analysis presented by the petitioner is incomplete and claimed subgroupings not well defined. Creation of a new analysis is not required under BAR procedures. Demonstration that the claimed enclaves were social subgroupings is not necessary to demonstrate that the community criterion is met, since this may be demonstrated by other means (EP PF 2000, 94).

The EP Comments stated that:

a. We define enclaves as residential areas occupied exclusively or nearly exclusively by Eastern Pequots or Eastern Pequots and other Indian people. For non-reservation Eastern Pequots, in the absence of "territorially separate communities" (if by this the BAR means separate reservations, such as those maintained by the Passamaquoddies at Pleasant Point and Princeton, Maine or physically isolated "ghettos"), we argue that residence in the same apartment building, on the same street, or in the same neighborhood by Eastern Pequots is evidence of an attempt to establish and maintain a distinctively Eastern Pequot "space" (Introduction 10; EP Comments 8/2/2001).

The EP Comments indicates that the data to describe enclaves is Report IIC, whose results are described in the section on geographical patterns. No such description of enclaves or specific geographical concentrations is provided. As the proposed finding noted, it was not necessary to show enclaves to show community and the EP have largely focused on showing visiting relationships between towns within which various EP families live, which does contribute to the showing of community

The introduction to the EP Comments narrative also state that:

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**b. The enclave residents were related to one another, and socialized with one another, and therefore constituted a social as well as a residential unit. Evidence for such is provided in Reports IIC and IID (Introduction 11; EP Comments 8/2/2001).**

This section of the EP Comments' Introduction also states:

**c. The enclave residents were in contact with other enclave residents, and visits between residents of the various enclaves were between primary kin, secondary kin, and non-kin. Evidence for this is provided in the analysis of Eastern Pequot marriage patterns (Reports IIC, IID, and IIIJ) (Introduction 11; EP Comments 8/2/2001).**

These assertions in effect repeat the claim of the original EP petition narrative. However, the cited reports IIC, IID, and IIIJ (which is on the topic of EP politics since 1970) do not provide information on enclaves, nor do the other EP reports, with the exception noted below. The available data on geographical location, kinship ties and visiting patterns is discussed in the EP reports without reference to specifically trying to establish "enclaves".

The exception to the lack of reference to enclaves is the EP discussion of the residents of High Street in Mystic, and nearby areas. Although this did not constitute an "enclave" in the sense of distinct territorial community, there were several families on one small cull de sac lane on the street and others within a mile or two. Burgess (IIC, 42-44; EP Comments 8/2/2001) provides a summary discussion of the interview data from the 20th century concerning the area, noting that there has been a concentration of Eastern Pequots, from several different sublines of the Sebastians, living close to each other and interacting regularly. A review of the available interview materials supports her description (A. Smith, Elsie Wilson). Burgess, reviewing the data, states that "Many Eastern Pequots have resided in the High St. area of Mystic, which constituted an Eastern Pequot "enclave" in the early 20th century." She lists Lillian Sebastian, whose parents Betty and Arthur Sebastian, Sr., lived on High Street Lane. Sylvia (Sebastian) Steadman also lived on the lane, and Lawrence Wilson, Sr., lived at the head of the lane. Burgess notes that, "[w]ithin a quarter mile radius of the Steadman residence were the homes of Alden Wilson (1890-1969) and Solomon Sebastian (1859-1938)." The Powers lived down the street about half a mile away. According to Burgess, "Hattie Sebastian and their family also moved to High St. some time after the Hurricane of 1938. Clarence Sebastian (1887-1960) lived on Cow Hill Road, approximately three miles away," which is where Tamer (Brushell) Sebastian had lived before moving onto the reservation.

Burgess also states that Sylvia Steadman's house "was the residence of many Eastern Pequot tribal members at various times during that period, including Sarah Sebastian Williams (1867-1932); her daughter, Bertha Brown (1897-1941) (Mashantucket, former EP); Joe and Helen Williams (Helen, 1904-1973) and their daughter, Violet (1921 ); Julia and Solomon Sebastian (Solomon, 1859-1938); Moses Sebastian (1890-1958); and Betty and Arthur Sebastian (Arthur,

1879-1968) (Burgess, interview with Lillian Sebastian, 2000)" Burgess does not provide specific information how or when these individuals may have actually resided with Sylvia Steadman.

The EP Comments also state that:

d. A systematic survey of the non-enclave residents is also provided in report IIC, with accompanying maps. The relationships between non-enclave residents, residents of the reservation, and enclave residents is documented in several oral history interviews and in the Kate Harris and Sarah Swan diaries (Burgess IIID) (Introduction 11; EP Comments 8/2/2001).

The former report (Flowers and Grant-Costa IIC; EP Comments 8/2/2001) did not provide not useful information on maintenance of social relations, providing only general geographical data. The information in Report IIID is discussed elsewhere in the analysis for the final determination, under visiting and other categories as appropriate.

Pleasant Street Baptist Church. The proposed finding reviewed a lengthy report prepared by the EP on the Pleasant Street Baptist church in Westerly, Rhode Island, a sister church to the Narragansett church on the Narragansett tribal lands. The report described the attendance at this church by a significant number of Eastern Pequots over the past 100 years.<sup>55</sup> For the final determination, EP submitted an additional report on the church, further detailing which members of their antecedent families and collateral relatives had been members, and the dates when they attended, extending the analysis past the 1930's (Flowers IC, The Pleasant Street Baptist Church; EP Comments 8/2/2001). It does not provide figures concerning how many EP members are currently members of the church.

PEP argues that the attendance did not include its antecedent lines, explaining PEP Paul Spellman's attendance at the Pleasant Street Baptist church, an item cited by EP in the first report and cited in the proposed finding, as resulting from his wife's attendance (McMullen 9/4/2001, 19; PEP Response to Comments 9/4/2001).

The Towns denied the church as evidence of community, claiming that, "this church cannot be considered an Eastern Pequot 'tribal' institution because, as the Summary Under the Criteria pointed out, there is no evidence that the attendees included descendants in the Gardner and Jackson lines, with perhaps one exception (BIA, Summary Under the Criteria, EP, p. 92" (*Towns August 2001*, 209). The Towns also state that the church, "was not predominantly Indian in

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<sup>55</sup>Flowers, Marcia. Report on "Pleasant Street Baptist Church. An Indian Church Established by, for and of Indians." 1999. With documentary exhibits. The BIA reviewed a copy of this report during the anthropologist's site visit in March 1999 and requested a copy at that time.

orientation. It was chartered in 1874 as the Advent Christian Colored Church (A.C.C.C.) (*Towns August 2001*, 209).

EP's new data does not substantially change the proposed finding, except to the extent it indicates that Eastern Pequot attendance is somewhat concentrated in Eastern Pequots with Narragansett relatives. It is not necessary for the church to encompass all of the family lines to provide evidence for demonstrating community.

In regard to the Towns' assertions, it was not the church's denominational affiliation, but the character of the congregation which was the basis for considering its activities as providing evidence of community among the Eastern Pequot. It is not uncommon for Indian churches to be affiliated with non-Indian denominational organizations.

Some Evidence, Largely Interview, Concerning Links among Eastern Pequot Families. In connection with the conclusion in the proposed finding that the two groups met the criteria as a single tribe up until 1973, the proposed finding mentioned that social separation had been increasing in more recent decades:

There was substantial solidarity within the two segments which may have subsequently separated into the two petitioners. However, this finding does not reach a conclusion that the families ancestral to the petitioning groups had separated into two communities before 1973. The available interview data is insufficient to establish at what point in time they may have become two separate communities. Many individuals who grew up in the era when there was clearly a single tribal community were still alive between 1940 and 1973, and a few are still alive today. Available interview data from the petitioners and BIA interview data do not indicate any informal social interaction between the Sebastians and the Gardners among members in their 60's or younger (born after 1940). Further, there was no substantial data found in the available interviews to indicate significant social connections of the Jacksons in recent eras with either the Gardners or the Sebastians, notwithstanding the marriages of both Atwood Williams and his aunt, Grace Jackson, in the previous generation, with Gardners (see Moore 1991) (EP PF 2000, 100).

The petitioners were advised to address this issue as a factual question. PEP's Comments continued to take the position that the Sebastian family was not Eastern Pequot and that the PEP families had never been part of a single tribe with them (see PEP FD 2002, Bases for the Final Determination). EP attempted to develop additional data showing social and political links. Both petitioners and the third parties addressed the substantial issue of whether this is one group or two, and if two, when did they separate. In this regard, see also the discussion above in the "General Issues" section.

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**Analysis of Comments and Responses.** The analysis undertaken by the BIA for the final determination is designed to test the conclusion of the proposed finding that there was only one historical Eastern Pequot tribe, and that the families from both current petitioners were part of it. The focus here is on community, rather than political relationships (for that, see under criterion 83.7(c)). Additional documentary and interview information was available for the final determination. This report's review attempts to pierce the veil of recriminations deriving from the conflict which has existed at least since the 1920's and the heightened conflict which developed after the 1973 creation of the CIAC, which effectively imposed an externally created need to define and formalize the Eastern Pequot governing unit. CIAC representation provided the focus for the conflict from that point until some time in the 1990's, when the focus shifted to the contending petitions for acknowledgment.

The following is largely interview/oral history based – integrated with examples taken from documents, which seem to be largely consistent, and provide corroboration for each other.

The petitioners provided no 20<sup>th</sup> century evidence that the Sebastians had any significant social contact with any of the Gardner/Edwards line who didn't live on the reservation (the sole member of the Gardner/Edwards line who did, for any portion of the period from 1927-1976, was Helen (Edwards) LeGault.) In connection with the Gardner/Williams line, the few interview mentions of Atwood Williams by Sebastians indicated only that they knew who he was, but not that they had any substantial connection with him (see Alton Smith 1999, Mark Sebastian 1999).<sup>56</sup>

From the limited information from the Jackson side, Harold Jackson stated that Silver Star [Atwood Williams, Sr., and his first cousin] was "chief of the Narragansetts," possibly referring to the idea that the Gardners were "Narragansett." Harold Jackson said that "I didn't know him too well at all. I remember seeing him. He was a nice looking man. He wasn't a big man, but he was a nice looking man" (Jackson 1999, 6). In addition, Jackson knew where Williams' farm was, lived near it at one point, but never visited it. Yet for part of the time that Williams was active, Jackson should have been living in Helen LeGault's house (approximately 1928-1935 or 1932-1939) or in his father's house (early 1950's) on the reservation.

The overall pattern of evidence, based on interview reports, State of Connecticut documents, and Catherine Harris's journal is that the Sebastians had a significant number of links with the Jacksons, including some off-reservation. The latter is important because of PEP's claim that the contacts shown by the written documentation were just reservation neighborliness (McMullen, 13, PEP Comments 9/4/2001). Alton Smith stated that he and Grace (Jackson) Gardner Boss were "great friends" until Federal recognition became an issue (Burgess IIID, 223; EP Comments

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<sup>56</sup>Charles James "Charlie" Lewis, Jr., (Burgess Interview of Lewis 2000) claims that Ray Geer, "used to drink with Ben and Moses Sebastian," both at times reservation residents. Judging by the ages of the individuals involved, it would almost have to be Raymond L. Geer aka Ray Geer, Sr., (1929-1970) who was referred to in the Lewis interview, since Raymond A. Geer, the former PEP chairman, was not born until 1952, a few years before Moses died and the Ben Sebastian probably referred to would have been an old man by then.

8/2/2001). This is consistent with the first protest to the CIAC (see that description), and with other data showing social contacts between this woman and the Sebastians.<sup>57</sup>

The EP response cites one interview as describing how Alden Wilson and his family would go up to the reservation to visit, stating that he visited the Browns [not further identified] and Franklin Williams [Western/Mashantucket Pequot, living on Lantern Hill]. The interviewee also stated that "Paul Spellman [Hoxie/Jackson] and his wife, and the Jackson girls were often there when Alden visited" (Burgess IIID 187, EP Comments 8/2/2001).<sup>58</sup> The "Jackson girls" in this case may refer not to the descendants of Rachel Hoxie but to the daughters of Julia Sebastian, though this is unlikely because they were so young (Julia B. Sebastian married an unrelated Jackson and had three daughters born between 1935 and 1943). The time period was apparently the 1930's and 1940's, although this is not certain (Paul Spellman married in 1931 and his wife died in 1943; Franklin Williams died in 1949, but his widow, the sister of Paul Spellman's wife, lived into the 1960's; Arlene Jackson and Richard Brown did not marry until 1956). The EP Comments state, based on an interview, that Catherine (Sebastian) Carpenter Harris had gone to Hartford after the fire at Paul Spellman's house, presumably on his behalf (Burgess, Interview with Connie Eccleston, 1997-2000, EP Response 8/2/01, Burgess IIID, 18)(see discussion under criterion 83.7(c)).

Other relatively early examples noted were Harold Jackson's contacts with the Mystic Sebastians and Wilsons, probably the late 1930's and the 1940's. Harold Jackson significantly states that he and his family visited the Sebastian/Wilson, "enclave" on High Street in Mystic (H. Jackson 1999). It is in this context that he notes that he and one of the Sebastian girls, Julia Sebastian, older sister to present EP member Idabelle (Sebastian) Jordan, were "sweethearts" and that his brother was dating Lillian, another sister. Lillian Sebastian also mentions knowing him early on. This data is significant because it shows off-reservation Sebastian-Jackson social links that were not the result of propinquity on the reservation.

Despite the PEP denial of any social relationship between the Sebastians and Paul Spellman (Introduction to Comments on the Proposed Finding, 24, 61, 66, PEP Comments 8/2/01) who was a reservation resident much of his life, both written documents and interviews suggest he knew various Sebastians fairly well (A. Smith 1999, Larry Sebastian 1999, Moore 1991). PEP explains his attendance at the Pleasant Street Baptist church, an item cited by EP, as resulting from his wife's attendance (McMullen 9/4/2001, 19; PEP Response to Comments 9/4/2001). A good description concerning Paul Spellman is Larry Sebastian's statement, made in a context where it was unlikely to be argumentative, that when he was a child (he was born in 1931) he called Paul

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<sup>57</sup>In 1941, Mrs. Grace Boss "was staying temporarily in the home of Mrs. Calvin Williams" (EP Response to Comments 9/4/2001, Ex. 9, Memorandum C. S. Squires 9/18/41, ) and in 1948, "Mrs. Grace Boss, who is working for an Old Mystic family goes up and spends week ends with Mrs. Holland" (EP Response to Comments 9/4/2001, Ex. 17, Gray to Squires 5/11/1948).

<sup>58</sup>The text of the cited interview, by Burgess with Margaret Wilson, was not submitted.

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"uncle" even though he knew he was a "cousin"<sup>59</sup> because of their age difference (Larry Sebastian 1999). He recalled visiting him, with his family, as a child. Both petitioners devoted large amounts of interview time and discussion to the circumstances under which Barbara (Spellman) Moore "gave" Larry Sebastian her brother Paul's house. The resulting data cannot be interpreted definitively as to whether this resulted from a significant, long-term social connection between Sebastian and Spellman, or just a short term friendship when Spellman was helped by Sebastian near the end of his life. Larry Sebastian himself didn't attribute great significance to the house when interviewed (Larry Sebastian Interview 1999).

It is difficult to determine an overall time depth for these contacts. As the proposed finding indicates, and the review of the data continues to substantiate, some social ties, if not close ones are evident for the oldest generation now living, *i.e.*, Eastern Pequots over 70 years old (see interviews with Harold Jackson, Lillian Sebastian, and Arthur Sebastian). Overall, the significant contacts of Jacksons and Sebastians ran well into the 1970's, as long as there were Jacksons living on the reservation. The following examples indicate some of these interactions.

In 1935, the right to approve residence became vested in the Connecticut State Parks and Forest Commission. On March 6, 1936, a Sebastian descendant, Ralph F. Powers, wrote from Noank, Connecticut, to the State Parks Superintendent asking that his name be put on the Eastern Pequot tribal membership (Lynch 1998, 5:123-124). His application for membership, dated December 1, 1936, was endorsed by Tamer Emeline (Sebastian) Swan Williams, Sarah (Swan) Holland, and Grace (Jackson) Gardner Boss (Austin I 8/2/2001, 9; PEP Comments 8/2/2001) The researcher for the third parties objected that the application was not endorsed by Atwood I. Williams, which it should have been according to the 1933 court order (Lynch 1998).

More difficult to evaluate are statements from a new interview by EP of Charlie Lewis (Burgess Interview with Lewis 2000; EP Comments 8/2/2001). Born in 1934, Lewis claims that Harold Jackson used to live across the street from his grandparents, Peter and Catherine (Sebastian) Harris. If this was referring to the period of time when Harold Jackson was living on the Lantern Hill Reservation, either with his father or with Helen (Edwards) LeGault, it refers to the mid to late 1930's or to the early 1950's. Charlie Lewis also indicates that Grace (Jackson) Gardner Boss was close to Kate [Catherine (Sebastian) Carpenter Harris] Harris, which is consistent with Harris's journal and with references from the Connecticut Office of Welfare records. Lewis is too young to know much directly about any relationship between the Jacksons and Tamer Emeline (Sebastian) Williams or of Harold Jackson's residence on the reservation.

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<sup>59</sup>There is no known direct consanguineal relationship between the two men, although they had common relatives – e.g. Maurice Gordon Sebastian, who frequently lived on the reservation, was almost the same age as Larry Sebastian and a was cousin of both men (1<sup>st</sup> cousin once removed of Paul Spellman; 2<sup>nd</sup> cousin once removed of Larry Sebastian). Maurice's mother was married to Spellman's brother, while Larry and Maurice had additional non-Eastern-Pequot kinship ties through the McKinney sisters, Jane and Mary.

Data from Catherine (Sebastian) Carpenter Harris's journal adds a few items. Petitioner #35 presented a photocopy of the journal and abstracted and analyzed the contents (Burgess IIID, 168-177; EP Comments 8/2/2001), which showed a considerable amount of contact between the Brushell/Sebastian lineage and Hoxie/Jackson lineage during the 1930's and 1940's, continuing into the early 1950's. This contact did not include the Gardner/Edwards or Gardner/Williams descendants. The journal notes the 1938 wedding of Harold Jackson and Marion Hazard (a Narragansett) giving evidence that it was attended by Emeline Williams<sup>60</sup>, Catherine Harris, Sarah (Swan) Holland and Albert Carpenter. The journal also contains her notation that in 1942, when she went to Norwich and had teeth out, Arlene Jackson went with her and that, apparently, they both had dinner with her daughter Catherine (Carpenter) Lewis (who lived in Norwich) (Burgess IIID, 174; EP Comments 8/2/2001).

There are other notations in Harris's journals noting weddings, obituaries, address of individuals and other clippings or notations re the Jackson's and others that Burgess argues shows social links (Burgess IIID 175-177; EP Comments 8/2/2001). In itself this information, where it doesn't describe social contact, is ambiguous, since Harris noted information on non-Indians (though Burgess further argues that these, like the Main family,<sup>61</sup> non-Indian neighbors, were people with whom she had contacts and connections).

In 1953, a group of Lantern Hill reservation residents traveled to Hartford to protest a bill (CT Senate Bill 502 1/30/1953) to sell the Lantern Hill reservation and terminate State responsibility for the Eastern Pequot tribe (see also above under General Issues). EP presented discussion of both the bill itself (Grant-Costa IIIF, 239-242; EP Comments 8/2/2001) and discussion of the group who went to Hartford, with genealogical analysis of their relationships (Flowers IIIE, 235-238; EP Comments 8/2/2001). The delegation included both Sebastians and Jacksons (see discussion under criterion 83.7(c)).

Harold Jackson (1915-2001), one of the oldest PEP members, from the Hoxie/Jackson line, referred to Helen LeGault (Gardner/Edwards line) as a "Narragansett" (Harold Jackson 1999) as had his sister, Arlene (Jackson) Brown, in 1973 (Eastern Pequot Indians of Connecticut. Letter to Commissioner of Environmental Protection, Hartford, Connecticut 10/14/1973). In context, this sequence of "Narragansett" references suggests another line of internal distinction within the historical Eastern Pequot, based on the earlier incorporation into the tribe of Marlboro Gardner and his line, which on his father's side originated in the Narragansett tribe. The statements don't indicate that the speaker thought that these individuals were in fact socially and politically Narragansetts and not part of the group. Rather, they carry historical information into a social

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<sup>60</sup> It is not clear whether this referred to Tamer Emeline (Sebastian) Williams or Emeline (Jones) Williams, wife of Franklin C. Williams.

<sup>61</sup> Barbara (Spellman) Moore also referenced the Main family, indicating that they were a contact point between the reservation residents and the overseer (Moore Interview 12/8/1991, 28).

context. As such, this reference is an indication of social connection, because social distinctions define relationships. The form the statements take does indicate some social distance.

The existence of some social distance between the Hoxie/Jackson and Gardner/Edwards lines was also reflected by Barbara Spellman Moore, who referred to LeGault as follows, indicating she didn't know her very well:

Yeah, there was a family that lived over where Aunt Grace used to live, took her house over. Helen LaGault or something. She claimed to be some Indian. And Paul and them, and all of them used to have to bus with her.

.....

But they used to do a lot of scrapping, Helen LaGault. She was (inaudible) used to do a lot of scrapping there because she wasn't -- then she claimed she was. And she was real sort of arrogant, an arrogant person. And but that's a lot of years. I don't know anything because I never met her, don't know her (Moore Interview 12/8/1991, 48; PEP Comments 8/2/2001, Ex. 86).

Because of the public visibility and prominence of individuals from the Gardner/Edwards line such as Helen LeGault, or Ray Geer, these individuals are somewhat known to Sebastian descendants, although the interview descriptions do not indicate a long history of social contact. There is much less indication of knowledge of or informal contacts with the less visible members of the Gardner/Edwards and Gardner/Williams families.

BIA interviews of EP members generally indicated that the interviewee did not know the Gardner/Edwards family, even the Geers, many of whom lived in the North Stonington and Stonington area, not far from the reservation. The results are consistent across individuals from a variety of families and in a variety of contexts. Nothing of the comments on Ray Geer, who moved on the reservation and hence is known to a number of EP leaders, indicates any long history of interaction with him. All of the awareness is focused on the fact that he moved onto Catherine Harris's property or that he sent letters trying to evict Sebastians from the reservation. Other EP specifically denied knowing Agnes Cunha or her brother or children, except in the context of living on the reservation in recent years. Presumably EP interviewees might be expected to exaggerate their contacts with the other side, rather than minimize them, but such was not the case.

Descriptions by one EP leader about how they made contacts to attempt to recruit PEP members to enroll at EP during the 1990's indicate that this individual, one of the Roy Sebastian Sr., line so central to reorganizing the EP, did not know whom to contact (Mark Sebastian 1999). This description was given in a different context than asking whether he knew the PEP families. It does not appear to be immediately comparable to circumstances where a community is sharply divided, but where the opposing group is well known, often the subject of a lot of specific complaints, gossip and stories. The latter situation is characteristic of highly factionalized Indian communities, and appears in the EP/PEP interviews that refer back to the period just before and

after 1920, as well as in some of the CIAC testimony presented during the period 1976-1983 which referred back to the same era, but does not appear in the contemporary interview data. Rather, the lack of knowledge documents the growing separation between the various Eastern Pequot lineages that has been developing since before 1973.

Therefore, in understanding the interview information concerning contacts between Sebastians, Jacksons and Gardners, it is important to look at the age profile of the current EP membership, which is 85 percent Sebastians. A number of the older individuals, who had more contacts according to the historical data, lived into the late 1960's, 1970's and early 1980's. Catherine Harris died after 1967, Roy Sebastian Sr., died in 1980. Similarly, the older Jacksons, Arlene Brown (died 1992), and Rachel Crumb (died 1995) were also alive. A quick examination of EP's list of "members alive in 1970" indicates a substantial number of individuals born before 1920 (as early as 1888) (46 based on this data) who were still alive in 1970, died within the 1970 to 1980 decade, or in some cases later (Box 1, Folder 3, Burgess evidence, EP Comments 8/2/2001). There are probably more such individuals than the petitioner's compilation included, since this data set appears to be incomplete. Thus, in 1973, when the current alignments began to take shape, there would have been more Sebastians who had maintained more contacts with Hoxie/Jacksons, Gardner/Williams, and possibly even Gardner/Edwards than shows from interviewing present adult members about such contacts during their own lives.

Various accounts indicate continuing conflict between the Gardner/Edwards line and the Sebastians during the 1940's to 1960's and later which were in part racially based. Ray Geer indicates clearly that his grandmother, Hazel (Edwards) Geer, objected to involvement with the Sebastians, and possibly the Jacksons, for reasons of their color (R. Geer 1999), a recollection which can be confirmed by an interview with her undertaken by a representative of the Connecticut State Park and Forest Commission in the late 1930's (Interview with Mrs. Calvin Geer - 1/4 Indian, Williams Notebook c. 1941).

EP member Charlie Lewis provides a graphic description of a physical confrontation involving Helen (Edwards) LeGault in 1951, in which the latter called Al Carpenter (1906-1977, son of Catherine (Sebastian) Carpenter Harris and husband of Anna (Sebastian) Carpenter) a racial epithet (Burgess Interview with Charlie Lewis 2000). Carpenter in response knocked her down, which led to a court trial. This indicates that the limited relationships between Sebastians and Gardner/Edwards descendants were not due solely to a "growing apart." This data supports PEP's claim that its antecedent family lines actively avoided the Sebastians, to the extent it applies to the Gardner/Edwards line. However, it is not clear that PEP's hypothesis applies to the Hoxie/Jackson family for the period from the 1940's through the 1960's. The interviewee states that Grace Powell (Jackson) (daughter of William Jackson) argued with LeGault against making such statements (Burgess IID, 206; EP Comments 8/2/2001).

As an overall statement, the EP interview data on visiting patterns in the past never mentions any member of the Gardner/Edwards line. This includes responses to open ended questions, such as about who attended an event. However, few if any of the interviews, except some of the BIA's,

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specifically asked such questions as – "did so and so attend? or did the Edwards attend? or did you know them?" EP's interviews focus on the Sebastians, though there are some open-ended questions. PEP's interviews with its own members include general statements that Sebastians never attended their affairs. The EP survey data question on this issue is poorly phrased and consequently its results are not usable as well as not corroborated by other interview information (see discussion below).

The interview information indicates that Barbara (Spellman) Moore and her husband may have been planning to move to Lantern Hill at some time during the 1950's,<sup>62</sup> in that she references a "Lillian Sebastian that lived – that came in, moved in there where my husband and I was going to live. So she was moving in there, and I never, ever heard of Lillian Sebastian" (Moore Interview 12/8/1991, 61; PEP Comments 8/2/2001, Ex. 86).

Overall, the factual pattern described by the proposed finding is confirmed by the additional data and reexamined data. It shows an early conflict, of an indeterminate nature, which becomes focused on color by the 1920's, and an increasing degree of separation, augmented by the decline in size and activity of the once central family line, the Jacksons. However, it is clear that the pattern is not a simple bifurcation along the lines of the present petitioners's antecedents, but a more complex one. The Hoxie/Jackson partners in the two late 19<sup>th</sup> century Gardner/Jackson marriages died in the 1950's (Atwood I. Williams in 1955 and Grace (Jackson) Gardner Boss in 1959). There is no clear evidence that after their deaths, Atwood Williams's descendants (Gardner/Williams) maintained close social contact with their Hoxie/Jackson relatives. They did continue to maintain contact with their Gardner/Edwards relatives.

As late as the 1970's, the picture that develops is that while the Sebastians have no amicable contact with either the Gardner/Edwards or the Gardner/Williams, the Gardner/Edwards also have no amicable contacts with the Hoxie/Jacksons. The Hoxie/Jacksons have significant and amicable contacts and conflicts with both the Sebastians and the Gardner/Williams. There are significant and amicable contacts between the Sebastians and the Fagins/Randall line. Limited evidence indicated limited contacts between the Sebastians and the Fagins/Watsons. The conclusion in the proposed finding that there was one tribal community to 1973 is affirmed.

*1973 to the Present.* Without reaching a conclusion on the period since 1973, the proposed finding indicated that the data presented in regard to the modern EP community needed to be strengthened (EP PF 2000, 136-140).

EP Comments. The EP Comments stated that the data intended to show "cohesive community since 1973" included the two long reports on political actions and governance, "the oral histories with 70 tribal members, survey data that document consistent work relations, social relations

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<sup>62</sup>Lillian Sebastian to Martin A. Barrett, Connecticut Welfare Department, re: purchase of cottage on the reservation from non-Indian, Alvin Heinrich, 1/9/1958; she identifies herself as the sister of Arthur W. Sebastian, Jr., who has a cottage on the reservation (Lynch 1998, 5:137).

geographic relations and widespread knowledge of tribal affairs, and kinship data, including patterned outmarriages” (Being Indian in Connecticut, Conclusions and Summary Chart, 555; EP Comments 8/2/2001).

Third Party Comments on Modern Community. The State (*State of Connecticut August 2001*, 36) cites the proposed finding’s factual conclusion, described in the appendix to that finding, that the petition had not submitted enough evidence of social cohesion to demonstrate modern community for EP. The State provided citations to examples from the BIA interviews of statements which it concluded were evidence "confirming the lack of significant social relationships widely distributed among the membership" (*State of Connecticut August 2001*, 36), but did not present an analysis of this evidence. The Towns cite essentially the same evidence, giving three examples from interviews (*Towns August 2001*, 284-285).

The following sections examine the various topics that were mentioned in the proposed finding in regard to community during the period from 1973 to the present, with an analysis of the EP Comments.

Cultural Differences. The proposed finding stated that in regard to the period from the 1920's to 1973:

The petitioner asserts as well that there are cultural differences from non-Indians and that there has been marriage within the membership and with other New England Indians which provide evidence for community. Almost all of the descriptions of the gatherings and enclaves are based on interview/oral history. The adequacy of this material varied substantially from instance to instance (EP PF 2000, 82).

Continuing consideration of the theme of cultural differences for the period from 1973 to the present, without reaching a conclusion, the proposed finding stated:

The petition's position is that there are presently cultural characteristics of the Eastern Pequot which show continuity from the Pequot tribe in the past (EPNarr. 7/98, 52-54). Where a group demonstrates cultural patterns which are distinct from the populations it interacts with, this provides evidence for community (83.7(b)(1)(vii)). The petitioner's position that cultural characteristics have been maintained is equivalent to stating that cultural differences have been maintained and exist. The cultural patterns do not need to be survivals of the group's culture from pre-European contact days. They must be more than symbolic assertions of group identity (EP PF 2000, 139).

The petition did not present a coherent discussion and supporting body of evidence for the past culture of the Eastern Pequot as providing context for community at the present. There was little or no data which would establish how widespread the

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cited cultural traits were within the membership. Several of the items categorized by the petition as distinct cultural practices were not, as described, different from non-Indians. These included hunting and fishing, music, dancing and sports and food-sharing, all described it as widespread among the Pequot. The data about food-sharing was also evaluated as to whether it showed social contact and relationships within the membership. Similarly, the data concerning employment patterns did not, as described, indicate cultural differences. A possible exception is a claimed tradition of stonemasonry, which might, with more complete data, be shown to be a distinctive (though not unique) group tradition. The use of herb and wild plants for curing was noted although not described as distinct from non-Indians. Burial practices which were described as traditional were noted. There was no information to show that these practices were in fact of long-standing, or widespread within the group or that they were other than symbolic (EP PF 2000, 139).

Two EP reports described phenomena that it characterized as "cultural features" (K. Sebastian IIIIG 244-246; EP Comments 8/2/2001; K. Sebastian 9/4/2001, 1; EP Response to Comments 9/4/2001), none of which were shown to be widely distributed among the membership nor to have existed until recent years. These included naming, burial ceremonies, prayers and dances, none of which were shown to be other than of recent origins nor to represent actual as opposed to symbolic cultural differences (see 83.7(b)(1)(vii)).

Nothing in the EP Comments showed significant cultural differences widely distributed among the membership. The survey and one of the reports considered hunting and fishing and working in certain occupations as cultural markers of the group. None of these occupations or activities was distinct from that among non-Indians in the area, nor were they shown to be more common than among non-Indians in the area. Even if hunting and fishing or certain occupations were traditions or part of the group's oral history, this would not show cultural differences or social distinction.

Geographical "Social Core" Model for Modern Community. The proposed finding noted that the Eastern Pequot petition had based its presentation of the data to demonstrate modern community on a model, derived from the Mohegan final determination, of a "social core" of members in substantial contact with each other, which in that case corresponded with members within a ten mile radius (EP PF 2000, 140). The proposed finding noted that "The petitioner presented no data to demonstrate that the Eastern Pequot members living within that radius form a social community (*i.e.*, meet the definition in 83.1)" (EP PF 2000, 136).

The proposed finding stated that:

The term "social core," as used in the Mohegan Final Determination and some other findings, referred to the portion of the group which maintained substantial social contact among the members. In the Mohegan Final Determination it was

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concluded on the basis of field research that the members within that radius formed a social core (Mohegan FD Sum. 14-17, Anthro. TR, 50-51). *However, the Eastern Pequot petition simply defines the ten-mile radius as a social core with no showing by evidence that it is* (EP PF 2000, 136). [emphasis added]

The proposed finding noted: "The concentration of members of a petition in a general area where there was historically a community is not good evidence that a present day population of descendants in the same area are still maintaining social ties, unless there are distinct neighborhoods or settlements (see Miami FD)" (EP PF 2000, 136) The proposed finding also rejected the fact presence of the petitioner's ancestors living in the defined area for hundreds of years as providing substantial information in support of community, past or present (EP PF 2000, 136).

The proposed finding also stated that

The petitioner defines the area within a ten mile radius of the Lantern Hill Reservation as the "social core area." This area includes not only the towns immediately around the reservation where Eastern Pequots have lived off-reservation since the 18th century, Mystic, Old Mystic, North Stonington and Stonington, but towns at a further distance, including Groton and the city of New London. According to the petition itself, the petitioner's members did not move to the latter two locations in significant numbers until the late 1960's, but census data indicates that the majority of the Sebastian line families resided in Groton from 1850 through 1880, while a substantial number of them continued to reside in Groton from 1900 through 1920 (EP PF 2000, 136).

The proposed finding also noted, referring to this description of the geographical location of members in the past, that "This geographic proximity of a portion of the membership would be supporting evidence for a finding that there is a social core within at least the older settlement areas within the ten mile radius, but does not substitute for direct evidence to demonstrate community" (EP PF 2000, 137).

The EP Comments redefine the geographic extent of their "core," widening it. They state:

Essentially, the core is that territory surrounding the Lantern Hill reservation within a radius of 10 to 15 miles as demonstrated in Map 1. Spanning parts of two states, it includes the towns of North Stonington, Stonington, Mystic, Westerly, R.I., and Ledyard towards its center, as well as the larger cities of Norwich, New London and Charlestown, R.I. at its extremities. The core area is not arbitrary, rather it is derived from the fairly consistent residency patterns of the Eastern Pequot in the second half of the 19th century and the whole of the 20th century (Flowers and Grant-Costa IIC, 78; EP Comments 8/2/2001).

The response also adds a new category, defining a "core periphery" area. The response argues that:

most Pequots migrating outside the core area resettled not in distant urban centers rather in the two close major capitals—Hartford and Providence—at the edges of the core area. Thus, the data which comprise the second set of charts were refigured by extracting the number of families living in Hartford and Providence and organizing them into a separate category: *the core periphery*. The core periphery is merely these two major urban centers. This is surely a reasonable extension of the core area for the 20th century since it accounts for the general trend within non-Indian communities as well as within Indian communities throughout the country (Flowers and Grant-Costa IIC, 79; EP Comments 8/2/2001). [footnote in original omitted]

Essentially this is an argument that those members living in those areas were maintaining substantial contact with the "body" of the Eastern Pequots. That proposition is discussed by the Eastern Pequot and data described, in the main discussion of post-1900 community (Burgess IIID; EP Comments 8/2/2001). Thus it is not a geographical but in practice a social argument.

Despite this geographical description and analysis, the EP Comments, without explicitly stating so, abandon the "Mohegan model" approach for demonstrating modern community used in their 1998 petition and addressed at length in the proposed finding. EP does not attempt to demonstrate systematically that those within the core area, or core and core periphery areas, presently maintain a social community. A better historical context is provided, in the discussion of past visiting, but there is no attempt to carry this analysis into the present day in any systematic fashion. The EP response primarily rests its demonstration of modern community on the geographical patterns past and present, and the data from the membership survey, along with additional information on past social interaction and kinship. However, neither the survey data nor geographic data provide substantial data to demonstrate social relations within the present-day community.

Evidence for Present Community from Kinship. The proposed finding stated:

In part because of the concentration of membership on the part of the Sebastians, most of the current membership is relatively closely related. Adult members in their 20's and 30's are generally fourth cousins if they descend from different children of Tamar, though some older ones are only second cousins. Within the dominant Francisco Sebastian subline, adults are cousins or second cousins. The BIA interview and petition interview data indicates that kinship links have been maintained well beyond immediate, first degree kin (i.e., first cousin, aunts and uncles). And the previous generations, to whom the historical discussion relates, were even more closely related (EP PF 2000, 89).

While this degree of genealogical relationship is not close enough to assume without further evidence that social connections are maintained, they are close enough to provide a strong basis for kinship relations to be maintained. *The evidence in this case is that the Eastern Pequot have maintained kinship relationships well beyond primary kin* (BAR 1999, Burgess 1998) (PEP PF 2000, 89). [emphasis added]

The State notes, apparently in reference to the current-day community, the BIA's statement in the proposed finding that there was not a systematic description that actual kin links existed beyond those that could be assumed from genealogical distance alone (*i.e.*, primary kin) (*State of Connecticut August 2001*, 32; citing EP PF 2000, 89). The State does not add to this analysis.

EP does not present a systematic description from interviews of individuals who presently account "distant" kinsmen as someone with whom they have a significant kinship relationship. There are some items of data, but there is no reanalysis of the existing interview data nor is their new interview data systematically addressed. As the proposed finding noted, the existing interview materials were not thoroughly reviewed and it was suggested that a re-review might provide a different result. The review for this final determination of the BIA's interview materials and the additional interview information submitted in EP's Comments to the proposed finding did not produce consistent data concerning whether at the present time kinship relationships are recognized well beyond primary kin.

EP's argument for the importance of kinship in the current group rests primarily on the interview information on past visiting patterns, which is fairly extensive, and the past participation in social and political events across family lines. Little information was available on informal visiting across family and primary kin lines in the present group.

An isolated but significant piece of information concerning the current group is the vice-chairman's appraisal of the political stances among the membership, which describes a set of family groupings and indicates his perception that these groupings exist and have some coherence which manifests itself in the support of candidates for office. This observation is presumably based on his 10 or more years in EP politics (Mark Sebastian 1999).

EP Membership Survey. EP conducted a survey of its membership to support and augment the documentary and interview data concerning past and present community and political organization that it had submitted for the proposed finding (Eastern Pequot Petition Team Survey, June 29, 2000; EP Comments 8/2/2001, Box 1, Folder Bragdon Evidence). The survey, and the data presented, suffer from very substantial weaknesses which limit their usefulness. Many of the questions are poorly worded, so that the import of the data gained cannot be adequately determined. The EP Comments included a report which included a discussion of some of the results of the survey (Bragdon, IIIJ, 465-79, EP Comments 8/2/2001).

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The total number of respondents was 195 out of approximately 555 adults. This was a mailed survey. The survey report did not list who had responded to the questions. The profile of the respondents in the report does not include distribution of respondents according to family line and subline, making it impossible to determine if it was representative in that important respect. The geographic distribution of current residence and birthplaces is given and is reasonably consistent with the overall EP membership as is also the age distribution.

The report did not provide a summary of all of the results of each question. A raw data printout of all responses was provided in a form which was difficult to use without inputting again into a database program. Because the survey was blind and because of problems with the questions, the BIA concluded that asking for additional analyses of data from this survey would not be fruitful and further would go beyond the limitations set forth by the February 2000 Directive.

Question 45 asked whether the respondent attended a political event, party, worked with or socialized informally with "any PEP member" but instructs the respondent to respond in terms of involvement with "other Paucatuck Eastern Pequot members." Although the report cites this as evidence that EP members are significantly involved with PEP members, the question as posed is ambiguous as far as whether the respondent meant PEP or not (particularly in light of the 1982 legislation which changed the formal name of the state-recognized group, whatever its components might be, to "Paucatuck Eastern Pequot"). Notably, the data is at odds with minutes and attendance sheets of either petitioner. Only data for the 12 former council members is reported, which raised the question of whether the 183 respondents ignored the question, or the EP simply did not include the answers in the material submitted.

Generally, to the extent that the survey only reported results of the 12 present or former council members, it is not particularly useful or significant since, as the text itself notes, the proposed finding asked about wider involvement than that of the active leadership. Failure to include results on several questions, such as what political issues are important, suggests at the very least that the results were not favorable. In general, the failure to provide a complete summary of results means that the survey was of only minimal use for purposes of evaluation.

Question 41 asked respondents to state who were leaders in the decades beginning in the 1950's. Again, the EP report only provides data from the 12 who were past or present council members. The text estimates this as 30% of the potential total of such individuals (the BIA's count of the potential total is a little higher, but some are deceased). Further, there is no identification or cross section of who these respondents are, hence it is impossible to separate out whether Roy Sebastian, Sr. was described as a leader only by other members of his Francisco subline or was also reported as a leader in that time period by persons who belonged to other sublines. These 12 respondents identified the following individuals as leaders of the tribe: in the 1940's, Roy Sebastian, Sr.; in the 1950's, Roy Sebastian, Sr.; in the 1960's, both Roy, Sr., and Roy, Jr.

The replies to question 34, indicating that 37 individuals had actually attended CIAC meetings in the 1970's and 1980's, provide some evidence for the importance of the CIAC's actions as a

political issue. Assuming all twelve former council members had attended such meetings, an additional 25 members, at a minimum, had shown sufficient interest to attend a meeting, lending some support to the hypothesis that the issues being considered were of importance to the membership. However, the data is for a 25 year period is lumped together, with no indication of frequency or total, nor are the individuals who responded positively profiled as to age, location or family line. Thirty of the 37 indicated that a friend or relative was the source of information about the CIAC, providing some substantiation for the respondents' being connected individuals as far as political issues went. The question did not specify EP meetings as a source of information about political issues and the data did not indicate that this was an important source.

EP developed relatively little data which identified which issues were of importance to individuals. Question 45 on the survey listed 14 possibilities. EP reported only the answers of the 12 present or former council members for this question, which by definition doesn't show whether there was broad political interest.

Question 46 asked, "are there major issues with which you disagree with the EP Tribal council," and asked the respondent to list any. The replies were once more reported for only the 12 council members. The answers provide some information about conflicts and disagreements, although without any information as to who took which positions and whether they only represent personal opinions or whether there was broader membership backing of the stand. The report states that "11 of 12 expressed concerns, referring to the tribal council, noting:

"too much talk, not enough action, more concern for people, etc.," "must unite with Khuna [*sic*]," "too much power, no control, tribal body has no say," "health, housing, education, environment, conservation, support for youth [are needed]," "lack of communication, involve elders more," "inability to follow through ideas, lack of meetings or communication, petty splits and arguments," "right to have closed meetings," and concern with "communication with tribal members in a timely manner" (Bragdon IIIJ, 470; EP Comments 8/2001).

Question 39 asked respondents to provide details regarding the method of "keeping up with tribal business." Only the results for the 12 present and former council members were given. The question is framed in the present only, further limiting its usefulness.

The survey included questions which apparently intended to get at the existence of distinct culture. However, the questions primarily concerned whether individuals hunted or fished and the like, or were taught these by their parents or grandparents. None of the items listed was identifiably a distinct cultural trait.

The questions concerning "community," asked broad questions such as to "who you socialized with mainly" as a child and as an adult. By implication, the intent of the questions was to distinguish between siblings, other close relatives, distant relatives, other Indians, and non-

Indians. However, the question doesn't distinguish between Indian or Pequot relatives and non-Indian relatives of the same kinship status. Consequently, these results are not useful.

The survey posed detailed questions about the work history of the respondents, their parents and their grandparents (but without distinguishing between Indian and non-Indian parents). The report concludes that "While such trends may parallel the non-Indian work trends throughout the nation it is clear that Eastern Pequot tribal members have continued to work in specific fields that may be linked to the geography and cultural history of the tribe" (IIIJ, Bragdon, 471, EP Comments 8/2/2001). In other words, it doesn't provide specific information which shows community or a distinct group. The results for a number of questions on the survey were neither reported except as raw data nor discussed.

The PEP Response to Comments provided a tabulation of part of the raw survey data that yielded significant results that the EP report did not provide. It found that 104 of 195 EP respondents to question 45, in indicating what issues were important, ranked the issue "the split" as very high in importance and only 10 ranked it as unimportant (Palma 9/4/2001, 16; EP Response to Comments 9/4/2001).

The PEP report assumed that the question about interaction with "Paucatuck Eastern Pequot" members would be interpreted to mean interaction with members of petitioner #113. Given that assumption, the report concluded that the question was insufficiently detailed and worded to address the "character, frequency, breadth, depth or intensity of the alleged social and political interactions between" the two groups (Palma 9/4/2001, 16; PEP Response to Comments 9/4/2001). The latter two comments appear to reflect the unavailability to PEP of the text of question 44.

EP Enrollment History. The Towns suggest that the EP membership list's sizeable expansion between 1975 and the present is evidence that it is a descent group rather than a community, and also that this unstable membership helps demonstrate that it isn't a community (*Towns August 2001*, 378). The State also commented that the proposed finding stated that EP membership had "fluctuated significantly during the petitioning process," from 70 in 1976 to 647 in 1998, and argued that this indicated that the EP were a recently formed group (*State of Connecticut August 2001*, 36). The nature of these fluctuations is discussed in more detail under criterion 83.7(e), below, but the data on the various lists does not indicate that EP is a recently formed group.

The Towns cited an interview in which an individual EP leader appears to describe a portion of the recently added members with the phrase, "everybody and his brother comes out of the woodwork" (*Towns August 2001*, 285; see also references to the Marsha Flowers and Geneva Sebastian interviews, *Towns August 2001*, 284). A more detailed review of the interview descriptions and documents of the governing body's actions concerning how the early EP rolls were prepared indicates a process in which a core of individuals drawn from several Sebastian sublines started with people they knew well, and then tried to "get word out" to those people (Larry Sebastian 1999). The EP organization may also have seen itself as an organization of

actives at first, rather than a complete enrollment. Some of the expansion that the Towns cite (*Towns August 2001*, 286), on the grounds that the earliest rolls were so small (96 members in 1978) (*Towns August 2001*, 348-349), may reflect that the earlier EP membership lists were an incomplete enrollment of active individuals. The later, larger, enumerations added relatively few sublines unrepresented on the earliest membership lists. A major contribution to the differential numbers is, without doubt, that the earliest EP membership lists included only adults, while the current ones include minors.

The current membership list, submitted for the final determination, has 1004 members, compared with 647 on the 1998 roll utilized for the proposed finding. It includes two lines not previously represented. One, Fagins/Randall, 98 individuals comprising approximately 10 percent of the membership, was active in EP in 1998 though not on the membership list and has clear social ties to the Sebastians (see below). The other, from Albert Sebastian, has had relatively weak ties in recent decades (see below). The total of EP members from the Albert Sebastian line is 141, which represents 14 per cent of the current membership (BIA FTM data base, printout, Descendants of Albert B. Sebastian). Thus, much of the difference of 347 is accounted for the addition of the Albert Sebastian subline and the Fagins/Randall line (a total of 239). The balance is largely accounted for the addition of minors, as well as some siblings of previously enrolled members (see also discussion of enrollment changes under criterion 83.7(e)).

The Larry Sebastian material cited by the Towns includes his comment that "everybody and his brother comes out of the woodwork" (*Towns August 2001*, 285; citing "Larry Sebastian transcript, Tape No. 14, p. 10" (Larry Sebastian 1999)). The discussion follows his description of the EP enrollment process as starting with "anyone that was a tribal member or family member of the tribe that we could think of," and going on to ask these whom else they knew (L. Sebastian, Tape 14, State transcription, 8-10 (Larry Sebastian 1999)). He does go on to state that the EP had recently added "10, 15 people that were from [inaud] their sons had moved away from here and we didn't know anything about it" (L. Sebastian, Tape 14, State transcription, 13). This apparently refers to the Albert Sebastian line, although EP membership comes only through Albert Sebastian's daughters (see BIA FTM data base).

The PEP Response to Comments on the proposed finding makes the argument that the EP added the Fagins descendants in order to be considered a tribe rather than a family, after Mashantucket became federally recognized, noting instances when the EP refer to themselves as the "Sebastian family" (McMullen 9/4/2001, 13-14; PEP Response to Comments 9/4/2001). There is nothing in the record concerning the development of the EP membership to support this speculation. For example, in 1982, one of the EP leaders wrote to the CIAC stating, "We the Sebastian family have had to spend several thousand dollar in lawyers fees, legal fees and documents" (Lawrence Sebastian to CIAC 11/29/1982). In context, the group represented itself as the Sebastian family to the CIAC, in the pursuit of demonstrating eligibility for membership in the Eastern Pequot tribe as it was defined by statutory provisions and the CIAC's interpretation of those statutes. At some point, they tend to shift to towards describing themselves not as one family of a tribe, but as a tribe. There is no indicated motivation and the evolution of their actions is fairly consistently

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one of resisting exclusion from membership in the state-recognized tribe by the CIAC or resisting being classified as "not Indian" by the CIAC, rather than seeking exclusive recognition. There is no indication that EP in the 1970's and 1980's was seeing the historical Eastern Pequots as other than one group, despite references which focus on the Sebastians. .

In 1999 BIA interviews, some EP leaders indicated that they were open to enrolling individuals from any Eastern Pequot descent (Mary Sebastian 1999). In practice that has not occurred. There was nothing in EP's minutes and other documents to indicate that an actual open recruitment of any descendant of the historical Eastern Pequot tribe has occurred.

The Albert Sebastian line has only been included on EP membership lists since 1998. There is limited interview information, without much detail, which describes this line as one which was not central or highly involved with the EP. One interview appears to describe the Albert Sebastian descendants as effectively having become attached to the Narragansetts (Albert Sebastian married a Narragansett). The description of this line by individuals from the Francisco Sebastian, Sr., subline is that they are known, but somewhat distant relatives, categorized as having "moved down to Rhode Island" (Larry Sebastian, 1999).

The membership list used for the proposed finding included individuals from the Laura (Fagins) Watson line. The current membership list adds individuals from the Abby (Fagins) Randall line. No descendants of Abby Fagins were on the 1998 EP membership list, although their presence was evident during the 1999 BIA fieldwork. The Towns, commenting on mentions of this line in the proposed finding, cite to an interview where a Sebastian descendant born in 1937 stated that she did not know the "Fagins," referring in part to an individual from the Abby Fagins line who grew up in Norwich (*Towns August 2001*, 283, 342; citing "Geneva Sebastian transcript, Tape No. 23, p. 19").

In contrast, other interviews, and materials cited by Burgess (Burgess IB, 45; EP Comments 8/2/2001) show visiting and attendance at the same church in Norwich among the older generation of Sebastians and Fagins/Randalls. Alton Smith, Sr., had a grandmother who was married first to a Sebastian and then to a Randall (*i.e.*, a member of the Fagins/Randall family) and he often visited with his step-grandfather (A. Smith 1999a). Burgess notes that "Lillian Sebastian, from the Solomon Sebastian subline, remembers Alden Wilson's picnics taking place in the 1930's and that the Randalls and the DeBarros family, both from the Abby (Fagins) Randall line, would sometimes be there. Dorothy Sebastian Hardy, Lillian's sister, was close to Fred DeBarros's sister" (Burgess, Interview with Lillian Sebastian, 2000). Charlie Lewis recalled close residential ties to the Randalls in Norwich, but because of an Indian, but non-Eastern-Pequot, family that linked the two lines – his father's sister had married a Randall, whereas his father married a Sebastian (Lewis 2001).

It is less clear from the available evidence that individuals from the Laura (Fagins) Watson line had remained in contact with the main group before their recent enrollment (1998 membership list). In an interview with two older individuals from this line, one indicated that they had visited

the reservation when very young, possibly visiting the husband (Frank Steadman, died 1933, here described as Narragansett) of Sylvia Sebastian (Bourne-Silva 1999; EP Comments 8/2/2001). The older interviewee, born in 1925, might possibly remember such visits. However, since the Steadmans lived in Mystic and not on the reservation, and another account indicates visits to a different person on the reservation, the recollection may be imprecise. A 1996 letter from R.G. Bourne to Mary Sebastian also recalled such visits to Lantern Hill, but thought that the name of the person whom his family visited was Grace (Bourne to Sebastian 5/28/1996; EP Response to Comments 9/4/2001, Ex. 19).<sup>63</sup> The interviewees described their family as primarily involved with the Narragansetts through family connections on that side, attending the Pleasant Street Baptist Church at times (Bourne and Silva 1999).

*Analysis of Comments and Responses.* The proposed finding concluded that on the basis of precedent, using evidence acceptable to the Secretary, the historical Eastern Pequot tribe met criterion 83.7(b) from the colonial period through 1873 (see EP PF 2000, 69, 72, 79, 98). A review of the evidence in the record at the time of the proposed finding and submitted for the final determination indicated that no significant new evidence was submitted in regard to the nature of the historical Eastern Pequot community in the colonial period or in regard to the nature of the historical Eastern Pequot community from the era of the American revolution into the third quarter of the 19<sup>th</sup> century. The arguments to the contrary presented by the third parties were essentially the same as at the time of the proposed finding. They were not persuasive, in that throughout this time period, there remained a reservation enclave with a majority of the tribal members resident in it, if not continuously, at least regularly, with other individuals and families having maintained contact, which is demonstrated by moves on and off the reservation and their continuing presence on the overseers' reports. This is sufficient evidence under the regulations (83.7(b)(2)(i)). Contrary to the argumentation presented by PEP, there was significant evidence that the direct antecedents of petitioner #35 were a part of that historical community centered upon the Lantern Hill reservation.

For the period from 1873 through 1973, the proposed finding concluded that on the basis of precedent, using evidence acceptable to the Secretary, the historical Eastern Pequot tribe met criterion 83.7(b). A review of the evidence submitted for the final determination indicates that significant new data was presented in the form of the better copy of the 1873 petition showing a connection between Tamar (Brushell) Sebastian and her children and other members of the historical Eastern Pequot tribe at the time of its signing, plus overseers' reports that filled in the time span from the 1880's through the early 20<sup>th</sup> century. For the 20<sup>th</sup> century, data from the journals of Sarah (Swan) Holland and Catherine (Sebastian) Carpenter Harris also provided

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<sup>63</sup>R. G. "Rudy" Bourne to Dear Aunt Mary, from San Jose, CA: "as a card carrying member" . . . "I realize that I have not been a member of the tribe long" . . . . Recollections of visiting the reservation at North Stonington when he was a child: "There was an old Pequot woman who lived on a hill above Long Pond and we would climb up that hill and she would feed all of us supper, it seems to me her name was Grace something but I cannot remember what her last name was, but I do remember those were happy days, that was over fifty years ago . . ." (Bourne to Sebastian 5/28/1996; EP Response to Comments 9/4/2001, Ex. 19).

contemporary data concerning social interactions. The arguments of PEP that the direct antecedents of petitioner #35 did not form a portion of, or were not an element of, the historical Eastern Pequot tribe during this period were not persuasive.

For the period since 1973, there are significant deficiencies in the EP reports intended to demonstrate modern community. The geographic section of the EP Comments implies that it can stand alone. The other data does not, in turn, focus on the geographical patterns. The survey data was intended to be a major part of this demonstration, but for the reasons discussed above, it did not provide good evidence. The historical foundations of kinship, geographical concentration and visiting patterns before the modern era are given extensive attention as a foundation for a claim to modern community, *i.e.*, for the purpose of showing that in the period before 1973, there was substantial evidence.

The interviews are largely oral histories which do not systematically address present-day community. The EP analysis of interview material presented is not directed at showing modern community *per se*. The petitioner has not, in many of its materials, drawn a sharp distinct between "modern" and recent historical times. The failings of the survey data are noted above. The limitations of projecting the genealogically established kinship links are described elsewhere.

Oral history data concerning maintenance of tribal links is not absent (there is data but it has not been summarized or organized). The EP comments asserted that there is widespread knowledge among core members of the affairs and characters of peripheral members, but cited no data and this aspect was not covered in the EP reports.

PEP analyzed the EP survey data, evidently retabulating some of the raw data submitted, although they lacked a complete copy of the survey form itself (Palma 9/4/2001, 14; PEP Response to Comments 9/4/2001). Their report noted areas where the results were difficult to evaluate because it was unclear how key terms were defined by the respondents and time frames for reported actions were not specified (Palma 9/4/2001, 15-16; PEP Response to Comments 9/4/2001).

However, deficiencies in the presentation of data do not necessarily lead to the conclusion that the petitioner does not meet criterion 83.7(b). Under the 25 CFR Part 83 regulations, the task is to evaluate the nature of the petitioner, not the quality of the petition.

*Conclusion.* See the conclusory section of this document.

**83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**

*Introduction.*<sup>64</sup> The responses and comments submitted in regard to the proposed findings contained arguments, but only minimal new evidence, pertaining to criterion 83.7(c) for the period prior to the Civil War.<sup>65</sup> The petitioner provided extensive Response to the Towns' Comments in regard to the colonial period (Den Ouden 1-18; EP Response to Comments 9/4/2001) and some in regard to the 19<sup>th</sup> century (Den Ouden 19-20; EP Response to Comments 9/4/2001).

The State's comments deny that "State guardianship in any way prevented political activity." It states further that, unlike most unacknowledged groups, the Eastern Pequot had a land base which "would have facilitated political process" (*State of Connecticut August 2001*, Appendix 12-14). It notes that there was no evidence that the State prevented meetings, nor that the State interfered with the activities of Alden Wilson or others identified as leaders by one or the other petitioner.

The Towns direct their arguments to the proposition that there was an "absence of continuous social community and political influence and authority" (*Towns August 2001*, 17). In regard to criterion 83.7(c), the Towns' major contentions are that the historical Pequot were a conquered people which the "colonial government no longer considered . . . to be a political body" (*Towns August 2001*, 47) and that the historical Eastern Pequot Indians were throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries dependent upon the State and its Towns in a wardship-style "custodial or welfare provider" (*Towns August 2001*, 148) or "welfare provider and guardian" relationship dealing with individuals, not with a tribe or with leaders (*Towns August 2001*, 149, 115, 221). The Towns also state that the 18<sup>th</sup> and 19<sup>th</sup> century Eastern Pequot petitions did not designate any of the signers as "leaders" (*Towns August 2001*, 150-151), state that the persons identified as leaders in the proposed finding were not leaders (*Towns August 2001*, 180-195, 239), and that the petitions and

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<sup>64</sup>"Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group" (25 CFR Part 83.1).

<sup>65</sup>The Towns' argued that, for the period of the 1830's, "No evidence has been found, for example, that the overseers provided law enforcement or fire protection services on the reservation. Rather, these services were provided by local government" (*Towns August 2001*, 125). However, the regulations contain no requirement that a petitioning group or its overseers exercise law enforcement authority. No evidence in the record mentions the issue of fire protection services, nor have prior determinations addressed that matter in any other case. Political authority or influence can be demonstrated by a combination of various forms of evidence.

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other documents evaluated for the proposed finding did not provide “evidence of internal tribal political processes” (*Towns August 2001*, 150).<sup>66</sup>

The regulations provide that:

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met (25 CFR 83.6(d)).

Some of the points of argument in regard to the early period, such as those of the Towns in regard to the nature of a tribe at first contact<sup>67</sup> or the impact of oversight by a colonial government,<sup>68</sup> were already addressed in the proposed finding (EP PF 2000, 100-101). The BIA does not find the Towns’ interpretation of the evidence for the period from first sustained contact through the mid-19th century persuasive, particularly in light of the provision in the regulations that:

Evaluations of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria (25 CFR 83.6(e)).

*Colonial Period through the End of the American Revolution.* The proposed finding concluded:

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<sup>66</sup>This paragraph constitutes a sampling, rather than an exhaustive listing, of the passages in which the Towns assert these points.

<sup>67</sup>The Towns contend that a tribe must have existed at earliest point of sustained contact exactly as it exists now, rather than being a portion that has evolved from such a tribe (*Towns August 2001*, 3, 5-6, 8-14, 17, and many succeeding instances). Many now-recognized tribes are no longer in precisely the same organization or political conformation as they were at the time of first sustained contact. Tribes which evolved as parts of historical tribes which have been acknowledged through the 25 CFR Part 83 process (Jena Choctaw, Huron Potawatomi, MBPI).

<sup>68</sup>The Towns contend that once a tribe has been “conquered and dissolved,” then it has to be regarded as permanently gone (*Towns August 2001*, 41; see also 15-17, 45, 47, 64, 87, 101ff., 109, and many other instances), leaving only “colonial government over a conquered people” (*Towns August 2001*, 56) and arguing that “Complete governance by the Colony is the antithesis of tribal sovereignty” (*Towns August 2001*, 60). The State also addressed this issue (*State of Connecticut August 2001*, 41ff). “Autonomy” under the regulations is defined only in relation to other Indian tribes, not to non-Indian governmental authorities. The temporary assignment of the Pequots to supervision of the Narragansett, Mohegan, and Eastern Niantic tribes after 1637 was as an act of the colonial government, as was their subsequent removal from that supervision in 1654-1655 (EP PF 2000, 13-24).

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Such occasional petitions have been accepted in prior acknowledgment decisions as providing sufficient documentation concerning political leadership and influence and internal political processes for the later 17<sup>th</sup> and 18<sup>th</sup> centuries (Mohegan PF 1989, 6). Precedents also indicate that the defense of a tribe's economic position is a significant indicator of political processes (Snoqualmie PF 1993, 25; Tunica-Biloxi PF 1980, 4). On the basis of precedent, this material is sufficient to meet 83.7(c) during the colonial period (EP PF 2000, 105).

The appointment of overseers for the Eastern Pequot reservation by the colony of Connecticut in itself provides data about the continuous existence of the tribal entity, but no specific information about internal political leadership or influence. However, the initiative of the Eastern Pequot Indians in requesting particular persons as overseers, combined with the signatures on the petitions, indicates that the Indians on the Lantern Hill reservation did at this time have internal political processes. On the basis of precedent, this material is sufficient to meet 83.7(c) for a tribe during the second half of the 18<sup>th</sup> century (EP PF 2000, 106)

The Towns, in general, challenge the finding that the historical Eastern Pequot tribe met criterion 83.7(c) for the colonial period, from first sustained contact with non-Indians until 1788 (*Towns August 2001*, 8-17, 43-93, 100-104). The Towns assert that:

While the Colony considered Harmon Garrett and Momoho to be its political authority over the Eastern Pequot, it did not consider them to also represent a tribal political entity. In effect, the government over the Pequot survivors was merely an extension of the civil government of the Colony. No evidence has been found that any independent tribal political leadership existed outside of this imposed structure. The Colony dealt with the Pequot survivors primarily as individuals and treated them similarly to other poor inhabitants who required overseers (*Towns August 2001*, 102).

The Towns, in regard to the leadership of Mary Momoho, state: "Among other reasons, it seems unlikely, in a New England society in which women were not even allowed to vote, that the Colony would recognize any female, outside of the Queen of England, as being a political leader" (*Towns August 2001*, 73). This argument indicates a lack of familiarity with the colonial Indian history of New England, in which there were many references to women, called by the term "Sunck Squaw," who functioned as political leaders and were so treated by the colonial authorities of Massachusetts and Rhode Island.

The Towns assert that:

During the course of the 18<sup>th</sup> century, the existing evidence indicated that the Stonington Pequots directly addressed the Connecticut government on only seven occasions, through petitions in 1722, 1723, 1749, 1750, 1764, 1766, and 1788.

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None of these petitions listed the signatories as having a leadership title or as being members of any tribal governing or social body. Rather the signatories were described in the petitions as being “Momohos Squaw [no close quotation marks] (1722), “subscribers in behalf of all ye Rest of ye Descent of Momohoe and his men” (1723), “Indian natives, of the tribe of Momohoe” (1749), “Indian Inhabitants of the town of Stonington” (1766), and “Indians of the Pequod [*sic*] Tribe in Stonington” (1788). In and of themselves, the petitions do not provide evidence of internal tribal processes because they fail to explain how they were developed or indicate to what extent the signers were truly representative of the tribal group (*Towns August 2001*, 103).

. . . Connecticut never acknowledged the existence of a tribal government on the Stonington reservation. Throughout the 18<sup>th</sup> century, it recognized neither an Indian leader by title nor a governing body on or near the reserve. Like any other Connecticut residents, the Pequots at Stonington could petition the General Assembly for the redress of grievance, but they chose to do so only seven times during the course of the [18<sup>th</sup>] century, and never as named or titled tribal leaders of a governing body. Neither did they ever appeal during this period to the central governments of the British Crown or the United States (once it was established). In short, the Connecticut government had no relationship with a tribal government on the Stonington reservation during this period and, indeed, there is no evidence that such a tribal political entity existed (*Towns August 2001*, 106).

### Analysis of Comments and Responses in Regard to Criterion 83.7(c) for the Colonial Period.

There is no requirement in the regulations that a colonial group have had “named or titled leaders of a governing body” in a formal sense. The material on the background of the 1994 revision of the 25 CFR Part 83 regulations provides:

In particular, many commenters interpreted the revised regulations as requiring a group to demonstrate that it meets the criteria in historical times by using the same kinds of evidence as for the present. In fact, actual acknowledgment decisions to date have clearly recognized the limitations of the historical record and have utilized standard scholarly requirements for determining the nature of societies in the past. It has been the Department’s experience that claimed “gaps” in the historical record often represent deficiencies in the petitioner’s research even in easily accessible records.

Language has also been added to § 83.6 which explicitly takes into account the inherent limitations of historical research on community and political influence. Further, the section allows for circumstances where evidence is genuinely not available, as opposed to being available but not developed by appropriate research. This does not mean, however, that a group can be acknowledged where continuous

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existence cannot be reasonably demonstrated, nor where an extant historical record does not record its presence (59 *Federal Register* 2/25/1994, 9280-9281).

In this instance, the historical record clearly demonstrates the presence and continuous existence of the historical Eastern Pequot tribe. While there are intervals of time between the petitions (one specific form of evidence) there are no significant intervals of time when the existence of the group is not recorded. The Review of Public Comments under the topic "Standards of Evidence and Stringency Requirements" in the preamble to the 1994n regulations also noted that:

It has been the Department's experience that historical evidence of tribal existence is often not available in clear, unambiguous packets relating to particular points in time. More often, demonstration of historical existence requires piecing together various bits of information of differing importance, each relating to a different historical date (59 *Federal Register* 2/25/1994, 9281).

In regard to the requirement of the regulations that "substantially" continuous existence be demonstrated, the Review of Public Comments noted that "substantially" as a requirement "means only that overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited" (59 *Federal Register* 2/25/1994, 9281).

In the context of the Towns' comment, the provisions of the regulations in regard to fluctuations in tribal activity are also relevant. The Review of Public Comments noted specifically that the "language concerning fluctuations recognized that acknowledgment determinations should take into account that the level of tribal activity may decrease temporarily for various reasons such as a change in leadership or a loss of land or resources" (59 *Federal Register* 2/25/1994, 9281).

1788-1873. The proposed finding stated;

Precedent does not require that there have been either a single named leader or a formally designated leader (Mohegan PF 1989, 6). The evidence, in the context of a group with a distinct territory, is sufficient to show that the petitioner meets criterion 83.7(c) for the period from 1800 to 1822 (EP PF 2000, 107).

The 1839 initiative of the Indians in requesting the replacement of an inadequate overseer indicated that the Indians themselves still, as in the later 18<sup>th</sup> century, expected the state-appointed overseers to carry out their wishes in some matters. Although the court did not respond to the petition favorably, but rather continued the prior overseer in office, the presentation of the petition, signed by six women and four men, indicated that the group had internal organization . . . . In 1841, [the petition presented] was signed by five men and five women (#35 Pet. B-02B). The regulations do not require that in order to demonstrate political process, a petition must be signed by the entire tribe. Petitions which show a portion of the tribe

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expressing an opinion or preference on issues of importance or consequence are also evidence of political process (Mohegan PF 1989, 6) (EP PF 2000, 108).

The Towns, in general challenge the finding that the historical Eastern Pequot tribe met criterion 83.7(c) from 1788 to 1873 (*Towns August 2001*, 94-129).

Analysis of Comments and Responses in Regard to Criterion 83.7(c) for the Period from the American Revolution to 1873. The proposed finding presented discussion of the sequence of documentation for the historical Eastern Pequot tribe for this period, both descriptively in the historical overview (EP PF 2000, 47-58) and with specific evaluation under criterion 83.7(c) (EP PF 2000, 103-106).

The content of the address of the Town of Norwich to the General Assembly on October 11, 1795 (*Towns August 2001*, Ex. 69), specifically mentions the “Pequod [*sic*] Tribe of Indians, in the Town of Stonington” and then references the money expended by towns for “the support and removal of an Individual of that Tribe, who fell sick with in the Town of Norwich” and requested repayment (*IP*, 2<sup>nd</sup>, II:155; *Towns August 2001*, Ex. 69). This is evaluated as an identification of the tribal nature of the petitioner as of that date and specifically indicates that its members were not classified among the poor for whom the Towns considered themselves to bear responsibility.

In regard to the 1800 Eastern Pequot petition against intruders on the reservation (Connection Indian Papers 2, II:105; *Towns August 2001*, Ex. 74), the Towns assert: “Of course, had the group existed as a functioning political and social entity with any degree of internal cohesion, those incursions onto the small reservation could not have occurred” (*Towns August 2001*, 110). The Towns argue also that the evidence for #35 and #113 was handled differently from the evidence in regard to the Mohegan petition for criterion 83.7(c) (*Towns August 2001*, 29-31). This argument is incorrect. It should be noted that, in fact, the Mohegan tribe submitted a petition to the New London County Court containing similar complaints during the first half of the 19<sup>th</sup> century (Mohegan Pet., Ex. 341).<sup>69</sup> Such petitioning did not preclude the Mohegan tribe from meeting criterion 83.7(c).

The evaluation in the proposed finding that the petitions of February 8, 1839 (*Towns August 2001*, Ex. 80) and February 1841 (*Towns August 2001*, Ex. 81) indicate the existence of political authority or influence (EP PF 2000, 108) stands, even though no one specific individual among the signers was designated as a leader (*Towns August 2001*, 126-129).

*Political Influence or Authority 1873-Present.* The majority of the new analysis and evidence submitted pertained to the period from 1883 to the present. However, the BIA’s detailed analysis for the final determination begins with 1873 because of significant new information in regard to

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<sup>69</sup>1834 complaint of Mohegan to New London County Court, troubled with trespassers on their wood land by white people & also by colored people who live among us & continually cut & sell wood . . .” (Mohegan Pet., Ex. 341).

the 1873 Eastern Pequot petition. Petitioner #35 presented argumentation in regard to a political leadership role of Calvin Williams<sup>70</sup> in the later 19<sup>th</sup> and early 20<sup>th</sup> centuries, beginning with the 1873 and 1874 petitions<sup>71</sup> (Grant-Costa and Glaza IIIC, 133-134; EP Comments 8/2/2001; Grant-Costa and Glaza I(6), 36-38, EP Response to Comments 9/4/2001; Grant-Costa and Glaza II(7), 13-16; EP Response to Comments 9/4/2001).

*1873 Petition.* The proposed finding stated:

The petitions and lists generated by the proposed land sale are evidence indicating that from 1873 through 1883, the tribe was able to generate organized protests which they regarded as contrary to its economic interests, and to present documents to this effect to the non-Indian authorities. This evidence shows that the petitioner meets 83.7(c) for the period from 1873-1883 (EP PF 2000, 111).

On May 19, 1873, Leonard C. Williams of Stonington, Overseer, petitioned the General Assembly for permission to sell a portion of the Lantern Hill reservation (Bassett 1938; #35 Pet. Petitions; see EP PF 2000, 106, for details). The proposed sale engendered protests by the Indians who would be affected by it. On June 26, 1873, the "members of the Pequot tribe of Indians of North Stonington" remonstrated against the sale of lands and requested removal of Leonard C. Williams as overseer (Lynch 1998a 5:81-82; Grabowski 1996, 114). For a detailed discussion of the new evidence, see above under criterion 83.7(b) in regard to Tamar (Brushell) Sebastian. This 1873 petition also includes signatures of the other two lines ancestral to the current petitioner, Fagins/Watson and Fagins/Randall, and lists them in common with Amanda (Nedson) Williams and Leonard Ned/Nedson/Brown. The 1874 petition referenced by the Towns (*Towns August 2001*, Ex. 84) included members of the Fagins/Randall and Fagins/Watson families (#35 Pet. Petitions; Lynch 1998, 5:82-83). There is no evidentiary requirement that a petition have been acted upon favorably by the receiving entity (*Towns August 2001*, 127, 129) for its composition and presentation to provide evidence for the existence of political influence or authority among the members of the submitting entity.

*1883-1920.* The proposed finding stated that, "There are no overseer's reports in the record from 1875 until 1889" (EP PF 2000, 107), and cited a document which appeared to indicate that these

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<sup>70</sup>All Williams family members who signed Eastern Pequot petitions or appeared on Eastern Pequot overseers' lists in the period from 1873 onward were either siblings or nieces and nephews of Calvin Williams; thus all descended from the marriage of Ammon Williams and his wife Mercy (whose family name is unknown). On the 1900 special Indian Population census, Calvin Williams indicated that his mother was Narragansett; in 1910, he indicated that she was Pequot.

<sup>71</sup>For prior discussion, see EP PF 2000, 109-111.

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reports did not exist.<sup>72</sup> However, some reports for these years were located by the petitioner and submitted for consideration in the final determination (EP Comments 8/2/2001, Box 1, Folder 9). The Eastern Pequot overseer's report filed April 4, 1883, by Charles Chipman noted, "That the present number of members of said tribe as known to said Overseer is now Thirty Three – two having been added the past year by order of Chief Justice Park" (EP Comments 8/2/2001, Box 1, Folder 9; see also 1878, March Term 1879; March 1881, April 1882-April 1883; petition of December 3, 1883, and March Term A.D. 1884; #35 Pet. Overseers Reports; Lynch 1998, 6:91-92). The subsequent reports surrounding this event are summarized here.<sup>73</sup> No copy of the pertinent court order was included in the evidence submitted by either petitioner #35 or petitioner #113 or by the interested parties. At the request of the BIA, the United States Attorney's Office in Connecticut attempted to locate a copy of this document in the most likely sequence of records, but was unable to do so. The BIA thus does not have direct information as to the two names added by this order, or on what basis they were ordered to be added. However, the two names which appear on the sequence of overseer's reports immediately after 1883 that did not appear earlier are those of Marlboro Gardner and his sister, Harriet (Gardner) Simons (see further discussion in the proposed finding for PEP).

As noted in regard to the appearance of Tamar (Brushell) Sebastian on the Eastern Pequot overseer's reports (see summaries above under criterion 83.7(b)), her name was listed as of 1888-1889. Like Tamar (Brushell) Sebastian, Marlboro Gardner had already appeared on Eastern Pequot documents a decade earlier (EP PF 2000, 107; see also the 1874 petition discussed above) (#35 Pet. Overseers Reports; Lynch 1998, 5:83-84). No Brushell/Sebastian family members were

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<sup>72</sup>A letter from the North Stonington Town Clerk's Office to Connecticut Secretary of State Charles E. Searls, dated February 4, 1881, stated that his office had received no report from the overseer of the Indians residing in the town since that filed by Leonard Williams in 1875: Mr. Charles P. Chipman, the present overseer, had never made any return to that office (Hillard to Searls 2/4/1881; #35 Pet., B-02B).

The Towns did not locate these additional overseers' reports and presented their comments upon the assumption that they were non-existent (*Towns August 2001*, 144-145).

<sup>73</sup>March Term A.D. 1885, Charles H Brown overseer of Eastern Tribe Pequot Indians in the town of North Stonington Conn. to the Honorable Superior Court for New London County. "That the numbers of said Tribe 31, two having died in past year." Paid Calvin Williams for clearing land. Goods and services for: Amanda Williams, Eunice Cottrell, Molbro Gardiner (EP Comments Box 1, Folder 9).

1 April 1886. Charles H. Brown, overseer. Received goods or services: Amanda Williams, Eunice Cottrell, Molbro Gardiner (EP Comments Box 1, Folder 9).

April 1886 - April 1887, Charles Brown, overseer; 28 members: Paid or receiving goods or services: Lucy Hill Reynolds, Eunice Cottrell, Noyes Hoxie, Amanda Williams, Molbro Gardner (EP Comments, Box 1, Folder 9, "Systematic Survey").

April 1887 - April 1888, Charles Brown overweer, 26 members, 2 having died since the last report; Paid or receiving goods or services; Lucy Hill Reynolds, Eunice Cottrell, Amanda Williams, Molbro Gardner (EP Comments, Box 1, Folder 9, "Systematic Survey").

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among the signers of the December 3, 1883, petition, which did contain Gardner, Hoxie/Jackson, Fagins/Randall, and Fagins/Watson signers. The copy submitted by the Towns (*Towns August 2001*, Ex. 89), omitted the name of Marlboro Gardner, although the Towns' own researcher had included it (#35 Pet. Petitions; Lynch 1998, 5:91-92).

The documentation submitted during the comment period did not contain any confirmation of the assertion that Calvin Williams had been paid for preaching on the Lantern Hill Reservation (EP PF 2000, 109; citing #113 Pet. 1996, citing Grabowski 1996, 176). Calvin Williams had been a Lantern Hill reservation resident since at least 1870. The only mention of payment to him was for the March Term A.D. 1885, when Charles H. Brown, overseer of Eastern Tribe Pequot Indians in the town of North Stonington Conn. to the Honorable Superior Court for New London County, noted that he had paid Calvin Williams for clearing land (EP Comments Box 1, Folder 9).

Three letters from the early 20<sup>th</sup> century indicated that Calvin Williams played a political role. On June 27, 1905, Rev. Calvin Williams, North Stonington, wrote to Mr. J. C. Averill, Esq. "I received your Postal Sunday eve. 25th. We have not had time to see all of the members, as there are only 2 or 3 whom reside here. In regard to choosing another Overseer, we your Honor ask for a little longer time, & if can't be decided, we name gentlemen Mr. Chas. H. Main or Mr. Calvin Snyder both of North Stonington" (EP Response to Comments 9/4/2001, Errata Item 4).

Charles Stewart, overseer, wrote to Calvin Williams, October 26, 1911, regarding a proposed timber sale on the reservation and survey of the reservation: "Several days ago I wrote to Mr. Alonso Main in order to learn the boundaries of this property, and as soon as they are obtained I shall come down and see you. At that time we can probably make some satisfactory arrangement by which you may receive further aid from the small fund in my hands" (*Towns August 2001*, Ex. 95; EP Response to Comments 9/4/2001, Ex. 20).

Kenneth Congdon in 1988 reported oral history concerning Calvin Williams, which supports his status and position as an informal leader. Congdon was the grandson of Ephraim Williams and Sarah Sebastian, noting that Calvin Williams had thus married his grandmother's sister. Congdon states that "He was a lot older man [than Emeline], but he was a kind of a person . . . I won't say aristocratic, but he was kind of well to do. When you had 2 or 3 buggies . . . and a couple of horses in the barn . . . and dress up an go to church and you had a little wagon to go to church and you had one for every day and you had an old buckboard to go to church in. He was a man of means you know" (Congdon 1988, McBride interview).

Calvin Williams's position in the kinship networks would have been conducive to an informal leadership position in that he had connections by marriage, to a variety of lines: Nedson, Sebastian and, most notably, Eunice (Wheeler) Gardner. Calvin Williams was also a first cousin once removed to Ephraim Williams (in addition to which, the wives of Calvin and Ephraim were sisters; while Ephraim's Western Pequot mother was a sister of Alexander Randall's wife).

*1920-1975. Leaders Between Calvin Williams and Formal Organization.* The summary descriptions in the following section consider carefully the reliability of individual testimony and the importance of comparing testimony from multiple sources.

EP Comments. EP's petition and comments presented information on several individuals whom it claimed as leaders during the period from shortly after Calvin Williams's death until the formal organization of EP in 1975. These assertions are evaluated individually.

Issues Raised by the Towns. The Towns focus upon retrospective testimony in three hearings before the CIAC (1976, 1982) as evidence that "Fourth Sunday and Sebastian family meetings" were not "tribal political meetings" (*Towns August 2001*, 180-181).

The Towns incorrectly state that the transcripts of these hearings were not in the record for the proposed findings (*Towns August 2001*, 180-183), when in fact there were multiple copies. One respondent cited was a Western Pequot married to an Eastern Pequot and a second was their daughter. The respondents translated the question posed, which asked about "powwows," by referring to family gatherings, and social events, with the one Eastern Pequot referring also to religious meetings. They declined to characterize these gatherings as "tribal" or "business" meetings. There is no followup in the transcripts which would clarify how the respondents interpreted these terms, but they appear to be saying that there were not formal meetings, with rules. Unlike other interview materials, the responses here did not provide hints that problems were informally discussed, although one individual specifically mentioned there were arguments, in response to the questions.

The significance of this testimony is that it does not appear to refer to the events organized by Atwood Williams, Sr. Helen LeGault, a PEP leader, responded to this same line of questions by reference to what were clearly ceremonial powwows, not even necessarily limited to Pequots, evidently referring to American Indian Federation (AID) functions organized by Williams (LeGault Testimony, CIAC 1983a, 73).

The Towns also refer to the absence of mention of tribal political meetings in the testimony of two other individuals, Lawrence Wilson, Jr., born 1920 (testifying at the 1983 CIAC hearing) (*Towns August 2001*, 193-194), and his cousin Doris (Wilson) Cook, born 1920 (testifying at the 1976 hearing) (*Towns August 2001*, 188-189). It does not appear that the questions in the form directed at these individuals would necessarily have elicited such information, hence the absence of statements does not provide evidence one way or another.

Both provided useful information about gatherings, religious and otherwise. Lawrence Wilson, Jr.'s "failure" to mention the gatherings of his brother Alden (*Towns August 2001*, 193) is not necessarily significant, given that his response appears to refer particularly to gatherings on the reservation and Lawrence Wilson, Jr., did specifically mention that, "we gathered on the reservation for years. Had our powwows, religious meetings and so forth . . ." (CIAC Hearing 9/28/1983, 34), while Doris (Wilson) Cook stated that, "[f]or those many years many families

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gathered in the grove under Lantern Hill by the small lake where the silica mine is now . . . . Also, as children, we were taken to religious meetings held at my great aunt Emeline's. And the older people and families met inside and talked and sang and prayed, and we played outside" (CIAC Hearing 8/10/1976, 33). Roy Sebastian, Jr., did refer to meetings "at family places such as the Wilson home" among other off-reservation locations (*Towns August 2001*, 191).

The Towns note that only Royal Sebastian, Jr.,<sup>74</sup> characterizes meetings, of various kinds, as powwows (*Towns August 2001*, 190), but also quote testimony in which Lawrence Wilson, Jr., used the term (*Towns August 2001*, 193). The CIAC itself at times used the word "powwow" in questioning (CIAC Hearing 1/18/1977, 60), but the respondents were generally consistent in referring to social and religious events and family gatherings (CIAC Hearing 1/18/1977). The Towns assert that Sebastian is putting "spin" on the information to "advance his own political agenda" (*Towns August 2001*, 192) and review Sebastian's testimony for several pages (*Towns August 2001*, 189-193). The review of testimony and interviews for this determination is based on the entire body of evidence and takes into account the manner in which viewpoints may affect statements (see discussion of interview methodology).

The Towns comments consider the absence of mention of attendance at any of the various gatherings described by Sebastians of Atwood Williams, Sr., or the Gardners to be significant because it indicated that only part of the Eastern Pequots attended and therefore these could not be "tribal meetings" encompassing the full membership (*Towns August 2001*, 195). This evidence is part of the larger body of evidence concerning conflicts between the Sebastians and the Gardner descendants.

Tamer Emeline (Sebastian) Swan Williams, "Aunt Liney," as Leader. The proposed finding stated that:

Emeline Sebastian is described as influential in the spiritual life of the group, by organizing the fourth Sunday meetings, as matriarch of the tribe (Burgess 1998, 9-11), as meeting with the overseers and as the primary contact person and conveyor of tribal news. The fourth Sunday meetings, from sometime prior to 1921 to the late 1930's, were political, judging from available accounts, in that problems and topics of concern to the membership were discussed. To the extent she organized these, Emeline Sebastian can be considered an informal tribal leader. There was insufficient information to evaluate her posited role as contact person and conveyor of tribal news (EP PF 2000, 116).

There is limited external data in regard to her role. After Calvin Williams's death, Charles L. Stewart wrote to Mrs. Calvin Williams, July 18, 1918, re: Lease of land on the Indian

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<sup>74</sup>The Towns state that he was born in 1942; also that he was "57 years of age" at the time he testified before the CIAC hearing in 1983 (*Towns August 2001*, 189). Royal Edward Sebastian, aka Roy Sebastian, Jr., was born in 1926.

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Reservation to Boy Scout Troop No. 1: "I am writing you at this time to inquire if you approve of the matter of letting him this site and of the erection of a log cabin. Kindly advise me as to this as soon as convenient" (*Towns August 2001*, Ex. 95; EP Response to Comments 9/4/2001, Ex. 20). About 1941, a researcher for the state wrote: "

Mrs. Calvin Williams. Father was Sebastian the Portuguese Negro. Her mother Tanner Brussels, a Pequot. She is 72 years old, lives with her daughter a Mrs. Holland, widow. Mrs. William's first husband was Swan "from Cuby". She has prayer meeting in her house three or four times a year. Anybody comes that wants to" (Williams Notebook c. 1941).

EP Comments. The EP Comments characterize Tamer Emeline (Sebastian) Swan Williams's role by asserting that by hosting the Fourth Sunday meetings, "'Liney' helped to maintain the cohesiveness of the tribal community by bringing tribal members together; fostering an Eastern Pequot form of worship; and by maintaining contact between tribal members who did not reside on the reservation with the reservation and its residents" (Burgess IID, 167; EP Comments 8/2/2001). The Comments also state: "(Calvin) Williams' wife Tamer Emeline subsequently maintained her husband's ministry to the tribe and addressed internal political issues" (Burgess IID, 179; EP Comments 8/2/2001).

The EP Comments also stated that: "Emeline 'Liney' Sebastian Williams is also frequently mentioned in the reports of the state agents as both a contact person and as someone who played an integral part in the tribal community" (Burgess IID, 167; EP Comments 8/2/2001). The report (Burgess IID; EP Comments 8/2/2001) did not cite documents which made specific statements to that effect. The State and Towns challenged the EP proposed finding's characterization of Emeline Williams' role in relation to the overseers (*Towns August 2001*, 166; *State of Connecticut August 2001*, 46-47, EP PF 116). EP submitted no substantial new information to support the claim that she had a role as contact person for the overseers (the 1918 letter mentioned above was submitted by the Towns) or that she had a political role as conveyor of tribal news.

Grant-Costa and Glaza in their portion of the EP Response to Comments, assert that Tamer Emeline (Sebastian) Williams was a "sociocultural leader," in the sense of "leadership role in the creation and/or continuity of traditions within an Indian tribe" (Grant-Costa and Glaza II(7), 22-23; EP Response to Comments 9/4/2001). There was insufficient evidence to show that she had this form of influence, which appears to have been modeled on Gladys Tantaquidgeon of the Mohegan (Mohegan FD 1994, Summ. Crit. 21) notwithstanding evidence of Tamer Emeline Williams's basketry and use as an informant by Eva Butler (Butler 1947, 41 *in* Speck 1947), since neither of these individual activities shows that she had cultural influence on the group's members.

Towns' Comments. The Towns' review of the interview information (it is unclear if they relied solely on the BIA interviews) concluded that there was no information to support the claim that Tamer Emeline (Sebastian) Swan Williams was a political leader in or out of the context of the

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Fourth Sunday meetings (*Towns August 2001*, 167). The Towns specifically cited an interview statement that "Emeline Sebastian Williams" did not lead prayers at these meetings (*Towns August 2001*, 177).

**State's Comments.** The State's comments that the discussions by the older people at these meetings largely concerned "family problems" (*State of Connecticut August 2001 Appendix*, 16) is consistent with the overall body of interview evidence. The State also quoted one individual's interview as characterizing Tamer Emeline as a "matriarchal political leader" (*State of Connecticut August 2001 Appendix*, 16). This statement has not been evaluated as significant interview evidence both because the individual's comment is based on transmitted knowledge and because it is a characterization rather than a specific factual description which adds to the available body of facts in any useful way.

**PEP's Comments.** PEP, petitioner #113 asserted that in 1950, Ruth G. Spellman complained that: "[Tamar] Emeline [Sebastian] Williams is having some one cut wood on my land . . . ." (Austin I 8/2/2001, 7; PEP Comments 8/2/2001). [brackets in original] Having inserted the additional data in brackets, PEP then argued that this showed that the Hoxie/Jackson descendants did not accept the leadership of Tamer Emeline (Sebastian) Williams (Austin I 8/2/2001, 7-8; PEP Comments 8/2/2001).

However, Tamer Emeline (Sebastian) Williams died in 1942. Therefore, either the date of the reported complaint was wrong or the parties involved were incorrectly identified. The unedited statement reads: "Emeline Williams is having some one cut wood on my land & is giving me lots of trouble & she does not belong . . ." (PEP Comments 8/2/2001, Ex. 37).

The actual letter was accurately dated to 1950 and contained a number of points, including the statement: ". . . I understand you gave Lulu Sabastian permission to build upon my land" (PEP Comments 8/2/2001, Ex. 37). Ruth G. Spellman did not have any land on the reservation -- on the contrary, there were complaints from other residents about her, with her husband Consor Fayerweather, being on Lantern Hill, in Grace Boss's house, without permission (investigation for trespass by State Police along with Ellsworth Gray, State Agent and First Selectman; the State Police reported on May 22, 1950, that the Fayerweathers had left the reservation) (PEP Comments 8/2/2001, Ex. 37). Thus, the context of the full letter indicates that "Emeline Williams" was Emeline (Jones) Williams, the non-Pequot widow of the lately deceased Franklin C. Williams, a Western/Mashantucket Pequot who had received permission to build a house on the Lantern Hill reservation in the 1930's.<sup>75</sup>

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<sup>75</sup>Petitioner #113 submitted a number of documents which showed that that Emeline (Jones) Williams was still alive and living on Lantern Hill in 1950 and subsequent years (PEP Comments 8/2/2001, Ex. 10, which contains many documents):

Letter, Joseph Harold Williams to Herbert Barrell, State Welfare Department, 18 October 1960 "My brother, Franklin Williams built a small house on the Reservation several years ago, which was occupied by his widow Emeline Williams, until about a year ago when she was committed for the second time to the Norwich State

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**Summary Analysis of Comments and Responses.** While her role as a leader was not political in the strictest sense of heading an organization, Tamer Emeline (Sebastian) Swan Williams was an informal leader within the meaning of 83.7(c). She organized Fourth Sunday meetings and provided her home as a meeting place, at least. The Towns' comment that Emeline Williams didn't do the preaching and therefore would not be a leader (*Towns August 2001*, 177) is not on point. Her role as leader was as the organizational focus of these meetings. Nor does the evidence indicate that she never led prayers -- only that Ephraim Williams and other ministers often did. It isn't necessarily the case with religious meetings that the role of preacher is also that of organizer. In addition there was also lay preaching or testifying. It also is not necessarily the case with informal leaders that there is only a single person of influence in an event.

The issue of her leadership is separate from that of the nature of the Fourth Sunday meetings themselves. Based on the review of available materials for this final determination, there was little or no information which showed that the Fourth Sunday meetings (see extensive discussion of the meetings under criterion 83.7(b)) were political. However, as the proposed finding concluded, her role as an informal leader within the meaning of 83.7(c) is implied by the organization and sponsoring of such meetings, which were held regularly over a span of years. The fact that the meetings were not exclusively attended by Eastern Pequots does not obviate this, since they appear to have centered on Eastern Pequots to a very substantial degree. No specific details about the organizational process are known. The one oral history account suggesting a high degree of organization and coordination with other Eastern Pequot was not reliable nor consistent with the other evidence (Roy Sebastian 1988).

Atwood Williams as Leader. Atwood I. Williams, Sr., who descended from both the Hoxie/Jackson and Gardner lines, is a PEP ancestor and is claimed by PEP as its political leader for the period from the late 1920's through his death in 1955 (see evaluation, EP PF 2000, 113, indicating that he did function as a subgroup leader for PEP). In regard to his relationship to petitioner #35, the proposed finding stated that:

Williams is recorded as opposing allowing the Sebastians to live on the reservation, indicating he was not their leader. Consequently, there is no evidence that Atwood I. Williams was a political leader of the tribal subgroup antecedent to the present EP petitioner #35. However, insofar as there was only one tribe in

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Hospital. Mrs. Emeline Williams is not a member of the Eastern Pequot Tribe.

Mrs. Williams is no longer of sound mind, so I would like your permission to occupy and maintain the house with my wife" (PEP Response to Comments 9/4/2001, Ex. 25).

PEP submitted additional documentation about Emeline (Jones) Williams in their section of documents on the activities of Helen LeGault (PEP Response to Comments 9/4/2001, Ex. 26). Of these, a typewritten memo 5/29/62 from Mr. Fred Speer, Spvr. Reimb. To Mr. Herbert Barrel, Chief in regard to: WILLIAMS, Emeline, Eastern Pequot reservation, Attention: George Payne, covers the genealogy and indicates that John Williams should be given notice that "he will not acquire any squatter's rights, or have any thought that he can take over his aunt's property upon her return to the hospital or death."

existence at the time, Williams' activities as a state-recognized leader indicate that the petitioner meets criterion 83.7(c) for the 1930's (EP PF 2000, 115).

The EP Comments attempted to strengthen the group's claim to continuity of leadership by asserting that during the late 1920's and 1930's, Atwood I. Williams, Sr., specifically provided leadership to a united Eastern Pequot tribe, which included the antecedents of EP as well as the antecedents of PEP (Grant-Costa in: Burgess IID 8/2/2001, 179-184; EP Comments 8/2/2001). This was disputed by PEP (Austin IV 8/2/2001, 55; PEP Comments 8/2/2001). The documentation from 1941 shows Williams intervening only on behalf of his aunt, a Hoxie/Jackson descendant (EP Response to Comments 9/4/2001, Ex. 5, Ex. 6, Ex. 8). EP presented no new documentation that alters the conclusion of the proposed finding in this regard or presents a stronger case for regarding him as a leader of EP specifically. The conclusion of the proposed finding in regard to Atwood Williams stands.

Catherine (Sebastian) Carpenter Harris, "Aunt Kate," as Leader. The proposed finding stated:

To the extent she organized these [the Fourth Sunday meetings], Emeline Sebastian can be considered an informal tribal leader. There was insufficient information to evaluate her posited role as contact person and conveyor of tribal news. There was insufficient information concerning who may have succeeded her. However, Catherine Harris is more frequently mentioned in interviews and is shown in state records as endorsing recommendations of requests for residence on the reservation. Thus it is possible that further information and analysis could establish her as an informal leader (EP PF 2000, 116).

The following discussion addresses in turn each of the assertions that have been made in regard to Catherine Harris's possible role as a leader.

EP Comments. In the EP Comments, Burgess suggests that Catherine Harris was an informal political leader, based on a showing that she was the contact person for State agents who visited or inspected the reservation. The report states:

Catherine Sebastian Carpenter Harris held a leadership role in the tribe as indicated in her actions as an agent for change after the fire at Paul Spellman's house; her attendance at the attempted detribalization in Hartford; and as the hostess of Fourth Sunday meetings and other tribal gatherings. Her leadership role is further substantiated in the many references to her in the oral testimonies of Eastern Pequot tribal members (Burgess IID, 177; EP Comments 8/2/2001).

Most of the documentary or interview data cited as evidence is about contacts concerning her own situation. The fact that Harris had the agent's contact information in her journal (Harris Journal 24, 26; EP Comments 8/2/2001, Box 1, Folder Harris) is not evidence that she was the contact person. In contrast, her possible role in the 1953 hearings protest is more significant (see Flowers

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IIIE 235-238; Grant-Costa IIIF, 239-242; EP Comments 8/2/2001). Both EP reports cover the legislative history of the 1953 proposed bill (see discussion following; see also above in the General Issues section) and Flowers notes the passage “from Aunt Kate’s journal dated March 18, 1953 (Flowers IIIE, 235; EP Comments 8/2/2001).

The report that she went to Hartford after Paul Spellman's house burned in 1942 (Burgess IIID citing Eccleston interview; EP Comments 8/2/2001) might also be significant, but there is not sufficient data in the evidence to permit a determination of why she went. Nothing in the current data supports the claim that she was acting as an agent for Paul Spellman or was representing him in the matter of the loss of his house.

Town’s Comments. The Towns' Comments noted that the proposed finding listed little evidence in regard to informal leadership by Catherine Harris (*Towns August 2001*, 236-237).

Summary Analysis. The data about gatherings at Catherine Harris' house are too vague to indicate a political leadership role as opposed to a prominent social role. These gatherings appear to have been more limited and more purely social than the Fourth Sunday meetings. The available materials shows that Catherine (Sebastian) Carpenter Harris was well known and in good contact with other EP, although the contacts appear to be somewhat, though not entirely, focused on her subline or the rest of the Francisco line (see Alton Smith 1999). This information in itself does not show leadership or the presence of political influence or authority.

In 1953, legislation was proposed in the Connecticut General Assembly in regard to the State’s four Indian reservations (see: Hoover, Albert C., Acting Director, Public Welfare Council. Statement in Favor of Senate Bill 502 “An Act Concerning Indians” before the Joint Legislative Committee on the Judiciary. Prepared by the Public Welfare council as a result of its study of the state welfare laws made under the provisions of Special Act No. 615 of 1951, 3/18/1953).

Catherine Harris’s journal stated: “1953 To the upholding to land Went to Hartford Mar. 18, 1953 Albert Carpenter, Moses Sebastian, Benjamin Sebastian, John Sebastian, Anna Carpenter, Hattie Sebastian, Grace Powell, Rachel Crumb, Betty Sebastian, Lilie Sebastian, Catherine Harris, Marion Robinson, Gertie Grizzer” (Harris Journal 7; EP Comments 8/2/2001, Box 1, Folder Harris). This listing did not include anyone from the Gardner line, or from the Fagins/Randall or Fagins/Watson lines: all belonged to either the Hoxie/Jackson or Brushell/Sebastian lines, with Grizzer an unidentified and apparently non-Pequot individual.

This material does not show that she organized a political action, but it does demonstrate that there was at this point a political action in which she participated, and which had considerable significance in regard to the State’s proposed disposition of the Lantern Hill reservation and its resources. Although the documentation does not show specific leadership upon the part of Catherine Harris, it does show political influence that comprised members of family lines antecedent to both EP and PEP.

Arthur Sebastian as Leader. Burgess's report reiterates the petition's claim that Arthur Sebastian, Jr., was a leader, citing activities in helping his siblings get permission to live on the reservation and defending the reservation spring (Burgess IID, 184-185; EP Comments 8/2/2001). The materials submitted are the same as were there for the proposed finding. The material only shows that he was helping his immediate kinship group, and thus does not indicate that he was a leader for any substantial portion of the tribe.

Alden Wilson as Leader. The proposed finding stated:

The available interview information is sufficient to identify Alden Wilson of Mystic as an informal leader, one who influenced and aided individuals beyond Mystic (BAR 1999, Burgess 1997, 1998 ints). According to the petition, Wilson's most active period was 1940 to 1960. There are a number of accounts which indicate that he was consulted by Pequots from different locations on personal matters, and that he used his somewhat greater economic resources to assist individuals beyond his immediate family including, but not limited to the reservation residents. The petition also states that Alden Wilson and his brother Lawrence visited the reservation and reviewed or discussed the "dealings with the overseer" as to whether these were "to the tribe's liking." Wilson was described by the petition as visiting the reservation and perhaps meeting with Emeline (Sebastian) Williams in connection with her dealings with the overseers. There was insufficient information to fully evaluate the latter statement, except that Wilson did visit the reservation and meet with Emeline and her daughter. As described, his role was broader than dealing only with the individuals living in Mystic, hence he was more than an "enclave leader" (EP PF 2000, 117).

The proposed finding suggested, based on interviews and field discussions, that he had aided a number of individuals outside his immediate family, both financially and because of being more sophisticated and knowledgeable (*e.g.*, as an estate administrator). His influence was considered possible because he was well-off and well educated in comparison with many of the Sebastians, and because of the gatherings that he had sponsored for a long period of time, which if nothing else would have made him well known to many Eastern Pequots (EP PF 2000, 117).

EP Comments. The EP Comments essentially reiterate the characterization of Alden Wilson in the proposed finding. Burgess's report comments that: "He was known for bringing the tribal membership together as he hosted large picnics and dances and for ensuring that the reservation residents were cared for by the Indian agents" (Burgess IID, 186; EP Comments 8/2/2001). It states further that: "Most importantly, however, Alden was known for being a civic influence in the Eastern Pequot community" and that "his participation in the funerals of various tribal members outside of his family line, the sponsorship of a grave site for Emeline Williams, and his participation in two churches well-frequented by Eastern Pequot members are all indications of his contribution. EP also asserts that he continuously offered assistance to tribal members in a

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number of ways, and served as a sort of "nucleus" for the Eastern Pequot social network (Burgess IID, 167, EP Comments 8/2/2001).

**Third Party Comments.** The State and Towns contend that there was very little information to support Alden Wilson's being an informal leader or demonstrating that he dealt with individuals beyond his immediate kinship group (*State of Connecticut August 2001*, 47-48; *State of Connecticut August 2001 Appendix 16-17*; *Towns August 2001*, 238-239). The Towns specifically argued that the interview information did not show that Alden Wilson was a leader (*Towns August 2001*, 278-279).

The State asserts that the interview information did not show exercise of political influence or authority by Alden Wilson (*State of Connecticut August 2001*, Appendix 16-17). It characterizes the actions mentioned as showing that he assisted others as "furnishing services." The State reiterates the proposed finding's specific conclusion that there wasn't good evidence that Wilson dealt with the overseers or other state authorities. It argues that the few letters he wrote on behalf of other people do not indicate whether he did this "in a leadership capacity or simply as an educated and prosperous person assisting people" (*State of Connecticut August 2001 Appendix*, 17). The State noted that at least one interviewee stated that they did not have much contact with him (*State of Connecticut August 2001*, 17; citing BIA Lancaster/Eccleston interview).

The State argues that although the interview data indicates Alden Wilson provided financial assistance to some members, it does not demonstrate he was "consulted by Pequots on personal matters or advised them accordingly" and that while individuals may have sought economic help from him "there is no evidence they followed his advice on any significant matter" or that they sought his advice. The State also states that his activities did not involve the Gardners or the Jacksons. Finally, the State argues that there was no evidence that Wilson made decisions for the group or had a "political connection which existed broadly among the membership" (*State of Connecticut August 2001*, 47-48).

**Analysis of Comments and Responses.** General data on visiting patterns, as well as the picnics, as submitted in the EP Comments, attest that the Wilsons on High Street did have wide contacts and that many people visited Alden Wilson and his brother Lawrence Wilson, Sr.

The only substantial interview sources for the statements that Alden Wilson attended a lot of funerals were from Eleanor Manson, his niece. Manson mentions his being a pallbearer at Sarah Holland's funeral (Sarah (Swan) Holland was his first cousin) and also said that he attended funerals of the Williams's and the Jacksons, but doesn't indicate which ones (there is a Sebastian-line Williams family, descended from the marriage of Alden Wilson's aunt Sarah Sebastian to Ephraim Williams, and a Sebastian-line Jackson family, descended from the marriage of his first cousin once removed, Julia B. Sebastian, to a non-Eastern-Pequot William Thomas Jackson). Although some obituaries were submitted as part of the record, they did not show his involvement except at Sarah Holland's funeral.

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The EP Comments' section on Alden Wilson's leadership does not supply or cite much evidence for influence outside of his extended family, the descendants of Mary Marilla (Sebastian) Wilson. Additional evidence submitted to substantiate a role in dealing with the overseer was an interview with Lawrence Wilson III which reported his conversations with George Cook, Jr., grandson of Alden Wilson (L. Wilson 2001; EP Comments 8/2/2001). Cook, born in 1946, also claims that "Eastern Pequot elders and clan leaders" frequented his grandfather's farm for advice on Saturdays, Sundays, and certain evenings during the week "to discuss family members who were ill, in need of assistance or without work" (K. Sebastian, 5; EP Response to Comments 9/4/2001). The latter information is reported third hand, and thus must be treated with great care, although the interviews do contain some important specifics.

Manson describes Alden Wilson as having aided Tamer Emeline (Sebastian) Swan Williams "Aunt Liney" and Sylvia (Sebastian) Steadman, who were his aunts. Documentation was submitted showing that he had purchased burial plots for both women. The interview with information from George Cook, states that Alden Wilson brought food to Kate Harris [Catherine (Sebastian) Carpenter Harris] (who was his first cousin), the Carpenters, Aunt Liney, and Sylvia Steadman, and also to unnamed families near Westerly, some of whom were "Narragansett relatives" (L. Wilson 2001). This was the extent of specific interview evidence to show his involvement as an advisor, provider of financial aid, or other leadership role among the Eastern Pequot.

To the extent that Wilson provided help and assistance dealing with authorities, including financial help, he displayed characteristics of an informal leader. As noted, there was not extensive evidence that he did these actions with other than immediate kin.

Frank Sebastian, Jr., as Leader. The proposed finding noted that Frank Sebastian, Sr.,<sup>76</sup> (1874-1956) was "identified as the leader of the Old Mystic enclave, followed by his son Royal Sebastian, Sr., and then grandson, Roy Sebastian, Jr., the current chief of the Eastern Pequot" (EP PF 2000, 116). It went on to say:

There was not sufficient data to know whether the described functions of Frank Sebastian Sr. (b. 1874), and his successors in Old Mystic enclave occurred or not. He is described as organizing hunting parties, organizing shared labor (Burgess 1998, 9-11) and helping needy tribal members. No dates were given for when he may have been active, or succeeded by his son and grandson (EP PF 2000, 117).

The EP Comments state that his man's leadership is "detailed" in Report IIIG (Introduction 14, EP Comments 8/2/2001). However, Report III focused on the period since 1976 and did not discuss the idea that this Frank Sebastian was a leader.

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<sup>76</sup>Frank Sebastian born 1874 was also "Frank Sebastian, Jr.," as he was the son of Francisco Sebastian, son of Tamar (Brushell) Sebastian. However, he also had a son named Frank, so for much of his life, the documents referred to him as "Frank Sebastian, Sr." rather than "Frank Sebastian, Jr."

**Roy Sebastian, Sr., as Leader.** Roy Sebastian, Sr., (1907-1980) was the father of the men who were most active in the 1970's and 1980's in the organization and activities dealing with the CIAC. The proposed finding evaluated the Sebastian Foundation material that EP had submitted (EP PF 2000, 118-119), stating:

The bylaws of the [Sebastian] foundation indicate that its membership was limited to the descendants of Frank Sebastian Sr. (father of the former chairman Roy Sebastian) (Sebastian Foundation 1963). The officers, donators and all of the identifiable recipients of funds were from this same subline. None of the BIA interview materials indicated its activities extended more broadly among the Eastern Pequots. Thus this does not provide evidence to substantiate the petitioner's position that it shows tribal political influence (EP PF 2000, 118-119).

In regard to the formal organization of EP, the proposed finding stated:

The transition to a formalized system of EP tribal government is not well described. The petition's position is that Roy Sebastian Jr. took over as a general leader in the 1960's (Burgess 1998, 10). It offers no evidence for this as opposed to his becoming leader in the early 1970's, when the EP began to organize. Burgess states that in the early 1960's the EP "began to have 'Indian meetings' held at homes of various members" and that these were "precursors" to a formalized government (Burgess 1998, 10). She lists attendees drawn from several branches of the Sebastians, *i.e.*, a reasonably broad representation. There was no information concerning the nature of these meetings, however, and thus they cannot be evaluated as evidence for political processes in the 1960's. No sources were cited (EP PF 2000, 141).

EP Comments. In 1998, the EP petition thus claimed that Roy Sebastian, Sr., (Royal Emmanuel Sebastian) was a leader and stated that he stopped being leader in the 1960's, succeeded by his son Roy Sebastian, Jr. (Royal Edward Sebastian, b. 1926). The EP Comments (K. Sebastian IIIG; EP Comments 8/2/2001) and Response enlarge upon the idea of Roy Sebastian, Sr., as a leader before EP was formally organized (K. Sebastian 9/4/2001, 2-3; EP Response to Comments 9/4/2001). The activity dates are proposed as the 1940's and 1950's. The descriptions of him as a leader are linked in the EP Response with the idea of hunting and fishing as a traditional cultural activity (K. Sebastian 9/4/2001, 1-2, EP Response to Third Party Comments 9/4/2001).

The other item that EP points to as evidence of Roy Sebastian, Sr.,'s leadership are the activities of the Sebastian foundation, a family organization of the descendants of Frank Sebastian, Jr., that collected money and provided aid to various family members (K. Sebastian IIIG, 255; EP Comments 8/2/2001). The proposed finding reviewed the Sebastian foundation and concluded that its activities did not extend beyond this immediate family group and thus were not good evidence of tribal political influence. A limited amount of new interview evidence was provided concerning the Sebastian foundation and Roy Sebastian, Sr.,'s activities in aiding individuals.

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This additional information was entirely consistent with the proposed finding. None of the oral history in the record about Roy Sebastian, Sr.,'s activities in helping EP individuals clearly identified EP lines outside of the Frank Sebastian, Jr., family group. At most it appears that Roy Sebastian, Sr., was well known among the Sebastians as a whole because of these activities. He is remembered within his family and by others as being a strong leader but the material didn't indicate that this extended more broadly (Roy Sebastian 1999, Mark Sebastian 1999, Alton Smith 1999).

**Analysis of Comments and Responses.** Roy, Sebastian, Sr., was a commercial fisherman with his own boat. Interview evidence concerning the hunting and fishing activities that Roy, Sr., and other Sebastians engaged in during the 1930's indicates that he was a well-known and active person, but the descriptions of these as cooperative tribal activities goes beyond the reliable data. The descriptions of Roy, Sr., as a leader in some hunting and fishing activities with some other Sebastians do not constitute evidence that he was a tribal leader or show political authority or influence, nor does it substantiate the description of him as a "chief."

Roy Sebastian, Sr., Alden Wilson, and Lawrence Wilson, Sr., were all members of the Knights of Pythias,<sup>77</sup> and are listed together with some apparently non-Eastern-Pequot individuals as part of the committee to run a 1938 dance (K. Sebastian 9/4/2001, 5n12; EP Response to Comments 9/4/2001; copy of undated flyer in Exhibits under tab "Photos-Wilson Picnics & Narragansett Pow Wow). This shows some association between them, but is not substantial evidence of leadership by itself.

Roy Sebastian, Sr., is not mentioned in connection with the ill-defined and vaguely described meetings held in the 1960's -- all these are attributed to Roy Sebastian, Jr. Although he lived until 1980, there is no indication that Roy Sebastian, Sr., played any role in the EP meetings, etc. between 1970 and 1975, *i.e.*, in the activity preceding and immediately following the creation of the CIAC. The material submitted in response to the proposed finding does not substantially extend that which was presented for the proposed finding.

Other Evidence Concerning Political Activity in the 1960's and Early 1970's. The only person from the Lantern Hill Reservation who testified at a state legislative hearing on the 1961 reservations act was Helen (Edwards) LeGault, a PEP leader (Austin II 8/2/2001, 34; PEP Comments 8/2/2001). During the course of her testimony, she entered into a colloquy with the North Stonington representative, who took issue with her characterization of the Sebastians as not being Indian (Austin II 8/2/2001, 34-35; PEP Comments 8/2/2001). By the mid-1960's, LeGault was focusing upon opposition to reservation residency by members of the Sebastian family. PEP

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<sup>77</sup>This was a men's fraternal organization, a national charitable and social organization formed in 1864, neither tribal nor pan-Indian in nature.

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notes that in 1965, 1966,<sup>78</sup> and 1969 she complained to the state authorities about the Sebastians living on and/or trying to move on to Lantern Hill (Lawrence Wilson, Sr.) and also about “non-Indians” living on and utilizing the reservation for various purposes (PEP Comments 8/2/2001, Ex. 39, 26). Although many of her objections were directed at Sebastian descendants,<sup>79</sup> this material did not provide direct evidence of political activities involving the Sebastians because it contained no indication about if, or how, they may have responded.

The State also submitted an affidavit, dated July 27, 2001, from Edward A. Danielczuk (*State of Connecticut August 2001*, Ex. 60). The document is retrospective rather than being contemporary evidence. In it, Danielczuk states that in the 1960's and early 1970's, he worked for the Connecticut Welfare Department as a supervisor in the Resource Department, with one of his responsibilities being “to oversee the State’s four Indian Reservations” (Danielczuk 7/27/2001, 1). Danielczuk stated:

9. I was not aware of any organized political activity by members of these groups or of any political leadership of these groups. I did not engage in, and was not aware of any other State official or employee having engaged in, any effort to prohibit or obstruct political or other organized activity by persons qualified to use the reservations. Although I am not aware of any elections that were held, we would not have taken any action to prevent such activity, and we did not prevent those who were qualified to use the reservation to conduct [*sic*] a meeting there.

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<sup>78</sup>On June 3, 1966, a representative of the Division of Welfare visited the Eastern Pequot Indian Reservation. The follow-up report addressed Helen LeGault’s residence on the Eastern Pequot reservation and her “displeasure with the type of individuals residing on the Reservation, indicating that many were not truly Indians and were ‘so called Indians.’ She also indicated that she knew that people who are not Indians, had paid money for the right to reside on the Reservation. She reported that the Sebastians were renting their leases and were not actually occupying the property which they had leased. She reported that Mr. Wilson who is to take over the Harris property, has been boasting that he had enough money to grease palms in Hartford to gain admission to the Reservation. She doubted that he qualified as an Indian, although she was assured the genealogy we had did qualify him for residence on the reservation. She was also advised that the only funds he would have to have to live on the Reservation, were to establish his own financial ability to rebuilt or build a place with sufficient sanitary facility and one that would be an asset and not a detriment to the Reservation. I will follow up with reference to the Sebastians alleged rental of their leased property, since persons who rent are not qualified for residence or use of the Reservation” (Connecticut Welfare Department. Anonymous interdepartmental mail, to file 6/7/1966).

<sup>79</sup>In reporting a June 3, 1966, visit to the Eastern Pequot reservation, the agent reported that Mr. and Mrs. LeGault “have moved their trailer onto the site they are to occupy” and that “Mrs. LeGault expressed her displeasure with the type of individuals residing on the Reservation, indicating that many were not truly Indians . . . .” (File Idabelle Sebastian Jordan 6/7/1966, CT FOIA #68). Another memorandum the same month, regarding spot checks of the Eastern Pequot reservation, mentioned the LeGault/Sebastian conflict (Connecticut, State of. Welfare Department. Raphael J. Shafner 6/17/1966). The next month, “Mr. & Mrs. LeGault specifically mentioned that they did not want to create any hard feelings with their neighbors, the Sebastians. They did mention that the boating incident would be brought up at the next meeting of an association of local residents . . . .” (Connecticut Welfare Department. Memorandum concerning Lillian Sebastian and Idabelle (Sebastian) Jordan re: residence on Pequot reservation 7/28/1966).

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**Reservation residents were always free to meet off the reservation as well (Danielczuk 7/27/2001, 2).**

**Danielczuk continued:<sup>80</sup>**

**If residents on the reservation wanted to have a meeting there with persons they said were members of their group who may not have met the 1/8 blood requirement and who lived off the reservation we would have no problem with that and I don't see how I could deny that request. However, as far as I can recall, this never came up with any of the Connecticut Indian groups (Danielczuk 7/27/2001, 2-3).**

**10. Permission from the State was required for use of the reservation. Persons qualifying as Indian tribal members by demonstrating one-eighth Indian blood were readily granted such permission. Persons living on the reservation were always free to invite guests to their homes (Danielczuk 7/27/2001, 3).**

Assertion of Leadership by Non-Members. A 1971 dispute arose between John Hamilton, a Mohegan who presented himself as "Grand Chief Sachem of the Confederation of Mohegan-Pequot American Indian and Affiliated Algonquin Tribes," and several Pequots (both Eastern and Western). Hamilton asserted that in 1968 the Pequot Indians had chosen him as their leader. Helen (Edwards) LeGault (PEP) and Western Pequots both denied his assertion (*Norwich Bulletin* 6/19/1970; PEP Response to Comments 9/4/2001, Ex. 35).<sup>81</sup>

One PEP analysis of the incident notes that Paul Spellman and Arlene (Jackson) Brown (both members of the Hoxie/Jackson line) supported Hamilton in 1973 (Austin, Political Authority 9/4/2001, 23), but omits the information that it was Helen (Edwards) LeGault who had allowed him to reside in her home on the Lantern Hill reservation in 1970 (Connecticut Welfare Department. Report 6/3/1970; #113 Pet. 1996, HIST DOCS II, Doc. 75). This LeGault/Hamilton connection was acknowledged in another PEP submission, which stated that after the State's collection of reimbursement of Hamilton's rent payments from the LeGaults, "Mrs. LeGault's relationship with Mr. Hamilton and his members deteriorated rapidly, leading to the

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<sup>80</sup> The EP response to the PF asserted that "The actions that such informal leaders such as Emeline 'Liney' Williams or Catherine 'Kate' Harris took to host fourth Sunday meetings and other gatherings on the reservation, were, perhaps unbeknownst to them, acts of resistance. Such social gatherings were forbidden without the permission of the Indian agent according to the rules of the Welfare Department." (Burgess IIID, 185; EP Response 8/2/01). No documentation was cited in support of this.

<sup>81</sup> PEP described LeGault's cooperation with Western Pequots as responding to a "common threat that John Hamilton potentially represented to the Pequot Tribes' sovereignty" (Austin, Political Authority 9/4/2001, 22; PEP Response to Comments 9/4/2001), which somewhat inflates the significance of the matter.

Hoxie/Jackson family’s marginalization from the Paucatuck Eastern Pequot Tribe” (Palma, On the Sebastian Assertions 9/4/2001, 4-5; PEP Response to Comments 9/4/2001).

In 1972, a report submitted to a class at the University of Connecticut, “The Connecticut Indian as He Is Today,” indicated that, “Fred Tinney is chief of the Pequot Tribe. He is retired from business and makes his home in New Haven. He states that, notwithstanding the state’s division of the Pequot into Eastern and Western, they are all one tribe” (Ferris 1972, 47; #113 Pet. 1994 A5; PEP Comments 8/2/2001, Ex.). Tinney did not appear in any internal documents generated by either EP or PEP, nor was he mentioned by the third parties. He has subsequently appeared in documentation relating to the Golden Hill Paugussett, petitioner #89. There is no evidence that his assertion was based on anything other than an unsupported self-identification.

*Establishment of the CIAC, 1973-1975.* By early 1973, a newspaper article noted an initiative to remove supervision of Connecticut’s Indian reservations from the Welfare Department (Driscoll, Irene. Bills to End Indians’ Control by Welfare Unit in Works. *Hartford Courant*. [Hand-dated 2/6/1973]). The 1973 bill, part of a compromise package, did not create the new Connecticut Indian Affairs Commission (CIAC) as an autonomous commission, but rather as a liaison between the tribes and Connecticut’s Department of Environmental Protection (DEP), which would, in accordance with the provisions of this Act, take over administration of Indian Affairs from the Welfare Department. This Act became law on October 1, 1973 (Bee 1990, 197).<sup>82</sup> During the intervening period, the Welfare Department continued to administer the reservations and process applications for residence (Roy Sebastian to Connecticut State Welfare Department 7/17/2001; #35 Pet. CIAC B13).

CIAC Representation. The letter appointing/electing Helen LeGault to the CIAC, dated July 17, 1973, was signed by her close relatives, all members of the Gardner/Edwards and Gardner/Williams lines (Authentic Eastern Pequot Indians of North Stonington, Conn. to CIAC, #35 Pet. LIT 70).<sup>83</sup> The ensuing protest, dated September 26, 1973 (Brown to Wood 9/26/1973),

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<sup>82</sup>The new regulations declared that the Indian Affairs Council would advise the Commissioner of Environmental Protection on the administration of Indian affairs, but the Commissioner’s decisions were the binding ones. It would be made up of representatives of each of the state’s five tribes and three non-Indians appointed by the governor . . . In addition to its role as advisor, the council would be responsible for drawing up new programs for the reservations, for recommending changes in regulations pertaining to Indians, and for determining ‘the qualifications of individuals entitled to be designated as Indians for the purpose of administration [of the statute] . . . and shall decide who is eligible to live on reservation lands, subject to . . . [statutory] provisions . . . (Bee 1990, 198-199).

For more detailed discussion, see the General Issues section of this final determination.

<sup>83</sup>Signers: Ruth E. Geer, Mildred Holder, John Holder, Byron A. Edwards, Helen L. Edwards, Atwood I. Williams Jr., Frances Young, James L. Williams Sr., Agnes E. Cunha, Richard E. Williams, Helen E. LeGault, (Mrs.) Bertha Edwards Brown (Appointment of Helen LeGault to CIAC by the “Authentic Eastern Pequot Indians of North Stonington, Conn.” 7/17/1973; #35 Pet. LIT 70). Helen L. Edwards was her non-Indian sister-in-law;

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was initiated by Arlene (Jackson) Brown,<sup>84</sup> signed primarily by Hoxie/Jackson descendants,<sup>85</sup> and presented to the CIAC by Alton E. Smith, a Sebastian descendant who lived in the state capital.

A letter of the same date, September 26, 1973, from Alton E. Smith to Kenneth A. Wood, Jr., Assistant Commissioner, Connecticut Department of Environmental Protection, presented a formal challenge to Helen (Edwards) LeGault as the Eastern Pequot representative on the CIAC. The letter was presented "at the request of Mrs. Arline Brown, a resident of the Pequot Indian reservation at No. Stonington" and stated that:

The meeting called and conducted by Mrs. LeGault was not attended by long time residents of the reservation. The reason for non-attendance was simply that no invitation was extended. Sec. 2 of Public Act 73-660 clearly states that one representative from each of the four tribes will be "appointed by the respective tribes". If a majority portion of the Eastern Pequots were excluded from the meeting then the selections made were in opposition to Public Act 73-660 (Smith to Wood 9/26/1973; PEP Response to Comments 9/4/2001, Ex. 64).

The CIAC, on December 4, 1973, came up with the following interim measure:

Challenge to the Eastern Pequot delegate. Testimony by the following given under oath and recorded: Paul Spellman, Arlene Brown, Alton Smith, Helen LeGault. CIAC went into executive session, with Mrs. LeGault disqualifying herself. The Council proposed the following steps to resolve the challenge to Mrs. LeGault as the Eastern Pequot representative:

1. Mrs. Legault will remain as the Eastern Pequot representative; with Mr. Alton Smith, as spokesman for the challenging group, serving as her alternate.

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Mildred and John Holder subsequently affiliated with the Mashantucket Pequot Tribe.

<sup>84</sup>The accompanying envelope was from [illegible off edge] Brown, [illegible] Hill Rd., Ledyard, Conn., to Mr. Kenneth A. Wood, Assistant Commissioner, Dept. of Environmental Protection (#35 Pet. LIT 70).

<sup>85</sup>"We the undersigned Pequot Indians, do protest and challenge the Appointment of Mrs. Helen Le Gault and her sister Bertha Brown as representatives to the Indian Affairs Council." Signers: Alton E. Smith, Sharell Jackson, Sharon Jackson, Harold Jackson Jr., Alice Brend, Martha Langevin, Richard R. Brown, Arlene Brown, Paul L. Spellman, Rachel Crumb, Lucy Bowers, Barbara Moore, Hazel Sneed, Rachel Sylva, Harold C. Jackson, Ernest M. Jackson, Marion Jackson, [Udira?] Jackson" (Eastern Pequot Indians of Connecticut. Letter to Commissioner of Environmental Protection, Hartford, Connecticut 10/14/1973).

The "signatures" appear to be in same handwriting as the envelope and letter.

Alice Brend and Martha Langevin were Mashantucket Pequots, but cousins of the Jackson family through the Hoxie line (see FTM data base; the information from Barbara (Spellman) Moore is inaccurate (Moore Interview 12/8/1991, 45-46)..

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2. At such time that a census of the Eastern Pequot people is completed, an election will be held with participation in such an election based upon census information.
3. The tribal members of the IAC will work with the Eastern Pequots to assist them in developing an internal organization so that one body will in the future represent the Eastern Pequot people” (CIAC Minutes Amended Minutes of regular meeting 12/4/1973, [2]; #35 Pet. LIT 70).

This interim solution was still in effect as late as August 5, 1975, as indicated by a joint letter to Eastern Pequot residents from Helen LeGault, Representative, and Alton Smith, Alternate Representative (LeGault and Smith to Eastern Pequot residents 8/5/1975; #35 Pet. LIT 70). The temporary *modus vivendi* came to an end at approximately the same August date, when the CIAC requested that each of the state recognized tribes prepare and submit a list of members (#35 NARR 1998, 125). A newspaper article discussed the CIAC’s proposed abandonment of the 1935-1941 tribal genealogical lists gathered by the State Park and Forest Commission and 1/8 quota in favor of letting the tribes decide their own membership (Sandberg, Jon. Indians May Rule on Members. *Hartford Courant* 8/28/1975; quoting Brendan Keleher of DEP/CIAC).

In August of 1975, several members of the Eastern Pequot Indians of Connecticut organization attended a CIAC meeting and were told that they should “organize the tribe before being recognized before the Council [CIAC].” In November 1975 and December 1975, the group scheduled two organizational meetings, which were followed in February 1976 by a meeting to approve by-laws (for more detail, see Section VIII of this technical report). Following that meeting, in February, 1976 the Eastern Pequot Indians of Connecticut submitted a package of data to the CIAC (Eastern Pequot Indians of Connecticut 6/10/1977, 1-2).

In the spring of 1976, Roy Sebastian, Jr., corresponded with the Department of Environmental Protection regarding reservation issues (#35 Pet. LIT 70). In March 1976, EP submitted a membership and bylaws for its organization to CIAC.<sup>86</sup> On April 26, 1976, William O. Sebastian wrote the CIAC asking why the group had received no acknowledgment of its March 13, 1976, submission, and questioning the dual role of Helen LeGault in both representing the state-recognized Eastern Pequot entity as a whole and organizing her own group. This letter also made the first reference to the CIAC’s scheduling of a hearing on the Eastern Pequot membership issue: “We are questioning your reasons for a public hearing without a formal charge or challenge to this organization” (W.O. Sebastian to Harris and Keleher 4/26/1976; #35 Pet. LIT 70). W. O Sebastian appears to have addressed a similar letter to Helen LeGault, to which she replied on May 15, 1976:

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<sup>86</sup>For the final determination, the BIA received a 1976 list of EP members headed, “The Genealogy of the Members of the Eastern Pequot Tribe” with a CIAC “Received” stamp of August 30, 1976 (PEP Comments 8/2/2001, Ex. 118) containing 98 names. For further discussion, see under criterion 83.7(e).

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In answer to your letter of April 1, 1976, I shall start by stating that I am the Representative of the Eastern Pequots, elected legally by twelve Pequot Indian decedents [sic], not by the Indian Affairs Council. It really doesn't make a great deal of difference whether you recognize [sic] me as such or not, I'm still the Representative . . . To keep you informed of all the correspondence pertaining to Tribal Business etc; one would spend one's time doing nothing else, sorry, but you will have to attend the Council meetings at Hartford each every month to be properly informed, this is what I do (LeGault to W.O. Sebastian 5/15/1976; #35 Pet. LIT 70).

One of the primary concerns expressed by the groups which opposed Helen LeGault's position on the CIAC was that on the one hand she was supposed to be representing the Eastern Pequot tribe as a whole, in an official capacity in which she received official communications from state authorities (Keleher to Eastern Pequot Representative 6/30/1975; Crosby to LeGault 11/28/1975), including those pertaining to membership issues (Keleher to LeGault and Smith 4/22/1976), while on the other hand she was leading specific efforts to organize the "Authentic Eastern Pequot" and its successor groups.

Interview evidence indicates that Alton Smith, Sr., (Alton W. Smith) was a political rival of Roy Sebastian, Jr., and perhaps of the latter's brothers as well (Mark Sebastian 1999). Smith was very involved at the time with the activities of American Indian Development (AID) which he helped found. This may explain in part why Alton Smith contacted the Jacksons rather than any of the Sebastians when he discovered that Helen LeGault had been named the Eastern Pequot representative (Mark Sebastian 1999, 25). Smith's comments on this event never indicate that he was in contact with the Roy Sebastian, Jr., group when he filed the protest to Helen LeGault. Larry Sebastian, one of the leaders in the 1970's Sebastian efforts, stated in 1983 in regard to Alton Smith, Sr., that, "he was put on the council from the challenge of the Jackson, the Jackson's family, Arlene Brown particularly made the challenge" . . . Don't know if the council involved any of the Jacksons on that decision. . . . The Sebastian family was never involved in that at all. Later on, he joined the Sebastian organization" (CIAC 1983b, 72). This sequence of action is both additional evidence of Sebastian-Jackson links and confirmation that the current alignment of the Hoxie/Jackson line with PEP is more recent than the mid-1970's.

Two of the EP reports claims that Alton Smith's action was taken in coordination with the Sebastians (Bragdon IIIG, 40; Flowers IVD, 504; EP Comments 8/2/2001) appear to be incorrect. The report's speculation that Alton Smith, Sr., wanted a reservation resident to sign the protest isn't supported by evidence either, since there were Sebastians resident on the reservation at the time. PEP's response to Third Party Comments, in this case to EP's Comments on the proposed finding, disputed EP's claims that the protest and Alton Smith, Sr.,'s subsequent appointment as alternative delegate to the CIAC, had been a Sebastian initiative (Palma 9/4/2001, 3-4; PEP Response to Comments 9/4/2001). Although PEP cites four of EP's reports to this effect, only Bragdon's and Flowers make these claims. The main report on EP's political processes clearly describes Smith's actions as taken before the EP leadership was involved and lays out a series of

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reasons why Smith thought these individuals did not immediately realize the significance of the CIAC's action (III G 343-345; EP Comments 8/2/01).

The Towns have asserted that: “The transcripts of these CIAC hearings were not submitted to the BIA by either petitioner group, although they were readily accessible, most likely because they seriously undermine the acknowledgment claims” (*Towns August 2001*, 180). These documents are shown in the consolidated documentary finding aid on petitions #35 and #113, which the BIA prepared and furnished to both petitioners and all interested parties.<sup>87</sup>

*1975-Present.*

Proposed Finding. The proposed finding stated:

The petitioner's argument for bilateral political process described 12 specific categories of business and events, in support of the general argument described above. These included holding elections and seating tribal officers; assessing and collecting membership dues; and organizing the tribe's annual powwow. These activities in themselves are not distinguishable from a voluntary association. For these to be useful evidence, the petitioner needs to show that there is widespread participation, political communication, and the like (83.7(b)(1)(iii)) (EP PF 2000, 142).

The proposed finding stated, with regard to the petitioner's claimed form of political activity, "organizing protests to the actions of the state and local governments (e.g., cutting of timber on the reservation, opposing the actions of the CIAC, disputing the town's right to tax tribal members)" that "[t]here was little evidence in the minutes to show whether there were expressions of membership opinion, interest, or participation, in these central actions of the council" (EP PF 2000, 143).

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<sup>87</sup>Consolidated list of submitted documentation: Petition #35, Petition #113, and CT FOIA Virginia DeMarce, begun 31 August 1998. Version 27 March 2000.

In addition to the following transcripts, the finding aid indicates that many associated documents were also submitted.

- |            |   |
|------------|---|
| 8/10/1976  | Hearing Transcript. Connecticut Indian Affairs Council Hearing on Membership in the Eastern Pequot Tribe of Connecticut. August 10, 1976. Typescript. [Submitted by both petitioners and included in the CT FOIA.]  |
| 1/18/1977  | Hearing Transcript. Connecticut Indian Affairs Council Hearing on Membership in the Eastern Pequot Tribe of Connecticut. January 18, 1977. Typescript. [Submitted by both petitioners and included in the CT FOIA.] |
| 9/28/1983  | Connecticut Indian Affairs Council. Paucatuck-Eastern Pequot Hearings. Hartford, Connecticut. September 28 <sup>th</sup> , 1983. Typescript. [Submitted by #113 and included in the CT FOIA.]                       |
| 10/15/1983 | Connecticut Indian Affairs Council. Paucatuck-Eastern Pequot Hearings. Hartford, Connecticut. October 15 <sup>th</sup> , 1983. [ Submitted by both petitioners and included in the CT FOIA.]                        |

The proposed finding noted concerning showing issues to be of importance that:

Although the petition does not explicitly claim that the conflict with PEP represents evidence under 83.7(c)(1) of an issue of importance to the membership, it does present extensive data and discussion of the conflicts with the latter from the formation of the CIAC until the present. BAR field data indicated that at least at present, the conflict was an issue of importance in terms of this being an attack on their claim to be Indian. An additional, related issue, retaining the rights to the reservation land, is an issue of importance, given the sheer number of people that mentioned visiting the reservation and relatives there earlier in their childhood (BAR 1999, Burgess 1997, 1998) (EP PF 2000, 143).

Finally, the petitioner cites a number of activities which concern control and regulation of the reservation land and also concern controlling the behavior and activities of members and others on the reservation. The activities cited are: directing tribal members to clean up their property, directing the building and repair of private roads on the reservation, and issuing and enforcing hunting and fishing regulations, and dog control ordinances. In addition, the petition states that "the tribal council regulates housing on the reservation [and] accepts and rules on applications by tribal members to live on the reservation, allots home and building lots, and regulates home repairs and upkeep." Control of territory and its uses is a strong form of evidence for political influence. Section 83.7(c)(2)(i) refers to allocating "group resources such as land, residence rights and the like on a consistent basis" (EP PF 2000, 143).

The proposed finding concluded that:

The council has exercised since its inception some *defacto* control of reservation lands. Twelve examples of this were found. Examples included hunting and fishing rules and directing an individual to clean up the area around his residence and control his dogs. Because there are not a large number of members resident on the reservation, there are not numerous examples of enforcement of rules. It appears from the minutes, however, that the individuals concerned did respond to the council's instructions. The council has also ruled on requests to move onto the reservation and on maintaining roads and other matters pertaining to the reservation. (EP PF 2000, 143).

This last finding is confirmed and reinforced by the EP Comments on the proposed finding, with additional detail (IIIG, IIIH; EP Comments 8/2/2001).

The proposed finding also stated:

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The petitioner also cites two categories which can in themselves be important evidence of political processes under the regulations. These were dispute resolution and banishing and reinstating individual tribal members who had violated the tribe's rules and regulations. Under the regulations, 83.7(c)(2)(ii), settling disputes among members on a regular basis is sufficient evidence for political influence. Under the regulations, 83.7(c)(2)(iii) establishing of norms and directing or controlling behavior is sufficient evidence for political influence if this is a consistent pattern. Isolated examples provide some evidence which can be evaluated with other evidence for criterion 83.7(c) (EP PF 2000, 144).

The proposed finding concluded that the materials on dealing with conflict primarily referred to conflicts within the council, while the

. . . evidence required under section 83.7(c)(2)(ii) is that the political system maintains social control among the membership in general and establishes and maintains standards for the behavior of its members. It does not refer to ordinary political conflicts, even though they may involve arguments over the behavior of particular leaders (EP PF 2000, 144).

Only one example was cited in the materials for the proposed finding, and the EP Comments do not add materially to this information. As the PF noted, "A single instance is not sufficient to show this form of evidence" (EP PF 2000, 144).

The proposed finding noted that the "petition also states that the council organized 'work parties of tribal members to raze a burned home, for example, and to maintain the powwow grounds, reservation cemeteries, and tribal buildings' (EPNarr 7/98, 137)" (EP PF 2000, 144). It noted this could be evidence under 83.7(c)(1)(i) that the "group is able to mobilize significant numbers of members" for group purposes. The proposed finding was that those participating were largely "the council members or other leaders" and that "[t]o be useful evidence, it must be shown that significant numbers of members beyond the core group of active leaders have been mobilized" (EP PF 2000, 144). The EP Comments provided some additional information but did not organize it in a useful fashion. Some of this data has been incorporated in a database of individuals who participated in EP activities.

The proposed finding was particularly critical that the materials submitted and discussed in the EP petition did not show substantial political communication between leaders and followers, as claimed. The proposed finding was that:

There were not enough examples between 1976 to 1999 to conclude whether communication and involvement occurred on a regular basis . . . There was little or no reference to expressions of membership opinion as influencing or being reflected in council actions before 1997. The evidence does not demonstrate that

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**significant member-council communication on political matters has occurred except in the present-day (EP PF 2000, 144-145).**

**The proposed finding criticized the type of evidence that the petition had primarily relied upon, stating:**

**The group is small enough, and closely related enough, to be supportive evidence for political processes. However, the meeting minutes in this case are a poor form of evidence, giving quite limited information. The absence of such information in the minutes does not mean that significant political processes were not occurring, only that relevant information may not have been recorded (EP PF 2000, 145).**

The proposed finding noted that the petition also referenced interviews by researcher William Starna and that these may have contained the appropriate information the petitioner relied upon in part (EP PF 2000, 145). No such material by Starna was submitted with the EP Comments. The substantial number of additional interviews submitted did not provide substantial useful information on contemporary political processes. The petitioner relied in part on a survey, which, produced only limited useful data.

The proposed finding also indicated that:

Political conflicts within a group often provide useful information concerning the exercise of political influence, the importance of issues to the membership and the functioning of political processes such as communication. Such data has been used to demonstrate internal political processes in other cases (see Snoqualmie proposed and final determinations). The petitioner did not describe conflicts or claim conflicts as evidence for criterion 83.7(c) except with regard to the relationship between EP and PEP. BAR field interviews and some documentary materials obtained from EP members and the petitioner's files provide some evidence which suggests that in the past five years there have been several internal conflicts within the EP which mobilized substantial numbers of members in support of one or another side and which indicated issues of concern to the membership. However, under revised internal procedures for processing acknowledgment petitions, the available data was given only a limited analysis since the topic is nowhere raised by the petitioner. An analysis of this data and supplementary research may demonstrate substantial evidence for criterion 83.7(c) in this time period (EP PF 2000, 145).

The proposed finding also noted that "The annual meeting is thus identified by the petitioner as a setting for significant political discussion. However, none of the minutes of annual meetings indicated that this was a venue at which significant political decisions were made and there was no other evidence submitted which would show significant political processes" (EP PF 2000, 146). The EP Comments did not focus on activities at annual meetings as showing political

processes, except insofar as it noted when they were used for elections or as a venue to gather member opinion.

**EP Comments.** The number of arguments made by the EP Comments to demonstrate substantial political processes from 1973 to the present is very large. These are summarized here, with the focus on the most pertinent arguments. The EP Comments on this part of the proposed finding consist of at least five different reports, written by a number of different individuals and not particularly coordinated as to arguments and data. Of these, Report IIIH presents the most coherent and thorough statement of argument about post-1973 political processes. It is focused on here, with additional arguments presented elsewhere in the EP Comments reports integrated into the text as appropriate.

EP argues that political influence in the present is shown by internal and external conflict. “The internal conflict is the conflict between the major family lines that comprise the Eastern Pequot Indians of Connecticut (the ‘EP’) and those families who choose to follow Helen LeGault in the formation of the Paucatuck Eastern Pequot group (the ‘PEP’)” (IIIH, 335; EP Comments 8/2/2001). EP then limits its definition of external conflict: “The external conflict is the conflict between the EP and the State of Connecticut (the ‘State’) over the EP’s right to determine its own membership requirements and select its leaders as well as its right to control the uses of the Lantern Hill Reservation” (IIIH, 335; EP Comments 8/2/2001). The Comments assert: “The Council encouraged the members to come together and maintain a clear and consistent approach toward resolving their differences between the members and the PEP group and between the members and the State” (IIIH, 338; EP Comments 8/2/2001).

EP asserts further that:

To survive this period, the members of the EP have bonded together socially, shared the labor necessary to raise funds, and fought collectively against the discrimination they faced from the Connecticut Indian Affairs Council (the “CIAC”), the State and the PEP. This discrimination was unique—the EP were the only Indians in Connecticut whose blood quantum and Indian identity was questioned by the State and the CIAC (IIIH, 335; EP Comments 8/2/2001).

This statement is actually a general argument for political process, which covers a number of the topic areas noted below.

EP points out that the administration of the Lantern Hill reservation involves the allocation of significant resources, which falls into the evidentiary category 83.7 (c)(2)(1):<sup>88</sup>

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<sup>88</sup>(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” (83.7(c)(2)

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Members of this political entity have joined together to maintain the reservation and protect its resources. To the full extent allowed, the Council controlled who could live on the Reservation, who could hunt and fish on tribal lands and who could use the Reservation for group purposes. It also worked to insure that the reservation was properly maintained. These Council actions were respected and supported by the membership through their applications for residency rights and hunting and fishing permits and their participation in reservation clean-up projects (IIIH, 338; EP Comments 8/2/2001).

One of EP's core arguments, to which much of the data presented is directed, is that members were aware of and approved of council actions:

With the permission of the EP membership, the EP leaders managed and allocated the EP's meager financial resources and fought to protect the Tribe's collective monies held by the State. They and the other members of the EP also fought to control the use of Reservation lands.

As each problem developed, the Tribal leaders, in consultation with the membership, established the plan of action the EP would follow and worked to insure that the members of their community avoided violent confrontation with the PEP and state officials (IIIH, 335-336; EP Comments 8/2/2001).

EP also argues that significant political communication existed within the membership (evidence under 83.7(c)(1)(iii)), stating that, "[t]hroughout this period, the EP membership remained knowledgeable of what their leaders were doing . . . This knowledge came through regular membership meetings, newsletters, telephone calls and attendance at court proceedings and CIAC hearings" (IIIH, 335; EP Comments 8/2/2001). It also asserts that the knowledge was accompanied by support: "The membership was aware of the actions taken by the leadership through meetings and newsletters and supported those actions through the payment of dues, participation in fund raisers and attendance at tribal meetings and social gatherings" (IIIH, 337; EP Comments 8/2/2001).

EP also maintains that the members considered these activities important (IIIH, 335, EP Comments 8/2/2001, though it did not present direct evidence in support of this. Issues of importance are specific evidence under 83.7(c)(1)(ii).

EP also cited 83.7(c)(1)(i), which refers to mobilization significant numbers of members and significant resources from its members for group purposes. Most of the data here was directed toward evidence of banding "together to raise the funds necessary to keep their fight going" (IIIH, 335; EP Comments 8/2/2001). Only limited information was presented concerning mobilization

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and 83.7(c)(2)(i)).

of members for group projects, such as working on the reservation lands, putting on the annual meeting, and the like. To the extent such data was provided, the names were placed by the BIA researcher into the database concerning individual participation (see below).

Towns' Comments. The Towns cite a memorandum in the record which contains the results of a review of EP minutes stating there was little evidence for political processes (*Towns August 2001*, 305). This memorandum was prepared for the proposed finding by extracting data from the available EP minutes. The work was performed by a BIA staff anthropologist under the direction of the staff anthropologist assigned to the petition (not by the BIA historian as the Towns' comments assume). The proposed finding utilized this work as part of the basis for its conclusions. The review for this final determination considered the data extracts created for that study but conducted additional review of the minutes and as well as of other documents. Thus the results discussed here supercede the previous analysis.

The Towns' comments compare the Eastern Pequot and Paucatuck proposed findings with the final determination on the Indiana Miami petition, which contained a lengthy discussion which concluded that the evidence did not show that the Miami met criterion 83.7(c), political influence, from 1940 until 1990 (the date of the proposed finding) (*Towns August 2001*, 242-246). The Town notes the comparatively brief discussion of the parallel time period in the Pequot findings. The report notes that the Miami finding concluded that, although the Miami had an active formal organization for much of this period, it had not shown that the issues pursued were significant to the membership as a whole or that a bilateral political relationship was maintained between the council and the membership. The Towns also conclude that there was more evidence of political activity in Miami than in the Pequot cases (*Towns August 2001*, 243), but that the EP and PEP proposed findings nonetheless concluded that criterion 83.7(c) had been met.

Analysis of Comments and Responses. EP has presented an very large volume of documentation and description to support its claim to show tribal political authority since the organization of a formalized structure in late 1975. The largest and most important part are two reports, of 91 and 111 pages in length, each of which review council and organization activities and some other political information, more or less year by year from the early 1970's, at the beginning of the CIAC period, to approximately 2000 (IIIG and IIIH; EP Comments 8/2/2001). The reports are accompanied by two separate boxes of chronologically organized documents, totaling about six feet in length. Most of this material, consisting of minutes, correspondence, court briefs and the like, was already in the record. Though report IIIH stated that it was integrating information from these documents with interviews of leaders, it did so only in a few places.

While the response to the final determination identified this information, presenting it as part of the two long and detailed reviews of the political activities of the EP from 1973 to the present, it did not pull the pertinent information together into sections focusing on particular topics most relevant to demonstrating political processes and influence. The data is presented chronologically in the reports with much other data which, for reasons discussed, do not differentiate the EP activities from those of a voluntary organization whose members might not otherwise have any

connection with each other. Discussed below is data which does differentiate the EP from a voluntary organization.

Some arguments made do not in themselves show significant political processes, and as such have not been evaluated for the final determination. Thus, the use of newsletters *per se* is not evidence of significant political communication, especially in circumstances where a group is lacking in communication from members to leaders. Similarly, the attempt to show allocation of group resources, 83.7(c)(2)(i), is not shown by using tribal funds to pay for lawyers, renting meeting space, and preparing newsletters.

The Indiana Miami and other findings established precedents that a high level organizational activity does not in itself demonstrate that a tribe exists within the meaning of the regulations, as opposed to a vigorous voluntary association of individuals not otherwise associated with each other. The EP argument in IIIG and IIH must demonstrate that this is more than a voluntary organization. Consequently the evidence focused on here is not the organization's activities *per se*.

The EP Comments do not clearly draw the link between the detailed summarizations and extracts of data in their reports, which are chronologically organized, and the specific kinds of behavior and phenomena that the petitioner is trying to present as evidence for significant political processes. Nor, for the most part, are these integrated with interview data, such as an attempt to reconstruct what went on at key meetings on key issues, though there is some pertinent interview data in the record. The discussion below is based on extracting data from the reports and accompanying records concerning certain specific areas which provide evidence for political processes. Material which does not in this case provide useful evidence, such as drafting a constitution, helping needy members, applying for grants, and the like is not analyzed here.

Issues of Importance to the Membership, and Political Communication. As a general matter, the EP and its representatives conducted actions, such as attending CIAC and presenting arguments and evidence at CIAC, filing lawsuits against actions of the CIAC, as well as establishing membership rules and a governing process. The EP generally held membership meetings to inform the members and to get votes from members ratifying these decisions. The minutes are unfortunately sparse in these matters, beyond the fact of a vote or the presentation of an issue. Nonetheless, these are numerous and consistent from 1976 on.

Access to the reservation and status as Eastern Pequot Indians was an issue of importance to the membership at large. Consequently the actions of the CIAC to recognize or not recognize the PEP or EP as part of or representing the state-recognized entity, CIAC hearings to determine whether Tamar Brushell was Pequot, and the ability to control the reservation and the associated funds were issues of importance. By definition, because they affected access to significant material resources, the various lawsuits brought by the EP against the CIAC and against PEP, and PEP's lawsuits and reaction became political issues of consequence within the meaning of 83.7(c)(2).

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The EP narrative and documentation boils down to an argument that EP held frequent and consistent membership meetings (not just tribal council meetings and not just taking actions at the instigation of the council members themselves) on these issues and that the meetings resulted in decisions on how to deal with the issues and actions to implement the decisions. What is missing is a centralized description of this process and direct evidence of how members presented their concerns and interests at such meetings.

The best contextual evidence for reservation control as a significant political issue is that it has been shown that in the past a broadly distributed number of members visited relatives on the reservation, attended meetings and gatherings and, perhaps hunted and fished there. These descriptions appear *per se* to be generally valid, because they are so numerous and particularistic, even though no doubt embellished somewhat. Certainly this evidence fits the interpretive rule that a claim, to be assumed of political significance without further evidence, must be for something lost in the lifetime of much of the group itself, as opposed to something centuries old (see Miami FD, Snoqualmie FD). In this case, the claim is to something that has not yet been lost, but for which there is a threat of loss. This, combined with the historical pattern of involvement with the reservation, is evidence that the issues were and are of importance.

Survey Data. The EP survey of its membership, and the analysis presented in its Comments on the Proposed finding, produced only a small amount of useful data. The survey data on community and political processes is discussed above under criterion b. There was some data to indicate that the "split" with PEP (as the question was phrased) was an important political issue to about half of the respondents, constituting approximately 20 percent of the adult membership. There was some data, concerning attendance at CIAC meetings which provide some support for the conclusion that the actions of the CIAC were important issues.

Fund-raising and Donations as Evidence of Mobilization of Members, Participation, and Membership Interest in Council Actions. An additional argument contained within the body of the reports is that members consistently donated small sums of money to pay for all these legal actions, beyond the payment of dues, although the dues are characterized as being pushed for in the context of supporting the numerous lawsuits and actions. The reports contain descriptions, numbers, examples and the like of members donating funds to support the EP council's efforts, with examples from almost all years from 1976 to 2000.

Control of the Reservation. EP effectively asserted control of the reservation from 1982 on, in spite of continuing controversies with PEP over the competing claims, and such incidents as the 1992 effort of PEP to get the Town of North Stonington to revoke the tax exemption of the personal property of EP residents on Lantern Hill. EP exerted control by passing ordinances covering hunting and fishing and land use, requiring approval to reside on the reservation, attempting to prevent or limit state police and town jurisdiction on the reservation, adopting rules for residence, trash control, and letting contracts to cut trees. Examples of this control appear in every year after 1982. Also, EP physically established a beachhead, building on the several who

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were resident in 1970, with the advent first of Larry Sebastian (in 1973-1974), and Mark Sebastian, taking over the area previously occupied by Annie Carpenter [Anna Geneva (Sebastian) Carpenter, widow of Al Carpenter] "up top." Vice Chairman Mark Sebastian characterized the situation on the reservation in 1999 as EP controlling 190 acres and PEP about 30 -- apparently *de facto* rather than by agreement (Mark Sebastian 1999).

The evidence is that the members have generally followed the council's ordinances, although there are relatively few specific instances. However, there is no direct data in interviews or the survey to show that the membership supports this.

Behavior Control and Settlement of Disputes among Members. The EP Comments present a few examples of council actions to control the behavior of members and/or settle disputes, such as a complaint that one individual on the reservation had taken the property of another because of failure to pay a debt (IIIH, 388, 393; EP Comments 8/2/2001). The council heard testimony on the dispute, and ordered the individual banished from the reservation and tribal activities for a year. As noted by the proposed finding, there are too few examples of such actions to be significant evidence.

EP also argues that the council exercised such control by convincing some of the dissident "hotheads" from taking physical action in 1982 after the PEP chairman had sent letters to EP members resident on the reservation, ordering them evicted (Report IIIH, 374; EP Comments 8/2/2001). However, this example fits better under the heading of members communicating with and accepting the action of the council.

Attendance and Participation. The proposed finding stated:

The petitioner did not present a specific description or position concerning the extent to which individual members outside the leadership participated in the government or in political meetings, nominated candidates, or voted. While some records which contain information about participation were obtained from the Eastern Pequot office, BIA staff cannot be responsible for conducting research on behalf of the petitioner. EP should analyze these records and the participation reflected therein to interpret its own political processes (EP PF 2000, 145).

The proposed finding further stated that, "[a] detailed study of participation of individuals in the political process was not made for this decision as a means of showing criterion 83.7(c) was met," adding that "[s]uch a study is one approach to demonstrating that criterion 83.7(c) is met (see Mohegan FD)" (EP PF 2001, 145).

The EP Comments did not make such an analysis, but presented a sampling of lists of voters, petitioners, workers on community projects and the like, sometimes analyzing them to indicate breadth of family line and subline participation. The reports cited a substantial number of documents, in some instances providing an analysis of the number of individuals participating in

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a variety of activities and analyzing the family line and subline backgrounds of the individuals. It identified circumstances where members did not merely attend meetings, but voted on issues which can be considered of significance.

The BIA researcher constructed an approximate gauge for the amount of political participation by compiling the information presented in the lists and reviewing some additional documents to clarify patterns. Participating individuals were divided into two groups. The first group, the "actives" were defined as any individual who had actually held an office in the EP governing structure, including committees. A total of 60 such individuals fit this definition between late 1975 and 2000. About two thirds of these were active in this manner for at least 10 years.

The family line distribution of these included at least a few individuals from most of the Francisco Sebastian, Jr., subline, from the Solomon Sebastian line, and from the Mary Marilla (Sebastian) Wilson line – the three main largest sectors of Sebastians in the current membership. In the earlier years of this span of time, the Sarah (Sebastian) Williams line was also represented. These individuals have since enrolled with the Mashantucket (Western Pequot) tribe. Proportions of those politically active from each line or subline were not calculated, but on inspection, the Mary Marilla line and the Francisco Jr. subline of the Francisco line were somewhat overrepresented among those politically active.

The second group were "signers" – individuals who had signed petitions to the Connecticut government or to the EP itself (thus including dissident individuals) had nominated someone for office, participated in work parties to take care of reservation lands, and similar kinds of lists. Only a limited portion of the records of this character identified in the two reports or in materials on EP elections and other materials collected during the BIA field visit were analyzed. The results of this limited analysis are thus highly preliminary. The initial data entry provided approximately 65 additional names not included with the first group. An estimated minimum of an additional 45 names would be added by adding names from other such sources to the database.

These figures compared with the approximately 555 adults on the present roll indicate approximately 30 percent of adults significantly active, a substantial figure.

Conflicts. The proposed finding indicated, based on a limited review of documentation, that there were some political conflicts within the EP and that further data on these might provide significant evidence for political processes (EP PF 2000, 145). It was noted that such conflicts would have particular evidentiary significance if the evidence shows that they involved particular political opinions among the larger body of the membership, rather than being only personal in nature and showing only differences of opinion between a few active individuals whose views did not reflect contending bodies of political opinion within the group.

In technical assistance meetings, the BIA suggested that the apparent opposition to and issues concerning development of a revised EP constitution would be a fruitful area, based on their preliminary description by the EP researchers. In addition, BIA interview information indicated

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that the past chairman had been put forward by supporters of one camp to prevent the election of a candidate supported by a different group (Mary Sebastian 1999). The BIA indicated that a study of this election might provide information in regard to modern political processes within EP.

EP Comments. The two main reports provide data on some conflicts, as do the reports of Bragdon and Simmons (IIIJ, IVC, EP Comments 8/2/2001), but for the most part, the EP Comments did not address the specific areas recommended by the proposed finding and in technical assistance concerning conflicts.

Bragdon makes reference to discontent among the membership with the central role of the family of Roy Sebastian, Sr., several of whose members have been active leaders, as well as to conflicts within that family sub-subline. She alludes to issues raised by the dissidents such as “tensions and concerns about inappropriate use of power and tribal funds are still visible today, as the federal recognition project enters its final stages” (Bragdon IIIJ 462; EP Comments 8/2/2001). She also suggests there has been resentment by the “older hands” who had been in the leadership and council at the beginning, against the role of “new” members, outside scholars, and different attorneys who have “usurped” the role played by the original group of researchers, who claim to “know twice as much” as anybody on the current research team.” (Bragdon IIIJ, 462; EP Comments 8/2/2001). Finally, she makes oblique reference to objections raised by a “dissident,” Ashbow Sebastian to several elections (Bragdon IIIJ, 462-463; EP Comments 8/2/2001). However, the report does not flesh any of this out, or cite to data to describe the size, character and history of these conflicts and of the “dissidents.” Much of the information, in BIA and EP interviews, and documentation from EP, pertains to more or less personal objections to one or another council action, the handling of recent elections, and the like (see Larry Sebastian 1999), though there was some limited evidence that there was broader political interest among the membership.

EP has had several individuals who have been noteworthy “dissidents” since the 1980's, especially Larry Sebastian, Ashbow Sebastian, and Ron Jackson. While EP supplied information about some of the conflicts involving these individuals, the submissions contained little information to indicate how many supporters they had, nor did EP present an event analysis of the conflicts. Two lists of “dissidents” were included in the submissions – signatories to a protest petition to the EP council and to a letter to the BIA. The names on these have been included in the participation database noted above (Ashbow Sebastian 1994, Strong et al., 1998; EP Comments 8/2/2001). Together with interview data, they indicate as many as 30 individuals had supported at least one protest. A major portion of these was drawn from the Catherine Harris sub-subline of the Francisco Sebastian, Jr. subline (see Eccleston 1999), along with several from the Solomon Sebastian line and two leaders from among the children of Roy Sebastian, Sr., Ashbow and Larry Sebastian.

PEP stated that the EP “dissidents” are a group of self-appointed individuals, with no connection with the EP leadership (get cite ; PEP Comments or Response).

**The Warrior Society.** Bragdon's report references the "Warrior Society" as a body with influence in EP politics and which also performed services for older individuals, protected the reservation and performed other functions (Bragdon III; EP Comments 8/2/2001). There is little evidence that such a group has functioned continuously or been active consistently. To the extent information on the membership was available, the active members of the "Warrior Society" appeared to correspond now and to have corresponded loosely in the past to the dissidents. Both have been somewhat focused around Ashbow Sebastian. EP minutes confirm that an actual organization, as kind of a service organization, was approved by the council in 1983, to be under the council's direction (EP Minutes 3/9/1983). However, the minutes record no activities after 1983.

EP Report IIIH (EP Comments 8/2/2001) and interview materials from vice-chairman Mark Sebastian and Ashbow Sebastian quoted in the report suggest that the 1983 council action was a formalization of something which had existed historically, *i.e.*, before 1983. There is no evidence that the organization existed before 1983 or that it is as large as the descriptions imply. During the BIA fieldwork visit, it was characterized as a "men's group" (Mary Sebastian 1999). While the dissidents were mentioned frequently in BIA interviews, little or no mention was made of a "Warrior's group."

Ashbow Sebastian's descriptions of the "Warriors" was that the purpose of the group was to defend the reservation against the PEP and stop PEP attempts to push the EP off of it (Ashbow Sebastian, 2001, Interview by Patricia Marks). This fits with the several physical confrontations with PEP members on the reservation that have occurred between 1980 and the present, which in turn suggest it was part of a strategy that fit with EP's efforts to control the reservation. It is unknown whether the EP council exercised influence to dampen some of the violent tendencies attributed to this group as Report IIIH suggests (IIIH 376-377; EP Comments 8/2/2001). Another interview, with Mark Sebastian, described it more as a kind of service group (Mark Sebastian Interview by Patricia Marks 2001). There is insufficient information to adequately describe this group or to demonstrate a significant political role for it.

**"Factions."** With regard to whether the two petitioners are factions within the same group, EP's theoretical discussions about the nature of factionalism *per se* and citations to various definitions in the professional literature (Bragdon IVA, Simmons IVC; EP Comments 8/2/2001) are not directly relevant. The primary focus of inquiry is a purely descriptive one -- is there a single political system, which implies also a single community, within which a conflict is occurring. In the present instance, the EP Comments did not focus on the issue of whether there are political and social contacts between members of the two sides, or any institutional framework uniting them. Those questions are addressed generally in the review of the formation of the two present petitioners, past and present community and political processes in the two petitioners and their antecedent families and the history of the conflicts between the two groups.

EP presented little direct evidence, data, and description to show a single political system, in the sense of a single social community and social and political relationships between the leaders,

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rather than being an argument between two separate groups contending for the same prize, other than the conflict itself, the common issues and the actions in response. There was little data to show any present community connection between the members of the two groups or to demonstrate that the dispute takes place within a framework in which there are relationships between the members and/or leaders of the two memberships.

PEP limited its Comments to providing instances where events, gatherings or meetings were held in which EP members did not participate and from which they were perhaps deliberately excluded, although the latter wasn't definitely shown. They also commented frequently that there had never been a political relationship between the two groups.

*Analysis of Comments and Responses.* The proposed finding concluded that consistent with precedent and using evidence acceptable to the Secretary, the historical Eastern Pequot tribe, which included the antecedents of both current petitioners, met criterion 83.7(c) from the colonial period through the third quarter of the 19<sup>th</sup> century. Much of the argumentation presented by the Towns for the final determination reiterated issues which had already been considered in the proposed finding (nature of an aboriginal tribe; whether more than one modern tribe may have evolved from an aboriginal tribe, etc.). No significant new evidence in regard to this early period was presented for the final determination.

From 1873 through 1973, the proposed finding concluded that consistent with precedent and using evidence acceptable to the Secretary, the historical Eastern Pequot tribe, which included the antecedents of both current petitioners, met criterion 83.7(c). Petitioner #35 accepts the hypothesis of a single historical tribe of which its antecedents were a part, but also in its response submitted evidence to strengthen the evidence for political influence and authority among its own subgroup. The evidence for the entire tribe is stronger for the final determination, since much of the additional evidence, such as the response to the State's 1953 detribalization effort, showed cooperative undertakings between the Hoxie/Jackson lineage, now a part of petitioner #113, and the direct antecedents of petitioner #35.

From 1973 to the present, EP has maintained a distinct organization. As with PEP, the major focus of the distinct political organization has been rivalry with the other petitioner. From 1982 to the present, EP has exercised effective control over and allocation of the majority of the Lantern Hill resources.

*Conclusion.* See the conclusory section of this document.

**83.7(d) 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 proposed finding stated:

On April 3, 1996, the petitioner provided copies of the current revised and amended by-laws, which include a statement of membership qualifications and enrollment procedures. On February 3, 1998, the petition stated that a new governing document was in the drafting process. However it has not been submitted to the BIA. Having a new governing document under preparation is not a disqualification for 83.7(d). For the final determination, the petitioner should either recertify the 1996 document or provide a copy of the new constitution and/or by-laws certified by the governing body (EP PF 2000, 121).

For the final determination, EP, petitioner #35, neither submitted an updated/revised governing document nor provided separate certification of the governing document submitted for use in the proposed finding. Petitioner #113 submitted a letter dated August 19, 1998, from Mary E. Sebastian to "All Tribal Members" on Eastern Pequot Indians of Connecticut letterhead which stated that EP had "drafted a new Constitution and By-laws" and that "[o]ur legal counsel is now reviewing them before we distribute them for final Tribal ratification this fall" (PEP Response to Comments 9/4/2001, Ex. 24). This letter contained proposed standards for membership eligibility.<sup>89</sup> Additionally, it included procedures for "Clarifying/Approving Tribal Enrollment

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<sup>89</sup>TRIBAL ENROLLMENT

We have been asked to clarify how we handle enrollment in the Tribe. As we know, our By-laws define a member of the Tribe as someone of direct lineal decent [*sic*] of a full-blooded Pequot. The BIA is comfortable with this definition but wishes an explanation as to how we actually measure direct lineal decent [*sic*]. The Tribal Council, on the advice of our legal counsel, proposes the following:

- (a) Overseers' Reports prior to 1935 identify and therefore define the individuals who are members of the historic Eastern Pequot Tribe. Therefore, to qualify for membership in the contemporary Eastern Pequot Tribe, an individual must be able to trace his/her lineage to one or more of these historic tribal members.
- (b) No members of the Eastern Pequot Indians of Connecticut shall be a member of any other Federal, State or Canadian recognized tribe. Therefore, there shall be no dual enrollment. Further, while an individual is applying to the Eastern Pequot Tribe for membership, he/she will be permitted to maintain membership in another tribe. However, should the Eastern Pequot Tribe accept said application, the applicant MUST drop his/her enrollment in any other Federal State or Canadian recognized tribe.

Procedure” (PEP Response to Comments 9/4/2001, Ex. 24)<sup>90</sup>. The BIA has no indication from petitioner #35 that these proposed procedures were adopted.

The Towns asserted that in the proposed finding the BIA did not provide a summation of the petitioner’s eligibility requirements in either the Summary under the Criteria for the proposed finding or in the Federal Register notice (*Towns August 2001*, 314, 372). The Summary and the Federal Register notice contained only the information that these documents had been submitted in accordance with the requirements of criterion 83.7(d) (EP PF 2000, 121; 65 FR 17298). However, the charts for criterion 83.7(d) that accompanied the proposed finding contained the information on the current eligibility requirements (EP PF Chart 83.7(d), 2). Additionally, the Towns were furnished with a copy of the draft technical report on EP prepared by a BIA staff member, of which “Section VIII, #35 EASTERN PEQUOT GOVERNING DOCUMENTS, ENROLLMENT ORDINANCES, AND MEMBERSHIP LISTS,” occupied pages 111-131, and the specific subsection “B. Eastern Pequot Indians of Connecticut Enrollment Provisions, 1973-Present” comprised pages 115-120, with a summary of the current requirements on pages 119-120. Thus, the Towns had the information itself and the BIA’s analysis of it.

The information provided in the draft technical report on petitioner #35 was as follows:

*2. Membership Provisions of Prior Governing Documents, #35.*

*a. 1976 By-laws.* The by-laws adopted by the Eastern Pequot Indians of Connecticut in January or February, 1976 (Eastern Pequot Indians of Connecticut By-laws 1976) contained the following provisions:

**MEMBERSHIP** An authentic descendant of the Eastern Pequot Tribe of Indians is a person who can prove through a birth certificate or other legal record that he or she is directly related to an Indian who is geneologically [*sic*] recorded as an Eastern Pequot Indian. An authentic descendant of Eastern Pequot Tribe of Indians contributing annually at least five dollars a year may become a member upon the approval of the Tribal Council.

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- <sup>90</sup>c. The Tribal Membership Committee comprising five Tribal elders as appointed by the Tribal Council shall make enrollment decisions. In the case of a dispute between the committee and the applicant, an appeal may be filed with the Tribal Council. The decision of the Tribal Council shall then be final.
- d. If an adult member of the Eastern Pequot Tribe is removed from the membership roll at his/her request or by way of action by the Tribal Council, said member may not apply for reinstatement for a period of five years.
- e. The five-year prohibition defined in part (d) above shall not apply to any minor member who was removed or refused at the behest of his/her parent or guardian. Said minor may apply for membership in the Tribe upon his/her 18<sup>th</sup> birthday.

**TRIBAL MEMBERSHIP** The Tribal Membership shall consist of the following persons: members who are authentic descendant [*sic*] of the Eastern Pequot Tribe and over (18) years of age.

**ASSOCIATES MEMBERS** [*sic*] An associate member is a spouse of an authentic descendant of the Eastern Pequot Indians. He or she shall have the full right to participate in all the meetings of the Tribe but without the right to vote.

**b. 1988 Amendments.** These amendments made no changes in the above membership provisions.

**c. 1995 Amendments.** The version of the “By-Laws of the Eastern Pequot Nation” hand-dated 1995 and received by the BIA on April 3, 1996,<sup>91</sup> modified the membership provisions to read:

3. **TRIBAL MEMBERSHIP** All persons who can document through a birth certificate or other legal record that he or she is a direct lineal descendant of a member of the historical Eastern Pequot Tribe are eligible for membership in the Eastern Pequot Tribe as a full citizen of the Eastern Pequot Nation. The tribal membership shall consist of all persons who have provided to the Tribal Council documentation or other evidence establishing that they are eligible for tribal membership and full citizenship in the Eastern Pequot Nation.

The provision concerning associate members remained unchanged.

3. *Current Enrollment Provisions, #35.* The BIA has not received copies of any enrollment ordinances formally adopted by #35 that would supplement the above provisions in the by-laws.

The EP petition narrative states that:

“All of the current membership is traceable to the:

1870 census: “Indians in North Stonington.”

1900 census: “Indian Population” of “North Stonington Town”

1910 census: “special Federal census of the Indian population, as ‘Pequot’”

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<sup>91</sup> Another version of this document, with different formatting but identical content, was included as an attachment to the cover letter on the petitioner’s May 2, 1995, Response.

Indians of the "Indian Reservation: in North  
Stonington town (#35 Pet. Narr. 7/1998, 3)

There is no explanation of why these omit 1880 census and 1920 census.<sup>92</sup> The petition narrative states that the above qualifications are "specified in the tribe's membership rules" (#35 Pet. Narr. 7/1998, 166). Petitioner #35 has not submitted any 'membership rules' which contain these provisions (EP Draft TR 2000, 119-120).

The proposed finding found that EP met criterion 83.7(d). As of the issuance of the proposed finding, all of the petitioner's membership (100%) met the membership requirements as referenced in the above documents.

For the final determination, the petitioner submitted additional enrollment materials (EP Comments 2001, Item G). These were certified by a signed resolution of the Tribal Council of the Eastern Pequot Indians of Connecticut dated July 17, 2001 (EP Comments 8/2/2001, Item G). They included a ten-page Tribal Enrollment Ordinance [no number, although containing a blank space for a number in the heading] certified as having been adopted at a council meeting held April 14, 1999 (7 in favor, 0 opposed, 2 absent, and 0 abstentions), the certification of adoption signed by Mary Sebastian, Chairperson, and Dawn Rocha. The basic eligibility requirements are as follow:

Section 2. Persons Entitled to Membership

2.01 An individual is eligible for membership in the Tribe, if that individual:

(a) Provides documentation, through birth certificate(s) or other legal records, that he/she is a direct lineal descendant of a member of the historical Eastern Pequot Tribe as defined below:

(1) a member of the historical Eastern Pequot Tribe is any person whose name appeared on one or more of the Indians of North Stonington overseer's reports to the State of Connecticut dated 1935 or earlier; or

(2) a person who is designated as an Eastern Pequot Indian in North Stonington on the 1870, 1900 or 1910 census; and

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<sup>92</sup>In the light of the discussion of census records above, 1880 and 1920 may have been omitted because they did not identify the reservation residents as an Indian group. Submissions by #35 to the BIA do not make this explanation.

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(b) Is not currently enrolled in any other state or federally recognized Indian Tribe, band, or group (EP Comments 8/2/2001, Item G, Tribal Enrollment Ordinance 4/14/1999, 1).

The remainder of the content of the ordinance is procedural, including an appeals procedure (EP Response 2001, Item G, Tribal Enrollment Ordinance 4/14/1999, 2-3) and detailed provisions for disenrollment (EP Comments 8/2/2001, Item G, Tribal Enrollment Ordinance 4/14/1999, 3-5). It also provides for voluntary relinquishment of membership (EP Comments 8/2/2001, Item G, Tribal Enrollment Ordinance 4/14/1999, 5). Section 11 provides that, "Nothing in this Ordinance shall modify or invalidate enrollment decisions made or approved by the Tribal Council or Tribal Geneologist [*sic*] of the Tribe prior to the effective date of this Ordinance" (EP Comments 8/2/2001, Item G, Tribal Enrollment Ordinance 4/14/1999, 10).

**Conclusion.** The petitioner has submitted a copy of its governing document, which includes a description of its membership eligibility. The conclusion of the proposed finding that the petitioner meets criterion 83.7(d) is affirmed.

See also the conclusory section of this document.

**83.7(e) 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.**

*Descent from the Historical Tribe.* The proposed finding noted that:

In the case of the two Eastern Pequot petitions, . . . Eastern Pequot Indians of Connecticut #35 and Paucatuck Eastern Pequot Indians #113, much controversy has arisen in regard to the genealogical claims of certain key ancestors. Since petitioner #113 has specifically challenged the accuracy of the above official records in regard to petitioner #35, the BIA was required to go behind the lists of the late 19<sup>th</sup> and early 20<sup>th</sup> century to examine the underlying documentation in detail. Additionally, the third parties have challenged the existence of descent from the historic tribe for both petitioners (Lynch 2998a, Lynch 1998b, Lynch 1999) (EP PF 2000, 121-122).

After evaluation and analysis of the evidence, the proposed finding concluded that:

Extensive genealogical material submitted by the petitioner, by petitioner #113, and by the third parties indicates that the petitioner's current members are descendants of Tamar (Brushell) Sebastian and of Laura (Fagins) Watson. As those individuals were, during their lives, members of the Eastern Pequot tribe as

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ascertained by evidence acceptable to the Secretary, the descendants of these individuals, as well as the descendants of any descendants of Abby (Fagins) Randall now included on the petitioner's membership list, descend from the historical tribe.

The lines of descent for individual families have been verified through Federal census records from 1850 through 1920; public vital records of births, marriages, and deaths; and to a lesser extent through church records of baptisms, marriages, and burials, as well as through use of state [*sic*] records concerning the Lantern Hill reservation. These are the same types of records which have been used to verify descent for prior Federal acknowledgment decisions.

Therefore, the petitioner meets criterion 83.7(e) (EP PF 2000, 133).

Position of PEP. The Comments from PEP, petitioner #113, continue to challenge the descent of the EP Brushell/Sebastian lineage from the historical Eastern Pequot tribe, reiterating PEP's prior assertion that Tamar Brushell was either non-Indian or non-Eastern Pequot. PEP also asserts that, "there was only one marriage between a Sebastian descendant and a member of the historical Eastern Pequot Indian Tribe, and that was in the late 1800s; that is, Mary Eliza Watson (an Eastern Pequot Indian) married Calvin Sebastian" (Austin II 8/2/2001, 15; PEP Response 8/2/2001).

Position of the State of Connecticut. The State did not directly address the issue of descent from the historical tribe in its Comments (*State of Connecticut August 2001*).

The State submitted an affidavit, dated July 27, 2001, from Edward A. Danielczuk (*State of Connecticut August 2001*, Ex. 60). The document is retrospective rather than being contemporary evidence. In it, Danielczuk states that in the 1960's and early 1970's, he worked for the Connecticut Welfare Department as a supervisor in the Resource Department, with one of his responsibilities being "to oversee the State's four Indian Reservations" (Danielczuk 7/27/2001, 1). Danielczuk made the following points:

6. The State's main function with respect to the four Indian reservations and those residing thereon was to oversee the reservations, to provide the Indians living there with assistance and ensure that the reservations were preserved for and used by only qualifying Indians who could demonstrate at least one-eighth (1/8) Indian blood of the tribe for which the reservation was maintained.

7. When determining whether a person was qualified Indian under this requirement, we used a genealogical chart maintained by our office. We did not require or make any investigation into whether the person maintained any sort of social or political relationship with the other Indians but rather based our

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determination solely on the basis of the office's genealogical chart (Danielczuk 7/27/2001, 2).

Position of the Towns. The Towns' Comments continue to challenge the petitioner's descent from the historical Eastern Pequot tribe within the meaning of the 25 CFR Part 83 regulations in detail (*Towns August 2001*, 286-287, 308-313). The Towns would establish a requirement that petitioners show individual genealogical descent from a historical tribe as it existed at the time of first sustained contact with non-Indians for petitioners #35 and #113 (Lynch 1998a, 3; *Towns August 2001*, 286-287, 308-310).

The Towns also assert that to meet the standard of descent from a historical tribe under 25 CFR Part 83, current members must descend through individuals who themselves "maintained consistent 'tribal relations.' It is not enough for those individuals to have made momentary or periodic appearances on the reservation or as part of the tribal community" (*Towns August 2001*, 311; see also *Towns August 2001*, 366).

The Towns also state that the, "BIA must apply the 'one family rule.' This principle is based on the fundamental concept that a 'tribe,' as a political and social entity, cannot be derived from only one family. That problem exists clearly here for the Eastern Pequot group, as it depends for 93 percent of its membership exclusively on the Brushell link" (*Towns August 2001*, 313).

Analysis of Comments and Responses. Both the Fagins/Watson and the Brushell/Sebastian lines are antecedent to EP, petitioner #35 – PEP's argument in regard to the Watson/Sebastian marriage rests only upon the its hypothesis that the Sebastian family did not descend from the historical Eastern Pequot tribe. The proposed finding concluded that the Sebastian family does descend from the historical Eastern Pequot tribe, for reasons explained in the handling of the evidence there (EP PF 2000, Criterion 8.7(e); see also accompanying chart for criterion 83.7(e)). PEP has not submitted any new evidence on this matter. The extensive report (Austin I 8/2/2001; PEP Comments 8/2/2001) merely restated PEP's prior arguments, while McMullen rejects the validity of the "suggested inclusion of Tamer Brushel Sebastian on the 1873 petition" (McMullen 9/4/2001, 8; PEP Response to Comments 9/4/2001).

The Danielczuk statements presented by the State are in accordance with the conclusions reached by the proposed findings in regard to EP and PEP, so have not been further analyzed in this section.

The State's argument that, "[i]t follows from the requirements of substantially continuous community and political authority that even petitioners with common tribal ancestry, 'but whose families have not been associated with the tribe or each other for many generations' are ineligible for acknowledgment. 59 Fed. Reg. 9282 (stated in the context of prior Federal acknowledgment, but applicable with even greater force here)" (*State of Connecticut August 2001*, 9) was aimed not at the issue of descent, as such, but rather at the nature of the petitioning group under criterion 83.7(b).

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The BIA used the Towns' submissions for the proposed finding (Lynch 1998, Lynch 1998 Ex.; Lynch 1998a, Lynch 1999). The Towns submitted additional material after April 5, 1999, received by the BIA between April 19, 1999, and August 2, 1999, which was held by the BIA and which has considered for the final determinations.<sup>93</sup>

The Towns are aware (*Towns August 2001*, 315) that prior Federal acknowledgment determinations have used 19<sup>th</sup> and early 20<sup>th</sup> century rolls as a basis for establishing descent from a historical tribe under 25 CFR Part 83, rather than attempting to trace lineages from the date of first sustained contact. The BIA previously responded to the Towns' argument in the proposed finding (EP PF 2000, 119).

It has never been a requirement or standard for showing descent under criterion 83.7(e) that intervening generations of ancestors have maintained tribal relations. The regulations are not applied in the manner advocated by the Towns. Criterion 83.7(e) looks at descent from a strictly genealogical point of view. Maintenance of tribal relations is an issue that arises under criteria 83.7(b) and 83.7(c). The Towns' interpretation (*Towns August 2001*, 311-312, 321, 326) conflates the two. This aspect of the Towns' argument was already addressed in the proposed finding (EP PF 2000, 119).

The issue regarding "one family" in GHP was not the proportion of the membership of a tribe descending through a single ancestor, but whether it is acceptable for the total membership of a tribe to trace descent through a single ancestor. The Towns misstate a policy set forth in previous Department decisions (GHP PF, GHP FD, and Munsee-Thames). The Departmental policy is that "ancestry from a single Indian individual does not meet the requirement of criterion 83.7(e) because the section specifically requires descent from a historical Indian tribe. The plain language of the regulation requires tribal descent, not merely Indian descent" (Deer to Miller and Faleomavaega 10/18/1995). This principle is not violated by the conclusion of the proposed finding in regard to EP, as it has at least three Eastern Pequot ancestral lines that trace to the historical 19<sup>th</sup> century Eastern Pequot tribe.

Apparently also in regard to the "one family rule" raised by the Towns, petitioner #113 stated:

... that the addition of Abby Fagins Randall and Laura Fagins Watson as ancestors of Petitioner #35 postdates the publication of the negative Proposed Finding (June 1995) for the Golden Hill Paugussett, which made obvious the fact that a tribe could not consist solely of the descendants of a single individual (McMullen 9/4/2001, 14; PEP Response to Comments 9/4/2001).

The BIA presumes that the subsequent reference to "Laura Watson Randall" (McMullen 9/4/2001, 15n5; PEP Response to Comments 9/4/2001) was intended as a reference to Laura

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<sup>93</sup>See listing above in the Administrative Chronology section of this final determination.

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(Fagins) Watson. Petitioner #113 compared the “Sebastian roll of 1975” and a 1991 EP membership list to the 1996 and 2001 EP membership lists (McMullen 9/4/2001, 15n5; PEP Response to Comments 9/4/2001).<sup>94</sup> For further discussion of the circumstances under which this family line was included in EP enrollment, see under criterion 83.7(b).

*Handling of the Evidence.* PEP accepts the validity of the 19<sup>th</sup> century petitions and overseers’ reports as showing Eastern Pequot membership for the ancestors of its own members, but does not accept the validity of the same reports as showing Eastern Pequot membership for EP ancestors (Austin II:12, II:40; PEP Comments 8/2/2001). This is the case even when the names of the ancestors of both petitioners appear in the same document. BIA does not accept this methodological approach as valid. As the proposed findings indicated, the evidentiary material for the Eastern Pequot ancestry of both petitioners is essentially equivalent.<sup>95</sup>

Prior to issuance of the proposed findings, the third parties challenged the existence of descent from the historic tribe for both petitioners (Lynch 1998a, Lynch 1998b, Lynch 1999). The

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<sup>94</sup>For purposes of comparison, the BIA notes that #113’s membership lists for many years excluded the Hoxie/Jackson descendants (see PEP PF 2000, 126-127).

<sup>95</sup>As a technical correction, in regard to the June 27, 1873, document, the proposed finding read as follows:

... another document, dated June 27, 1873, “A list of the names of those belonging to the Pequot tribe of Indians of North Stonington. On file in Superior Court Records, New London County, located in the State Library, Hartford” (#35 Pet. Overseers Reports) ... contained the following names:

Francis \_\_. Watson, Mary C. Watson [?], Edgar Ross, Mary A. Potter, Harriet Merriman, Jesse I. [L.] Potter, Amman Potter, Wm. Merriman, John Brushel, Calvin Nedson, Lucy [?urey E., Percy?] Williams, Harriet Williams, Wm Williams, Emily Brushel, John Randall, Charity Fagins, Hannah Brushel, Joseph Nedson, Caroline Nedson, Fanny Sherley, Lucy George, Lucy A. George, Harriet Simon, Eunice Gardner, Marlboro Gardner, Dwight Gardner, Martin Nedson, Lucy Hill, Thomas S. Skesux, [Gusey?] Skesux. "These are the names and there is others may the Lord have mercy and healp us and give for Jesus Sake" (#35 Pet. Overseers Reports; Lynch 1998a 5:83-84).

This second document from the summer of 1873 included representatives of both the Brushell and the Gardner families, as well as several collateral relatives of Calvin Williams (EP PF 2000, 107).

A better copy of this document submitted in the petitioner’s response (EP Comments 8/2/2001, Items ACDE) allows transcription of the names as follows: “Frances P. Watson, Mary E. Watson, Edgar Watson [not Ross, with an illegible two-word name or remark beginning with B next to it], Emily Ross, Mary A. Potter, Harriett E. Merriman, Jesse L. Potter, Ammon Potter, Wm. Merriman, John Brushel, Calvin Nedson, Mercy E. Williams, Harriett Williams, Wm. Williams, Emely Brushel, Hannah Brushiel, Joseph Nedson, Caroline Nedson, Fanny Sherley, Lucy George, Lucy A. George, Harriett Simon, Emer [?, with something written above the name] Gardner, Malbrow Gardner, Dwight Gardner, Martin Nedson, Lucy Hill, Thomas S. Skesux, Gracy Skesux.” The following page, before the concluding sentence, contained the names of John Randall and Charity Fagins (EP Comments 8/2/2001, Items ACDE).

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Towns' Comments continue to repudiate the validity of the overseers' lists and accounts compiled under the supervision of the State and of the New London County Superior Court (*Towns 2001*, 124, 130, 139-140, 316-317, 321),<sup>96</sup> of the 19<sup>th</sup> century tribal census records compiled by the overseers (*Towns 2001*, 310-311), of the Federal census records including the special Indian Population Schedules of 1900 and 1910 (*Towns August 2001*, 325), and of petitions submitted to the State and to the New London County Superior Court (*Towns August 2001*, 117-118, 147), as well as of 20<sup>th</sup> century membership lists accepted by the New London County Superior Court and by the Connecticut State Park and Forest Commission (*Towns August 2001*, 317)<sup>97</sup> as being acceptable documentation for showing a connection between the petitioner's current members, their 19<sup>th</sup> century ancestors, and the historical Eastern Pequot Tribe. The final determination affirms the conclusion of the proposed finding that such documents do constitute evidence acceptable to the Secretary under 25 CFR Part 83 (EP PF 2000, 7, 62, 121).

The Towns assert at length that the reliance upon the overseers' reports in the proposed findings was inappropriate (*Towns August 2001*, 121, 124, 286-287, 321) and that previous cases had not relied upon them to an equivalent degree. In the evaluation of any petition for federal acknowledgment, the handling of the evidence is to a great extent dependent upon what evidence is available. More overseers' reports were available for the historical Eastern Pequot tribe than existed for other petitioners (some successful petitioners had none at all, never having had overseers). Overseers' reports have also been utilized heavily in the proposed findings on petitioners #69A and #69B, The Nipmuc Nation and the Chaubunagungamaug Band of Nipmuc Indians, because such documents were in the record. The regulations state explicitly that the evaluation will take historical circumstances into account. The nature of the available evidence is one of those circumstances.

It should also be noted that the above evidence was not used instead of "certified vital documents such as birth, marriage, and death records" (*Towns August 2001*, 317) but in addition to them, as noted in the proposed finding (EP PF 2000, 133). The evidence for Tamar (Brushell) Sebastian and Laura (Fagins) Watson was outlined both in the Summary under the Criteria for the proposed finding (EP PF 2000, 125-129) and in the accompanying charts. The Towns have not presented any new evidence pertaining to these lines that documents that they were not of Eastern Pequot ancestry (Siefer Report May 1999, 2-3; "Discussion of the Brushel Surname," 3-5; Siefer Report May 1999, 5-9, "Discussion of Tamer Sebastian nee Brushell"; followed by a discussion of each of her children, 8-16; *Towns August 2001*, 327-340 for Brushell/Sebastian; *Towns August 2001*, 340-343 for Laura (Fagins) Watson; see also Siefer Report May 1999, 17-18, under topic,

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<sup>96</sup>“The overseers' reports and lists in this case did not list 'descendants,' were not based on descendency, and were never intended to be inclusive of 'tribal membership.' Rather, they were lists of welfare recipients whose composition was influenced in large part at any time by the desire of town governments to minimize its responsibility for the poor” (*Towns August 2001*, 317).

<sup>97</sup>“Those in the 20<sup>th</sup> century that claimed to be a genealogical record only established linkage to the previous unreliable links and records” (*Towns August 2001*, 317).

"Discussion of the Watson Surname"; Lynch Report June 1999, 29-30, "Discussion of Laura Fagins/Watson").<sup>98</sup> In regard to the Brushell/Sebastian lineage, the petitioner responded to third party comments (EP Response to Comments 9/4/2001; Grant-Costa and Glaza 2-6, Ex. 1, Ex. 2).

The Towns' desire to require documentation equivalent to the detribalization lists used in the Narragansett, Mohegan, and Gay Head determinations (*Towns August 2001*, 319-324) is impracticable, since in this case the historical Eastern Pequot tribe was never detribalized and the reservation land was never allotted to individual families.

The Towns' comments pose numerous rhetorical questions, as, for example: "Why was there no Brushel signatory on the May 1788 petition to the Connecticut General Assembly if the family name was 'old core proprietary' as BIA maintained? How does BIA explain Lucy Brushel as being a Mohegan tribal member in 1804? Were the Brushells 'old core proprietary' Mohegan as well?" (*Towns 2001*, 331).<sup>99</sup> While the Mohegan aspect of this passage is basically irrelevant, it may be briefly explained by saying that the Brushell family name entered the Mohegan tribe through a Brushell/Cooper marriage that took place at Brothertown,<sup>100</sup> when the wife, carrying

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<sup>98</sup>Lynch's argumentation that Albert Watson was Narragansett rather than Pequot (Lynch Report June 1999, 29), is irrelevant, since the petitioner's current members do not claim EP descent through him but rather through his wife, the Eastern Pequot Laura Fagins. Similarly, the Towns' question: "But, if Calvin Williams was an Eastern Pequot, then why do none of the petitioner's current membership trace their Indian descent from him?" (*Towns August 2001*, 338) is best answered by saying that the man has no known living descendants. Of his two children by Eunice Wheeler (through whom they would also have the option of tracing EP ancestry, see Williams Notebook Typescripts c. 1941), one died childless; his daughter was listed with a grandchild in her household in the 1910 Federal census (NARA T-624, Roll 142, ED 525, Sheet 9A, # [illegible], 1910 Census, North Stonington, CT, #220/246: Congdon, Irving, Head, m, illegible, Wd, CT/CT/CT; Simmons, Elizabeth A., servant, f, Mu, 48, Wd, borne 2/2 living, RI/CT/CT; Simmons, Edna, Granddaughter, f, Mu, 3, NY/NY/NY; #113 Pet. 1996, GEN DOCS I), but there is no subsequent mention of this child in the records. The grandchild was not in the Congdon/Simmons household in the 1920 census (NARA T-625, Roll 196, ED 269, Sheet 11, 1920 Census, North Stonington, CT, #273/290: Congdon, Irving, head, m, In, 54, Wd, RI/CT/CT; Simmons, Elizabeth, housekeeper, f, In, 59, Wd, RI/CT/Maine; Congdon, Osmar, Brother, m, In, 58, Wd, RI/CT/CT).

<sup>99</sup>The Towns also state that, "there were known Brushell families among both the Mohegan and Narragansett during this period, . . ." (*Towns August 2001*, 327; see also Austin II:13ff; PEP Comments 8/2/2001). This is not strictly correct. There were known Brushell families among the Mohegan after 1800. There were Brushell families identified as Indian in the Rhode Island census records prior to 1800, but the surname does not appear on any lists of Narragansett Indians in the BIA's records.

<sup>100</sup>The Towns have reiterated their previous assertion that the Eastern Pequot tribe ceased to exist as a result of emigration to Brothertown (*Towns August 2001*, 99-100, 135; see also 120). This issue was considered in the proposed finding (EP PF 2000, 45). The BIA did not deny the Towns' assertion that some Eastern Pequots removed to Brothertown. That is a historical fact. The BIA did not and does not agree with the Towns' assertion that, "it appears that most of the Eastern Pequot historic tribe was no longer in Connecticut and no longer part of an Eastern Pequot community" as of 1850 (*Towns August 2001*, 135). This is particularly the case because the third parties rely entirely upon the appearance of certain surnames in both the 18<sup>th</sup> century Eastern Pequot tribe and subsequently at Brothertown, rather than on a genealogical study of the specific families bearing those surnames.

Oral testimony given at the 1977 CIAC hearing does not represent primary evidence pertaining to events in

her new surname and bringing children, returned to Connecticut – a sequence of events explained in the proposed finding (EP PF 2000, 124). The BIA did not state in the proposed finding that the Brushell family *name* was “old core proprietary,” on the Lantern Hill reservation, but concluded that Moses Brushell, who bore that surname, must have descended from a historical Eastern Pequot proprietary family in order to have rights to collect rent from the lease of a field on the Lantern Hill reservation (EP PF 2000, 126).<sup>101</sup> The Towns disagree with this conclusion (*Towns August 2001*, 328).

*Evidence in Regard to Abby (Fagins) Randall.* The EP PF stated:

*The Fagins/Randall Family.* The data pertaining to Abby (Fagins) Randall has not been detailed on the charts, since the 1998 membership lists did not indicate which of the petitioner’s members were her descendants. For the data in detail, see the year-by-year listings on the overseer’s reports, continuing to the 1920’s for her sons John and Alexander Randall, and the genealogical data in the background genealogical file and draft technical report compiled by the BIA. For the final determination, if the petitioner provides a membership list including those persons who trace descent through her, the documentation will be incorporated into the summary under the criteria (EP PF 129-130).

The Towns misinterpret the above passage by saying that, “the BAR did not have information that would allow a quantification of this family complex at the time of the proposed finding” (*Towns August 2001*, 342; citing “BIA, Summary Under the Criteria, EP, pp. 129-132-33”). The issue was not quantification, but the identification of who descended from this individual. For the Final Determination, EP, petitioner #35 submitted a membership list which included members who were identified as descendants of this family line. The evidence which indicates its connection to the historical Eastern Pequot tribe is as follows.

According to her death record (see below), Abby (Fagins) Randall<sup>102</sup> died October 23, 1902, at age 79. According to her obituary (see below), she was born on March 23, 1823, on the Eastern Pequot Reservation in North Stonington, Connecticut, and entered domestic service at age nine,

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1776 (*Towns August 2001*, 100). The basic standards of genealogical, historical, and anthropological research methodology as consistently applied by the BIA do not place it in that category.

<sup>101</sup>The Towns challenge to the appearance of “new” surnames such as Brushell and Fagins in EP records is without merit, as every child born has a maternal as well as a paternal lineage and it was customary in the 18<sup>th</sup> and 19<sup>th</sup> centuries for women who married to take the surname of the husband.

<sup>102</sup>See discussion in Lynch Report June 1999, 10, 21-23, 30-32. Lynch’s basic assertions are that any identifications of a family as “Black” in census and vital records indicate that it was not Indian, and that residence of a family off the reservation indicates that it did not maintain tribal relations. The BIA does not accept either of these propositions. Although a designation as “Black” does not establish Indian ancestry, it does not preclude it.

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which would have been about the year 1832.<sup>103</sup> She was first named in the documentation submitted for this petition on the 1850 census of North Stonington, Connecticut, age 27, f, B, in the household of Mary Hewitt, age 51, white (NARA M-432, household #171/188). This was the family named as her employer in her obituary. On November 27, 1851, she married John Jack Randall.<sup>104</sup> The overseer's reports occasionally carried her as "Abby John Jack," her husband, John J. Randall, being a son of Jack Randall. The Lynch Report's speculation that she might have had a prior marriage (Lynch Report June 1999, 30) is unfounded -- it doesn't track the variations of her husband's name.<sup>105</sup>

On September 9, 1857, Isaac W. Miner, as overseer, compiled the first census of the tribe that is found in the material submitted to the BIA. He headed it: "The following names are the present members of the Pequot Tribe in North Stonington and are of said tribe so far as I have been ascertaining to the best of my knowledge -" (#35 Pet. Overseers Reports). The names that he listed included, "Abby Fagins & two children" (#35 Pet. Overseers Reports). She continued to be carried on the August 28, 1858, overseer's report as Abby Fagans (#35 Pet. Overseers Reports),

Her marital family was listed on the 1860 Federal census: John Randall, 27, m, B, \$200, b. CT, Laborer; Abbie, 21, f, M; John Jr., 6, m, B; Joseph R., 6, m, B; Florence N., 2, f, B; Alexander, 1, m, B (NARA M-653, 1870 U.S. Census, North Stonington, New London County, Connecticut, 246 #264/290).

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<sup>103</sup>The Eastern Pequot overseer's report covering the period from June 22, 1831, to June 19, 1832, headed: "Pequot Indians To Silas Chesebrough" did not name the child Abby Fagins, but did name people with the Fagins surname: "Tyre, Shuntaup, Polly Shelly, Isaac Fagins, Cyrus Shelly, Else Ned, Thos. Ned, Tyre Ned, Tyre Nedson, Richd Ned, Prude Fagins, S. Shuntauk, Nancy Pawheag, R Ned, Prude Pauheag, Polly Ned, Prude Fagins. Esther Waughs while sick, Betsey Wheeler for care of Filena, E. Unding[?]" (#35 Pet. Overseers Reports).

The same was true for the report covering the period from June 20, 1832, through April 1, 1833. "Indians of N Stonington in . . . with Silas Chesebrough. P. Fagins, Tyre Ned, Cyrus Shelly, Polly Shelly, Saml Shantauk, repairing Betsey Tykins house, Elsa Ned, Sary Pomp, grave clothes and coffin for Isaac Fagins, Prude Fagins, Margaret Fagins, Hannah Shelly, Peggy Fagins, Nancy Pauheag, Prude Pauheag, Else Ned, Polly Ned, Samuel Shentauk, Rich Ned, Sary Pompus [sic], Nancy Ned, 1833 Jan 20, 4 ½ pork & peck potatoes for Moses Brushels wife, 1833 March 4. grave clothes for Betsey Hill, Polly Shelly, Hannah Shelly, Margaret Fagins, Peggy Fagins, Nancy Ned, my services for two years ending April 1 1834. Due Pequot Indians Nov. 19 1833, 6.97" (#35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS Doc. 41).

<sup>104</sup>November 27, 1851, Marriage, John Randall to Abby Phagins, North Stonington, CT. Lynch recorded this marriage as November 27, 1857 [sic]. North Stonington Vital Records 1758-1864:256. "This certifies that I have this day united in marriage John Randall and Abby Fagins (col. Persons) both of North Stonington . . ." (Lynch 1998, 5:66): 11/27/1851 Marriage record John Randall to Abby Phagins (Col'd persons) by M. N. Morris. North Stonington, CT (#35 EP Photocopy 1997; another photocopy EP Comments 8/2/2001, Box 6, Randall Folder).

<sup>105</sup>Lynch's speculations on the relevance of a possible "Jack" family ancestry for her are thus unfounded. Lynch also asked "what happened" to the five children of "Abby John Jack" on the 1854/55 EP Overseer's Report. They are the Randall family.

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She appeared on one version of the 1861 overseer's report as Abby Fagins (#35 Pet. Overseers Reports) and on a second 1861 list as "Abby J Jack 5 Children" (#35 Pet. Overseers Reports). An undated list, possibly 1862 or 1863, had "Aby jack or Fagins 4 children" (#35 Pet. Overseers Reports). The 1864 overseer's report, list of names, Pequot Tribe of Indians of North Stonington, included "Abby Fagans" (#35 Pet. Overseers Reports), while the 1865 list of names from Isaac Miner's overseer's report, North Stonington Superior Court Records, State Library, Hartford, Connecticut, "Names of the Pequot Tribe of Indians of North Stonington as far as I can ascertain," showed "Abby Fagans or Randall 5 Children" (#35 Pet. Overseers Reports).

The 1870 Federal census showed the family in North Stonington: Randall, John, 48, m, B, occupation "none," \$500 personal property, b. CT; Abby, 43, f, M, keeping house, b. CT; John, 17, m, M; Joseph, 16, m, M; Florence, 12, f, M; Alexander, 9, m, M (1870 U.S. Census, North Stonington, New London Co., CT, 37, #315/3345).

On June 26, 1873, the "members of the Pequot tribe of Indians of North Stonington" remonstrated against the sale of lands and requested removal of Leonard C. Williams as overseer (Lynch 1998, 5:81-82; Grabowski 1996, 114). The names of signers on the photocopy submitted to the BIA for the proposed finding (#35 Pet. Petitions) were nearly illegible. Combining the transcriptions in petition #35, petition #113, and by the BIA researchers, comparing the old copy to the new one submitted in 2001, the names now appear to be:

Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson, Fanny J, Irean J, Phebe J, Lucy A J, Wm. H J, Jane[y?] M J, Leanard Brown[e?], Tamar S and HTR nin cheldren [takes up two lines], James M Watson, Sarah J Watson; [next page] Mercy Williams her x mark, [illegible] H x, [illegible] x, George W Hill x, [illegible]san Randall, A. B. Randle ("Errata and Addendum for Comments on the PF 'Being an Indian in Connecticut' submitted August 2, 2001"; EP Response to Comments 9/4/2001, Item 3; #35 Pet. Petitions; Lynch 1998, 5:81-82; Grabowski 1996, 114).

The name of Abby Randall, with those of three of her children, was much more legible on the March 31, 1874, "Remonstrance to Superior Court, New London, against sale of land" which stated: "We the undersigned most respectfully state that we are members of and belong to the Pequot tribe of Indians of North Stonington" and again requested the removal of Leonard O. Williams as overseer: Abby Randall, Florance Randall, Ellice Randall, John Randall, Jr. (#35 Pet. Petitions; Lynch 1998, 5:82-83).

For the report covering the period from August 2, 1876 to April 1, 1877, C. P. Chipman as Overseer for the North Stonington Tribe of Pequot Indians, ". . . report makes that the following is a list or schedule of the members of said Tribe, as nearly as can be ascertained, viz: . . . Abby Randall & two Children 3 . . ." (EP Comments 8/2/2001, Box 1, Folder 9).

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On the 1880 census, now widowed, she appeared as the head of a household in North Stonington that included both her children and boarders: Randall, Abbie J., I, f, 55, housekeeping, b. CT, parents b. CT; Randall, Alexander, I, m, 21, son, works on farm, b. CT, parents b. CT; Swan, Brueston, B, m, 86, boarder, b. CT, parents b. CT (NARA T-9, Roll 109, 1880 U.S. Census, North Stonington, New London Co., CT, p. 767B, #32/33). The following family was sharing the same dwelling, but were not part of her immediate household: #32/34: Robinson, Palmer, B, m, 42, farming, b. RI, parents b. RI; Mary E., B, f, 38, wife, b. RI, father b. Unk, mother b. RI; William, B, m, 13, nephew, b. RI, parents b. RI.

She signed the December 8, 1883 petition, "To the Hon John D. Park Chief Justice of the Supreme and Superior Courts of Connecticut. We the undersigned inhabitants of and belonging to the Pequot Tribe of Indians in the Town of North Stonington would respectfully represent to your honor that Mr. Chipman our former overseer being dead We would request your honor to appoint Charles H. Brown of North Stonington for overseer . . ." as Mrs. Abby X Randall (#35 Pet. Petitions; Lynch 1998, 5:91-92).

Between 1884 and 1891, there is data concerning a series of payments made to her for various services, by the North Stonington selectmen (Lynch Report June 1999, 21-23). Lynch interpreted these payments to mean that she was not living in tribal relations. However, for an Indian to have earned money, receiving payment for services rendered, does not lead to a conclusion that the individual has abandoned tribal relations. Other documents, such as the overseers' reports, indicate that she and her children were maintaining tribal relations.

On the overseer's report covering the period from April 1888 to April 1889, Gilbert Billings Overseer, the "List of Tribal members" began with the names: Abby Randall, John J. Randall, Flora (EP Comments 8/2/2001, Box 1, Folder 9, "Systematic Survey"). The Eastern Pequot account covering the period from July 2, 1889, through 1890, Gilbert Billing, overseer: Members of Tribe: Abby Randall, John J. Randall, Alexander Randall, Flora Randall (#113 Pet. 1996, HIST DOCS II Doc. 41; #35 Pet. Overseers Reports). Abby Randall continued to be listed on: Overseers Reports Eastern Pequot Indians of Connecticut, Overseer Gilbert Billings, from 1891-92 through 1901-02 (#35 EP Comments 8/2/2001, Box 1, Folder 9).

The 1900 U.S. Census for the Town of North Stonington, New London County, Connecticut, showed her living in her son's household: Randall, John J., Head, Black, male, DOB. August 1852, age 47, POB. Connecticut, widower, married 6 years, farm laborer; Randall, Abby, Mother of, Black, female, DOB. March 1823, age 77, POB. Connecticut, Widow, married 26 years, laundress (Lynch Report June 1999, 23; abstract).

The Eastern Pequot overseer's reports for 1901-1902 listed as "Members of Tribe": Abby Randall, John J. Randall, and Alexander Randall (Eastern Tribe Pequots Indians North Stonington In account with Gilbert Billings overseer 1901-1902, 27 June 1902; EP Comments 8/2/2001, Box 1 Folder 9).

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Abby (Fagins) Randal died October 23, 1902, in North Stonington, Connecticut (Grabowski 1996, 94; citing Brown and Rose 1980, 335; North Stonington Vital Records 1852-1920, Death, Abby Randall, 79, Black, POB/POD North Stonington; Lynch 1998, 5:98). Her obituary reads as follows:

Oceanica. 106 [unidentified]. Oossaduck Hill. Death of Mrs. Abbie Randall. Mrs. Abbie Randall, widow of John J. Randall, died Thursday afternoon at her home in North Stonington in the eightieth year of her age. Mrs. Randall's maiden name was Abbie Phagan. She was born on the Pequot reservation, March 23, 1823. When nine years old she was employed as a domestic in the family of Col. Stanton Hewitt, where she remained twenty years. In 1851 she married John J. Randall, who was employed by General Williams as coachman for many years. Mrs. Randall is survived by two sons--John and Alexander. She was an estimable woman, and a member of the Congregational church of Milltown. Her oldest son, John administered to her wants in her declining years and is worthy of much praise for his kind and affectionate care. Alex is in the employ of Mrs. Henry Bill. She was one of the last lineal descendants of the Pequot race (EP Comments 8/2/2001).

The names of John Randall and Alexander Randall, were on the Eastern Pequot overseer's report of June 13, 1919 (#113 Pet. 1996, HIST DOCS I, Doc. 41; #35 Pet. Overseers Reports) and the one covering the period from June 9, 1922, through June 8, 1923 (#113 Pet. 1996, HIST DOCS I, Doc. 41). As Abby Fagins's son Alexander had died in 1917, the Alexander Randall on these lists was possibly a carry-over, or possibly his son, Frederick Alexander Grovers Randall. Abby Fagins's son John J. Randall, Jr., died in 1926. After his death, the family was not mentioned on the subsequent Eastern Pequot overseer's reports (June 14, 1929; June 24, 1930; June 10, 1932; May 22, 1934; #35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS I, Doc. 41), or on the 1933 Superior Court membership list (In re Ledyard Tribe of Pequot Indians 6/9/1933).

There is evidence acceptable to the Secretary on the basis of precedent which shows that Abby (Fagins) Randall was a member of the historical Eastern Pequot tribe and that her descendants meet the standard of descent from a historical tribe under criterion 83.7(e).

*Membership Lists.*

Prior Membership Lists. The first membership list was begun at a meeting held November 16, 1975, at the home of Benjamin Sebastian on Lantern Hill Reservation (EP Comments 8/2/2001, IIIH, 347). For the final determination, the petitioner sent a copy of this, with some additions, labeled on the front as the 1976 membership list – which was referenced in documents available at the time of the proposed finding (EP PF 2000, 5, 145), but was not submitted. This document contained 70 names, all adults who signed at the meeting (EP Comments 8/2/2001, Report IIIH Ex. 12), with a continuation sheet containing ten additional names (EP Comments 8/2/2001, Report IIIH Ex. 12). For the final determination, the BIA staff added this list to the EP membership information in the Family Tree Maker data base.

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Additionally, for the final determination, the BIA received a numbered list of EP members headed, "The Genealogy of the Members of the Eastern Pequot Tribe" with a CIAC "Received" stamp of August 30, 1976 (PEP Comments 8/2/2001, Ex. 118) containing 98 names. The BIA also entered this into the Family Tree Maker data base, since it was slightly variant from the handwritten list submitted by EP and contained data enabling identification of a couple of the married names on the other (EP Comments 8/2/2001, Report IIIH Ex. 12) list for that year.

Third Party Assertions. The Towns stated that the increase in EP membership between 1978 and 1998, "is not attributable to a high birth rate, but rather to a high recruitment rate. The BIA described this growth as being a significant fluctuation in size, when it should more accurately be termed an excessive escalation to meet a goal defined under the acknowledgment regulations" (*Towns August 2001*, 285). There is no size goal defined under the 25 CFR Part 83 regulations.

EP Membership List for the Proposed Finding. The EP membership list used for the proposed finding, submitted in 1998, contained 647 members (#35 Pet. Narr. 1998a, 90), ending with #703.

EP Membership List for the Final Determination (Current Membership List). For the final determination, petitioner #35 submitted a revised membership list containing 1,004 persons (diskette and hard copy),<sup>106</sup> separately certified by the Tribal Enrollment Committee (EP Comments 8/2/2001, Item G, "Certification of the Base Roll of the Eastern Pequot Tribe by the Eastern Pequot Tribal Enrollment Committee, 7/12/2001) with supplementary items as follow: a separate list of all members added since 1998; ancestry charts for members added since 1998; a membership checklist; a list of members who had died since 1998 (11 persons); a list of persons whose names had been removed from the membership list; a list of members who have had legal name changes; a list of all people removed from the membership list for reasons other than death (one child whose parent had not filed documentation; 16 persons at various dates between September 29, 1997, and February 6, 2001, for dual enrollment); a list of pending applicants (nine persons); a list of minors whose files are missing birth certificates or other vital information; and a list of persons who have submitted evidence or requested an application for EP membership but whose files are not complete (55 numbers, which would represent more individuals since one number was followed by two names and another read "and family") (EP Comments 8/2/2001, Item G). The membership list and other documents in Item G were certified by resolution of the Tribal Council of the Eastern Pequot Indians of Connecticut dated July 17, 2001 (EP Comments 8/2/2001, Item G; signatures only of the EP chairperson and secretary).

The section headed "New Members" began with #740 (EP Comments 8/2/2001, Membership List). On December 4, 2001, a BIA staff member sent a query to the EP office (DeMarce to Flowers 12/4/2001) asking when #704 through #739 had been added to the EP membership list and indicating that there were no printed ancestry charts for #704 through #739 in the folder of

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<sup>106</sup>List #1 in Name Sequence; List #2 in Name Sequence; Index Checkoff List in Numerical sequence 8-999; thereafter 77 more individuals listed in no apparent sequence.

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ancestry charts (EP Comments 8/2/2001, Ancestry Charts).<sup>107</sup> Petitioner #35 responded with clarifications and the additional ancestry charts on December 6, 2001. Of the 36 membership numbers in question, 23 were minors; the date of addition for #704 - #715 was October 7, 1998 (Flowers to DeMarce 12/6/2001; received by BIA 12/11/2001). A BIA staff member entered all the new data into a Family Tree Maker data base, correlating it with the data in the membership list used at the time the proposed findings were issued.

The ancestral calculations presented by EP were as follow. Of the nine surviving children of Tamar (Brushell) Sebastian, five left descendants who are EP members. Other EP members descend either from Laura (Fagins) Watson or Abby (Fagins) Randall, as follow:

**“Total Number and Percentage of Tribal Members by Family and Subline Groups as of July 18, 2001”**

Brushell/Sebastian		(85% of total)
Francisco I (broken into sublines)		(57% of total)
Francisco II	178	18%
Phebe	119	12%
Calvin (some also via Benjamin)	118	12%
Katherine	78	8%
Charles	40	4%
Ella	28	3%
Albert	141	14%
Solomon	72	7%
Moses	61	6%
Mary	29	3%
Fagins/Randall	98	10%
Fagins/Watson	49	5%

(EP Comments 8/2/2001, Item G; restructured by BIA for greater clarity).<sup>108</sup>

All descendants of the Fagins/Randall line were added to the EP membership list between 1998 and 2001 (see further discussion under criterion 83.7(b)). By evidence acceptable to the Secretary, they are shown to be descendants of the historical Eastern Pequot tribe.

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<sup>107</sup>The BIA memorandum (DeMarce to Flowers 12/4/2001) also requested technical clarification as to the relationship between #727 and #771.

<sup>108</sup>Subtotals rounded upwards in the percentages; results in a total of greater than 100%.

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PEP asserts that the membership of petitioner #35 consists solely of those Sebastian family members who did not qualify for membership in the Mashantucket Pequot Tribe (Austin I 8/2/2001, 37n27). This argument is not material to criterion 83.7(e). Of note, since a number of persons who appeared on prior PEP lists are now enrolled with either Mashantucket or Narragansett, the same could be said in regard to petitioner #113. This assertion by PEP is not persuasive.

*Conclusion.* All persons on the current membership list of EP, petitioner #35, on the basis of evidence acceptable to the Secretary, descend from persons who were members of the historical Eastern Pequot tribe in the 19<sup>th</sup> century. Therefore, the conclusion of the proposed finding that the petitioner meets 83.7(e) is affirmed.

See also the conclusory section of this document.

**83.7(f)            The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.**

The proposed finding concluded that the petitioner met criterion 83.7(f) (EP PF 2000, 134).

No comments were received or new evidence was submitted pertaining to criterion 83.7(f).

Therefore, the conclusion of the proposed finding that the petitioner meets 83.7(f) is affirmed.

See also the conclusory section of this document.

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

Under criterion 83.7(g), the proposed Finding concluded that neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (EP PF 2000, 134).

No comments were received or new evidence submitted in connection with criterion 83.7(g).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.78(g) is affirmed.

See also the conclusory section of this document.