

Summary Under the Criteria and Evidence for
Final Determination in Regard to Federal Acknowledgment
of the
Paucatuck 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)

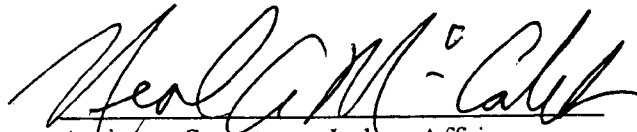

Assistant Secretary - Indian Affairs

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INTRODUCTION

Administrative History.

Administrative History of the Proposed Finding. The Paucatuck Eastern Pequot Indians of Connecticut, the official name of the group (hereinafter cited as PEP)¹ submitted a letter of intent to petition for Federal acknowledgment on June 20, 1989, and was assigned #113 by the Bureau of Indian Affairs (BIA). After consideration and notification of petitioner #35, the Eastern Pequot Indians of Connecticut, and other petitioners on the “ready, waiting for active consideration” list, 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 the petition of the Paucatuck Eastern Pequot Indians of Connecticut (Petitioner #113) simultaneously with petition #35, 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, 2000.² The administrative history of the petition to that date was presented in the Summary under the Criteria for the proposed finding (PEP PF) and summarized in the notice of the proposed finding published in the *Federal Register* on March 31, 2000 (65 FR 17294-17299).

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

¹On July 17, 1973, the “Authentic Eastern Pequot Indians of Stonington, Conn.” appointed Helen LeGault “to represent the Tribe on the Indian Affairs Council set up by public Act 73-660- . . .” Bertha Brown was appointed as alternate (Authentic Eastern Pequot Indians 1973). This was the first usage of a specific name for the organization in the documents submitted in evidence.

As of June 12, 1977, the organization was using the name: “The Eastern Pequot Indians of Connecticut, Inc.” (Geer to Commissioner of Environmental Protection 6/12/1977; Eastern Pequot Indians of Connecticut, Inc. Minutes 6/12/1977). This name was still used on September 18, 1978 (LeGault, Brown, and Edwards to CIAC 9/18/1978).

As of November 1, 1979, the group was using the name “Paucatuck Eastern Pequot Indians of Connecticut” (Geer to Grasso 11/1/1979). This name has remained in use until the present.

²It should be noted that on June 10, 1999, AS-IA Kevin Gover visited petitioner #113 and spoke with its Council (PEP Minutes 6/24/1999; PEP Comments 8/4/2001, Ex. 94).

entered by the Federal District Court for Connecticut as part of the litigation in this case (see below).

On the Record Technical Assistance Meeting. 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 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; 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.*³ Petitioner #113 (PEP) submitted its comments on the proposed finding on July 31, 2001 (officially dated August 2, 2001). This consisted of *Comments on the Proposed Finding to Acknowledge that the Paucatuck Eastern Pequot Indian Tribal Nation Exists as an Indian Tribe within the Meaning of the Federal Law, Introduction & Chapters 1-4*; seven three-ring binders containing 120 exhibits, most of which were multi-part; and six three-ring binders containing genealogical reports and documentation.

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. The EP Comments 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*,

³BAR 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.

several supplementary reports, and several boxes of supporting documentation (for additional detail, see the final determination for petitioner #35).

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.

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.⁴

⁴On 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 received subsequent to that date but prior to issuance of the proposed findings 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/Pawcatuck [*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

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.⁵ To the best of the BIA's knowledge, petitioner #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 *Response to Comments from Third Parties on the proposed Finding to acknowledge that the Paucatuck Eastern Pequot Indian Tribal Nation Exists as an Indian Tribe within the Meaning of the Federal Law, Introduction & Chapters 1-6* accompanied by additional binders containing Exhibits 1-50 and 51-70 on September 4, 2001.⁶

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

Pequot Ancestry by years Reported”; Documents.

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

⁵Preliminary 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 Virginia DeMarce, 28 February 2001; updated 3 April 2001.

⁶Many of these exhibits duplicated items that had previously been submitted. The petitioner included a numbered listing (PEF Comments to Comments 9/4/2001, List of Exhibits i-vii) which is categorical rather than item-by-item in many cases (e.g., “Exhibit #40, CIAC Correspondence Relating to the Paucatuck Eastern Pequot Tribe”). This listing does not contain page counts for the individual exhibits.

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 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 30th 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 decision to recognize PEP and EP 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 of a continuous longstanding 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:

- 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.

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 (PEP PF 2000, 64).

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.

Conclusions under the Mandatory Criteria. In regard to the individual mandatory criteria, the proposed finding was summarized in an executive summary (PEP PF 2000, 62-64). The conclusions under each criterion were as follows:

- Criterion 83.7(a). The combination of the various forms of evidence, taken in historical context, provide sufficient external identification of the Eastern Pequot as an American Indian entity from 1900 until the present, and of the petitioner as a group which has existed within that entity. Therefore, the petitioner meets criterion 83.7(a). (PEP PF 2000, 67).
- Criterion 83.7(b). The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(b) through 1973 (PEP PF 2000, 97).

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).

- Criterion 83.7(c). The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(c) through 1973. (PEP PF 2000, 120).

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).

- Criterion 83.7(d). The petitioner has submitted its Articles of Government, dated July 18, 1993 (Articles of Government of the Paucatuck Eastern Pequot Indian Tribe of the Paucatuck Eastern Pequot Indian Reservation 1993; #113 Pet. 1994, Narr. Ex.). Article II of this document contains a statement on membership eligibility (PEP PF 2000, 121).

Therefore, the petitioner meets criterion 83.7(d) (PEP PF 2000, 121).

- Criterion 83.7(e). Extensive genealogical material submitted by the petitioner, by petitioner #35, and by the third parties indicates that the petitioner's current members are descendants of Marlboro and Eunice (Wheeler) Gardner and of Rachel (Hoxie) Jackson. As those individuals were, during their lives, members of the Eastern Pequot tribe as ascertained by evidence acceptable to the Secretary, the descendants of these individuals descend from the historical tribe (PEP PF 2000, 137).

The lines of descent for individual families from these three key ancestors have been verified through the same types of records used for prior petitions: 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 records concerning the Lantern Hill reservation. (PEP PF 2000, 137).

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 19th 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 (PEP PF 2000, 63).

- Criterion 83.7(f). No members of petitioner #113 appear to be enrolled with any other federally acknowledged tribe. . . . Therefore, the petitioner meets criterion 83.7 (f) (PEP PF 2000, 138).

- Criterion 83.7(g). There is no evidence that the petitioner is subject to congressional legislation that has terminated or forbidden the Federal relationship (Resolution of the Tribal Council of the Paucatuck Eastern Pequot Tribe, February 24, 1996; RS000031). Therefore, the petitioner meets criterion 83.7 (g) (PEP PF 2000, 138).

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) (PEP PF 2000, 62). 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

Evidentiary Basis. 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.

Nature of the Reevaluation of the Evidence for the Final Determination. 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 (PEP PF 2000, 62).

The proposed positive findings for both petitioners do not prevent the Department, in the final determination stage, from recognizing a combined entity, or both petitioners, or either one of the current petitioners but not the other, or neither of the current petitioners, depending upon the evidence developed during the comment periods by both petitioners and all interested and informed parties, as verified and evaluated by BIA staff (PEP PF 2000, 63).

In its response to the proposed finding, petitioner #113, both in its Comments on the proposed finding (PEP Comments 8/2/2001) and its Response to third parties (PEP Response to Comments 9/4/2001), specifically repudiated the basis upon which the positive proposed finding to the year 1973 was issued. This repudiation was neither casual nor made in passing (Austin Introduction 8/2/2001, 3, 5, 6; PEP Comments 8/2/2001; Cunha to McCaleb 9/4/2001, 2; PEP Response to Comments 9/4/2001).⁷ PEP's Comments state: "The Paucatuck Eastern Pequot

⁷For texts of the statements cited here, see below in the General Issues section.

Tribe believes that the Government did not fully understand the temporal and substantive depth of the differences between itself and petitioner #35" (Austin Introduction 8/2/2001, 6; PEP Comments 8/2/2001). PEP then expanded upon this:

Chapter One will present evidence demonstrating that the conflict between the Paucatuck Eastern Pequot tribe and the members of Petitioner #35 did not begin in 1973, but has existed from at least the late 1800s to the present. 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 of the [sic] historical Eastern Pequot Tribe by the Paucatuck Eastern Pequot Tribe's ancestors or current members. 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. . . . The misconception in the Proposed Finding, that the Paucatuck Eastern Pequot Tribe's members and the Sebastian family are members of the same tribe through at least 1973, has been consistently promoted by the Sebastian family and rejected by the PEP (Austin Introduction 8/2/2001, 7-8; PEP Comments 8/2/2001). [footnotes in original omitted]

PEP's emphasis was on a denial of common tribal relations, stating: "It [PEP Comments 8/2/2001, Austin Report II] will clearly demonstrate that PEP members have been a separate tribal community from the Sebastians from at least the late 1800s to the present" (Austin Introduction 8/2/2001, 9-10; PEP Comments 8/2/2001), and maintaining: "There is no reliable evidence that proves the Paucatuck Eastern Pequot tribe and Petitioner #35 have ever been part of the same whole. Petitioner #35's members descend from a woman who never lived in tribal relations with the Paucatuck Eastern Pequot Tribe" (Austin I 8/2/2001, 49; PEP Comments 8/2/2001). PEP urged that the AS - IA acknowledge it separately:

It is the Tribe's hope that, based upon the evidence in its original petition, the analysis in these comments on the Proposed Finding, and new evidence included with this submission, the AS - IA's Final Determination will respect the right of the Paucatuck Eastern Pequot Tribe to determine its own membership. The only way to do that is to acknowledge the existence of the Paucatuck Eastern Pequot Indian Tribal Nation as an Indian tribe in its own right, apart from Petitioner #35 (Austin I 8/2/2001, 82; PEP Comments 8/2/2001).

Although the petitioner specifically repudiated the basis upon which the positive proposed finding was issued, it did not submit evidence to show that before 1973 its antecedents met the criteria independently of a full tribal unit that also contained the antecedents of petitioner #35. Rather, PEP stated:

Because the Proposed Finding was positive with regard to evidence for the continuous existence of the historical Eastern Pequot Tribe through the late 1800s, that period of time is not addressed in the Tribe's comments on the PEP Proposed Finding, submitted this day, August 2, 2001. Rather, the focus in the comments is on the historical Eastern Pequot Tribe as it has continued to exist from the late 1800s to the present (Austin Introduction 8/2/2001, 4; PEP Response to Comments 8/2/2001).

The conclusions in the proposed finding, however, did not distinguish between the bases of the positive finding from the colonial period through the late 1800's and the bases of the positive finding from the late 1800's through 1973. Therefore, it has been necessary in the final determination to reanalyze all the evidence in the record as to whether it pertains to the antecedents of PEP separately from any entity which also contained the descendants of Tamar (Brushell) Sebastian – and, logically, any entity which contained the known ancestors of Tamar (Brushell) Sebastian or included the individual in question. The responses of petitioner #113 made only minimal reference to the other family lines antecedent to petitioner #35, namely Fagins/Randall and Fagins/Watson.⁸

The petitioner stated: “The two petitions (#35 and #113) and their supporting documentation should have been reviewed under the acknowledgment criteria separately from each other” (Austin Introduction 8/2/2001, 13; PEP Comments 8/2/2001). The petitioner also asserts that, “what happened with the evaluation of the Paucatuck Eastern Pequot Tribe's petition was unusual in that the evidence from the two petitions was apparently ‘pooled’ and evaluated from the start, under an assumption that the individuals in the two petitioning groups were so socially and politically related to each other that they were really one social community rather than two” (Austin Introduction 8/2/2001, 13; PEP Comments 8/2/2001) and that, “the result was that at any time a social connection was found between the members of the PEP and Petitioner #35, no matter how tenuous, it was used to confirm the erroneous assumption that the two petitioners were one social and political group; that is, that they were one tribe” (Austin Introduction 8/2/2001, 14; PEP Comments 8/2/2001).

On the contrary, the manner in which the Department utilized all available evidence pertinent to both petitions in the evaluation process was standard methodology. The AS-IA has never, in the review of any petition under 25 CFR Part 83, limited the basis of the decision to supporting documentation presented by the petitioner. The purpose of the evaluation is to make the most balanced judgment possible on the basis of all available evidence pertinent to the petition under consideration, whether that evidence consists of documentation submitted by the petitioner, documentation submitted by third parties, documentation obtained by BIA researchers, or cumulative knowledge based on other petitions from the same geographical area. It should also

⁸One reference made in passing implied that PEP regards the Fagins/Watson line as having been part of the historical Eastern Pequot tribe in the 19th century (Austin Introduction 8/2/2001, 15; PEP Comments 8/2/2001), but does not state the basis on which it reached this conclusion.

be noted (see administrative history, above) that the two petitions were considered simultaneously at the request of PEP.

The explanation for the pooling of genealogical information into a combined data base (Austin Introduction 8/2/2001, 13-14; PEP Comments 8/2/2001) was provided at the On the Record Technical Assistance Meeting (Austin Introduction 8/2/2001, 14; PEP Comments 8/2/2001). Both genealogical data bases, as submitted by petitioners #35 and #113, contained a great deal of information on the same individuals. For example, the genealogical data base submitted by PEP for the proposed finding listed 121 individuals with the surname Sebastian and numerous other Sebastian descendants (for example, Alton Smith and Sarah Emeline Swan). It was consequently most efficient for the BIA to combine the data.⁹

The petitioner states that the proposed findings were “issued on the basis of the combined database” (Austin Introduction 8/2/2001, 15; PEP Comments 8/2/2001). This is not the case. The great majority of the material used for evaluation of the petition in the proposed finding – for example, all of the material for criterion 83.7(a) – was not in the genealogical Family Tree Maker for Windows (FTM) data base at all, because it was not genealogical data.

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.

⁹ Additionally, it is misleading for petitioner #113 to claim in this context 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 Introduction 8/2/2001, 15; PEP Comments 8/2/2001). Both the Brushell/Sebastian and the Fagins/Watson lines are antecedent to petitioner #35 – the cited marriage, therefore, had no relevance to petitioner #113's assertion that the BIA was deliberately attempting to “pool” the ancestors of PEP and EP into a single social group.

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.
PEP	Paucatuck Eastern Pequot Indians of Connecticut (petitioner #113).
OTR	On the Record technical assistance meeting.
PF	Proposed Finding.
TA	Technical assistance letter issued by the BIA.

Standardized Spellings

When discussing Indian tribes and bands, 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.

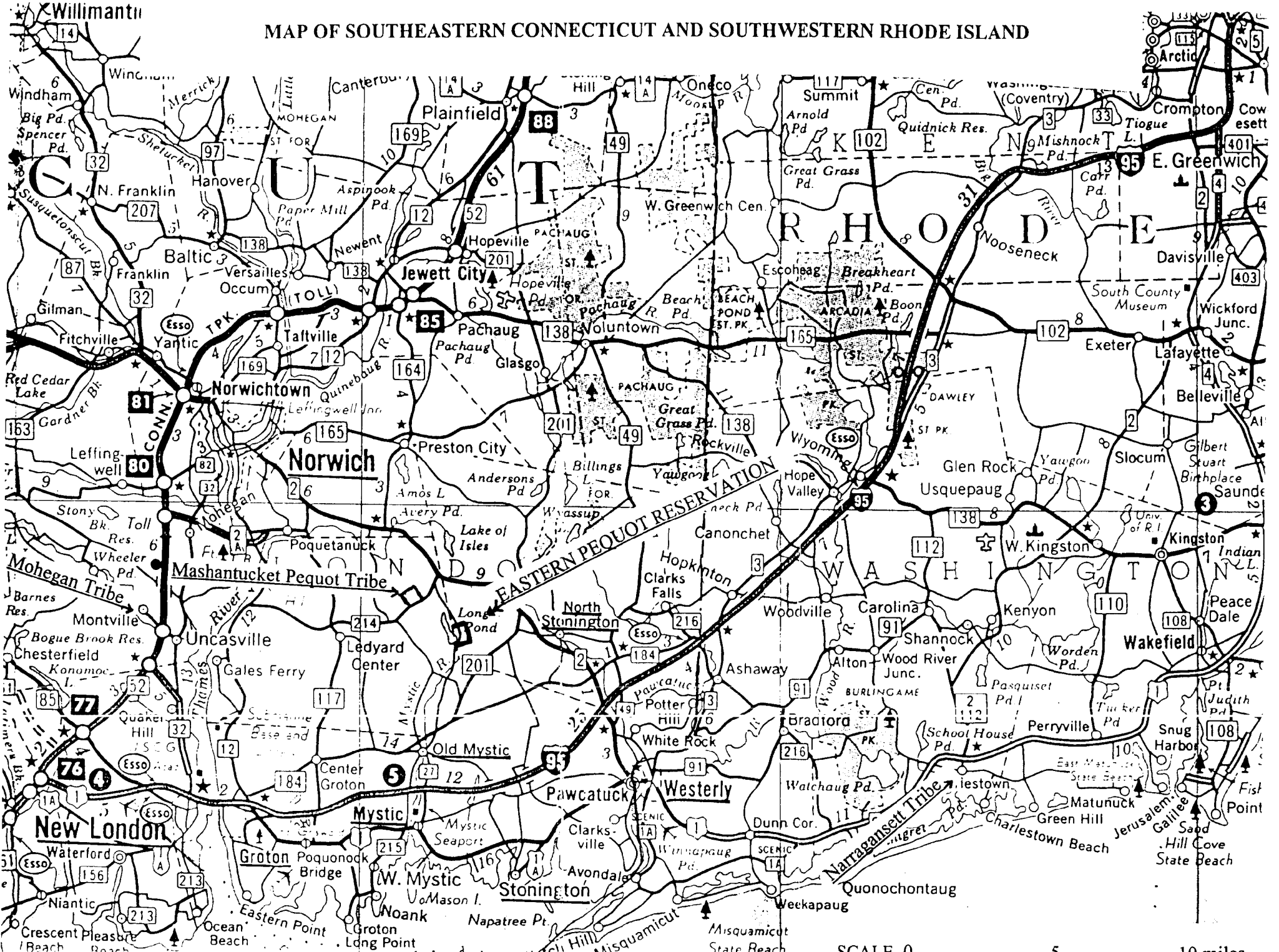
Important 20th Century Figures in Relationship to Family Lines

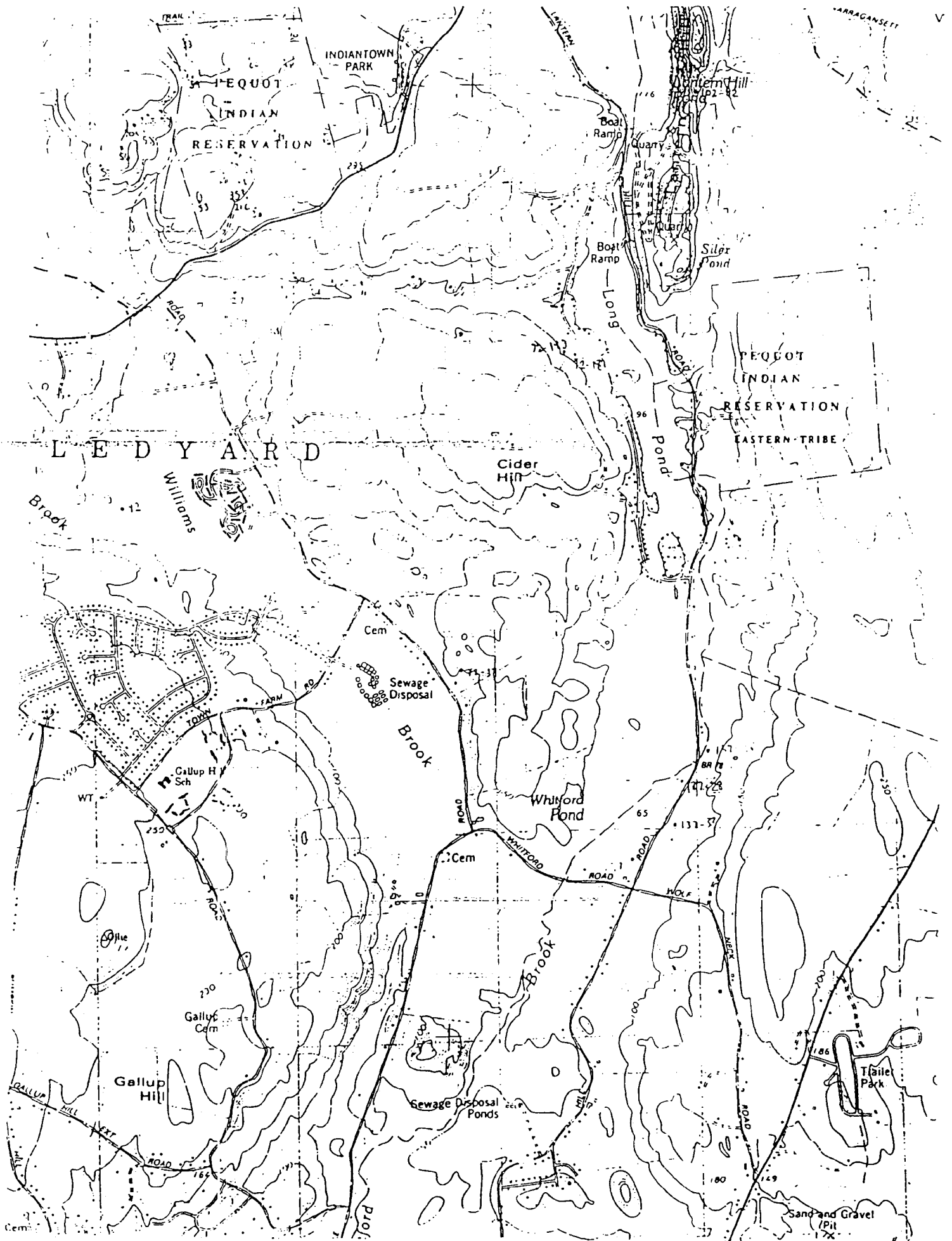
Eastern Pequot Petitioner

<u>Brushell/Sebastian</u>		(85% of total)*		
[By children of Tamer Sebastian]				<u>Important Figures</u>
Francisco I (broken into sublines)		(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(some 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

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 19th 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 19th 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 20th 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

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

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/Randa I 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.

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 sublines.¹⁰ There is direct evidence that kinship relations are recognized within

¹⁰ 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.

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

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 [(Brushell) 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 20th 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).

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.

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.

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.

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 ISSUES¹¹

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

¹¹The 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.

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.¹²

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.

¹²As late as the 1830's, the issue of the extension of state authority over Indian tribes within states was still unsettled (Prucha 196?).

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

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).

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).

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

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 (c) (*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

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).¹³

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.¹⁴ 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

¹³These examples are not intended to be an exhaustive list of tribes that fall into these categories.

¹⁴Additionally, 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

historical Eastern Pequot tribe, but has not taken a position as to the leaders of that successor (EP PF 2000, 61).¹⁵ [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

¹⁵PEP 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).

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

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 IIHH, 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 III, 459-460; EP Comments 8/2/2001).

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

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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 section¹⁶ 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]

¹⁶Report 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 20th Century.

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

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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statutes, 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 20th 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.

- 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.
- If the threshold issue is answered affirmatively, the second question becomes the point in the past at which the two tribes became separate.
- 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 19th 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

(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).

... 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).¹⁷

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"

¹⁷ 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).

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

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).¹⁸

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).

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

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 18th 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*, 47-82).

Thus, during the period from the formation of the Articles of Confederation through the end of the 19th 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).

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: *Pussamaquoddy 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.

*Survey of the Nature of the State Relationship under Connecticut Statutes from Colonial Times to the Present.*¹⁹ 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 19th 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

¹⁹EP 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*, 1:1-9).

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

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 tearmes, of which they are to make return to the Court in October next" (Trumbull 1859, 8-9).²⁰

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

²⁰No return by this committee was located in 1761 (IP, II:118).

to Mamohoe and his company a sufficient tract of land for them to plant on as near the sea as may be, five hundred acres at least” (Trumbull 1859, 31).²¹ The town declined to act (Hurd 1882, 32).²² 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).²³ 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 obteyned 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 comodious as may be, either by exchange or moderate purchase” (Trumbull 1859, 81-82).²⁴ 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).²⁵ By a deed dated May 24, 1683, the committee

²¹No return of committee action found in 1761 (IP, II:118).

²²This 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).

²³Misdated as 1680 by Wheeler (Wheeler 1887, 17).

²⁴No return by committee located in 1761 (IP, II:118).

²⁵“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 endeavoures to suit them with a sufficient tract of land, which if they can procure by exchange of countrey lands they may, or by setleing them on some country 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 repayed out of the country lands or by the towne of Stoneington” (Trumbull 1859, 117).

purchased a tract of land from Mr. Isaac Wheeler containing about 280 acres, in Stonington a little way south of Lantern Hill.²⁶ 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 writing 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 1st 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:

²⁶The 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, 117n).

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,²⁷ 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.²⁸

²⁷John 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 No. 40.

²⁸In 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 Incian Papers, vol. II, Doc 123; Colonial Records, Vol. IX). None of the submissions for these

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 (IP, 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).

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 19th century. In other New England states, such as Massachusetts²⁹ and Rhode Island (Narragansett PF 1982, 4), it was also the case that during the second half of the 19th 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

²⁹See: Plane, Ann Marie, and Gregory Button, The Massachusetts Indian Enfranchisement Act; Ethnic Contest in Historical Context, 1849-1869, *Ethnohistory* 40 (1993): 587-618.

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.)

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 genealogies [*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).

Final Determination, Paucatuck Eastern Pequot Indians of Connecticut

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).³⁰

Just before the outbreak of King Philip’s War,³¹ 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

³⁰“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).

³¹June 24, 1675, opening of King Philip’s War (Swansea, Rhode Island) (Haynes 1976, 22).

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 gouement 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 Cassacinamon 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 Cassacinamon and to Harmon Garrett through the end of the 17th 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.”³² In October 1725, it resolved: “That till the Sessicn 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;

³²Similar 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).

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."³³

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 19th 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, 2nd, 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

³³Similar 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."

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 19th 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 20th Century. In 1902, Connecticut re-enacted the 1888 legislation that provided that the superior court “in any county, except the county of Litchfield,

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).³⁴

³⁴Twenty 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:

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).

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).³⁵

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.³⁶ The change of the state-recognized tribe’s name to “Paucatuck Eastern Pequot Tribe” was incorporated into the Connecticut General Statues 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).

³⁵See also PEP’s analysis of the significance of this letter (Austin, Political Authority 9/4/2001, 31; PEP Response to Comments 9/4/2001).

³⁶EP 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) (98th 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 (98th Congress 1st 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 detribalization 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),³⁷ 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).

³⁷As 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 19th and 20th 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.³⁸ 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.

³⁸ 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, 54th Congress, 2nd 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. I; 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 19th 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.

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 19th 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 charts analyzed evidence for external identification of the petitioner as an American 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, and of the petitioner as a group which has existed within that entity.³⁹

PEP, petitioner #13 has specifically rejected the evidentiary analysis upon which the positive conclusion for criterion 83.7(a) was based.⁴⁰ Namely, it asserts that it was never at any point in time part of a single tribe to which the antecedents of petitioner #35, EP, also belonged.⁴¹ PEP also specifically rejects the validity of residence on the Lantern Hill Reservation or inclusion upon Eastern Pequot overseers' lists or accounts as indicating that an individual so recorded was a member of the historical Eastern Pequot tribe (*cf.* McMullen 9/4/2001, 5; PEP Response to Comments 9/4/2001, "This [1875-1881] is the period during which a sizable disjuncture between

³⁹One 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 (PEP PF 2000, 80; citing Wheeler 1900, 195, as quoted in Lynch 1998a, 5:96).

⁴⁰"From 1900 to the present, the petitioner's antecedent group, the Eastern Pequot tribe based on the reservation at Lantern Hill in North Stonington, New London County, Connecticut, has regularly been identified as an Indian entity. The majority of the identifications specifically included the petitioner's direct or collateral ancestors as members of that entity" (PEP PF 2000, 65).

"From 1900 through the early 1970's, identifications indicated the presence of a single entity, although sometimes mentioning the presence of tensions and conflicts within that entity" (PEP PF 2000, 65).

⁴¹"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" (Austin Introduction 8/2/2001, 5; PEP Comments 8/2/2001).

the tribal community and the reservation community began to grow.”).⁴² These assertions by PEP required complete reanalysis of the evidence for external identification from 1900 to the present under criterion 83.7(a).⁴³

The evidence itself, as it was listed in the chart for criterion 83.7(a) that accompanied the proposed finding on PEP and analyzed for the proposed finding (PEP PF 2000, 64-66), remains the same, since the petitioner neither submitted additional evidence in regard to external identification of it as an American Indian entity separate from identifications of the complete body of the historical Eastern Pequot tribe for the period 1900-1973, nor presented argumentation that showed its own antecedents as the object of external identifications other than those used for the proposed finding. It is therefore the applicability of the evidence used for criterion 83.7(a) in the proposed finding for the period 1900-1973 to petitioner #113's direct antecedents that is at issue in the reanalysis of the evidence under criterion 83.7(a).

External identifications that clearly encompassed a joint group by listing the antecedents of both current petitioners as members of the historical Eastern Pequot tribe, such as those by the State of Connecticut and its subordinate agencies (for example, the overseers' reports)⁴⁴ from 1900 through 1973 (for example, *In re Ledyard Tribe* 1933) do not provide external identifications as an Indian entity for petitioner #113 separate from the remainder of the historical Eastern Pequot tribe. Specifically, the activities of the State of Connecticut's agencies (the State Parks and

⁴²Petitioner's researchers upon occasion misinterpreted some of the evidence in the overseers' reports, as, for example, in conflating Gilbert Billings, who was overseer in the later 19th century, with Gilbert Raymond, who was overseer in the late 1920's and early 1930's: "Unlike earlier overseers, Billings did not use any system of maiden names or parenthetical notations to remind himself of the family connections of those he listed. This is especially important because 1910 to 1929 marks the disappearance of many long-established tribal surnames, largely through the marriage of Paucatuck women to non-Indians or non-Paucatucks, and Billings must have had a difficult time figuring it all out" (McMullen 9/4/2001, 6; PEP Response to Comments 9/4/2001).

Billings was no longer overseer during the 1910-1929 period of time; the overseer for this period was Charles Stewart.

⁴³It also, as will be seen below, required reanalysis of the pre-1973 evidence for criteria 83.7(b) and 83.7(c). PEP also claimed that the proposed finding "BAR researchers and staff have not had sufficient time and opportunity to completely understand the complex and highly unusual circumstances surrounding the relationship—or lack thereof—between the Paucatuck Eastern Pequot and the self-named Eastern Pequots" (McMullen 9/4/2001, 2; PEP Response to Comments 9/4/2001).

⁴⁴For example, June 13, 1919. Members of the Tribe; John Randall, Alexd. Randall, Phebe Jackson, Irene Jackson, Jeamie Jackson, Lucy Jackson, Wm. Jackson, Fannie Jackson, Ed. Jackson, Maria Simmons, Mary Simmons, Herman Simmons, Russel Simmons, Dwight Goodhere, Jesse Williams, Mary Watson, Grace Gardner, Clarence Sebastian, Sarah Swan, Phebe Spellman, Mrs. Calvin Williams, Mrs. Rachel Silver. (#113 Pet. 1996, HIST DOCS I, Doc. 41; #35 Pet. Overseers Reports).

All of the overseers' reports in the record from 1900 through the issuance of *In re Ledyard* in 1933 included individuals antecedent to both petitioner #113 and petitioner #35. All but one (1929) included members of the Sebastian family. Under PEP's hypothesis, these identifications do not constitute identifications of a tribal entity, or of itself.

Forest Commission 1935-1941, the Department of Welfare 1941-1973) until the transfer of jurisdiction over Connecticut's Indian reservations to the Department of Environmental Protection and the establishment of the Connecticut Indian Affairs Commission (CIAC) pertained to the Lantern Hill Reservation and to all of its residents. The State's dealings with Atwood I. Williams did not constitute identification of any entity separate from the residents of the Lantern Hill reservation overall. This material, individually and collectively, did not constitute a separate identification of PEP as an American Indian entity.

All of Connecticut's legislation from 1900-1973 pertained to the State's responsibility for its Indian reservations, including the Lantern Hill (Eastern Pequot) reservation. It did not constitute an external identification of the antecedents of PEP, apart from that collective group, as an American Indian entity.

The 1900 Federal Census (NARA T-623, Roll 149, ED 469, Sheet 14. 1900 June 30, Twelfth Census of the United States, Connecticut, New London County, North Stonington, Indian Population/Special Enquiries Relating to Indians) listed residents of the Lantern Hill reservation as a group. The entries included two households containing members ancestral to petitioner #113: that of William Jackson and that of Leonard Brown, in which Eunice Gardner was resident. The entry for William Jackson indicated that his mother was Pequot (but not specifically Eastern Pequot); that for Eunice Gardner indicated that she was Narragansett, with both of her parents having been Pequot (but not specifically Eastern Pequot). This does not, however, constitute an identification of petitioner #113 as an Indian entity under 83.7(a), since other residents on the reservation were not antecedent to petitioner #113 and some of them, such as the Calvin Williams household, are antecedent to petitioner #35.

The 1910 Federal Census (NARA T-724, Roll 142, ED 525, Sheet 13A: 1910, Thirteenth census of the United States, New London Co., Connecticut, Indian Population, North Stonington Reservation) falls into the same category of analysis. There were two households, those of William H. Jackson and William A. Gardner, for which the ancestry was identified as Pequot (but not specifically Eastern Pequot). The reservation listing also included a household containing persons antecedent to petitioner #35. The identification of a reservation does identify an Indian entity, but one which included both PEP and EP antecedents. The remaining families antecedent to petitioner #113 in 1910 were enumerated off the reservation and were not identified as Indian (NARA T-624, Roll 142, 1910 U.S. Census, North Stonington, New London County, Connecticut, ED 525, Sheet 9A, #219/245; #218/244), which does not constitute an external identification of an Indian entity.

Aside from the 1900 and 1910 Indian Population special schedules on the census, the only other Federal identification of an Eastern Pequot tribe prior to 1973, the 1934 Tantaquidgeon report

(Tantaquidgeon 1934), mentioned Atwood I. Williams but did not identify the PEP antecedents as a separate American Indian entity.⁴⁵

Many of the newspaper articles for the period of the 1920s and 1930s (Last of Pequot Tribe of Indians Live on Lantern Hill Reservation, *The Evening Day* 8/5/1924; Pequots Seek to Name Overseer [unidentified, hand-dated c. 1930]), primarily discuss the Lantern Hill reservation and do not provide external identifications as an Indian entity for petitioner #113 separate from the remainder of the reservation residents. Those external identifications which indicated opposition by leaders who opposed the Sebastians, such as Atwood I. Williams, Sr. (Founders of Norwich Re-Elect Reginald Reynolds President, *Norwich Bulletin* 6/10/1937) or Helen (Edwards) LeGault⁴⁶ (Poor But Proud, *Hartford Courant* 7/9/1933; PEP Comments 8/2/2001, Ex. 99⁴⁷), are acceptable as evidence under the self-definition established by petitioner #113, in that they do depict the leaders antecedent to PEP. For Atwood Williams, the photograph caption describes him as, “sachem of the two [Eastern and Western] Pequot tribes which dwell on Connecticut reservations and through his untiring efforts the ancient culture and customs of his tribe are slowly being revived” (Poor but Proud, *Hartford Courant* 7/9/1933; PEP Comments 8/2/2001, Ex. 99), but for Helen LeGault the article emphasized that she “feels strongly against the

⁴⁵The research was accomplished during 1934 by Gladys Tantaquidgeon, a Mohegan, who submitted her report to COIA John Collier, dated at Norwich, Connecticut, December 6, 1934 (Tantaquidgeon 1934; United States, Bureau of Indian Affairs. New England Groups. File No. 671-1935-150). In her “List of New England Indian Groups 1934,” she included:

8. Pequot, (a) Eastern and (b) Ledyard.

Both groups supervised by Gilbert S. Raymond, Norwich, Conn.

Tribal organization headed by Atwood I. Williams, (Chief Silver Star) Westerly, R.I.

“Atwood I. Williams (Chief Silver Star) claims to be the tribal chief of the surviving Pequot and is seeking to gain legal recognition as such. This office is honorary and Mr. Williams acts as master of ceremonies at tribal and public meetings” (Tantaquidgeon 1934, Pequot 4).

A version of this report was published early in 1935, a section entitled, “The Connecticut Bands” in an article entitled “New England Indian Council Fires Still Burn,” *Indians at Work: A News Sheet for Indians and the Indian Service*, February 1, 1935. Washington, DC: Office of Indian Affairs. #95390 (Tantaquidgeon 1935; NP App. 47). It stated:

The Pequot are located on two reservations in eastern Connecticut, in the towns of Ledyard and Stonington [sic], New London County. Of the Pequot band, twenty-one are living on the two reservations. There are no cultural survivals to be noted. The Pequot have funds which have been built up from the sale of wood and land. The State of Connecticut makes no appropriations for the maintenance of the Pequot; their individual tribal trust funds are under the supervision of the overseer, who is appointed by the judge of the Supreme Court of New London County” (Tantaquidgeon 1935).

⁴⁶See, “The Life of Helen Dorothy Edwards LeGault” (Austin, Political Authority 9/4/2001, 5-7; PEP Response to Comments 9/4/2001).

⁴⁷Part of article: missing at the bottom of the page.

intermarriage of the Pequots with other races” (Poor but Proud, *Hartford Courant* 7/9/1933; PEP Comments 8/2/2001, Ex. 99).

On June 10, 1937, Gilbert Raymond, the former overseer and current liaison between the State Park and Forest Commission and the Pequot reservations, gave an extensive talk on Pequot history to the Founders of Norwich (Founders of Norwich, *Norwich Bulletin* 6/10/1937). Raymond described the Lantern Hill reservation as a whole⁴⁸ and also referenced the conflict between the antecedents of petitioners #113 and #35, but in a manner which provided considerably more data about the antecedents of #35. He described the marriage of “Tamer Brussels” to “an African Islander” in 1849 at the Road Church in the Town of Stonington and noted that it had produced more than 150 descendants, some of the children being still alive, notably Mrs. Calvin C. Williams, living on the reservation. Raymond then added that:⁴⁹

The right of this strain to the tribal privileges is denied by Chief Silver Star who claims that the Indian girl, Tamer Brussels, was not a Pequot Indian, but as members of this family have been entered on the records of both tribes for over 40 years I have never taken steps to have these names removed. Eighty-eight years have passed since that marriage and it is rather late in the day to find out very much about it (Founders of Norwich Re-Elect Reginald Reynolds President. *Norwich Bulletin* 6/10/1937).

From the 1940's through the 1960's, records maintained by the State of Connecticut pertained to the Lantern Hill reservation and its residents as a whole. While they reflected tensions between Helen LeGault and other residents, they did not distinguish the antecedents of PEP as an entity, in that Mrs. LeGault was shown as having tensions with the Hoxie/Jackson descendants, now

⁴⁸This reservation now consists of about 270 acres of wood, brush and pasture land, probably not over ten acres of which can be cultivated, in the western part of the town of North Stonington southerly of Lantern Hill and on the eastern shore of Long pond. This is about the same size as when established, except for about 60 acres which have been sold. The last sale was made about 1880 when the state legislature authorized a sale of 30 acres to Mrs. Sarah Mallory, who later sold the land to William L. Main. On this reservation there are six or seven houses, small frame shacks occupied by members of the tribe, about 15 living there, the number varying from time to time. The children who go to school from there attend the country school on the Westerly road about one and one-half miles this side of North Stonington village. There are also three cottages on the shore of the pond, the sites being leased by residents of Mystic, and which are used during the summer (Founders of Norwich, *Norwich Bulletin* 6/10/1937).

⁴⁹See also, “Disputed Strain of Portuguese-Pequot marriage” (J.R. Williams Spiral notebook, #113 Pet. ETH DOCS III, Doc. 63).

In 1976, Arthur Sebastian (born in 1910), grandson of Solomon Sebastian, testified before the CIAC: “Only at the time when I was rather small. My grandfather, Solomon Sebastian, said that, told us that we belonged up on that reservation. He said we, they have always had arguments, pro and con, going on ever since, ever since he could remember . . .” (CIAC hearing on membership in the Eastern Pequot Tribe of Connecticut 8/10/1976; #113 Pet. 1996, HIST DOCS II, Doc. 71; Lynch 1998, 5:146).

claimed as a portion of PEP, as well as with the Brushell/Sebastian descendants (see more detailed discussion under criterion 83.7(c)).

A 1947 article in the *Westerly Sun* identified Atwood I. Williams as chief of the Eastern Pequot tribe, but did not provide any description of a tribal entity, mentioning only that he opposed a proposed sale of reservation land. (Indian Chief Opposes Selling North Stonington Tribal Land, *Westerly Sun* Sunday, May 5, 1947 [typed identification of name and date]; PEP Comments 8/2/2001, Ex. 52).

Since 1973, the majority of the external identifications by CIAC and the State have identified PEP as a subgroup within the larger, historical, Eastern Pequot tribe with claims to the Lantern Hill Reservation.⁵⁰ An example of this is the communication from CIAC coordinator Mikki Aganstata (Aganstata to Sebastian 2/13/1979). PEP argues that Ms. Aganstata was mistaken in her evaluation, indicating that she 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” (Austin, Political Authority 9/4/2001, 29; PEP Response to Comments 9/4/2001). This does not change the nature of the external identification. Documents indicate that the 1982 legislation changing the official name to “Paucatuck Pequot Tribe” was not intended to identify PEP as an American Indian entity separate from the totality of the historical Eastern Pequot tribe. The action was meant merely to change the designation.⁵¹

A subsequent letter from the CIAC coordinator explained the intent of the 1982 name change as follows: “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) . . . ; the tribal names changed are: . . . Eastern Pequot to Paucatuck Pequot” (Sarabia to Roy Sebastian 3/30/1985; PEP Response to Comments 9/4/2001, Ex. 40).

⁵⁰There are exceptions to this general rule, such as the letter from Ella Grasso, Governor of Connecticut, to Fred Williams, Intergovernmental Relations, which declared the “Paucatuck Eastern Pequot Tribe” to be a unit of Connecticut local government eligible for revenue sharing (Grasso to Williams 11/8/1979; PEP Response to Comments 9/4/2001, Ex. 44). See, however, the 1989 statement of the Appellate Court that, “The 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).

⁵¹“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) (98th 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 (98th Congress 1st Session, House of Representatives Report No. 98-43, 5; PEP Comments 8/2/2001, Ex. 104).

Petitioner #113 argues that its participation in the State of Connecticut Legislative Task Force on Indian Affairs⁵² constitutes identification of PEP as an American Indian entity separate from the "Sebastian group" (Austin, Political Authority 9/4/2001, 38; PEP Response to Comments 9/4/2001). However, in February 1989, the Task Force's Report to General Assembly specifically referenced the conflict and ensuing litigation:

The Paucatuck Eastern Pequot Tribe is one of two groups of Pequots [Western/Mashantucket Pequot and Eastern Pequot] who returned to their aboriginal homelands after the catastrophe of the Pequot War in 1637. In 1683 they were assigned a reservation near Long Pond in North Stonington, where many of the members now live on the remaining 224.6 acres. The Tribe has 300 to 500 members, but is hindered in its efforts at development by a membership eligibility dispute now on appeal in the Connecticut courts. See Paucatuck Eastern Pequot Indians vs. Connecticut Indian Affairs Council, Superior Court, Judicial District of Hartford, Docket No. 2906127 (July 17, 1987) (CT Legislative Task Force 1989, 2).

This statement does not rise to the level of identifying petitioner #113 as an American Indian entity separate from the historical context of the Lantern Hill reservation as a whole, but reinforces the idea that there was a continuous, single, tribe. The Task Force clearly refers to a single tribe involved in a membership dispute. Similarly, the petitioner cites the following instance and states that, "[t]his evidence demonstrates that the State's CIAC accepted Helen LeGault as the Paucatuck Eastern Pequot Tribe's duly selected representative in 1976" (Austin, Political Authority 9/4/2001, 27; PEP Response to Comments 9/4/2001):

In 1976, the State of Connecticut, Register and Manual included a list of representatives who had been appointed to the CIAC by the State's five recognized tribes: . . . Eastern Pequot, Helen LeGault; . . . there is no mention of the Sebastian family or its organization in this official publication of the State, a year after the Sebastians formed their organization in 1975 (see Response Exhibit #26) (Austin, Political Authority 9/4/2001, 27; PEP Response to Comments 9/4/2001).

First, the passage does not reference a "Paucatuck Eastern Pequot Tribe," but merely says, "Eastern Pequot." Second, upon examination of the circumstances, in 1976, Alton Smith, a Sebastian descendant, was serving as Eastern Pequot alternate delegate to CIAC, and had been since 1973 (see more detailed discussion below under criterion 83.7(c)). Therefore, this material does not constitute an external identification of petitioner #113 as an American Indian entity

⁵²Connecticut State Legislature, Special Act 87-108 (1987) commissioned an Indian Affairs Task Force to research and report on the status of Indians in Connecticut, including the legal status title to the reservations.

separate from petitioner #35, but rather provides extensive identification of the petitioner as part of the larger Indian entity.

A limited number of the newspaper articles in the record for the period since 1973 did identify a separate group without reference to persons antecedent to petitioner #35, such as the one following the death of Atwood I. Williams, Jr., which focused on the intention of his children and grandchildrer, the core membership of PEP, to return to the Lantern Hill reservation (Bates 6/12/1979). Similarly, on November 9, 1980, an article included a photograph of Helen LeGault and stated: "One tribal chairman, Helen LeGault of the Eastern Pequots, claims that for years non-Indians have been living on the reservation in North Stonington" (Glassman 11/9/1980; #113 Pet. 1994 A-6). A similar identification appeared in 1994 (Waldman 8/15/1994, A-1, A-5; CT FOIA #2; stamped Exhibit A-35, page 1, page 2, and page 3).

Some additional evidence submitted for the final determination, such as newspaper articles, provided additional instances of identification of petitioner #113, PEP, separate from the historical Eastern Pequot tribe, as an American Indian entity for the period since 1973. Identifications from 1973-2001 were not consistent, with the majority identifying PEP as a subgroup within the wider historical Eastern Pequot tribe associated with the Lantern Hill reservation.⁵³ There are, however, sufficient separate identifications, particularly in the form of newspaper articles, to conclude that PEP has been externally identified as a distinct American Indian entity from 1973 to the present in addition to the larger number of external identifications which described PEP as part of the larger Eastern Pequot historical tribe.

Evaluation of PEP Arguments for Separate External Identification since 1900

The evidence does not provide external identifications of PEP as distinct from the historical Eastern Pequot tribe as a whole (including the antecedents of petitioner #35) from 1900-1929. From 1929 through 1973, the evidence provides external identification of PEP or its antecedents primarily as a subgroup within the historical Eastern Pequot tribe, which is also depicted as including the antecedents of petitioner #35. PEP's definition of their group as reiterated in its Response to Comments on the proposed finding⁵⁴ does not accept the validity of characterizations which depicted PEP's specific antecedents as part of a larger entity that also comprised the antecedents of petitioner #35. From 1973 to the present, the majority of external identifications depict PEP as a subgroup within the historical Eastern Pequot tribe, but some do

⁵³See, 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).

⁵⁴"... 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).

"The petitioner has the last say during comment periods" (*Official Guidelines* 1997, 68).

identify it as a separate American Indian entity from 1973 onwards. For the full period from 1900 to the present, PEP meets criterion 83.7(a) only as part of the historical Eastern Pequot tribe.

Conclusion: See conclusory section.

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.*⁵⁵ The Towns challenge the conclusion in the proposed finding that an Eastern Pequot community as a whole existed in the colonial period and from the American Revolution to 1883 (*Towns August 2001*, 110-111, 119-120, 124-125, 132-143). The topics raised by the Towns were already addressed in the proposed finding, which concluded that upon the basis of precedent, the evidence was adequate to show that the historical Eastern Pequot tribe met criterion 83.7(b) for these time periods (PEP PF 2000, 67-79). No substantial new evidence was submitted. For discussion of the State's and the Towns' assertion of whether state recognition can be used as evidence under criterion 83.7(b), see the discussion above under "General Issues."⁵⁶

The petitioner states:

Aside from lack of evidence to support the AS - IA's tentative conclusion in the Proposed Finding that there may be one tribe with two factions, there are at least two other conclusions in the Proposed Finding with which the Paucatuck Eastern Pequot Tribe takes issue. For example, the Proposed Finding concluded that there was very little evidence demonstrating community (25 CFR 83.78(b)) and political authority (25 CFR 83.7(c)) for the Paucatuck Eastern Pequot Tribe during some decades of the 1900s (Austin Introduction 8/2/2001, 9; PEP Comments 8/2/2001).

⁵⁵"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).

⁵⁶The BIA points 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 in the draft technical reports on EP and PEP, but was a quotation from a mid-19th century book on Connecticut Indians (DeForest 1852).

The petitioner submitted additional evidence and analysis in regard to criterion 83.7(b) which is discussed here (for discussion of additional evidence and analysis for political authority, see under criterion 83.7(c)).

PEP petitioner in its Comments on the proposed finding specifically repudiates the evidentiary analysis upon which the AS-IA issued a positive proposed finding on criterion 83.7(b) through 1973 – namely that there was a historical Eastern Pequot tribe which met the criterion and of which the petitioner’s antecedents were part.⁵⁷ The petitioner states:

The criterion in 25 CFR 83.7(b) requires a petitioner to demonstrate by evidence that it has maintained a separate community from surrounding non-Indians from historical times to the present. The AS - IA concluded that the evidence in the Paucatuck Eastern Pequot Tribe’s petition successfully demonstrated this point through 1973. But the conclusion is flawed in that the evidence for the PEP was considered together with evidence from the petition of Petitioner #35. The conclusion of the AS - IA, therefore, was that the evidence for Petitioner #35 and the PEP (Petitioner #113), when considered together, demonstrated that the two petitioners represented one single tribal community from colonial times to 1973 (Austin Introduction 8/2/2001, 11-12; PEP Comments 8/2/2001).

In reaching this conclusion, it appears the AS - IA failed to distinguish between residents on a Reservation on the one hand, and a tribal community on the other. It is true that State appointed tribal Overseers and other officials allowed a few of the Sebastian descendants to reside on the Reservation starting in the very late 1800s and early 1900s. In that sense, a few of the Sebastians and many of the Paucatuck Eastern Pequot tribal members lived near each other, and even interacted socially with each other to a nominal extent, during the first half of the Twentieth century. But, on the whole, the Sebastians were never acknowledged as Paucatuck Eastern Pequot tribal members by tribal members themselves. There has always been a difference between “tribal member” and “reservation resident” in the Paucatuck mind set, and the mind set of most reservation Indians,

⁵⁷The petitioner’s narrative utilizes the term “Paucatuck Eastern Pequot Tribe” throughout this period from the 1870’s through 1973, although the word “Paucatuck” was not found in contemporary documents prior to the late 1970’s. It was not officially applied to the Lantern Hill Reservation until the legislation of 1982. While the usage is feasible when the petitioner is distinguishing the antecedents of PEP from other historical Eastern Pequots, it is not accurate when summarizing the content of documents submitted, or in many other contexts, such as the statement, “the longtime First Selectman of North Stonington, Ellsworth Gray (who was also en loco Indian Agent for the PEP Indians of the Lantern Hill Reservation from 1941 to at least 1951)” (PEP Comments 8/2/2001, Austin IV:70). Gray was the State’s agent in regard to all residents on the reservation, whether they were PEP antecedents or not.

in general (Austin Introduction 8/2/2001, 12; PEP Comments 8/2/2001).⁵⁸
[footnote added]

. . . 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).

This repudiation by the petitioner of the hypothesis that underlay the AS-IA's positive finding through 1973, which was based on all of the evidence in the record at the time of the proposed finding, requires a complete reanalysis to determine whether or not PEP and its antecedents meet criterion 83.7(b) when all evidence that includes the antecedents of petitioner #35 as part of the historical Eastern Pequot tribe is classified as inapplicable in accordance with the petitioner's self-definition.

From First Sustained Contact with Non-Indians to the American Revolution. The proposed finding concluded:

- On the basis of precedent, the available material is sufficient to meet 83.7(b) for a tribe during the colonial period (PEP PF 2000, 72).

No named, identified, ancestors of PEP appear in the Eastern Pequot records for the colonial period, and, indeed, the petitioner indicates that the Gardner family did not become associated with the historical Eastern Pequot tribe until the late 18th century (Austin II 8/2/2001, 11-12; PEP Comments 8/2/2001). Thus there is no evidence presented of a separate PEP community from first sustained contact with non-Indians to the late 18th century.

*From the American Revolution through 1873.*⁵⁹ The proposed finding concluded:

- Because the community as a whole, throughout this period, had a residential focus on the reservation, and still maintained a very high rate of intermarriage and

⁵⁸It is noted that the petitioner's discussion of temporary reservation residents such as William and Ella (Wheeler) Wilcox and John Hamilton (PEP Comments 8/2/2001, 12-13) are not on point, in that these individuals were never carried as members of the Eastern Pequot tribe on State records.

⁵⁹The final determination has somewhat changed the periodization used for analytical purposes in the proposed finding. Because of the desirability of discussing, under 83.7(c), the petitions and other documents from the decade 1873-1883 from the perspective of their relation to subsequent developments, the breakpoint has been changed from 1883 to 1873. This modification for the purpose of discussion does not require a modification of the conclusions reached in the proposed finding.

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 (PEP PF 2000, 79). [footnote in original omitted]

PEP's response to the proposed finding stated:

Because the Proposed Finding was positive with regard to evidence for the continuous existence of the historical Eastern Pequot Tribe through the late 1800s, that period of time is not addressed in the Tribe's comments on the PEP Proposed Finding, submitted this day, August 2, 2001. Rather, the focus in the comments is on the historical Eastern Pequot Tribe as it has continued to exist from the late 1800s to the present (Austin Introduction 8/202001, 4; PEP Response to Comments 8/2/2001).

However, the petitioner in this statement takes advantage of the conclusion of the positive proposed finding through the late 1800's while simultaneously rejecting the proposed finding's conclusion that during the period from the American Revolution to 1873, the entity upon which the proposed finding's conclusion was based included the Brushell/Sebastian lineage. The petitioner strongly asserts the position that it was not, at any time, part of a historical Eastern Pequot tribal community that included the Sebastian family (Cunha to McCaleb 9/4/2001, 2; PEP Response to Comments 9/4/2001).

The earlier evidence has, therefore, been reanalyzed to see whether, for the period from the American Revolution to 1873, there is evidence of a PEP community separate from the community of the historical Eastern Pequot tribe as a whole since the 19th century evidence accepted by the Secretary in the proposed finding specifically showed the Sebastians as members of the historical Eastern Pequot tribe with the name of Moses Brushell first listed in March 1825 and continuing in the listing through his death in 1839, his daughter Tamar being listed in 1830 and 1831 (#35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS II Doc. 41).⁶⁰ During the same general period of the 1830's, the overseer's reports made two mentions of Charlotte (Potter) Wheeler. The Eastern Pequot overseer's report covering the period from June 16, 1835 through January 6, 1836 (#35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS II Doc. 41)⁶¹ mentioned, for the first appearance of the name in an Eastern Pequot overseer's report, "articles furnished Charlott [*sic*] Wheeler" on December 14, 1835 (#35 Pet. Overseers Reports). A

⁶⁰"While Tamar Brushell's father, Moses Brushell, was resident on the reservation for a few years before his death in 1840, there is no reliable evidence that he was an Eastern Pequot tribal member" (Austin I 8/2/2001, 1n1; PEP Comments 8/2/2001).

⁶¹It mentioned: Hannah Shelly, Edward Nedson, Nancy Skesux, Prue Fagins, Tyra Nedson, Sam Shelly, Thos Nedsons children, Samuel Shuntap, Hannah Shelly children, Richard Ned'; 2 spelling Books for Hannah Shelley Children, 8 yds Callico for Tyra Daughter of ---; Betsey Robbins, B. Robins house, coffin for Betsy Robbins, schooling Thomas Nedson, Tyra Nedson, coffin for Elsey Nedson, Cyrus Shellys boy, Articles furnished Charlott Wheeler 1.00 (#35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS Doc. 41).

continuation of the same document which began January 6, 1836, and continued through June 14, 1836, also mentioned a payment for two loads of wood for Charlotte Wheeler on February 6, 1836 (#35 Pet. Overseers Reports; #113 Pet. 1996, HIST DOCS II Doc. 41).⁶² She was not mentioned in subsequent reports, although she did not die until May 26, 1862.⁶³

While Eastern Pequot overseers' reports from 1849 through 1872 listed Rachel (nee Hoxie or possibly Ned) Jackson on the reservation, thus providing evidence for the existence of community between the Hoxie/Jackson lineage and the other historical Eastern Pequot families then residing on the Lantern Hill Reservation, they did not include Marlboro Gardner and/or Eunice Wheeler, so provide no indication of community between petitioner #113's two antecedent family lines for the period.⁶⁴

By contrast, there is some limited documentation that shows pre-1873 contacts between the Gardner and Brushell families. The Eastern Pequot overseer's report which began June 14, 1843, continuing through April 23, 1844, recorded Moses Brushell's sickness and payment for his coffin on October 9, 1843 (#35 Pet. Overseers Reports). On October 9, 1843, the overseer paid Harry[?] Gardner for keeping Moses Brushel, paid David Holmes for making a coffin for "M.B." and paid Primus Wheeler for digging his grave; grave clothes ditto; on November 15, 1843, he paid Harry Gardner for keeping "M Brushel" (#35 Pet. Overseers Reports).

There is documentation to show association between Eunice Wheeler, the future wife of Marlboro Gardner, and Calvin Williams, who later married (sequentially) Amanda (Nedson) Douglas and Tamar Emeline (Sebastian) Swan (who was Tamar (Brushell) Sebastian's

⁶²These two entries took place shortly after Charlotte (Potter) Wheeler was widowed. Abstracts of Vital Records and Membership Records As Found in North Stonington Congregational Church, 1720-1887 (Hartford; Connecticut State Library, 1968), 74. Primus Wheeler died May 15, 1835, at the approximately 45 years old (PEP Comments, Genealogical Documents III, Family Group Sheet). The ethnicity of her husband, Primus Wheeler, is unknown.

In 1880, Eunice (Wheeler) Gardner testified that her mother, Charlotte Potter, was Narragansett: "Eunice [Wheeler] Gardner, (sworn.) -- I am connected with the tribe by my mother. Then, again Albert Gardner [Eunice's late husband] belonged here. My mother was Charlotte Potter. My father was not a member of the tribe. I have never lived on the reservation. I was there for the first time at the last meeting at the meeting-house" (*Report of Commissioner on Narragansett Indians* 1881, 81).

⁶³Death record: May 26, 1862, Ulemic Ulceration, Charlotte Wheeler, 66, Colored, born Stonington, CT; no occupation, res. North Stonington, widowed (#113 Pet. 1996, GEN DOCS IV). Another copy, Towns' Evidence July 1999.

⁶⁴Prior to her marriage to Marlboro Gardner, Eunice Wheeler's partners were two Western Pequot, a Narragansett, and Calvin Williams, who is rejected by PEP as having been a member of the historical Eastern Pequot tribe. Marlboro Gardner did not appear on Eastern Pequot documents prior to 1873.

daughter). In the early 1860's, Calvin and Eunice had two children (for detailed documentation, see FTM file, EPPEPBarFD).⁶⁵

Beginning in 1870, there is documentation to show association between Marlboro and Eunice (Wheeler) Gardner and some members of the historical Eastern Pequot tribe. The 1870 census for North Stonington listed Leonard Ned/Brown twice, both times closely associated with one of the petitioner's antecedent family lines (but not with both of them simultaneously):

1870 U.S. Census, North Stonington, New London Co., CT. Grouped together on NARA M-593, Roll 113, p. 436, as "Indians in North Stonington," all shown as b. in CT:

4/4 Jackson, Henry, 45, m, I, farm hand, b. CT; Rachel, 39, f, I, keeping house, b. CT [i.e. b.c. 1831]; Isaac, 20, m, I, farm hand; Fannie, 8, f, I; Jennie, 6, f, I; Phebe E., 4, f, I; Lydia, 2, f, I; Anry, 8/12, m, I;
5/5 Andrew [Andson?], Isaac, 20, m, I, farm hand;
7/7 Gray, Issac, 20, m, I, farm hand; Boswick, Charles, 11, m, I, farm hand; Baker, George, 35, m, I, laborer; Baker, Phebe, 28, f, I, domestic servant; Brown, Leonard, [age illegible], m. I, farm hand.

Duplicate entry:

1870 U.S. Census, North Stonington, New London Co., CT, NARA M-593, Roll 113, p. 434, #357/382:

Gardner, Eunice, 32, f, M, keeping house, CT; Williams, Elizabeth, 8, f, M, Rhode Island; Williams, John, 5, m, M, CT; George, Charles, 13, m, M, Farm Hand, CT; Gardner, Lucy, 3, f, M, T; Gardner, Geo. W, 11/12, m, M, CT; Gardner, Malbro, 32, m, M, Farm Hand, CT; Gardner, Charles, 18, m, M, Farm Hand, CT; Cuff, Ezra, 25, m, B, Farm Hand, CT; Brown, Leonard, 46, m, M, Farm Hand, Massachusetts; Simon [Simson?], Eliza A., 45, f, M, CT.

This association between Leonard Ned and the Gardner family continued into the post-1873 time period (see the 1900 census). Also, the 1880 census provided no direct evidence of interaction between the Hoxie/Jackson and Gardner/Wheeler family lines, as they were residing some distance from one another.⁶⁶

⁶⁵NARA M-653, Roll 1211, 1860 U.S. Census, Richmond, Washington Co., RI, p. 343r, #183/192: Calvin Williams, 28, m, B, b. CT; [illegible name, overwritten, possibly Catherine?] Eunice A., 32 [written over an illegible numeral], f, B, b. CT; Cimon, 5, m, B, b. CT; Charles H., 3, m, B, b. CT. This census record was not submitted or discussed by the Siefer Report April 1999.

⁶⁶NARA T-9, Roll 109, 1880 U.S. Census, North Stonington, New London Co., CT, p. 767: #21/22: Orchard, Harry, B, M, 50, CT; Rachel, B, f, 44, wife; Fannie E., 17; Ida J., 16; Pheba E., 15; Lucy A., 12; William H., 10; Jennie, 8; James, 6; Grace, 1 (see also Lynch 1998, 4:3-4).

The State quotes an interview with PEP chairman Agnes Cunha to the effect that Marlboro Gardner never interacted with the Indians in North Stonington (*State of Connecticut August 2001*, 36-39).⁶⁷ The cited statement is ambiguous, but in context appears to refer to his not interacting at Narragansett rather than Eastern Pequot. In any event she appears to be reciting information from her review of documentary evidence rather than oral history. As such, the documents must speak for themselves.

It is noted that since petitioner #113 rejects residence on the Lantern Hill reservation as evidence of Eastern Pequot tribal membership, without the 1900 census⁶⁸ there is no contemporary evidence in the record that Eunice (Wheeler) Gardner was ever identified as a member of the

NARA T-9, Roll 109, 1880 U.S. Census, North Stonington, New London Co., CT, p. 776:
#220/240, Almon Jones household, I;
#220/241, Gad W. Appes household, I;
#221/242: Gardner, Malbro, I, m, 42, works on farm, CT; Eunice, I, f, 45; Charles H., I, m, 22; Nellie, I, f, 30, daughter in law; George W., I, m, 12; Eddie C., I, m, 6; Eunice A, I, f, 5; William A, I, M, 3; Emma E., I, m, 11/12.

It should be noted that neither of the neighboring Indian households contained individuals from the historical Eastern Pequot tribe: they have been identified as Narragansett and Western Pequot.

1880 census, North Stonington: Gardner, Malbro, Indian, 42; Eunice A., Indian, 39; Charles H., Indian, 22; Nellie, Indian, 30; George N., Indian, 12; Eddie L., Indian, 6; Eunice A., Indian, 5; William A., Indian, 3 (Lynch 1998, 88; see comments, Siefer Report April 1999, 8-9).

⁶⁷MS. CUNHA: Eventually. I really couldn't tell you. Between two wives, he had 11 children. They might have married into other tribes and just went with them. You know, we don't know. Like Harriet Gardner, she resided on our reservation once in a while but she was with the (indiscernible), and her grandchildren -- if you look at the hearings between 1880 and 1882 or 3, you will find her descendants there. Same thing with Clark Gardner. A lot of them intermarried there and they just stayed there.

MR. ROTH: But you were saying the hearings show that Marlboro was not because he was (indiscernible).

MS. CUNHA: Marlboro never interacted here. He never stayed in. He never interacted here. He was more with us, even though he was claiming part (indiscernible), he was more with us. He was in Stonington and (indiscernible) this side.

MR. ROTH: And then he --

MS. CUNHA: And he spent a lot of time at sea. He was in the Navy. Matter of fact, Lee has a picture of his cemetery plot with the Civil War (indiscernible) (BIA Interview with Agnes Cunha).

It appears that in the above passage that Mrs. Cunha was confusing Marlboro Garder with his father part of the time, since Marlboro is known to have had only one wife.

⁶⁸1900 U.S. Census of the Indian Population Schedule, living in North Stonington (1900 U.S. Census, North Stonington, State of Connecticut):

Leonard Brown	Black	M	80	Head	Conn.	Pequot/Pequot/Narrag.
Lucy Hill	Black	F	70	Boarder	Conn.	Pequot/Pequot/Pequot
Eunice Gardner	Black	F	65	Boarder	Conn.	Narrag./Pequot/Pequot

(Siefer Report April 1999, 9).

Eastern Pequot tribe (see under criterion 83.7(c) for discussion of the ambiguous name “Eunice George” on the 1373 petition).

Based on interview evidence, petitioner #113 asserts as evidence that: “When she [Tamar (Brushell) Sebastian] and her descendants started asserting rights in the Paucatuck Eastern Pequot tribe, they were not recognized as tribal members by the descendants of Rachel Hoxie Jackson” (PEP Comments 8/2/2001, Austin I:1-2n1). The value of this evidence must be weighed in light of the fact that there were also occasions when the descendants of Rachel Hoxie Jackson did not recognize the Gardner family as tribal members, as in Arlene (Jackson) Brown’s statements in the protest, dated September 26, 1973, against the appointment of Helen (Edwards) LeGault as Eastern Pequot representative on the CIAC (Brown to Wood 9/26/1973) – see discussion below under criterion 83.7(c). In 1976, Arlene (Jackson) Brown and her supporters were asserting that only the descendants of Rachel Hoxie were actually Eastern Pequot, denying both Tamar Brushell and Marlboro Gardner as qualifying ancestors,⁶⁹ while not mentioning Eunice Wheeler at all. It is inconsistent of the petitioner to cite occasions when the Jackson lineage repudiated Brushell/Sebastian identity as Eastern Pequot as being of evidentiary importance without also referring to those instances in which the Jackson lineage repudiated the Gardner identity as Eastern Pequot. Omission of this information makes the argument invalid.⁷⁰

The evidence from the American Revolution to 1873 does not demonstrate a community of PEP ancestors. Rather the evidence shows the existence of a historical Eastern Pequot tribe encompassing antecedents of both EP and PEP.

⁶⁹John E. Hamilton (Chief Rolling Cloud), Grand Sachem for Life, challenges the jurisdiction of the CIAC and claims that no agency in Connecticut other than his council was qualified to state who is and who is not an American Indian. “This Special Qualifications Commission is comprised of the following members of the Royal Mohegan-Pequot American Indian Council: Wounded Wolf (Rowland Bishop), Chairman, Mrs. Jane (Gray) Hennessey, Secretary; Mrs. Arlene (Jackson) Brown; Mrs. Jane Keeler, and Sagamore Chief Onoco (Albert Baker).”

Of the Eastern Pequots living on Hereditary Mohegan lands in Lantern Hill, North Stoughton [*sic*], only those who have proved descent from the Hoxie Family through the female line and who can thereby trace their ancestry to Esther Meezen (sister to the Great Sum Squaw Chief, Hanna Meezen of the Groton-Ledyard Pequots) who were great granddaughters of Sassacus, are placed upon the Grand Sachem’s Tribal Roll Book. Only three resident members of the Eastern Pequots can do this: Mrs. Arlene (Jackson) Brown: Her sister Rachel Crouch [*sic*]; and their cousin Paul Spellman. Their grandmother was a Hoxie and a descendant of Sassacus (Confederation of the Mohegan-Pequot American Indian Nation and Affiliated Algonquin Tribes. A Petition to the Governor of the State of Connecticut 11/29/1976).

This petition asserted that Tamar ““Bruschel”” was non-Indian from Cape Verde and that Marlboro Gardner was a non-American Indian of British West Indies origin. Both of these assertions were demonstrably false.

⁷⁰Arlene (Jackson) Brown’s statement that she and her family, and the Spellman family, had been excluded from the membership list prepared by Helen LeGault (PEP Membership List 1977) was correct—see more detailed discussion below under criterion 83.7(c).

From 1873 to the 1920's. For reanalysis of the documents from 1873-1883, see the more extended discussion of the documentary record under criterion 83.7(c).

The proposed finding concluded:

- The Eastern Pequot tribe as a whole, including the ancestors of petitioner #113, meets the requirements of criterion 83.7(b) between 1883 and 1920 (PEP PF 2000, 94).

For the final determination, PEP, EP, and the State and Towns submitted additional documentation and comments applicable to the issue of maintenance of community by PEP (petitioner #113) and its antecedents for the entire period from 1873 to the present.

PEP criticized the BIA for not noting in the "Family Tree Maker database, relied upon by the AS - IA in the Proposed Finding, which merged information on Petitioners #113 and #35" that the household in which Atwood I. Williams was living in 1900 was that of cousins and thus "exemplifies the importance of kinship ties to members of this tribe" (PEP Comments 8/2/2001, 19n2). However, the existence of the household had been added to the combined database by the BIA researcher during the evaluation for the proposed finding. The separate data base submitted by PEP for the proposed finding, which was merged with Petitioner #35 did not make such a connection. The merging of the two data bases did not create the claimed deficiency.

PEP states:

Aside from lack of evidence to support the AS - IA's tentative conclusion in the Proposed Finding that there may be one tribe with two factions, there are at least two other conclusions in the Proposed Finding with which the Paucatuck Eastern Pequot Tribe takes issue. For example, the Proposed Finding concluded that there was very little evidence demonstrating community (25 CFR 83.78(b)) and political authority (25 CFR 83.7(c)) for the Paucatuck Eastern Pequot Tribe during some decades of the 1900s (Austin Introduction 8/2/2001, 9; PEP Comments 8/2/2001).

The following material reviews the evidence for 1873-1920. Aside from the 1873-1883 documents discussed in detail below under criterion 83.7(c) and the overseers' reports, the earliest documented associations between the Gardner and Hoxie/Jackson lines are two marriages at the end of the 19th century, those of William Albert Gardner to Grace Jackson in 1898 and of Agnes Eunice Gardner to Atwood Isaac Williams (son of Phebe Esther Jackson) in 1899. These marriages clearly indicate interaction between the two families at the turn from the 19th to the 20th century.

To put the depth impact of these two marriages on overall family connections in perspective, of the four children of Marlboro and Eunice (Wheeler) Gardner who reached adulthood, one never

married; one married a non-Indian; two married members of the Hoxie/Jackson family. Of the eight children of Henry and Rachel (Hoxie) Jackson who reached adulthood, two never married; two married members of the Gardner family; and four married outside of the Eastern Pequot tribe (three of those marrying more than once).

PEP recalls an event referenced in the Barbara (Spellman) Moore interview which revealed a connection between the Jackson and Brushell/Sebastian family lines during this period, but PEP repudiates the value of the recollection:

The Paucatuck tribal tradition is that William H. Jackson swore that Tamar Emeline "Liney" Sebastian was a Pequot Indian because his wife's (Fanny Thornton Roberts-Jackson's) step-father was Moses Sebastian. Moses Sebastian was the elder brother of Liney Sebastian. Once again, there is no kinship term for the relationship between William H. Jackson and Moses Sebastian (Austin Introduction 8/2/2001, 16; PEP Comments 8/2/2001).

For further discussion of this undated incident, see (Austin I 8/2/2001, 2-6; PEP Comments 8/2/2001) and discussion in the EP final determination. If the interviewee Barbara (Spellman) Moore's recollections were accurate, the incident probably took place some time between Phebe (Jackson) Spellman's return to the reservation in about 1912⁷¹ and her death in 1922, when her daughter Alice Barbara (Barbara (Spellman) Moore) was 16.⁷² The PEP are arguing this is a very distant relationship, although Moore's interview suggests that kinship ties were William Jackson's motivation. William H. Jackson was the step-son-in-law of Moses Sebastian and that Tamar Emeline (Sebastian) Williams was his wife's step-aunt.

⁷¹June 14, 1912 - June 13, 1913, account, Eastern Tribe of Pequot Indians. Assistance of Calvin Williams, Fannie Sebastian, Phebe Spellman and family, Wm. Jackson, Sadie Swan. Members of the tribe. John Randall, Alexd Randall, Phebe Jackson, Irene Jackson, Jeannie Jackson, Lucy Jackson, Wm. Jackson, Fannie Jackson, Ed. Jackson, Maria Simmons, Mary Simmons, Herman Simmons, Russell Simmons, Dwight Goodhere, Calvin Williams [crossed out], Jesse Williams, Mary Watson, Grace Gardner, Fanny Sebastian, Sarah Swan, Phebe Spellman. Calvin Williams confined to his bed; Mrs. Fannie Sebastian is the oldest member of the tribe and is a member of the Williams family. About a year ago, Mrs. Phebe Spellman, a member of the tribe, and a widow with nine children, moved to the reservation from Providence, R.I. Her children are all minors, and her condition is such as to require support from the funds of the tribe during the greater part of the year (#35 Pet. Overseers Reports).

⁷²If William H. Jackson made a formal legal declaration or affidavit, the most fruitful period for research in the records of New London County Superior Court to locate this document would probably be immediately following the death of Calvin Williams on July 8, 1913.

It should be noted that the Moore's interviewer referred to Atwood I. Williams as "your brother" (Moore Interview 12/8/1991, 62, 92; PEP Comments 8/2/2001, Ex. 86). Williams (born in 1881) was the half-brother of Moore (born 1906). In the first instance of this, Moore continued the interview by discussing her brother Paul Spellman; in the second instance, she did discuss the Williams family, but did not have a detailed knowledge of them (Moore Interview 12/8/1991, 92-94; PEP Comments 8/2/2001, Ex.86).

The petitioner also asserts:

During the first half of the 1900s,⁷³ there were some social relationships between a few individuals in the Paucatuck Eastern Pequot Tribe's Jackson family and a few descendants of the Sebastian family who lived on the Reservation. But these social relationships, when understood in light of all the evidence, do not support the position of the AS - IA that the two petitioners comprised a single tribe before 1973 (Austin Introduction 8/2/2001, 17; PEP Comments 8/2/2001). [footnote in original]

However, the underlying documentation does not fully support the petitioner's hypothesis. Alice Barbara (Spellman) Moore's statements suggested confusion or lack of awareness that Tamer Emeline (Sebastian) Swan Williams was born a Sebastian: she identified her by the name Williams until corrected by the person who interviewed her on behalf of PEP (Moore Interview 12/8/1991, 55; PEP Comments 8/2/2001, Ex. 86). It isn't certain that Moore had Tamer Emeline Williams in mind during this part of the interview, because she states: "But she was sort of young – real young person. But it was – I think she was really related to Fannie, you know" (Moore Interview 12/8/1991, 56; PEP Comments 8/2/2001, Ex. 86). Although Tamer Emeline Sebastian was born in 1865, whereas Alice Barbara Spellman was born in 1906, the spontaneously identification of the former as a "real young person" may reflect her age at the time of the interview.⁷⁴ Moore does refer to the person in question as "Lonnie," and elsewhere identifies Tamer Emeline Sebastian as "Aunt Lonnie," similar to the common references to her as "Aunt Liney." (Moore Interview 12/8/91, 47, 55-56, 68).

The interview does show Moore's awareness that, according to her brother Paul, the Spellmans were cousins of Clarence Sebastian, but she identified the family connection as coming through his mother, Annie George⁷⁵ (Moore Interview 12/8/1991, 50; PEP Comments 8/2/2001, Ex. 86). She also indicated that at least one other Sebastian family – in this case the wife was a

⁷³The Proposed Finding states that any social interaction between Paucatuck Eastern Pequot tribal members and Sebastians seems to have been limited to individuals who were born before 1940. We agree, in part, with this finding. There is no evidence of cooperative social interaction between the Tribe and the Sebastians based upon shared ties of kinship or tribal descent. There is nominal evidence that they occasionally interacted as neighbors due to the proximity of a few of their houses (Austin Introduction 7n8; PEP Comments 8/2/2001).

⁷⁴Much of Spellman's data does not conform to the verifiable contemporary documentation – for instance, her repeated statement of a belief that Fannie Jackson was from Virginia and that Tamer was her relative and might have been from Virginia (Moore Interview 12/8/1991, 59), or her unawareness that Sarah (Swan) Holland was a stepdaughter rather than a daughter of Calvin Williams (Moore Interview 12/8/1991, 57). Specifically, evidence indicates that Ella (Wheeler) Wilcox and Moore's mother Phebe (Jackson) Spellman, were not first cousins, as Moore asserted (Moore Interview 12/8/1991, 90-92; PEP Comments 8/2/2001, Ex. 86), but rather second cousins: the relationship was through Henry W. Jackson rather than through Rachel Hoxie.

⁷⁵Annie George was a granddaughter of Eunice (Wheeler) Gardner through a prior marriage.

stepdaughter of William Henry Jackson – resided on the reservation – the date must fall between the 1908 marriage and 1918 divorce of the couple under discussion (Moore Interview 12/8/1991, 51-55; PEP Comments 8/2/2001, Ex. 86).⁷⁶

The interview with Alice Barbara (Spellman) Moore, also, did not confirm significant contact between the Hoxie/Jackson and Gardner lineages on the Lantern Hill Reservation prior to 1920. Concerning William Albert Gardner, Moore stated only that “Will Gardner was married to my Aunt Grace” and, “I don’t know of him being anything. He didn’t have anything to do with the reservation as far as I know, only through my Aunt Grace . . . That’s the only - - I don’t know of any other Gardner that belonged to the reservation ever” (Moore Interview 12/8/1991, 47; PEP Comments 8/2/2001, Ex. 86). Indeed, Moore indicated that she “never kept close to” Agnes Eunice Gardner, the wife of her half-brother Atwood I. Williams (Moore Interview 12/8/1991, 92; PEP Comments 8/2/2001, Ex. 86), although the interview indicated some familiarity with their children, while she expressed disapproval of the wish of one of the younger members of the Williams family to live in the house of her brother Paul Spellman after he had died, saying that she had torn up the letter (Moore Interview 12/8/1991, 94-96).

By contrast, she recalled Sunday meetings on the reservation, led by “a Dixon that used to live up over the hill from Aunt Lonnie 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), thus referring to Tamer Emeline (Sebastian) Williams as “Aunt Lonnie” (Moore Interview 12/8/1991, 47, 56) Elsewhere, she commented: “When we were older, the Sebastians was a fine looking family, a very nice looking people. Larry Sebastian, and his brothers and all, they were pallbearers for my brother and yeah, they were very helpful and they’re fine (inaudible), fine looking people” (Moore Interview 12/8/1991, 108). Thus, the evidence from the Moore Interview does not support PEP’s position that all of the PEP antecedent lines socialized with one another, but not with the Sebastians.

A conflict over the status of the Sebastians, at least concerning their presence on the reservation is probably an old one, though not necessarily originally phrased in racial terms. Oral history sources are enough to suggest significant time depth, back to the beginning of the 20th century, but are not adequate to characterize the conflict more specifically.

In the oral history report cited by PEP, the interview of Barbara Spellman Moore, she states concerning "Aunt Lonnie" that "My Uncle Will 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

⁷⁶The wife was Clara Roberts, daughter of Fannie, wife of William Henry Jackson: "She had green eyes and sort of brown hair, reddish-brown hair. And she was pregnant when I left home, and she was married to this Everett Sebastian, and he had one arm missing up to the elbow -- up to the elbow here. And they lived in this little place up there they kept an underground cellar . . . I'm telling you they lived there" (Moore Interview 12/8/1991, 51-55; PEP Comments 8/2/2001, Ex. 86).

[Clara Roberts] had him swear that she was a Pequot and he did" (Moore 1991, 56-57). Moore also refers to the upset this caused among family members.⁷⁷ Moore, in context, is identifying the person in dispute as "Aunt Lonnie," wife of Calvin Williams, i.e., as "Aunt Liney," even though she seems uncertain if this person is a Sebastian. She describes a conflict about this person's Eastern Pequot identity which disturbed a number of people in the tribe. Certainly Aunt Lonnie was reasonably well known to her, judging by other parts of the interview.

Other oral history about conflicts over the Sebastians (not the specific incident Moore discusses) is provided by Arthur Sebastian, Jr. who quotes his grandfather, Solomon Sebastian, as stating that the conflict had existed a very long time. In 1976, Arthur Sebastian testified that "Only at the time when I was rather small. My grandfather, Solomon Sebastian told us that we belonged up on that reservation. He said "they have always had arguments, pro and con, going on ever since, ever since he could remember. . ." (CIAC 1976 transcript. Hearing on Membership in the Eastern Pequot Tribe of Connecticut. 20). Solomon Sebastian, one of the children of Tamar Sebastian, was born in 1858 and died in 1938.

The PEP cite testimony of Richard Hayward, then chairman of Mashantucket Pequot, in support of their contention that Tamar Sebastian was not Indian. This testimony suggests conflicts which had a significant time depth. Hayward states he obtained his information from his grandmother and two of his great his aunts, but also talked with Helen LeGault on the topic. He states that his grandmother (Elizabeth George Plouffe, 1895-1973) was repeating what she heard from her mother (1862-1927) and grandmother (1844-1933). Hayward's testimony, though not good evidence concerning Tamar Sebastian's ancestry, indicates significant time depth to the conflict. It implies that Tamar's moving back to the reservation might have initiated conflict (CIAC 1977, 21). Tamar moved back to the reservation sometime between March 1884 and April 1889. Hayward's account indicates conflicts between the Sebastians and the Georges (from whom he is descended), from Mashantucket, as much as with other Eastern Pequots (see also Phyllis Monroe's statements in CIAC 1977, 60). Helen LeGault stated that Jane Elizabeth Wheeler Durfee (1844-1933) (grandmother of Hayward's grandmother), another Mashantucket, accused Tamar of casting a spell, that is, witchcraft, which suggests that the conflict, at that point in time, had other aspects to it than simply claims that she was not Indian (CIAC 1977, 65-66), a story Hayward had also heard (CIAC 1977, 95-96).

Another source, which reflects the conflict though not of as great a time depth, is a statement Jane Fawcett, a Mchegan, that her aunt Ruth Tantaquidgeon (born about 1910), an older Mohegan, had said "That the Geers and the Sebastians . . . had been fighting over that reservation since I was a little girl. . . . she said to me that the Sebastians weren't Indians. And the Geers just weren't . . . rough enough people to keep them off (Fawcett 1999)."

⁷⁷ The interview does not provide significant evidence concerning Sebastian ancestry as Pequot. Records concerning the affidavit by Will Jackson, if such was in fact made, might provide more information about the context of the reported actions by Will Jackson.)

1920's to 1973: Introduction. The proposed finding concluded:

- The historical Eastern Pequot tribe as a whole meets the requirements of criterion 83.7(b) for the time period between 1920 and 1940. (PEP PF 2000, 94).
- 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 community which included, but was not limited to, the Gardner and Hoxie/Jackson descendants (PEP PF 2000, 96).

The proposed finding presented the following statements in regard to the petitioner's community from the late 1920s through the early 1970's:

The petitioner's description of community after 1920 is very general. The petitioner states that "even though most tribal members were no longer living on the North Stonington reservation in the early 1900's, it is clear that they were still sustaining strong social ties with other tribal members on and off the reservation" (Grabowski 1996, 150) (PEP PF 2000, 92).

The petitioner's most substantial discussion of historical community in the 20th century is to identify what it refers to as "kinship clusters," but the actual discussion of these, while introduced by a reference to 1930-1931 (Grabowski 1996, 165), focused on the 1910-1920 era (Grabowski 1998, 166-168) (PEP PF 2000, 92).

The petition goes on to say that "there were also [other] similar kin-based clusters of eastern Pequots who continued to reside off reservation, primarily in North Stonington, Providence and Westerly" (Grabowski 1996, 166), but the more detailed discussion of these also focused on 1910-1920 (PEP PF 2000, 92).

The "kinship clusters" are not clearly defined, but appear to be no more than close family groups. They are defined at one point in the petition text as the "Wheeler/Williams, Edwards/Wheeler and Jackson/Spellman kin clusters" (Grabowski 1996, 202). Examined in the light of the available genealogical data, this consists of the two main branches of the Marlboro Gardner family, and, apparently, a portion of the Jackson line connected with them. However, the petition is not clear on this question (PEP PF 2000, 92).

The petition contains few descriptions of social events that brought members together, other than meetings at Helen LeGault's house on the reservation which were both social and political. It provides no clear dates for these--the only ones documented took place in the 1970's and later (PEP PF 2000, 92).

PEP Comments. The PEP Comments lay out several tacks for demonstrating historic and present-day community. These are the historical marriage patterns, the kinship distance among the members, and the geographical distribution of the members.

The response to the proposed finding contains a report on community since 1900 originally submitted to BAR in February 2000 (Austin II, PEP 8/2/2001). Because it was submitted after the cutoff period for comments, it was not reviewed for the proposed finding. The report was re-submitted in the response to the proposed finding without change. Consequently, while it makes general reference to the other materials in the petition (presumably as of that date) as providing data on social and political community, it does not address the questions raised in the proposed finding about the petition's statements about historical community. It also does not identify which data about community it is referring to in the petition.

The PEP report on community submitted for the final determination does not present an argument for kinship clusters again (Austin II 8/2/2001; PEP Comments 8/2/2001). Instead, it focuses on the small size of the group and its relatively close kinship. The report argues that the PEP members are all reasonably close kin, i.e., that this is a very narrow kinship group, and that both community and political are supported by the fact that only some of the descendants of these lines are currently members (Austin II 8/2/2001, 16-20; PEP Comments 8/2/2001).

State Comments. Regarding PEP community after 1920, the State's brief (*State of Connecticut August 2001*, 36-39) mainly recites the specific factual conclusions included in the PEP proposed finding, and does not cite additional evidence or conduct additional analyses. The exception, based on excerpts from two interviews, is discussed below under the discussion of kinship links within the Gardners. For analysis of the issue of the extent of present and past contacts within the descendants of Marlboro Gardner, see below in the discussion of the interview with Beverly (Geer) Kilpatrick and generally the discussion of modern community.

Analysis of Specific Points.

Kinship Links between the Gardners and the Hoxie/Jacksons. There is consanguineal kinship between the Hoxie/Jackson line and the Gardner/Williams line; there is also consanguineal kinship between the Gardner/Williams line and the Gardner/Edwards line. There is no consanguineal kinship between the Hoxie/Jackson line and the Gardner/Edwards line. Since the two Gardner/Jackson marriages in 1898 and 1899, there have been no marriages between the two wider lineages, nor have there been any marriages within either the Gardner/Edwards or Gardner/Williams lineages, or between members of the two. In 1922, there was one marriage within the Hoxie/Jackson lineage, that of Reginald Spellman to his cousin Olive Jackson. Therefore, there was only minimal endogamy (one marriage which took place within a single

family line rather than between different family lines) among the PEP's antecedents during the entire 20th century.⁷⁸

For the Gardners, the common ancestors are Eunice Wheeler (1835-1912) and Marlboro Gardner (1839-1893). The two main branches (Gardner/Williams and Gardner/Edwards) derive from two daughters, Agnes Eunice 1875-1962 who married Atwood Williams Sr., a Hoxie/Jackson, and Emma Estelle (1879-1937) who married William Edwards, a non-Indian. There are no descendants of a sibling, William Gardner, who also married a Jackson. A historical question which may be posed is the extent to which the Gardner/Edwards and the Gardner/Williams wings have maintained contact with each other. One piece of evidence is that Emma (Gardner) Edwards, did not die until 1937. However, with the exception of the pan-Indian material pertaining to her daughter Bertha's participation in the American Indian Foundation and a few photographs, there are few references to her at any point in the petition or the oral history. Her sister, Agnes (Gardner) Williams, lived until 1962, but the petition and interviews do not contain many references to her, either.

In regard to social contacts, Atwood I. Williams, Sr., was in a somewhat different position than the Edwards family descendants (his wife's nieces and nephews—see the discussion of Helen (Edwards) LeGault, below). His mother was Phebe Esther (Jackson) Spellman and his wife was Agnes Eunice Gardner. Some of his children were born in North Stonington, but he was not listed on any overseer's reports prior to 1929, and he never became a permanent resident of the reservation, although he was there, at his mother's home, for a period of time around 1915 while recovering from a serious injury. His mother (at least sporadically before 1912 and regularly from 1912 to 1922?), his uncle William Henry Jackson (continuously), his Jackson aunts (frequently but not continuously), his uncle William Albert Gardner (continuously from 1898 to his death in 1927), and several of his half-siblings and their children (frequently but not continuously) were residents (see discussion above, #35 Pet. Overseers Reports; Williams Notebook c. 1941). A 1933 newspaper article summarized Atwood I. Williams's attitude: "Chief Williams believes in keeping the Indian blood as pure as possible and has endeavored to impress this important fact on the members of the two reservations" (Poor But Proud 7/9/1933).

Connecticut sources noted that Elizabeth (George) Plouffe, one of the leading Western Pequots, had "great scorn for" Williams himself because of his partly black ancestry (Williams Notebook

⁷⁸All persons who have appeared on PEP membership lists since 1973 (omitting individuals who were deceased prior to that date; including individuals who have died or withdrawn from membership since that date) entered into a total of 72 known marriages (BIA calculation, based on genealogical and membership data submitted by PEP). None of these marriages were endogamous.

The BIA was unable to determine which marriages from 1900-1949 were defined as "endogamous" by PEP within its analysis of marriages from 1850 to 1949 (Austin III 8/2/2001; PEP Comments 8/2/2001). The raw data in Appendix A did not correlate with the percentages given in the narrative (Austin III 8/2/2001, 5, 11; PEP Comments 8/2/2001), nor was it clear whether, in the narrative, PEP was calculating the rate of extant marriages or new marriages.

c. 1941).⁷⁹ Her sister, Flora (George) Stenhouse, was still expressing the same attitudes at the end of the decade. Writing to the Governor of Connecticut in regard to the Lantern Hill reservation, she stated that she wanted it used for the Ledyard (Western Pequot) Indians: "On this 'Lantern Hill Reservation' there is not one living there of Pequot blood but who claim to be Pequots. All of them are of negro blood and are 'squatters'. The old Pequots who lived there are now dead, but these people are getting the benefits from the reservation that should be for the Pequots" (Stenhouse to Bowles 5/17/1950; Lynch 1998, 5:135-136). This 1950 statement in regard to "not one living there" cannot have pertained only to the Sebastians. In the 1936 listing of residents by the State Parks and Forest Commission, eight of the total 13 reservation residents were members of the Hoxie/Jackson family. By contrast, three were Sebastians; one was Helen (Edwards) LeGault, a Gardner; and the last was a Western Pequot, Franklin Williams (also a Sebastian descendant), who had built a house on the reservation (Connecticut, State of. *Thirteenth Biennial Report of State Park and Forest Commission*, December 9, 1936, 30). Residency applications for the later 1940's and early 1950's showed a mixture of family lines,⁸⁰ and a substantial portion (five of seven, with one Sebastian and one Gardner) of the Lantern Hill residents in 1956, when yearly lists of residents resumed,⁸¹ were also of the Hoxie/Jackson line.

⁷⁹Elizabeth (George) Plouffe's father was a son of Eunice (Wheeler) Gardner by a prior marriage to a Western Pequot; her mother was a niece of Rachel (Hoxie) Jackson. Plouffe was thus referring to her first cousin once removed (on her mother's side) who was married to her half-aunt (on her father's side), and whose daughter was her sister-in-law. Her statement was little different in attitude from the attitude taken during the same period by Western Pequot Alice (Langevin) Brend (born 1905) toward the children of her half-sister Annie (George) Sebastian (born 1887) – both women were daughters of Martha (Hoxie) George Langevin. Barbara (Spellman) Moore referred to the families of Martha (Hoxie) George Langevin and Annie (George) Sebastian occasionally (Moore Interview 12/8/1991, 46, 50); Martha was her mother's first cousin on the Hoxie side of the family (Moore Interview 12/8/1991, 14).

⁸⁰6/27/1947, Connecticut, State of. Welfare Department. Report of construction on Eastern Pequot Reservation: Franklin, Jackson, and Harris residences.

3/20/1950, Connecticut, State of. Welfare Department. Letter to Arthur W. Sebastian Jr. re: house on campsite on Eastern Pequot reservation.

8/20/1950, Connecticut, State of. Welfare Department. Letter re: Paul Spellman's request to reside on Eastern Pequot reservation.

8/23/1951, Jackson, Harold C. Letter from Connecticut authorizing him to reside in the home of his father, William Jackson, on the Eastern Pequot Reservation. With attachments.

6/4/1953, Letter from Director to Arron E. Elbenbein, Attorney at Law, re: residence of Louis J. Sebastian on Eastern Pequot reservation.

7/27/1954, Connecticut, State of. Welfare Department. Letter to Mrs. Charles Lewis re: permission to build a house on the Eastern Pequot reservation.

⁸¹12/19/1956. Summary of Indian Activities, Connecticut Department of Welfare; Division of Resources and Reimbursement, Christy Hanas, Commissioner, Herbert Barrell, chief. "... Following is a detailed account of the physical make up of the reservation, the amount of tribal fund, if any, and the present inhabitants:

1. Eastern Pequot Reservation, North Stonington, consists of two hundred twenty acres of land on which there are nine dwellings, eight habitable and one uninhabitable. The tribal fund totals \$5,792.25. Residing on the reservation, full or part time, are the following:

a. Albert Carpenter, Indian, born 1905 and his wife, Anna Sebastian Carpenter, Indian.

The Gardner/Williams family subline is the only one which has kinship ties to both the Gardner/Edwards descendants and the other Hoxie/Jackson descendants. The current PEP chairman, Agnes (Williams) Cunha, is three generations back to the common ancestors, while Raymond Geer, former chairman is four generations back. The distance back for older individuals is three or four generations and obviously more for younger adults. The distance between two individuals, on the two wings of the Gardners, is second or third cousins. This is not close enough to assume that these individuals know each other and recognize a relationship, but nonetheless quite close so that a recognized relationship may be established with limited data.

Atwood I. Williams, Sr., Gatherings. The proposed finding stated:

The petition also states that Atwood Williams hosted gatherings of tribal members at his house in Westerly. It stated that his large house provided [*sic*] meeting place for extended kin and tribal members alike (Grabowski 158-60). A limited review of BIA interview data concerning Williams' activities did not provide information which would support the petitioner's position. A limited examination of BIA interview data did not indicate other tribal events or social gatherings beyond family affairs. However, it was not possible to complete review [*sic*] this body of data (PEP PF 2000, 92).

The PEP Comments state that Atwood Williams's gatherings were narrow because of the limitations of the kinship network to draw on (Austin IV 8/2/2001, 1; PEP Comments 8/2/2001), indicating a total of 41 descendants of Rachel Hoxie (Hoxie/Jackson and Gardner/Williams combined) and 18 members of the Gardner/Edwards line who lived to adulthood between 1881 and 1955, the total span of Atwood I. Williams, Sr.,'s lifetime (Austin IV 8/2/2001, 9; PEP Comments 8/2/2001). However, it appears that the gatherings were significantly narrower than the "available" kin. See for example, Harold Jackson's statement that he had never been to Atwood William's farm (Harold Jackson 1999). The material in the PEP comments does not alter the conclusion of the proposed finding that these gatherings were family affairs, not tribal or political events

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- b. Arlene Jackson Brown, Indian, born 1/20/09.
 - c. Rachel Jackson Crumb, Indian, born 10/15/11.
 - d. Grace Jackson Powell, Indian, born 3/20/04 and her husband, John Powell, non-Indian.
 - e. Paul Spellman, Indian, born 8/3/07.
 - f. Edna Jackson Watrous, Indian, born 7/30/02 and her husband, Harold Watrous, non-Indian.
 - g. Helen Edwards LeGault, Indian, born 2/12/08.

Three houses are occupied, one being assigned to a Mrs. Katherine Harris, Mystic, a Pequot Indian, one to Mrs. Franklin Williams, Norwich State Hospital, a Narragansett Indian, and one uninhabitable. Four lots on the shore of Long Pond are leased to individuals who have cottages on them. Rentals aggregate \$150.00 annually. Only one of the lessees, Arthur Sebastian, Jr., is a Pequot Indian" (Lynch 1998, 5:136-137).

Helen (Edwards) LeGault Gatherings. Based on her 1956 statement, Helen LeGault moved to the Lantern Hill reservation in 1927--the year of her uncle William Albert Gardner's death (LeGault to Barrett 11/15/1956).⁸² The 1933 overseer's report indicated that there were seven houses on the reservation, with their occupants listed. One of the occupants was given as "Mrs. Grace [*sic*] LeGault" with the handwritten annotation, not typed "(not a tribal member)" (#113 Pet. 1996, HIST DOCS I, Doc. 41). This was the earliest documentation concerning of Helen (Edwards) LeGault's residency on the Lantern Hill Reservation. Subsequent documents indicated that Mrs. LeGault resided on the reservation in the house where her uncle, William Albert Gardner, had previously lived.

She did not, however, remain there throughout the period after 1933, for in 1948-1950 she engaged in negotiations with the Office of the Commissioner of Welfare concerning her desire to return to the reservation and obtain assistance in repairing the house.⁸³ In the later 1950's, she negotiated with the Welfare Department for permission to build another house on the site (Palmer to Squires and Barratt c.1955-1957; CT FOIA #68), while in 1959, she and her husband were described as "summer residents" (Connecticut Welfare Department, Richardson to Kelly 8/5/1959).

⁸² As can be seen from the census records for 1910 and 1920, Helen Dorothy Edwards spent her childhood off-reservation, in the household of her non-Indian father. Therefore, the statement in the #35 (#35 Pet. Narr. 1998b) narrative paralleling her experience with that of Tamar (Brushell) Sebastian as having spent a childhood on the reservation, left for some time, and then returned, was not valid.

In 1956, she (Helen Dorothy (Edwards) LeGault) wrote that she had been on the southern portion of the reservation property for almost 29 years, which would place the beginning of her residency as 1927, approximately the same date as her 1926 marriage and about the same date as the death of her uncle, William Albert Gardner (LeGault to Barrett 11/15/1956). However, the petitioner's description of her life states that she, "spent much of her married life in Naugatuck, Connecticut (in the western part of Connecticut, about three hours from North Stonington), but she always maintained a relationship to the Lantern Hill reservation and her fellow tribal members there" (Austin, Political Authority 9/4/2001, 7; PEP Response to Comments 9/4/2001).

⁸³ 6/14/1948, letter from Clayton S. Squires to Helen E. LeGault re: return to reservation. Referral to Mr. Ellsworth Gray of North Stonington who "has been agent for a number of years and any matter concerning assistance or your residence on the Reservation should be referred to him."

1949 May 10, Memorandum, Clayton S. Squires, Pequot Reservations. Mrs. Flora George Stenhouse, 16 Dennison Avenue, Mystic, was in the office today with Mrs. Helen LeGault. Mrs. Stenhouse's statements concerning the Peters Hill cemetery in Shewville; statements concerning the history of the Lantern Hill reservation. "Mrs. LeGault stated that she has not asked for assistance of any kind but that her house does need repairs as the roof is caving in and termites have eaten into the sills. She will let me know when she goes to the Reservation for her vacation and I promised to either meet her there or send a representative to look over the situation." Complaints re summertime noises from the Arthur Sebastian house (Lynch 1998, 5:134-135).

7/12/1949, letter from Clayton S. Squires to Helen LeGault re: visit on the reservation.

1949-1953. Connecticut Welfare Department. Correspondence re: wish of Helen LeGault for Flora George Stenhouse to build on Eastern Pequot reservation (see also Lynch 1998, 5:134-135).

In an undated entry, made between approximately 1935-1939 given the context of the record, overseer Gilbert Raymond made a note in his ledger concerning:

Mrs. Emma Gardner Edwards (Mrs. Williams [*sic*] Edwards) (sister⁸⁴ of Grace Gardner Boss) not to go on List not a member of tribe (a Narragansett) (not a member) (mother of Helen Edwards LeGault. Mrs. Helen Edwards LeGault daughter of above (not a member of Tribe) (wife of George) Lives on the Reservation, has been there about 2 years. Has 5 brothers Sisters - 2 sisters, 3 brothers who do not live on the reservation (not members) of Eastern Tribe (Raymond Ledger 1932-1937). [footnote added]

By 1933, Mrs. LeGault was actively publicizing her opposition to some of the other residents on the Lantern Hill reservation. The July 9, 1933, article in the *Hartford Courant*, quoting Helen (Edwards) LeGault, stated:

Why Pure Stock has Dwindled. Mrs. Le Gault, one-half pure Pequot, is proud of her original blood. She feels strongly against the intermarriage of the Pequots with other races. The Indian blood that is left is the weakest of all, she asserted. She attributed this intermarriage to stark necessity. The original Pequots could not make a living among themselves and it became necessary to take husbands of other races in order to exist. This has accounted for the dwindling of the tribe to a mere handful . . . (Poor But Proud 7/9/1933).

Concerning LeGault's parents, the article stated: "Mrs. Edwards mother was of Pequot and Narraganset Indian ancestry, while her father was a full-blooded Pequot. Her husband is of Yankee stock (Poor But Proud 7/9/1933).

In addition to the above comments from Gilbert Raymond's ledger in the mid-1930's in regard to the tribal membership of the Edwards family, on June 29, 1938, Allen B. Cook, of the State Park and Forest Commission, wrote Arthur L. Peale in regard to the family's status:

During the past two years I have spent considerable time compiling geneological [*sic*] records of persons who claim or may claim to belong to the various Indian Tribes of which the Conn. State Park and Forest Commission is Overseer. While I believe that, as far as they go, these records are correct, I have not absolute proof.

These records show that Bertha Edwards' Father was a white man. Her mother, Emma (Gardner) Edwards was a daughter of Marlboro Gardner and Eunice

⁸⁴*Sic*, but in error: should read sister-in-law. In another place, in a list of houses on the Eastern Reservation, he wrote "LeGault daughter of Mrs. Gardner-Boss, House on West side highway" (Raymond Ledger 1932-1937). This too was mistaken: Mrs. LeGault was a niece by marriage of Grace (Jackson) Gardner Boss.

(Wheeler) (George) Gardner who were both Indians, probably full Bloods. Marlboro Gardner was at least part Pequot and possibly part Narragansett. Eunice Wheeler was Narragansett. As we were interested only in the Pequot I did not follow it farther.

From the above I believe that Bertha Edwards is probably one half Indian, Pequot and Narragansett (Cook to Peale 6/29/1938; CT FOIA #68; #35 Pet., LIT 80).

Social Ties between the Gardner/Edwards and Hoxie/Jackson Lineages. The evidence does not show any significant social contact or interaction between the Hoxie/Jacksons proper (those who were not also Gardner descendants) and the Gardner/Edwards line, its two antecedent families between 1910 and 1970 outside of William Gardner, who was married to Grace Jackson. The interview with Alice Barbara (Spellman) Moore did not confirm social ties between Helen (Edwards) LeGault and the Hoxie/Jackson descendants. When asked by the interviewer, "Well, no – aside from the Indians, anybody else who lived on the reservation?" Mrs. Moore volunteered:

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).

While emphasizing that Moore asserted that the Sebastians were not Indians, a PEP researcher omitted reference to her belief that Helen LeGault also was not an Indian (Palma, On the Sebastian Assertions 9/4/2001, 6; PEP Response to Comments 9/4/2001).

The petition notes that William Gardner (brother of the two women whose descendants form the two main branches of PEP's Gardner lineage), married Grace Jackson, sister of William Jackson and thus aunt of Harold Jackson. However, the descriptions of the gatherings at Helen LeGault's house don't mention the Jacksons.

Harold Jackson doesn't indicate a close social relationship with Helen LeGault. In describing moving in with her and her husband, he indicates that he had only recently met her. Nor did he appear to have kept up with her after he left the reservation, even though he was definitely in the area a good portion of the time (Harold Jackson 1999). Jackson refers to Helen LeGault as Narragansett and his cousin Barbara (Spellman) Moore (a Jackson) refers to her as "some kind of Indian." This appears to represent an internal distinction within the group, rather than an actual statement that LeGault was not a member of the Eastern Pequots, and as an internal distinction

provides evidence for community. It apparently picks up on oral history without the group which identifies Marlboro Gardner as having originally come from Narragansett. Beverly (Geer) Kilpatrick's answers to questions indicate clearly that she was only marginally acquainted with the Jacksons, including Paul Spellman (Beverly Kilpatrick 1999).

Kinship Ties within the Gardner Descendants. The State highlights excerpts from two interviews with PEP members as evidence that kinship ties do not unite the entire Gardner descendants in the PEP membership, but are and have been in the past 70 years limited to smaller portions (*State of Connecticut August 2001*, 36-39). One of the interviews is with a former chairman of the PEP (Strange 1999) and the other with another member (Tingley 1999). These, the State argues, indicate that certain events were limited to the Geers or were limited "family" (*State of Connecticut August 2001*, 38, 39n26). In the first of the cited interviews, the term "family" refers to more than the interviewee's immediate family, if not encompassing the entire body of Gardner descendants. The cited interview excerpt is unclear as to whether the speaker is viewing the PEP as a single family group, or is referring to a subset of that body. The other cited reference does indicate that certain gatherings were limited to the Geer portion of the Edwards wing of the Gardners, without demonstrating there were no contacts between the two sides.

The limited data about social gatherings before the 1970's among the Gardner descendants suggests that they were primarily within one side or another of the Gardner descendants (Ray Geer 1999; Beverly Kilpatrick 1999). Additional evidence for social community ties before the present are found in the interview with Beverly (Geer) Kilpatrick. The interview of Beverly Kilpatrick provides useful evidence since she provides specific detail, in a reasonably neutral fashion, and provides enough information to tell when she was where. Kilpatrick, born in 1941, indicated she was close to Helen LeGault. She describes gatherings at Helen LeGault's home when she was younger -- possibly before 1960, but these appear to be family affairs (of the Gardner/Edwards) and that the Gardner/Williams did not attend these. Perhaps less significant, although Atwood Williams, Sr., died in 1955, Beverly Kilpatrick did not meet him, for example, at one of the gatherings at Helen LeGault's on the reservation. She describes that growing up around North Stonington, she really wasn't aware of the Sebastians before high school, indicating the 1950's. This statement about lack of contact is consistent with the historical patterns of division along family line lines described in this determination. Her answers also support the idea that the Sebastians were an issue beyond Helen LeGault and Pat Brown in the 1950's, supporting the PEP contentions. There is reasonable evidence for the same patterns from the interview with Ray Geer (Ray Geer 1999).

Community 1973 to the Present. The proposed finding did not reach a determination on criterion 83.7(b) from 1973 to the present. Without reaching a conclusion in regard to the period since 1973, it stated:

The 1994 and 1996 petitions submitted by #113 did not provide a description of the present-day community or present data or analysis to show that is a social

community. The ethnohistorical report (Grabowski 1996) provided only minimal data addressing the period since the 1970's. The petitioner submitted a supplementary report addressing modern community in January 2000. This has been held because the petition was already under active consideration and will be incorporated into the evaluation for the final determination (PEP PF 2000, 140).

The main part of the present PEP membership is closely related. Of the 128 members, 119 are descendants of Eunice Wheeler and Marlboro Gardner, who married in 1875. The balance are from the Jackson family line. The 119 Gardner/Wheeler descendants are more or less evenly divided between the Edwards branch (69 members), which includes the Geer family, and the descendants of Atwood Williams Sr. (Gardner/Wheeler/Hoxie) (50 members). The latter segment is a link between the Gardner line and the Jacksons, since it derives from the marriage in 1899 between Agnes Gardner (born 1875), daughter of Marlboro Gardner and Eunice Wheeler, and Atwood Williams Sr, grandson of Henry Jackson and Rachel Hoxie. Older adults are generally either three or four generations removed from their common ancestor, Eunice (Wheeler) Gardner (PEP PF 2000, 140)

A limited review of BIA interview data indicates that the group divides along these kinship lines and that social contact in the period between 1970's and the present tended, not surprisingly, to be strongest within each subline of the Gardners. BIA interview data indicated that members living away from the North Stonington region are in sufficient contact with those in the area of the reservation to meet the requirements of the regulations for showing that the portion of the membership that is geographically scattered is maintaining some contact with the most cohesive and active core (PEP PF 2000, 140).

The petitioner indicated that in recent years it held an annual powwow or annual meeting. There was not sufficient description or analyses of these events to make an evaluation of them as evidence to demonstrate community (PEP PF 2000, 140).

In its Comments on the proposed finding, the petitioner stated:

Chapter Two of these comments is a copy of a paper on the Paucatuck Eastern Pequot Tribe's "modern community." It was previously submitted to the BAR, on January 10, 2000, but was not considered in the preparation of the PEP Proposed Finding. It is being resubmitted for the convenience of the BAR researchers. Since it is being resubmitted with these comments, it has not been changed except that a new title page has been prepared for it. . . . It will clearly demonstrate that PEP members have been a separate tribal community from the

Sebastians from at least the late 1800s to the present (Austin Introduction 8/2/2001, 9-10; PEP Comments 8/2/2001).

This resubmittal means that the BIA's files on petitioner #113 now contain two copies of the same item with different bibliographical citations (Austin Report 1/10/2000; Austin II 8/2/2001; PEP Comments 8/2/2001).⁸⁵ This final determination cites to the second submission.

The primary demonstration for present social community for the PEP membership is intended to rest on the kinship patterns described (see above) and on geographical patterns of the present membership (see below) but go beyond it.

PEP contends that the Paucatuck membership distribution is comparable to that of the Snoqualmie and thus provides equivalent support evidence. It states that:

The Summary Under the Criteria for the Snoqualmie Final Determination continues on to describe a situation very similar to that of the Paucatuck Tribe, in terms of the closeness of kinship relations, a narrowing of the membership base during the past 100 years due to individuals abandoning tribal relations, a limited number of family lines, and evidence for a pattern of broad social and political interaction across family lines (Austin II, 82/20001, 21).

It states, concerning geographical patterns of PEP membership, that the Snoqualmie were also widely dispersed geographically, and quotes Snoqualmie proposed finding statements about the portion of the membership that was within a 50 mile radius. (The report incorrectly attributes these to the Snoqualmie final determination rather than the proposed finding). The proposed finding stated that:

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

⁸⁵ As explained in connection with submissions by the Towns, the BIA held submissions received after April 5, 1999, and the Summary under the Criteria did not reference them. Petitioners and interested parties were notified of this decision by March 6, 2000 (PEP Minutes 3/30/2000; PEP Response to Comments 8/4/2001, Ex. 94). Submitters were assured at the On the Record Technical Assistance Meeting held August 8 and August 9, 2000, that these submissions would be used in preparation of the final determinations. The BIA notes that since the items are the same, the use of one version does not signify neglect of use of the other.

members over great distances with no concentrations in smaller areas (Snoqualmie PF Summ. Crit. 1993, 15).

The statement was context for detailed and specific evidence of the maintenance of community among the Snoqualmie.

The geographical patterns described by Austin's report use the reservation as their center point. Of 144 members on the version of the roll analyzed, 65 were within a 50 mile radius of the reservation (45 percent), of which 27 were within a 10 mile radius (Austin II 8/2/2001, 24; PEP Comments 8/2/2001) (these figures include adults and children).⁸⁶ Figures were not given as to where and of what character the balance were. There is some very general data adduced, from a 1997 survey to which 47 percent of the membership replied, that "many" who lived away had been born within the radius, were mostly younger and that it was "common for members to move outside and then move back." No data were supplied concerning this statement (Austin II 8/2/2001, 25-26; PEP Comments 8/2/2001).

PEP's basic argument for community divides the membership into three categories. Category I is those living on the reservation, described as having day to day interaction, and others with close kinship ties (parent-child or sibling) to the latter (Austin II 8/2/2001, 26-27; PEP Comments 8/2/2001). These comprise 11 of the 76 adult members of the EP.

Category II, 54 adults, the bulk of the group, is defined as those are those who "regularly attend the monthly tribal meetings and/or participate in other regular tribal activities such as the annual business meeting, etc." Data cited is the sign-in sheets. The report further states the "many of these are connected to Category I members by ties of primary kinship, defined as sibling, child, parent, or grandparent. A list of these is provided. The report notes also four adult members who "communicate regularly with the tribal council via telephone calls to the tribal office's toll free number." BAR interviews also indicated that this number was used frequently by out of town members, but no analysis was made as to whether the named individuals were included already within the 54 (Hogan 1999).

A third category, Category III, not otherwise accounted for, are related by primary kin ties to those in Categories I and II, as defined. The report provides a list of specific names. It states that "it can be assumed that they are at least keeping informed of tribal affairs, even if they are not actively participating." (Austin II 8/2/2001, 29; PEP Comments 8/2/2001).

Of the membership of 144, 113 fall within these three categories. Sixty five of 76 adults, or 81 per cent are included. A review of the lists indicates these patterns are accurate. The interview

⁸⁶ This is a somewhat larger membership roll than was submitted with the PEP petition and used for the proposed finding, which had 128 members on it.

data concerning social contacts, based on a partial examination, is consistent with this description.

The PEP report stresses the narrowness of its kinship lines and the fact that those in the present membership are not all of the possible descendants even in these family lines, but "only those that have maintained tribal relations." It states that those who married into other tribes have joined those tribes and others, have, presumably, dropped away. Thus it is arguing not simply on the basis of genealogical distance, but that this is a selection within a broader genealogically defined field. There was no specific demonstration of this. The statement is that descendants outside of the currently enrolled ones would not be socially and politically part of the community. This argument is repeated at several points in the petition response.

PEP also references as evidence for community the "steadiness" of membership in the group, from 1987 to the present, attributed to clearly defined criteria, carefully implemented through a thorough review. "No new family lines or individuals from hitherto unknown Indian families have been added to the membership roll." (Austin II 8/2/2001, 40; PEP Comments 8/2/2001). All are descendants of the three PEP ancestors.

The petitioner does not present systematic data showing that kinship relationships are recognized throughout the entire span of Gardner descendants in the sense of individual statements describing a more distant kinsman as in fact a kinsman. There is some data to this effect in the interviews, plus data on gatherings and relationship.

The genealogical report makes repeats the claim that the present membership is only those descendants actually maintaining social and political relationships, while noting that 300 membership applications are pending, to be processed after the PEP is recognized. Addition of these would invalidate the above quoted statements concerning the "steadiness" of membership in the group. In one interview, the present chief notes that they have "tons of people who are trying to come in to us. . ." (Austin Interview with James Cunha, Jr., 42-44; PEP Comments 8/2/2001, Ex. 75). He indicates they have been considering the applications or potential applications of another branch of the Marlboro Gardner line, i.e., from Marlboro Gardner's sister as well as several other families. Cunha and PEP minutes (PEP Minutes 10/3/1997) indicate their awareness of the community criterion and the Department's advice that adding individuals with no social connection with the community would affect the evaluation under criterion 83.7(b) and that the council was divided on the issue. Cunha estimates the PEP could reach 700 to 800 (for more detailed discussion of PEP views on potential membership expansion, see below under criterion 83.7(e)).

The PEP report on community also includes some general comments concerning modern community as an aspect of political processes, beyond the geographical and kinship arguments, stating:

Members of all three families participate in tribal events like the monthly council meetings, the annual tribal meeting, and the annual powwow. Members of these family groups know and gossip about each other, allowing for informal social and political control (Austin II 8/2/2001, 20; PEP Comments 8/2/2001).

The report also states that:

The members usually come to the [council] meetings with some time to spare so that they can catch up on gossip from other members. While attendance at the meetings tends to be relatively small, in terms of percentage of overall adult membership, participation is high. At the three monthly council meetings attended by the anthropologist (August, September, and October 1999), about 12 members were present on average, including the council. This is approximately 14 percent of the adult membership (12 of 84 adult members). The meetings usually entail lively discussions of both social and political interest (Austin II 8/2/2001, 39; PEP Comments 8/2/2001)."

The report also states that "annual meetings are also held, and the participation at those meetings is much higher. The annual meetings are both social and political events" (Austin II 8/2/2001, 39; PEP Comments 8/2/2001). The report does not cite to specific interview or documentary evidence for these statements.

Analysis of PEP's Argument that They and their Ancestors Have Been a Historically Distinct Tribe from the Sebastians. The PEP response to the proposed finding states throughout its fundamental argument that the PEP members and their ancestors have never been part of a single tribe together with the Sebastians, at any point in history (Austin I 8/2/2001, 49; PEP Comments 8/2/2001). The review of evidence for this proposed finding does not support this argument.

The proposed finding's conclusion is affirmed in so far that it states that there was a historical Eastern Pequot tribe which maintained community up to the date of the American Revolution. However, no named, identified, ancestors of PEP appear in the Eastern Pequot records for the colonial period, and, indeed, the petitioner indicates that the Gardner family did not become associated with the historical Eastern Pequot tribe until the late 18th century (Austin II 8/2/2001, 11-12; PEP Comments 8/2/2001).

The proposed finding's conclusion is affirmed in so far as it stated that the historical Eastern Pequot tribe as a whole met criterion 83.7(b) for the period from the American Revolution through 1873. However, the evidence presented does not demonstrate that the direct antecedents of PEP were maintaining a distinct community throughout this time period, distinct from the full body of the historical Eastern Pequot tribe and excluding the antecedents of EP whom the petitioner does not accept as elements of the historical Eastern Pequot tribe.

The data between the American Revolution and 1872 provides some evidence in regard to maintenance of community between both the Hoxie/Jackson and the Gardner family ancestors and other elements of the historical Eastern Pequot tribe. It does not, however, provide evidence of their having maintained a community with one another which was distinct from the larger entity that contained the antecedents of petitioner #35. The evidence only establishes the existence of the latter. The same is true of the decade from 1873 through 1883, where both families antecedent to #113 appear in Eastern Pequot documents, but sign or are listed in common with antecedents of petitioner #35.

For the period from 1883 through the 1920's, the two late 19th century marriages between the Gardner and Hoxie/Jackson families indicate that there was actual interaction between the two lines of PEP's antecedents. In the same generation, however, five persons married out of the group and three did not marry. The total sample for this generation (12 persons, excluding the children from Eunice Wheeler's other marriages) is very small. Neither does the available evidence, including interviews, confirm close social ties among the members of the two lines antecedent to #113, while the same evidence does not indicate clearly that the Hoxie/Jackson antecedents of PEP uniformly eschewed social contact with the antecedents of petitioner #35 or maintained that the Brushell/Sebastian descendants were not Indians.

From the late 1920's to the early 1970's, the evidence does not show substantial contact between those Jacksons, including the Spellman family, who did not also descend from Marlboro Gardner and the Gardner/Edwards descendants who had no Hoxie/Jackson ancestry. The evidence does not show substantial contact between either branch of the Gardners (Gardner/Edwards and Gardner/Williams) and the Sebastians. In contrast, there is a reasonably large amount of evidence of contact between the Hoxie/Jacksons who did not also descend from Marlboro Gardner and the Sebastians.

From 1973 to the present, the Gardner/Edwards and Gardner/Williams lines within PEP's community have been increasingly separate from the antecedents of EP. However, the level of separateness has not been constant throughout the time period. More significantly, throughout much of the period from 1973 to the present, until 1989-1990, the Hoxie/Jackson descendants were not comprised within the PEP membership and are not shown to have maintained community with PEP rather than with the full entity of the historical Eastern Pequot tribe.

The evidence does not show that the antecedents of petitioner #113 have maintained a distinct community from historical times to the present, apart from the larger body of the historical Eastern Pequot tribe, that meets criterion 83.7(b).

Conclusion. See conclusory section to 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.*⁸⁷

In response to the proposed finding, the petitioner states:

Aside from lack of evidence to support the AS - IA's tentative conclusion in the Proposed Finding that there may be one tribe with two factions, there are at least two other conclusions in the Proposed Finding with which the Paucatuck Eastern Pequot Tribe takes issue. For example, the Proposed Finding concluded that there was very little evidence demonstrating community (25 CFR 83.78(b)) and political authority (25 CFR 83.7(c)) for the Paucatuck Eastern Pequot Tribe during some decades of the 1900s (Austin Introduction 8/2/2001, 9; PEP Comments 8/2/2001).

The firm belief of PEP members, from about 1890 to the present, that the Sebastians are non-Indians, negates the conclusion in the Proposed Finding that the two petitioners (#35 and #113) are two factions of a single tribe up to 1973 (Austin I 8/2/2001, 49; PEP Response to Comments 8/2/2001).

The petitioner submitted additional evidence and analysis in regard to criteria 83.7(b) and 83.7(c). For discussion of the evidence specifically in regard to community, see above under criterion 83.7(b).

The petitioner states further:

The AS - IA's conclusions in the Proposed Finding on the Paucatuck Eastern Pequot tribe were founded upon an inadequate understanding of history of the relationship between the Paucatuck Eastern Pequot Tribe and the descendants of Tamar Brushell Sebastian . . . Chapter One will discuss recently discovered evidence, as well as evidence that was previously submitted, which demonstrates that the conflict is not of recent vintage. It is a long-standing dispute that began in the late 1800s, not in 1973 as the AS - IA concluded in the Proposed Finding (Austin Introduction 8/2/2001, 17; PEP Comments 8/2/2001).

⁸⁷ "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).

This statement that the proposed finding concluded that the conflict began in 1973 is not an accurate restatement of the conclusion of the proposed finding, which discussed the conflict from the 1920s onward extensively (PEP PF 2000, 81-84). It should also be noted that the petitioner repudiates specifically the basis upon which the AS-IA issued a positive finding for the period through 1973 (Austin Introduction 8/2/2001, 3, 5, 6, 8; PEP Comments 8/2/2001; for text of passages, see the General Issues section of this final determination). This final determination considers the petitioner's argument asserted in the cited passages, that PEP is separate from EP and has never been part of an entity that included the antecedents of EP. To do so, the final determination includes an analysis of the evidence in light of whether the petitioner meets criterion 83.7(c) from first sustained contact with non-Indian settlers to the present when only its own direct antecedents are taken into consideration, eliminating all documentation which shows the petitioner's antecedents as part of an entity which also included the antecedents of petitioner #35.

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). The Towns also 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).⁸⁸ The State also addressed this issue (*State of Connecticut August 2001*, 41ff).

Some of the points of argumentation in regard to the early period, such as those of the Towns in regard to the nature of a tribe at first contact⁸⁹ or the impact of oversight by a colonial government,⁹⁰ were already addressed in the proposed finding (PEP PF 2000, 98-99). Generally, the Towns' interpretation of the evidence for the period from first sustained contact through the mid-19th century is not 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

⁸⁸This paragraph constitutes a sampling, rather than an exhaustive listing, of the passages in which the Towns assert these points.

⁸⁹Many 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).

⁹⁰"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).

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 Developments.

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).

For extensive discussion of this contention, see the survey of the relationship between the Colony and Connecticut's tribes, as reflected in the legislative provisions, above, in the General Issues section. The Towns also contend:

During the course of the 18th 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. 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 quotes] (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 18th 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 [18th] 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).

The petitioner provided a detailed response to the Towns' comments in regard to the colonial period (Duryea; PEP Response to Comments 9/4/2001). Some of the argumentation presented, such as that which maintained that the Eastern Pequots after 1637 were "the remaining independent core of the Pequot Nation" rather than a "splinter group" (Duryea 12; PEP Response to Comments 9/4/2001) was not directly pertinent to the 25 CFR Part 83 criteria. Similarly, the evidence in the record does not indicate that an indigenous leadership of Wequashcook over the Eastern Pequot was "affirmed by colonial officials through an official 'appointment'," (Duryea 14; PEP Response to Comments 9/4/2001), nor is there any requirement in the regulations that such have been the case.⁹¹

*Political Influence or Authority, 1776-1872.*⁹² The Towns, in general challenge the finding that the historical Eastern Pequot tribe met criterion 83.7(c) for this period of time (*Towns August 2001*, 94-129).

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 the Town for "the support and removal of an Individual of that Tribe, who fell sick with in the Town of Norwich" and requested repayment (IP, 2nd, II:155; *Towns August 2001*, Ex. 69). This evidence is 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

⁹¹There is no requirement that the final determination address at any length argumentation, whether presented by a petitioner or by a third party, that is not directly pertinent to the acknowledgment regulations or reanalyze issues which were fully addressed in the proposed finding and for which no new evidence has been submitted.

⁹²The petitioner's narrative utilizes the term "Paucatuck Eastern Pequot Tribe" throughout its analysis of criterion 83.7(c), and generally throughout the period prior to 1982, although the terminology is not found in contemporary documents.

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 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 19th century (Mohegan Pet., Ex. 341),⁹³ and such petition did not preclude it 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 in the historical Eastern Pequot tribe stands, even though, as the Towns point out, no one specific individual among the signers is designated as a leader (*Towns August 2001*, 126-129). However, none of the identified ancestors of petitioner #113 were signers of these petitions.

There is no carry over from criterion 83.7(b) to criterion 83.7(c) for the period between the American Revolution and 1873 when the evaluation is limited to the antecedents of petitioner #113 only. The Eastern Pequot overseer's reports contain only two mentions of Eunice Wheeler's mother in 1835-1836 and no mention of Marlboro Gardner or Eunice Wheeler prior to 1873. Thus, the records show an Eastern Pequot residential community on the Lantern Hill reservation of which Rachel (Hoxie) Jackson is documented to have been a member from 1849 through 1873, but this reservation community did not include petitioner #113's other ancestral line, Gardner/Wheeler. Neither were there documented intermarriages between the two family lines antecedent to petitioner #113 during the period prior to 1873, so there is no carryover from 83.7(b) to 83.7(c) on the basis of endogamy. Thus, for the period from the American Revolution to 1873, the evidence presented does not demonstrate political influence within a PEP antecedent group separate from the full body of the historical Eastern Pequot tribe.

Political Influence or Authority 1873-1920. 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 for two reasons. The first is the presence of significant new information in regard to the June 26, 1873, Eastern Pequot petition. The second is the following assertion by the petitioner, which denies the underlying hypothesis of the conclusion reached by the AS-IA in the positive proposed finding:⁹⁴

⁹³1834 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).

⁹⁴The amount of data concerning political authority and influence in the record overall, including conflicts between the two groups, is considerably more extensive than that relating to internal political processes within petitioner #113 alone. As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(c) from 1883 to 1973, based on the conclusion that there was a single tribe, the entirety of whose actions reflected political

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 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).

1873-1883. Of the antecedents of petitioner #113, Rachel (Hoxie) Jackson was first named on an 1849 overseer’s list. From that naming until her appearance on the June 26, 1873, petition to the New London County Superior Court, there is no specific evidence in the overseers’ reports of her participating in any activity that indicates political authority or influence.⁹⁵ Her appearance on the 1873 petition is not in common with Marlboro and Eunice (Wheeler) Gardner, the other antecedents of petitioner #113, but rather in common with individuals antecedent to petitioner #35 (see detailed discussion following).⁹⁶

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).

The proposed finding indicated that, “The names of signers on photocopy submitted to the BIA (#35 Pet. Petitions) were nearly illegible” (PEP PF 2000, 104) but stated that by combining the transcriptions in petition #35, petition #113, and by the BIA researchers, the names had been deciphered as:

influence, including the Gardners as one subgroup, rather than as the entire entity evaluated . . .
The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(c) through 1973 (PEP PF 2000, 119).

⁹⁵See, for example, the 1865 list of names from Isaac Miner's overseer's report, North Stonington Superior Court Records, State Library, Hartford, CT: “Names of the Pequot Tribe of Indians of North Stonington as far as I can ascertain: Eunice Fagans Cotrell, Lucy Fagans, Charity Fagans, Lorry Fagans 5 Children, Murinda Ned Douglas, Caroline Ned, Lucy Hill, Rachel Orchard 4 Children, Abby Fagans or Randall 5 Children, Leonard Ned Brown, Calvin Ned, Joseph Fagans, James Kinness, George Hill, Andrew Hill” (#35 Pet. Overseers Reports).

⁹⁶Aside from the 1873-1883 documents discussed in this section and the overseers’ reports, the earliest documented associations between the Gardner and Hoxie/Jackson lines are two marriages, those of William Albert Gardner to Grace Jackson in 1898 and of Agnes Eunice Gardner to Atwood Isaac Williams (son of Phebe Esther Jackson) in 1899. These marriages do not, in themselves, provide any data concerning political influence or authority. For discussion of community, see criterion 83.7(b).

Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson, Fanny ", Irean ", Phebe ", Lucy ", Wm. H ", Jane M J, Leanard 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) (PEP PF 2000, 104).

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, Leanard Brown[e?], Tamar S and Har 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," 156; EP Response to Comments 9/4/2001).

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 noticed 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" (PEP PF 2000, 104). The "notice" of the additional names on this document is the result of there now being a better photocopy 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 1873 document that did include the Gardners (#35 Pet. Overseers Reports; Lynch 1998a 5:83-84; see EP PF 2000, 107; for text see discussion under criterion 83.7(e)) nor did PEP comment on a March 31, 1874, "Remonstrance to Superior Court, New London, against sale of land,"⁹⁷ 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.⁹⁸ Since, on 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, these provide no information concerning any political leadership or influence in the PEP's direct antecedent group as distinct from the whole body of listees and signers. They do, however, show political leadership or influence within the historical Eastern Pequot tribe comprised of both EP and PEP ancestors.

⁹⁷March 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, Permic? Jackson X, Fansos Jackson X, Molbrow Gardner X. (#35 Pet. Petitions; Lynch 1998, 5:82-83).

⁹⁸The 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 Children, 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).

The proposed finding stated that, "There are no overseer's reports in the record from 1875 until 1889" (PEP PF 2000, 103), and cited a document which appeared to indicate that these reports did not exist.⁹⁹ However, some reports for these years were located by petitioner #35 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). The sequence of reports preceding this event is summarized here.¹⁰⁰ No copy of the 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 this document, but was not able 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 Gardner¹⁰¹ and his sister, Harriet (Gardner) Simons.¹⁰²

⁹⁹A 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).

¹⁰⁰1878: 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. Overseers Reports).

¹⁰¹April 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: Marlboro Gardiner, Amanda Williams, Eunice Cottrell, Leonard Nedson (EP Comments 8/2/2001, Box 1, Folder 9).

¹⁰²March 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 Comments 8/2/2001 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.

Marlboro Gardner had already been listed on, and signed, Eastern Pequot documents a decade earlier (see above), and continued to be listed on the Eastern Pequot overseer's reports until his death.¹⁰³ The children of Harriet (Gardner) Simons continued to appear on the overseers' and State Parks and Forest Commission listings into the 1930's (#35 Pet. Overseers Reports), but his widow, nee Eunice Wheeler, was never listed as a member between 1893 and her death.¹⁰⁴

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

¹⁰³March 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 8/2/2001 Box 1, Folder 9).

1 April 1886, Charles H. Brown, overseer. Received goods or services: Amanda Williams, Eunice Cottrell, Molbro Gardiner (EP Comments 8/2/2001 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 8/2/2001, Box 1, Folder 9, "Systematic Survey").

April 1887 - April 1888, Charles Brown overseer, 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 8/2/2001, Box 1, Folder 9, "Systematic Survey").

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, Lucy Hill, Francis Watson, Mary Watson, Edgar Watson, Munroe Watson, Molbro [?] Gardiner, Phebe Jackson, Irene Jackson, Jenny Jackson, Lucy Jackson, William Jackson, Fanny Jackson, Ed Jackson, [Three pages later in the photocopied document in the #113 petition, but apparently a continuation of the list: follows immediately in #35 Pet., Overseers Reports] Maria Simons, Mary Simons Herman Simons, Lucy A. Sawant [Lawayt?], Russel Simons, Dwight Gardiner, Calvin Williams, Tamar Sebastian, Leonard Nedson, Mary Ann Potter. Account of provisions furnished each family: Molbro Gardiner, Calvin Williams, Tamar Sebastian (#113 Pet. 1996, HIST DOCS I Doc. 41; #35 Pet. Overseers Reports).

1890-1891 report, "Eastern Tribe Pequot Indians North Stonington in account with Gilbert Billings overseer (#35 Pet. Overseers Reports).

"Services rendered Marlbro Gardiner from 17 November 1892 until his death 16 May 1893" (Overseers Reports Eastern Pequot Indians of Connecticut, Overseer Gilbert Billings, from 1891-92 through 1904-05; EP Comments 8/2/2001, Box 1, Folder 9).

16 May 1893 Office of the Town Clerk, North Stonington [New London], Connecticut, "Birth, Marriages, Deaths, 1852-1920," page 51. Marlbro Gardner died on 16 May 1893 in North Stonington [New London], Connecticut at the age of 55. He was born in North Stonington [New London], Connecticut (PEP Comments 8/2/2001, Genealogy Records; Reference: Death Record, Doc. #20)

¹⁰⁴Members 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 Gardiner, Calvin Williams, Tamar Sebastian, Jessie Williams, Ed. Watson (dead), Leonard Ned 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).

Photocopy of death record: August 29, 1912, artero-sclerosis, mitral regurgitation, Eunice A. Gardner, 76 yrs. 11 months, Colored, Female, born Maine, no occupation listed, res. North Stonington, Conn., Widow (#113 Pet. 1996, GEN DOCS IV).

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, Nec [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). It therefore, like the documents from 1873 and 1874, does not provide evidence of political leadership or influence within the delimited PEP antecedent group as distinct from the body of historical Eastern Pequot petition signers as a whole but does show political influence within the latter.

1884-1929. From 1884 through 1929, the contemporary documentation in the record in regard to historical Eastern Pequot political authority and influence is sparse. That which does exist pertains to the activities of Calvin Williams (see more extensive discussion in the final determination for EP 2002), whom petitioner #113 rejects as having been an Eastern Pequot, while apparently accepting the premise that he exercised leadership on behalf of the historical tribe (Austin I 8/2/2001, 17n11; PEP Comments 8/2/2001), and his wife Tamer Emeline (Sebastian) Swan Williams, whom petitioner #113 does not accept as having been an Eastern Pequot (Austin I 8/2/2001, 2-3, 11n8; PEP Comments 8/2/2001).

The PEP Comments claim Phebe Spellman as an informal leader for the period between her return to the reservation full time, about 1910, and her death in 1922 (Austin IV 8/2/2001, 2; PEP Comments 8/2/2001; see Moore Interview 12/8/1991, 64-65). The cited basis appears to be actions in dealing with the overseers, which do not particularly indicate actions other than for her own family, as was also the case for most of the actions of Catherine Harris which were cited by EP. Neither was there contemporary evidence of leadership activities of Phebe (Jackson) Spellman that were recalled in the available interviews.

No descendants of Marlboro Gardner¹⁰⁵ were listed on Eastern Pequot overseers' reports between 1893 and 1929, when the Atwood I. Williams, Sr., family was listed (#35 Pet. Overseers Reports). The listing included Atwood I. Williams, Sr., himself, who was a Hoxie/Jackson descendant, and his children, who were Hoxie/Jackson as well as Gardner descendants; it did not include his wife, who was a Gardner descendant only. Petitioner #113 argues that this "oversight" was because these persons were not in need of financial assistance (Austin I 8/2/2001, 38-40; PEP Comments 8/2/2001). In 1933, the only member of the Gardner/Edwards lineage living on the reservation was annotated as "not a tribal member" (#113 Pet. 1996, HIST DOCS I, Doc. 41).¹⁰⁶ As noted in the proposed finding (EP PF 2000, 87), in an undated entry, made between approximately 1935-1939 given the context of the record, overseer Gilbert Raymond made a note in his ledger that the Edwards family were not members of the Eastern Pequot tribe (see text above under criterion 83.7(b) (Raymond Ledger 1932-1937)).

Thus, the overseers' reports for the period from the 1870's through the 1930's do not provide any direct contemporary documentation showing political influence or authority solely among the direct antecedents of the current petitioner #113 between 1873 and 1929, while the retrospective comments from the 1930's indicate that one of the petitioner's significant antecedent lineages (Gardner/Edwards) was not considered by the overseer to hold tribal membership. There is no contemporary documentation in the record that provides evidence concerning political leadership or influence solely within the PEP antecedent group for this time period separate from the historical Eastern Pequot tribe as a whole.

1929-1940. The petitioner indicates that: "Between the successive deaths of two prominent tribal members and Reservation residents, Phebe Jackson (1922) and Will Gardner (1927), an opening developed for a new tribal leader, and Atwood Williams, Sr. stepped up to fill it"

¹⁰⁵Not even William Albert Gardner, husband of Grace Jackson, although she was included by the overseers; William Albert Gardner was listed as a resident of the reservation on the 1910 Federal census: NARA T-624, Roll 142, ED 525, Sheet 13A: 1910, Thirteenth Census of the United States, New London Co., CT, Indian Population, North Stonington Reservation:

Gardner, William A., head, M/In. 39, married 1st, POB, FPOB, MBOB CT, laborer; Pequot, father unknown, mother unknown, ½ Indian, 1/4 white, 1/4 Negro

Grace E, wife, M/In., 34, married 1st, laborer; unknown, unknown, unknown.

¹⁰⁶The 1933 overseer's report indicated that there were seven houses on the reservation, with their occupants listed. One of the occupants was given as "Mrs. Grace [*sic*] LeGault" with the handwritten annotation, not typed "(not a tribal member)" (#113 Pet. 1996, HIST DOCS I, Doc. 41). This was the earliest documentation concerning of Helen (Edwards) LeGault's residency on the Lantern Hill Reservation and thus the earliest documentation of the residence of any of Marlboro Gardner's descendants on the reservation. Subsequent documents indicated that Mrs. LeGault resided on the reservation in the house where her uncle, William Albert Gardner (died 1927, married to Grace Jackson), had previously lived.

(Austin, Political Authority 9/4/2001, 5n4; PEP Response to Comments 9/4/2001).¹⁰⁷ The petitioner submitted an analysis, "Chapter Four: Political Authority and Leadership in the Twentieth Century: The Role of Chief Sachem Silver Star" (Austin III 8/2/2001; PEP Comments 8/2/2001).

The proposed finding analyzed the activities of Atwood Isaac Williams, Sr., (Chief Silver Star) in regard to the Eastern Pequot from 1929-1935 in some detail (PEP PF 2000, 83-84, 90-91, 108-113). By the late 1920's, Atwood I. Williams and Helen (Edwards) LeGault were actively opposing the presence of the descendants of Tamar (Brushell) Sebastian on the Lantern Hill Reservation (see FEP Draft TR 2000, 61-63).¹⁰⁸

Charles L. Stewart's overseer's report (Final Account) from June 25, 1928, to June 14, 1929, is the only one in the record up to that date that lists Gardner and Jackson descendants as "present members" while omitting Sebastian, Fagins/Randall, and Fagins/Watson descendants altogether (#35 Pet. Overseers Reports). Stewart's prior report dated June 8, 1923, included Jackson, Gardner/Simons, Fagins/Randall, and Sebastian family members (#113 pet. 1996, HIST DOCS I, Doc. 41).¹⁰⁹ Gilbert S. Raymond's subsequent report for June 24, 1930, again included the Sebastians, as did that dated June 10, 1932 (#113 Pet. 1996, HIST DOCS I, Doc. 41).

The 1931 overseer's report presented by Gilbert Raymond (PEP Comments 8/2/2001, Ex. 101), under the listing of "Members of the Eastern Tribe of Pequot Indians (As near as can be ascertained)," contained the handwritten annotation, "Chief Silver Star objected to these names makes 7." Although there are two sets of markings on the list, the "objected" names appear to have been Mrs. Sadie Holland, Mrs. Sylvia Sebastian Stedman, Clarence Sebastian, Mrs. Peter Harris (Catherine Sebastian), Albert W. Carpenter, Mrs. Catherine Carpenter Lewis, and Franklin Williams. Thus Atwood I. Williams, Sr. at this time, was not opposing the residence of the Hoxie/Jackson descendants.¹¹⁰ This listing once more omitted the Fagins/Randall descendants.

¹⁰⁷Williams, born in 1881, was the oldest son of Phebe Jackson and a nephew of William Gardner's wife, Grace Jackson. The petitioner has not otherwise presented any arguments in regard to a leadership role for William Albert Gardner.

¹⁰⁸This did not prevent Mashantucket interview Kenneth Brown Congdon in 1988 from saying that he had "heard" that Atwood I. Williams was a son of Calvin Williams (Congdon Interview 10/1988, [14]; EP Comments 8/2/2001), although the two men were unrelated. Congdon remembered him as "Chief Silver Star," knew that he was related to the Jacks ons and Spellmans, and knew that he had worked on the railroad

¹⁰⁹It also included a "Mary Watson," otherwise unidentifiable (#113 Pet. 1996, HIST DOCS I, Doc. 41). If it was meant to be Mary Eliza (Watson) Sebastian, she was most certainly deceased, having died January 14, 1912. Stewart's overseer's reports also carried this "Mary Watson" name from 1913-1919 (#35 Pet. Overseers Reports).

¹¹⁰Although the petitioner's narratives blur the distinction, this remains a fairly consistent divergence between Atwood I. Williams and Helen LeGault – and subsequently, in the more recent period, between Helen LeGault and Agnes (Villiams) Cunha.

Petitioner #113 refers to a report written in 1935 [*sic*] for the Bureau of Indian Affairs by Gladys Tantaquidgeon, on nine New England Indian tribes (PEP Comments 8/2/2001, Exhibit #61). After mentioning that the report suggested that the position of Everett Fielding as Mohegan chief was “honorary” (PEP Comments 8/2/2001, Austin IV:32), the petitioner states that contrary to Tantaquidgeon’s conclusions about other tribes, such as the Mohegan, Narragansett, Gay Head Wampanoag (Aquinnah), and Mashpee, “her conclusion about Chief Silver Star and the Eastern Pequot Tribe was firm and unqualified. Concerning the Pequot Tribes she wrote “Chief elected serving both tribes;” (i.e., the Mashantucket Pequot Tribe and the Paucatuck Pequot Tribe; there is no mention of any Sebastian family leaders in her report” (PEP Comments 8/2/2001, Austin IV:33; see PEP Comments 8/2/2001, Ex. 61, table headed “New England Groups 1934”).

This passage is accurate as quoted, but has been taken out of context and thus misrepresents the contents of the report, which stated that with the exception of her own tribe, which she designated as Mohegan-Pequot, “the other groups in Massachusetts, Rhode Island, and Connecticut (Pequot proper) have not kept up tribal organizations” (Tantaquidgeon Report 12/6/1934, File No. 671-1935-150 [unpaginated]; PEP Comments 8/2/2001, Ex. 61).

The petitioner goes on to argue that:

Her contrasting conclusions about the political organization of the Eastern Pequot Tribe indicates she believed the Eastern Pequot tribe had a functioning tribal organization with active, effective political leadership, while some of the others did not. While the BAR did not find the conclusions of Ms. Tantaquidgeon regarding the other three Tribes to be dispositive when it recommended the AS - IA recognize them, Ms. Tantaquidgeon’s positive conclusions regarding the Eastern Pequot tribe should be shown deference. The weight given this evidence should be based upon at least two factors. First, she was obviously not inclined to conclude the New England tribes that had continued to survive were still functioning as Indian tribes, even when it came to her own Tribe. Second, she was personally knowledgeable [*sic*] about the Eastern Pequot tribe and the condition of its leadership and membership, since she grew up in the New London area and interacted with them personally (PEP Comments 8/2/2001, Austin IV:33-34).

Tantaquidgeon’s research was accomplished during 1934. She submitted her report to COIA John Collier, dated at Norwich, Connecticut, December 6, 1934 (Tantaquidgeon 1934; United States, Bureau of Indian Affairs. New England Groups. File No. 671-1935-150). In her “List of New England Indian Groups 1934,” she included:

8. Pequot, (a) Eastern and (b) Ledyard.
Both groups supervised by Gilbert S. Raymond, Norwich, Conn.

Tribal organization headed by Atwood I. Williams, (Chief Silver Star) Westerly, R.I. ("Names of Agents, chiefs, overseers, Tantaquidgeon Report 12/6/1934, page stamped 671).

In this listing, Tantaquidgeon did not describe the status of Everett Fielding as "honorary," but simply wrote: "7. Mohegan-Pequot, Chief Everett [illegible middle initial] Fielding, Laurel Hill Avenue, Norwich, Conn. ("Names of Agents, chiefs, overseers, Tantaquidgeon Report 12/6/1934). The report also included the passage: "Atwood I. Williams (Chief Silver Star) claims to be the tribal chief of the surviving Pequot and is seeking to gain legal recognition as such. This office is honorary and Mr. Williams acts as master of ceremonies at tribal and public meetings" (Tantaquidgeon 1934, Pequot 4).¹¹¹

Thus, her actual description of the status of Atwood I. Williams as "honorary" was parallel to her usage in the instance of Everett Fielding, and her reference to his efforts in the American Indian Federation (AIF) was: "A similar organization was started a few years later by an Indian leader of the Pequot tribe but a confederacy is short lived in this area" (Tantaquidgeon Report 12/6/1934). The Tantaquidgeon report does not provide any data concerning political authority and influence within PEP as distinct from the entire historical Eastern Pequot tribe nor by itself provide sufficient evidence of political authority within the entire historical Eastern Pequot tribe in the mid 1930's. However, Tantaquidgeon's conclusions do not accurately describe the full extent of Atwood Williams, Sr.'s role.

In 1938, the Connecticut State Parks and Forest Commission was aware of the continuing objections by PEP antecedents to the Sebastian family, one of its employees writing in regard to Benjamin Harrison Sebastian:

His grandfather, Sebastian, was a "black" Portugee who married a full blood Indian. Other families on the Reservation claim that she was not a Pequot and therefore her descendants have no rights there. However, before the State Park and Forest commission was appointed as Overseer the Superior Court had recognized some of her descendants as members of the tribe and so there seems to be nothing for the Commission to do but to assume that members of this family have rights in the tribe (Cook to Gray 12/12/1938; PEP Comments 8/2/2001, Ex. 102).

Atwood Williams, Jr. (born in 1910), testified in 1976 that Atwood Williams, Sr. was elected by the people from the reservation, dating that event to June 1933, and recognized by the State of Connecticut (CIAC Hearing 8/10/1975, [83-84]; #35 Pet. LIT 1970s). Williams, Jr., testified that he had never lived on the reservation but visited William Gardner, his maternal uncle, quite a bit (probably in the 1920's, since Gardner died in 1927). He responded negatively to the

¹¹¹Omitted from PEP Comments 8/2/2001, Ex. 61.

question whether they had met "as a tribal group" (CIAC Hearing 8/10/1976, [82]; #35 Pet. LIT 1970s).

Helen LeGault testified that she knew Atwood Sr., but that unlike her sister did not go out on the road shows. She credits him as being a leader although she is a bit vague as to who voted him in. In response to a question, "was he looked upon as someone who made decisions for other people?" she replied, "yes he did, he did a great deal of work . . ." (CIAC 1977a, 74-75). She said that her mother had voted for him and that they "took many votes to vote him in because he did quite a bit of work."

There was the limited information or interview data from the Jackson side concerning Atwood Williams, Sr. Harold Jackson stated that Silver Star (Williams) was chief of the Narragansetts, possibly a reflection of his referring to the Gardners as "Narragansett." 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" (Harold Jackson 1999, 6). Yet for part of the time Williams was active, Jackson should have been living in Helen LeGault's house (PEP Grabowski Interview with Jackson 1995, 14; cited in Austin, Political Authority 9/4/2001, 9; PEP Response to Comments 9/4/2001). As noted elsewhere, Jackson knew where Williams' Rhode Island farm was, lived near it at one point, but never visited it.

Petitioner #35 submitted material which indicated that in 1939, during construction of a road in Noank, workers disturbed a salvage operation; Charles Stewart, who had been Eastern Pequot overseer until 1929, objected to her project; Atwood Williams and his family traveled to Noank to support Butler's efforts, as recorded in her diary (Burgess IID 8/2/2001, 182-183; EP Comments 8/2/2001).

The material is sufficient to conclude that for the period from 1929 through 1940, Atwood I. Williams, Sr., was providing leadership, recognized by the State, for the historical Eastern Pequot tribe as a whole. He was also, however, providing separate leadership for the Gardner family lineages specifically, and at least did not challenge the tribal membership of those members of the Hoxie/Jackson lineage who were not also Gardner descendants.

1941-1973. In addition to Atwood I. Williams, Sr., Atwood I. Williams, Jr., and Helen (Edwards) LeGault, the PEP Response to Comments also claims Paul Spellman and Arlene Jackson as informal leaders (Palma, On the Sebastian Assertions 9/4/2001, 2, 5; Austin, Political Authority and Leadership 9/4/2001, 2; PEP Response to Comments 9/4/2001). The evidence cited appears to be one or two complaints by Spellman to the authorities (Austin, Political Authority and Leadership 9/4/2001, 17; PEP Response to Comments 9/4/2001) and are thus not substantial. The documents do not indicate Spellman was acting for or on behalf of others. Some of the interview evidence recalls similarity of opinion between him, Arlene Jackson and Helen LeGault, but also that he had conflicts with LeGault (Moore 12/8/1991).

Atwood I. Williams, Sr., 1941-1955. During 1941, Atwood I. Williams intervened with the Department of Welfare on behalf of his aunt, Grace (Jackson) Gardner Boss. The data in the record did not indicate that he had been maintaining regular contact with the reservation: "There was a Mr. Atwood Williams in her [Mrs. Carroll's] office when she called who was looking for someone with the authority to take care of getting Mr. Boss off the reservation. Mrs. Grace Boss is Mr. Williams aunt, and he is also a Chief of the Pequots. Therefore he has a double interest in the case. . . . Mr. Williams went to see Mr. Stewart when in Norwich, and was told he was no longer in charge of the Indians." (Gray to Squires 8/25/1941, EP Response to Comments 9/4/2001, Ex. 5). Considering Williams' various clashes with Gilbert Raymond in the 1930's, he must have known that Stewart had ceased to be overseer in 1929. On September 5, 1941, the Director of the State Aid Division noted that: "I telephoned to Mr. Atwood Williams, nephew of Mrs. Boss. I learned that she is now living with a Mr. Fred Hazard in Kenyon, R.I." (Director to Gray 9/5/1941; EP Response to Comments 9/4/2001, Ex. 6). Similarly, his letter to Mrs. Boss also cited only the family relationship: "Mr. Atwood Williams, your nephew, has interceded in your behalf and has asked that your husband be removed from the reservation" (Director to Boss 9/5/1941; EP Response to Comments 9/4/2001, Ex. 8). A memorandum of the same month indicated that Mrs. Grace Boss "was staying temporarily in the home of Mrs. Calvin Williams" (Squires Memorandum 9/18/1941; EP Response to Comments 9/4/2001, Ex. 9).¹¹²

For the final determination, the petitioner submitted an article written by David L. Stallman, "Indian Chief Opposes Selling North Stonington Tribal Land," which had at the top a typed identification, *Westerly Sun* Sunday, May 5, 1947 (PEP Comments 8/2/2001, Ex. 52; no citation of source).¹¹³ Petitioner used this article to argue that the active political leadership of Atwood I. Williams extended into the later 1940's: "This article provides evidence that, in 1947, Chief Sachem Silver Star was still working as a leader of the Paucatuck Eastern Pequot Tribe, protecting the tribe's rights to use and benefit from the resources of the Lantern Hill Reservation, as he had been doing since 1928" (Austin IV 8/2/2001, 48; PEP Comments 8/2/2001). The article does not mention exactly what Williams may have done. It states, "The chief, according to his own statement, when interviewing legislators on the subject, is Atwood I. Williams, shown by unanimous consent of the tribal members taking part in the election and later confirmed by the superior court" (PEP Comments 8/2/2001, Ex. 52), which may imply that he interviewed legislators, but does not actually say that he did so. The proposed bill to permit sale of reservation land that is referenced in the article was not submitted. As of May 1947 the

¹¹² A memorandum of May 11, 1948, indicated that Grace (Jackson) Gardner Boss continued to maintain contact with the daughter of Tamer Emeline (Sebastian) Swan Williams on the reservation: "Mrs. Grace Boss, who is working for an Old Mystic family goes up and spends week ends with Mrs. Holland" (Gray to Squires 5/11/1948, EP Response to Comments 9/4/2001, Ex. 17).

¹¹³ Internally, the article noted that Williams had been employed by the New Haven Railroad "for the past 38 years," which tends to confirm the 1947 date, as does the statement that the Connecticut reservations were under the supervision of the "department of public welfare, with Clayton Squires, whose office is in Hartford, being responsible for the resident Indians' welfare, not only, but for anything pertaining to the tribe [*sic*] land" (Stallman 1947; PEP Comments 8/2/2001, Ex. 52).

documentation in the record included only discussion of extending the term of the leases – a request which the State refused.¹¹⁴

The other incident mentioned in the article was as follows:

One of the North Stonington Selectmen was notified that two female dogs with puppies apparently belonging to the reservation were in starving condition. He in turn notified the town dog warden. The 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 . . . they were referred to Mr. Squires . . . an assistant heard the complaint . . . and went along with the representatives to search out his superior, at the Capitol, across the way. Mr. Squires was found, 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).

The sequence of events thus narrated does not indicate that Atwood I. Williams was involved at any point. Indeed, the article does not indicate that Williams did anything in regard to the proposed bill authorizing land sales – only that he told the reporter that he was opposed to it (Stallman 5/5/1947; PEP Comments 8/2/2001, Ex. 52). It does provide documentation that he still had an interest in the topic.

After 1941, State documents showed no further indication of any intervention by Williams in Lantern Hill reservation matters until May 2, 1949, when his contact pertained, “among other things” (unspecified) to his son-in-law. The memorandum noted that, “He apparently had no knowledge of the law, Section 7168, under which we operate and referred to hearings held in June of 1932 concerning the appointment of an Overseer.” Additionally “Mr. Williams promised to compile and send me an up-to-date list of known members of the tribe” (Squires Memorandum 5/10/1949; *Towns August 2001*, Ex. 106), but the records obtained by the BIA

¹¹⁴Letter from C.H. Reynolds to Clayton Squires re: request for longer non-Indian leases of three reservation parcels (Reynolds to Squires 5/2/1947; Lynch 1998, 5:133-134).

Letter, Clayton Squires to Attorney C.H. Reynolds re requested lease of three reservation parcels, refusing (Squires to Reynolds 5/6/1947; Lynch 1998, 5:134).

No copy of the bill mentioned in the article as “introduced into the legislature earlier this session by representatives Haggard and Farnham of Groton, authorizing the sale of three cottage sites facing Long Pond to the owners of the buildings” (Stallman 5/5/1947; PEP Comments 8/2/2001, Ex. 52) was located in the petitioner’s submissions. The article indicated that: “The measure was opposed by the welfare department and the North Stonington representatives. An unfavorable report was subsequently made by the committee on state parks and reservation [*sic*], before which the hearing was held but the bill was slated for House debate, then referred back to committee at the request of a member, and has not since been heard from” (Stallman 5/5/1947; PEP Comments 8/2/2001, Ex. 52).

The only sale proposal mentioned in the documentation had been introduced several years earlier, in 1939, HB. No. 347 – the petitioner submitted a typed transcript of the hearings (PEP Comments 8/2/2001, Ex. 55).

from the State of Connecticut (CT FOIA) did not indicate that there was a follow-up to this conversation until the Squires memorandum of 1954.

The 1954 memorandum indicates that at some time between 1949 and 1954, the Office of the Commissioner of Welfare followed up the memorandum of 1949 in regard to the 1933 Superior Court decision. 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:

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).

Concerning Helen LeGault's leadership activities, the petitioner notes that, "in 1948 and 1955 she wrote letters to the Welfare Department objecting to the Sebastians' presence on the Lantern Hill reservation" (Austin, Political Authority 9/4/2001, 2; in regard to the 1948 letter exchange also, 9; in regard to the 1955 letter exchange also, 10; PEP Response to Comments 9/4/2001). These letters do not indicate that she wrote as the representative of any political subgroup, or even that she wrote on behalf of others.

1953 Proposed Connecticut Legislation. For further discussion of the contents of this undertaking, see the General Issues section. As a background for this 1953 proposal to sell the Lantern Hill reservation, the following data is relevant:

This agency [Public Welfare Council] was directed by the 1951 general assembly to study the public welfare laws of the state and to report our recommendations to the Governor by October 1, 1952. . . . According to the report of the Commissioner of Welfare for the year ended June 30, 1951, there were four Indian reservations in this state with the following number of persons living there during the year: E. Pequot (No. Stonington), 13 members of the tribe, 8 members of other tribes, not Indians 1, total 22. Value of land \$3000; value of houses \$12,850, value of funds \$3177.16; total value \$19,027.16 (Hoover to Association of American Indian Affairs 8/19/1952).¹¹⁵

¹¹⁵ "On June 10, 1952, according to the report of the Commissioner of Welfare for the year ended on that date, there were 9 persons in residence on the Eastern Pequot reservation" (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). This statement did not match with his 1952 letter, nor did the amount of funds listed.

There was a response to the proposal on the part of the Lantern Hill Reservation residents. Catherine Harris's journal stated in regard to the proposed 1953 measure: "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, Lili Sebastian, Catherine Harris, Marion Robinson, Gertie Grazer" (Harris Journal N.D., 7; EP Comments 8/2/2001, Box 1, Folder Harris). This listing included no one from the Gardner line – neither Atwood Williams nor Helen LeGault – nor from the Fagins/Randall or Fagins/Watson lines: all were either Brushell/Sebastian or Hoxie/Jackson.¹¹⁶ PEP asserts that: "There is no evidence that Rachel Crumb and Grace Powell had coordinated their presence with the Sebastians, let alone intended to show solidarity by their appearance at the hearing" (Palma, On the Sebastian Assertions 9/4/2001, 7; PEP Response to Comments 9/4/2001). This does not appear to be valid given the introductory phrasing of the journal entry.

Leadership 1955-1973. The proposed finding concluded concerning Helen LeGault as leader, that:

A limited review of BIA interview data with members of the petitioner supported the petitioner's position that LeGault was a leader of the Gardner/Edwards and Gardner/Williams family lines. However, the evidence of the membership lists and the 1973-1976 CIAC controversy indicates that her group did not include the Jacksons, who are currently listed as members of petitioner #113. The interviews describe meetings held at her house on the reservation as both social and political in nature. However, there was insufficient time under the procedures to analyze this data to determine how large the attendance was and the issues discussed or define the time span involved (PEP PF 2000, 119).

Helen LeGault and the CIAC Controversies after 1973. The petitioner's stated position is that Helen LeGault became leader of their group after Atwood Williams Jr.--i.e. after 1979. However, as can be seen above, the 1994 narrative cited to her activities in the 1960's. Most of the described actions concern her efforts to limit the residence of the Sebastians on the reservation and to have her group be the recognized tribe after the establishment of the CIAC. The written record, as noted above, does not provide evidence that she was selected by the members of the group at the time. The written record as cited by the petitioner largely concerns the CIAC and associated events (PEP PF 2000, 140).

In regard to Atwood I. Williams, Jr., the proposed finding noted that there was no record of his appearing with a leadership designation until he testified before the CIAC in 1976, and that the

¹¹⁶See also EP Comments 8/2/2001, Flowers III 235-238; Grant-Costa III, 239-242. Both cover the legislative history of this proposed bill. Flowers lists "from Aunt Kate's journal dated March 18, 1953" (EP Comments 8/2/2001, Flowers III, 235) the EP who attended the hearing in Hartford, Connecticut, to oppose the bill.

PEP 1994 narrative text had cited LeGault's activities in the 1960's (PEP PF 2000, 114-116, 119).

PEP now concludes that Atwood Williams, Jr., did not succeed his father in any significant fashion. It describes his role as largely ceremonial, and indicates that he was unable to exercise significant leadership because he lived distant from the reservation and because he had a family to care for. "Much of his [Atwood Williams, Jr.] leadership was exercised by filling the role of Chief Sachem, which had become largely honorary after the death of Chief Sachem Silver Star" (Austin, Political Authority 9/4/2001 3n3; PEP Response to Comments 9/4/2001). The PEP Response to Comments thus modifies PEP's prior views of who were leaders of the "PEP," defined as the Hoxie/Jackson and Gardner families (noting the special case of the Atwood I. Williams family, which by his marriage to a Gardner descends from both lines) before the current organization was formed.

The BIA analysis of assertions has not assumed that the two lines, Gardner (both surlines) and Hoxie/Jackson, consistently were a single unit, but has examined evidence about their distinctness, as well as evidence about distinctions within the two main branches of Marlboro Gardner descendants. Petitioner #113 presented the view that Helen LeGault led the PEP antecedent group from 1955 through 1973, in cooperation with Atwood I. Williams, Jr. (Austin, Political Authority 9/4/2001, 3-4; PEP Response to Comments 9/4/2001), stating that:

The same two political issues which focused the leadership career of Chief Sachem Silver Star were also the primary issues for Helen LeGault: 1. Fighting to maintain the Lantern Hill Reservation's resources for the exclusive use of the Paucatuck Eastern Pequot Tribe members; and, 2. Exercising the Paucatuck Eastern Pequot Tribe's right to determine its own membership (Austin, Political Authority 9/4/2001, 7; PEP Response to Comments 9/4/2001).

These are almost the same issue, except to the extent that she also sought to keep non-Indians who were not members of the Sebastian family from continuing to rent on the reservation. The PEP Comments now take the position that Helen LeGault was a leader from 1936 until 1987, shortly before she died (8/2/2001, 7; PEP Comments 8/2/2001). The earlier part of this period of leadership claimed for Helen LeGault corresponds with decline in the recorded activities of Atwood I. Williams, Sr.

PEP notes that LeGault occasionally represented her own interests or those of her family, as well as the tribe (Austin, Political Authority 9/4/2001, 10, 16; PEP Response to Comments 9/4/2001). The issue throughout is whether, in her actions throughout this period, which were largely complaints about the Sebastians, declarations that they weren't Indians, declarations that they were black or Portuguese, and (after the mid-1970's) rejecting their applications for residence on the reservation, she was acting with the knowledge of, approval of, the rest of the PEP antecedent families. LeGault is a visible figure in the interviews of PEP families. It appears, from the available evidence, that her ideas did in fact influence the next generation,

creating or reinforcing the group's common opinions. To the extent that the idea that the Sebastians are not Indian was found among all of the branches of the Gardner family line after the 1930's, this would make her a leader to the extent she acted on issues of importance to the membership as well as influencing members. It is true, however, that there isn't direct evidence for the actions cited and statements made that LeGault was acting in response to the "membership," although PEP asserts that she was (Austin II 8/2/2001, 35; PEP Comments 8/2/2001).

The specific examples cited are the 1936-1937 notation in J.R. Williams notebook, a 1948 letter inquiring about returning to the reservation in which she objects to "non-Indians" being given reservation rights (Austin, Political Authority and Leadership 9/4/2001, 9; PEP Response to Comments 9/4/2001), and correspondence between 1955 and 1958 over who would be allowed to settle on the property that had been occupied by her uncle William Gardner and his wife Grace (Jackson) Gardner Boss, who did not die until 1959, but was no longer residing on the same property (Austin, Political Authority and Leadership 9/4/2001, 10, 12; PEP Response to Comments 9/4/2001). In those, LeGault made similar objections. LeGault also testified at a state legislative hearing on the 1961 reservations act (Austin II 8/2/2001, 34; PEP Comments 8/2/2001; Austin, Political Authority and Leadership 9/4/2001, 13-16; PEP Response to Comments 9/4/2001). In it, she got 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; Austin, Political Authority and Leadership 9/4/2001, 16; PEP Response to Comments 9/4/2001). In 1965, 1966, and 1969 she complained to the state authorities about the Sebastians living on and/or trying to move on (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). These documents were all cited by PEP in its 1996 petition and reviewed for the proposed finding. None provided direct evidence of consultation with members nor of communication with members about the specific issues and complaints (see also discussion of pre-1973 gatherings at "Aunt Helen's house"). That these are believable as issues, because the resource is right there, and the conflict over whether they had something as concrete as the state relationship, given that their relatives lived on/had been living on the land, gives it greater presumption to be an issue.

In regard to PEP meetings, the proposed finding stated:

The petition contains few descriptions of social events that brought members together, other than meetings at Helen LeGault's house on the reservation which were both social and political. It provides no clear dates for these--the only ones documented took place in the 1970's and later (PEP PF 2000, 92).

The PEP Response to Comments presents a count of the number of adults in the Gardner and Hoxie/Jackson lineages in 1955 (39) and today (84), noting how small these are (Austin, Political Authority 9/4/2001, 11; PEP Response to Comments 9/4/2001). PEP argues that with such small absolute numbers, a small number participating, such as those signing Helen

LeGault's selection and Arlene Jackson's protest in 1973 (23 total signatures out of 40-50 adults) would show widespread participation (Austin, Political Authority 9/4/2001, 11; PEP Response to Comments 9/4/2001). It does represent a large percentage--a substantial number of Sebastians were also involved in the activities between 1973 and 1976 (IIIH; PEP Comments 8/2/2001).

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 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. Reservation residents were always free to meet off the reservation as well.

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).

Analysis of Comments and Responses. As noted in the proposed finding, there are no written records of the pre-1973 PEP meetings referred to in some of the interviews. The proposed finding's statement that the interviews describe meetings held at her house on the reservation that were political as well as social in nature pre-1973, is not well supported by the further review of available, reliable interview evidence. This further review of meetings at Helen LeGault's house leaves the picture unclear whether pre-1973 meetings were overtly political. They do appear, viewed from the present, as contacts with other Gardner/Edwards and Gardner/Williams individuals in which they at the least learned and discussed Helen LeGault's

views on the exclusion of the Sebastians. The interview data does not indicate that these gatherings included the Jacksons.

This activity would not have occurred in a vacuum, as some Sebastians were resident on the reservation in the 1950's and 1960's (see discussion of apparent confrontation with Al Carpenter). The EP gatherings at Catherine Carpenter's place (while and after she was resident there) would have been occurring more or less simultaneously. (See also the various complaints registered with State authorities).

After the death of Atwood I. Williams Sr. in 1955,¹¹⁷ the documentary record provides no indication that, for the period between 1955 and 1973, Helen LeGault provided leadership for any organization, or that her leadership extended beyond the Gardner family line to include any of the Hoxie/Jackson descendants who were not also Gardner descendants (see PEP PF 2000, 113-116; see also Barrel to Hanas 12/19/1956, *Towns August 2001*, Ex. 123, for a description of the Lantern Hill population as of that date).¹¹⁸ Although the petitioner's researcher at one point made the following statement: "... the Jacksons, whom she knew and do appear, in some cases, to be – being typically they look more African-American than the [*sic*] do Indian of White, even though they do have Indian ancestry, she didn't have any problem accepting them as part of the tribe" (Austin in Austin Interview with James Cunha, Jr., 9; PEP Comments 8/2/2001, Ex. 75), the assertion that Helen LeGault accepted those Jacksons who were not also Gardner descendants is not borne out by the contemporary documentary evidence, nor by recollections of Hoxie/Jackson descendants.

In regard to Helen LeGault, Alice Barbara (Spellman) Moore stated that she "never met her, don't know her" (Moore Interview 12/8/1991, 48; PEP Comments 8/2/2001, Ex. 86). Indeed, when asked, "... aside from the Indians, anybody else who lived on the reservation?" Mrs. Moore replied, "Yeah, there was a family that lived over where Aunt Grace used to live, took her house over. Helen LeGault or something. She claimed to be some Indian" (Moore Interview 12/8/1991, 48; PEP Comments 8/2/2001, Ex. 86). Cunha (born in 1962) recalled interaction between his grandfather Atwood I. Williams Jr. and the latter's Spellman aunts and uncles when he was "about 13" – *i.e.*, in the mid-1970's (Austin Interview of James Cunha, Jr., 7/21/2000, 7-8, 12-13; PEP Comments 8/2/2001, Ex. 75), but did not recall any such actual interaction between Helen LeGault and the Spellmans.

¹¹⁷The petitioner refers to the efforts of James Dumpson, beginning in 1958 and succeeding in 1960, to obtain a lease on the Lantern Hill Reservation, and argues that "Dumpson lease was ended [in 1973] in response to leadership provided by Chief Sachem Silver Star, Helen LeGault, and other tribal members, who had been fighting for years to end leases to non-tribal members and non-Indians" (Austin, Political Authority 9/4/2001, 24; PEP Response to Comments 9/4/2001). Silver Star (Atwood I. Williams, Sr.) cannot have been involved in this specific controversy, since he was deceased prior to its onset.

¹¹⁸The distinction made here between Hoxie/Jackson descendants who were also Gardner descendants and Hoxie/Jackson descendants who were not applies globally throughout this determination to the assertion made by PEP that, "[t]he Williamses ARE Jacksons" (Palma, On the Sebastian Assertions 9/4/2001, 13).

Additionally, until 1973 (see below), there is no documentation of the asserted cooperative political activity or interaction between Mrs. LeGault and the other claimed PEP leader for the period, Atwood I. Williams, Jr., although they were first cousins through their mothers, Agnes Eunice (Gardner) Williams and Emma Estelle (Gardner) Edwards. Atwood Williams, Jr. seems largely to have continued his father's Indian cultural demonstrations only (Jean Williams 1999). He signed the 1973 selection of Helen LeGault to represent the Eastern Pequot on the CIAC (Appointment of Helen LeGault to CIAC by the "Authentic Eastern Pequot Indians of North Stonington, Conn." 7/17/1973; #35 Pet. LIT 70). There is no evidence to suggest that he did not support her efforts.

1961 Connecticut Legislation. The legal status of Connecticut's Indian reservations was modified in 1961: "An Act Concerning the Management of Indian Reservations" (#113 Pet. 1996, HIST DOCS II, Doc. 64; citing PUBLIC ACTS 338-339, #304). Oversight remained with the Commissioner of Welfare. The reservations were listed specifically, future leases were prohibited, and the powers of the welfare commissioner to manage buildings, make repairs, and establish health and safety regulations were codified into legislation. The act defined eligibility for residency as follows:

SEC. 2. Reservations shall be maintained for the exclusive benefit of Indians who may reside on such lands, except that any person, other than an Indian, who resides on a reservation on July 1, 1961, may continue to reside thereon. The lawful spouse and children of an Indian may reside on a reservation with such Indian for as long as such Indian so resides. The burden of proving eligibility for residence on a reservation shall be on the claimant. A reservation may be used for recreational and social purposes by Indians, descendants of Indians and their guests at such times as the welfare commissioner may provide (#113 Pet. 1996, HIST DOCS II, Doc. 64; citing PUBLIC ACTS, (1961), #304).

While the 1961 act defined eligibility to reside on a reservation, and Section 4 provided appeal provisions for "[a]ny person aggrieved by a decision of the welfare commissioner in regard to admission to or eviction from a reservation," it did not establish any provisions for determining tribal membership other than stating that, "SECTION 1. . . . 'Indian' means a person of at least one-eighth Indian blood of the tribe for whose use any reservation was set out" (#113 Pet. 1996, HIST DOCS II, Doc. 64; citing PUBLIC ACTS, (1961), #304).

The petitioner argues that the testimony that Helen LeGault provided at a hearing on the above bill "is another example of Helen LeGault providing effective leadership for the Paucatuck Eastern Pequot Tribe" and that before its adoption it had "been revised in accordance with one of the changes suggested by Mrs. LeGault, specifically, to move the effective date of the bill forward to prevent further encroachment by Sebastian family members and other non-tribal members" (Austin, Political Authority 9/4/2001, 13; PEP Response to Comments 9/4/2001).

There was no indication in the record that Mrs. LeGault was chosen by the Eastern Pequot reservation residents, or by the persons directly antecedent to PEP, to testify at the committee hearing held March 23, 1961, as their representative. She may have testified as an individual. She stated:

. . . in Section 2 where it says that those who reside on reservations on Jan. 1, 1962 may continue to reside thereon. That gives quite a time for people who don't belong there to come as they have in the past and recently more have been coming than we've ever had before. Of course, I've been there 33 years and I've been able to watch it. . . . And there has to be someone there who is Indian to protect that part, and I have it and I'm sure there is no one else there who does (Connecticut General Assembly Hearings, Testimony of Helen LaGault [*sic*], 3/23/1961; HIST DOCS II, Doc. 65).

At other points in the dialogue, Mrs. LeGault stated that, "everyone seems to be so afraid they'll hurt the feelings of people that seem to be Indians, that are not. And I don't know why and that's the reason why I'm staying there because I don't mind hurting their feelings. I like to stand up for my own if I may" and "my uncle was there before me and my mother who was own sister to, it was her own brother, she didn't live there because she was afraid of these people and most of these people are afraid of these people. I mean, they resent me too, but I must have what it takes," (Connecticut General Assembly Hearings, Testimony of Helen LaGault [*sic*], 3/23/1961; HIST DOCS II, Doc. 65). There is no documentary evidence that her mother did not reside on Lantern Hill because of fear: throughout her married life, Mrs. Edwards resided on her husband's nearby farm (she predeceased her husband).

After some further discussion concerning non-Indian residents, people whom she described as squatters, Mrs. LeGault entered into a dispute with James Allen of Stonington in regard to the Sebastian family, stating:

Mr. Allen, you know very well that those Sebastians are not Indians, you know it just as well as you want to know it. If I've got to bring up the name I will. It's Sebastian, is that an Indian name, an American name? It's a Portuguese name. I even know where the first Sebastian came from and how he came to this country and what he married and who he married and who she was and you can't claim what kind of Indian she was because you don't know and no one else knows (Connecticut General Assembly Hearings, Testimony of Helen LaGault [*sic*], 3/23/1961; HIST DOCS II, Doc. 65).

LeGault subsequently exchanged letters with the Office of the Commissioner of Welfare in regard to residence on Lantern Hill by both members of the Edwards family and members of the Sebastian family (Austin, Political Authority 9/4/2001, 16-17, 21-22; PEP Response to Comments 9/4/2001).

The next sequence of documents discussed by the petitioner revolved around Paul Spellman (Austin, Political Authority 9/4/2001, 17-19); there was no indication of cooperation between Spellman and LeGault in the mid- to late 1960's. Indeed, a meeting on the reservation held August 21, 1968, between a representative of the Department of Welfare and residents included Arlene (Jackson) Brown and Paul Spellman, but did not include Helen LeGault (Austin, Political Authority 9/4/2001, 20; PEP Response to Comments 9/4/2001).

The evidence is sufficient to show that, although he became significantly less active after the mid-1930's, Atwood I. Williams did continue to be recognized as the head of the historical Eastern Pequot tribe by the State of Connecticut through 1954, although at times the significance of this office was downplayed. He also, during this period, intervened on behalf of members of the Hoxie/Jackson and Gardner lineages (to both of which he was related) from 1941 until 1955, there was political leadership on behalf of the families which are direct antecedents of petitioner #113 membership.

However, contrary to PEP's assertions, the contemporary documentation does not support a conclusion that Helen LeGault's political influence and leadership from 1955 through 1972 extended to both the Gardner and Hoxie/Jackson lineages, or that the Hoxie/Jackson lineage was clearly affiliated with the Gardners rather than with the Sebastians.

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," based upon his assertion that in 1968 the Pequot Indians had chosen him as their leader, and representatives of both the Eastern Pequot (Helen LeGault) and Western Pequot (*Norwich Bulletin* 6/19/1970; PEP Response to Comments 9/4/2001, Ex. 35).¹¹⁹ One PEP analysis of the incident notes support of Hamilton by Paul Spellman and Arlene (Jackson) Brown in 1973 (Austin, Political Authority 9/4/2001, 23), but omits the information that it was Helen LeGault who had allowed him to reside in her home on the Lantern Hill reservation in 1970 (Connecticut Welfare Department 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 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

¹¹⁹PEP 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). There was no specific evidence for this characterization.

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.

1973-Present. Without reaching a conclusion on the nature of petitioner #113's political processes since 1973, the proposed finding stated:

Much of the PEP petition's discussion of and documentation about events between the 1970's and the present describes events but does not show how the individuals acting in the name of the group got their position and whether they were responding to the membership. It is to a significant degree, a recording of events external to the group, rather than the internal events which would show political influence and processes. Because the leaders are dealing with outside authorities on matters which may be of consequence to the membership (see definition of political influence in 83.1) it would not take extensive evidence to show that the named leaders are acting with the knowledge and approval of members (PEP PF 2000, 141).

The PEP petition offers the general position that "the dispute with the Sebastians served to enhance social and political cohesion among the Wheeler/Williams, Edwards/Wheeler and Jackson/Spellman kin clusters" (Grabowski 1996, 202). It also states that this "demonstrates the depth of their commitment to preserving the tribal land base exclusively for bona fide Paucatuck Eastern Pequot tribal members" (Grabowski 1996, 208). There was not sufficient data and description to demonstrate how the dispute had affected the internal structure of the group or how widespread the opposition to the Sebastians was among the membership (PEP PF 2000, 141).

The petitioner presented an analysis, Steven L. Austin, Political Authority and Leadership in the Paucatuck Eastern Pequot Indian Tribal Nation 1955 to the Present (Austin, Political Authority 9/4/2001; PEP Response to Comments 9/4/2001). The petitioner states its hypothesis in regard to political influence or authority for the 1970's as follows:

One of Mrs. LeGault's contributions as a tribal leader was that, in the early 1970s, she helped the Tribe make the transition from the traditional style of leadership provided by Chief Sachem Silver Star to a non-traditional model of formally elected leaders and council members . . . In response to the changing needs of the Tribe in its relationship to the State, and with the full support of the tribal membership, Mrs. LeGault changed this [informal leadership] when she helped the Tribe establish a new formal relationship with the State of Connecticut through the Connecticut Indian Affairs Council, as was required by changes in

State law (Austin, Political Authority 9/4/2001, 2; PEP Response to Comments 9/42001).

Creation of the CIAC. 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]).¹²⁰ Hearings were held on March 26, 1973 (*Towns August 2001*, Ex. 138).¹²¹ 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 take over administration of Indian Affairs from the Welfare Department (Public Act No. 73-660; *Towns August 2001*, Ex. 139). It became law October 1, 1973 (Bee 1990, 197):

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).

CIAC Representation. A letter appointing/electing Helen LeGault to the CIAC, dated July 17, 1973, was signed only by her close relatives (Authentic Eastern Pequot Indians of North Stonington, Conn. to CIAC, #35 Pet. LIT 70).¹²² Petitioner argues that: "Seven of the twelve signatories were descendants of Rachel Hoxie, through Phebe Jackson, four were descendants of Eunice Wheeler and Marlboro Gardner, and one was non-Indian spouse of a tribal member"

¹²⁰See Driscoll to Meheran, Annual Indian Report 8/7/1973, for a listing of the Lantern Hill residents at the time of these developments (*Towns August 2001*, Ex. 137).

¹²¹Those speakers who identified themselves as being Connecticut Indians were Rolling Cloud (John Hamilton), Wounded Wolf (Rowland Charles Bishop), Necia (Shanks) Hopkins, Bryan Myles, Irving Harris, Claudette Bradley, Fred Tinney (who said that he was chief of the Pequots), Antoinette Norman, Catherine Velky, and Walking Turtle (Chink Sands). Aside from Tinney, there were, among these, two Mohegan, four Schaghticoke, and three other persons

¹²²Signers: 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).

(Austin, Political Authority 9/4/2001, 24; PEP Response to Comments 9/4/2001). This statement, while technically accurate, is a misleading presentation of the alignment. All of the signers other than the non-Indian spouse of Byron A. Edwards were descendants of Marlboro and Eunice (Wheeler) Gardner – *i.e.*, the only Hoxie/Jackson descendants who signed it were children and one grandson of Atwood I. Williams, Sr., and thus also Gardner descendants.

The ensuing protest, dated September 26, 1973 (Brown to Wood 9/26/1973), was initiated by Arlene (Jackson) Brown,¹²³ signed primarily by Hoxie/Jackson descendants, none of whom were also Gardner descendants,¹²⁴ and presented to the CIAC by Alton E. Smith, a Sebastian descendant who lived in the state capital. Charles J. Lewis, Jr., who gave permission for his signature to be affixed, was also a Sebastian. Petitioner #113 describes the Hoxie/Jackson signers of this document as a “faction” of PEP (Austin, Political Authority 9/4/2001, 12n8, 23, 25; PEP Response to Comments 9/4/2001).

The most important content of Brown’s letter was the two-page “footnote,” which identified the persons who had signed the endorsement of Helen LeGault as follows:

Foot Note: - I have before me a copy of the paper that Mrs Le Galt had signed at her meeting. The following people signed.

1. Ruth Geer, she is a non resident and non Indian living in the Mannville section.
2. Mildred Holder and son John - living in Mystic.
3. Baron Edwards - her brother living in California.
4. Under baron Edwards is and Edwards - first name not plain, but can make out L. Edwards, . . . does not live here and don’t know who he is.
5. Atwood Williams Jr. non resident. Never heard of him.
6. Frances Young. non resident, never heard of her.
7. Jams L. Williams Sr.

(over)

- never heard of him, also non resident
8. Agnes E. Cunha - non resident and non Indian

¹²³The 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).

¹²⁴“We the undersigned Pequot Indians, do protest and challenge the Appointment of Mrs. Helen Le Galt and her sister Bertha Brown as representatives to the Indian Affairs Council.” Signers: Alton E. Smith, Cheryl 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 Silva, 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 Mashar tucket Pequots, relatives of the Jacksons through descent from Rachel (Hoxie) Jackson’s brother, John Noyes Hoxie, who married a Western Pequot. They were also relatives of the Gardners through a prior marriage of Eunice (Wheeler) Gardner.

9. Richard E. Williams - non resident and non-Indian
 - 10 Helen Le Galt, here on squatters rights from Rhode Island and born in North Stonington Ct
 - 11 Mrs. Le Galt is an habitual trouble maker and should be removed from reservation. She is the main cause of my sickness (Mrs. Brown) Just for the record Mrs. Le Galt is non Indian according to confidential information that I have received. First she claims she is white and next she is Narragansett Indians, she plays both sides of the [illegible]. Whichever side will give the most, that's what she is. I have since found out that the welfare dept has let John Holder in here He was born in westerly R.I. and does not belong here, has never lived here."
- "We the undersigned gave Mr. Brown permission to sign our names - signed
1. Harold C. Jackson
 2. Marion F Jackson
 3. Charles J. Lewis Jr. (Eastern Pequot Indians of Connecticut to Commissioner of Environmental Protection 10/14/1973). [spelling and capitalization sic]

A subsequent letter dated 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; #35 Pet. LIT 70; PEP Response to Comments 9/4/2001, Ex. 64).

Petitioner #113 asserts that the documentation associated with the Authentic Eastern Pequot appointment of Helen LeGault, "precludes the possibility that the Paucatuck Eastern Pequot Tribe is a splinter group of the Sebastian family's organization which, by their 'leader's' own testimony, was not begun until 1975" and argues that, "[t]he Sebastians' claim to be the successors in interest to the historical Eastern Pequot Tribe are spurious and should be rejected by the AS - IA" (Austin, Political Authority 9/4/2001, 24; PEP Response to Comments 9/4/2001). The proposed finding did not conclude that petitioner #113 (PEP) was a splinter group of petitioner #35 (EP), but rather that both petitioners evolved out of the historical Eastern Pequot tribe as it had existed through 1973 (see PEP PF 2000, 62).

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.
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).

PEP states that:

The Sebastians’ assertion that Alton Smith was acting as a tribal leader for Paul Spellman, Barbara Spellman Moore, and Arlene Jackson Brown is preposterous. It is well-known from correspondence in the Welfare Department files and the interview of Barbara Spellman Moore by Kevin Meisner, that all three of these individuals did not think the Sebastians were Paucatuck Pequot Indians (Austin, Political Authority 9/4/2001, 25; PEP Response to Comments 9/4/2001).

This argumentation is beside the point, insofar as evidence discussed elsewhere in this finding, submitted by petitioner #113, indicates that Moore and Brown, at least, asserted that they did not think that Helen LeGault was a Paucatuck Eastern Pequot Indian, either.

PEP notes that:

At the June 3, 1975, meeting of the CIAC, Helen LeGault presented a request from the Eastern Pequot Tribe (Paucatuck Eastern Pequot tribe) for approval of the CIAC to use money from the Eastern Pequot fund to provide emergency funding for housing assistance to one of their tribal members, Rachel Jackson Crumb. Approval of the CIAC was granted for the use of money in the Eastern Pequot fund to purchase a mobile home and to make improvements to the water

and sewerage system for her home (Austin, Political Authority 9/4/2001, 26; PEP Response to Comments 9/4/2001; citing CIAC Minutes 6/3/1975; PEP Response to Comments 9/4/2001, Ex. 41).

PEP asserts that “the Sebastian family’s interference with the CIAC almost resulted in the failure of the CIAC to release the badly needed money” (Austin, Political Authority 9/4/2001, 26; see also Palma, On the Sebastian Assertions 9/4/2001, 11; PEP Response to Comments 9/4/2001).

Petitioner argues that: “With the demise of Hamilton’s organization, members of the Hoxie/Jackson family reconciled with Mrs. LeGault and resumed their interactions with the other members of the Paucatuck Eastern Pequot Tribe” (Palma, On the Sebastian Assertions 9/4/2001, 6; see also reiteration, Palma, On the Sebastian Assertions 9/4/2001, 17; PEP Response to Comments 9/4/2001) and, “This is an instance of Helen LeGault acting as a leader on behalf of the rest of the Tribe, for someone who was not an immediate family member (LeGault was a Gardner; Rachel Jackson Crumb a descendant of Rachel Hoxie)” (Austin, Political Authority 9/4/2001, 26; PEP Response to Comments 9/4/2001). Austin continues with an argument that this was “excellent evidence of factionalism within the Paucatuck Eastern Pequot Tribe,” since Rachel Crumb had opposed Helen LeGault’s appointment in 1973 (Austin, Political Authority 9/4/2001, 26; PEP Response to Comments 9/4/2001). As will be seen below, there is no documentary evidence of such a “reconciliation” and no documentary evidence of an effort by PEP to obtain the participation of Hoxie/Jackson descendants who were not also Gardner descendants until late 1989.

At approximately the same date of August 1975, the CIAC requested that each of the state recognized tribes prepare and submit a list of members (#35 Pet. 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 DEEP/CIAC).

Petitioner #113 argues that from 1975 through 1983, “Helen LeGault provided leadership for the Tribe, in concert with the Paucatuck Eastern Pequot Tribe’s duly elected Tribal Chairpersons, including Linda Strange, Richard Williams, and Raymond Geer, by fighting to keep the descendants of Tamar Brushell Sebastian off the Paucatuck Eastern Pequot membership list” (Austin, Political Authority 9/4/2001, 26; PEP Response to Comments 9/4/2001).

In late 1975, Arlene (Jackson) Brown and her supporters were seeking an appointment with the Governor on the matter, with the assistance of the Mohegan factional leader John Hamilton

(Richard R. Brown et al. to Hamilton, Grand Sachem Rolling Cloud 12/8/1975).¹²⁵ A few months later, she strongly protested the impact of the CIAC measure to Governor Ella Grasso:

The situation is very tense and getting worst [*sic*] everyday, and the D.E.P. and the dept of welfare has given non-Indians permission to reside and build homes here. Our Indian coordinator, namely Brenden Keleher, refuses to cooperate with us in this respect. I am a Pequot Indian, born on this Reservation 67 years ago. I understand that all of my family as well as myself and the Spellmans, also Pequot Indians, their names have all been removed from the tribal rolls in Hartford and the word Negro substituted in place of Pequot Indian. I do know that they were on the rolls, when Mr. George Payne was our overseer, under the Dept of Welfare. I did not know that it was legal to change any birth records in Hartford or any other place. The state has in the last year or more, admitted five or six Portuguese families [*sic*] on the Reservation and have them on the book or rolls as Pequot Indians. When Mr George Payne was our overseer, he would not give them permission to reside here because he knew they were non-Indians . . .
[Signed] Mrs. Arlene Jackson Brown, Mr. Harold C. Jackson, Mr. Ernest M. Jackson, Earbara Spellman Moore, Lucy Spellman Bowers, Paul L. Spellman, Rachel Spellman Silver, Philip Silver to Ella Grasso 4/14/1976; #35 Pet. B-02B SECOND, Sources cited; #113 Pet. 1996, HIST DOCS I, Doc. 21).

At this point, Arlene (Jackson) Brown and her supporters were asserting that only the descendants of Rachel Hoxie were actually Eastern Pequot, denying both Tamar Brushell and Marlboro Gardner as qualifying ancestors.¹²⁶

Of the Eastern Pequots living on Hereditary Mohegan lands in Lantern Hill, North Stoughton [*sic*], only those who have proved descent from the Hoxie Family through the female line and who can thereby trace their ancestry to Esther Meezen (sister to the Great Sum Squaw Chief, Hanna Meezen of the Groton-Ledyard Pequots) who were great granddaughters of Sassacus, are placed upon

¹²⁵Letter re: appointment with Gov. Ella Grasso. Signers: Richard R. Brown, Lucy Spellman Bowers, Paul L. Spellman, Barbara Spellman Moore, Rachel Spellman Silver, Olive F. Brown (Richard R. Brown et al. to Hamilton, Grand Sachem Rolling Cloud 12/8/1975).

Hamilton had resided temporarily on the Lantern Hill reservation in 1970, in the cottage ordinarily used by Helen (Edwards) LeGault (Connecticut Welfare Department. Report concerning John E. Hamilton's residence on the Eastern Pequot reservation in cottage of Helen LeGault 6/3/1970).

¹²⁶John E. Hamilton (Chief Rolling Cloud), Grand Sachem for Life, challenges the jurisdiction of the CIAC and claims that no agency in Connecticut other than his council was qualified to state who is and who is not an American Indian. "This Special Qualifications Commission is comprised of the following members of the Royal Mohegan-Pequot American Indian Council: Wounded Wolf (Rowland Bishop), Chairman, Mrs. Jane (Gray) Hennessey, Secretary; Mrs. Arlene (Jackson) Brown; Mrs. Jane Keeler, and Sagamore Chief Onoco (Albert Baker)."

the Grand Sachem's Tribal Roll Book. Only three resident members of the Eastern Pequots can do this: Mrs. Arlene (Jackson) Brown: Her sister Rachel Crouch [*sic*]: and their cousin Paul Spellman. Their grandmother was a Hoxie and a descendant of Sassacus.

All other groups claiming Eastern Pequot blood are not on the Grand Sachem's Tribal Roll and are therefor [*sic*] impostors. One group claims their right through descent from a cape Verde Non-Indian woman named "Bruschel"; the other group claims their right through a man named Marlboro Gardner, (sometimes spelled Gardenir), a non- American Indian of British West Indies origin (Confederation of the Mohegan-Pequot American Indian Nation and Affiliated Algonquir Tribes. A Petition to the Governor of the State of Connecticut 11/29/1975, 4-5; PEP Response to Comments 9/4/2001, Ex. 66).

Both of these latter assertions were demonstrably false. Arlene Jackson Brown and Paul L. Spellman both signed Hamilton's petition as "Member Royal Council." The data in the written record does not support PEP's contention that the Hoxie/Jackson descendants (other than the family of Atwood I. Williams, who were also Gardner descendants) were at this point a part of an organization led by Helen LeGault that was the political antecedent of PEP.

In the spring of 1976, EP, the antecedents of petitioner #35, submitted by-laws and a membership list to CIAC. 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 Eastern Pequots as a whole and organizing her own group. It 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). At close to the same time, he must have addressed a similar letter to Helen LeGault, for her May 15, 1976, reply stated:

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 the specific organizational efforts of the "Authentic Eastern Pequot" and its successor groups.

Developments as Reflected in the Minutes of PEP and Its Antecedent Organizations, 1976-1988.

For the final determination, petitioner #113 submitted meeting minutes kept by Helen LeGault and Ruth Geer (PEP Response to Comments 9/4/2001, Ex. 63). These indicated that the primary interest of the organization from 1976 through 1986 was CIAC representation. The first page of these (undated, but datable to 1976 by internal evidence; the petitioner dates this meeting as April 5, 1976, Austin, Political Authority 9/4/2001, 27; PEP Response to Comments 9/4/2001) began with the words: "On March 21st eleven persons gathered at Helen LeGault's home to discuss the forming of a tribe" (Eastern Pequot Indians of Connecticut, Inc., Minutes 3/21/1976; PEP Response to Comments 9/4/2001, Ex. 63). The officers elected were Linda Strange, President; Raymond Geer, Vice President; Ruth Geer, Secretary-Treasurer; and a Board of Directors consisting of Helen LeGault, John Holder, and Pat Brown.

The petitioner asserts that "both families of the Paucatuck Eastern Pequot Tribe, the descendants of Rachel Hoxie (Atwood Williams, Jr., Richard E. Williams, and John Holder) and descendants of Marlboro Gardner and Eunice Wheeler (Linda Strange, Raymond Geer, Pat Brown, and Helen LeGault) participated in the formation of the corporation" (Austin, Political Authority 9/4/2001, 27; PEP Response to Comments 9/4/2001). As noted on a prior occasion, this formulation is technically accurate, but misleading: all participants descended from Marlboro and Eunice (Wheeler) Gardner; there were no incorporators who descended solely through the Hoxie/Jackson lineage.

The minutes of the second meeting indicate that it was held on June 20th. This meeting discussed incorporation of the Eastern Pequot Indians of Connecticut and adopted by-laws. The minutes stated:

Next on the agenda was a detailed explanation of a meeting to be held on Aug. 10th with the Indian Affairs Council. At this meeting all Eastern Pequots are urged to attend and present proof of ancestry. This will eventually determine eligibility in the Eastern Pequot Indians of Conn., Inc.

The last item on the agenda was a discussion dealing with the removal of Alton Smith as the alternate on the I.A.C. The concensus [*sic*] being that he should be removed but action would be delayed until after the Aug. 10th meeting when hopefully our group would be accepted by the IAC (Eastern Pequot Indians of Connecticut, Inc., Minutes 6/20/1976; PEP Response to Comments 9/4/2001, Ex. 63).

Notes for June 20, 1976, indicated 14 persons present and five absent; of the total, six were non-Indian spouses (Notes 6/20/1976; PEP Response to Comments 9/4/2001, Ex. 63). On September

5, 1976, the group elected Helen LeGault as CIAC Representative with Atwood Williams, Jr., as alternative, with some question raised about the latter's eligibility because he was an out-of-state resident, so those present elected Raymond Geer in case it should be determined that Williams could not serve (Eastern Pequot Indians of Connecticut, Inc., Minutes 9/5/1976; PEP Response to Comments 9/4/2001, Ex. 63).¹²⁷ On October 3, a meeting accepted a motion to "accept the amended By-Laws providing 15 of our 29 members signed" and "to send amended By-Laws to the IAC and [*sic*] questions them as to proof of 'practice & usage of the tribe' statement" (Eastern Pequot of Connecticut, Inc., Minutes 10/3/1976; PEP Response to Comments 9/4/2001, Ex. 63). These minutes ended with the following statements:

Helen LeGault again reviewed the background of the "Sebastian tribe" since most of us do not know much about their ancestry.

The chief concern at this time appeared to be the loss of Helen LeGault as representative on the IAC if our group is not recognized as "the tribe" (Eastern Pequot Indians of Connecticut Inc. Minutes 10/3/1976; PEP Response to Comments 9/4/2001, Ex. 63).

At the November 14, 1976, meeting, "Helen LeGault summarized her 3 years on the IAC" and "Ray Geer questioned the right of our lawyer to appeal the decision of the Council regarding the acceptance of our group as 'the tribe' to be recognized" (Eastern Pequot Indians of Connecticut Minutes 11/14/1976; PEP Response to Comments 9/4/2001, Ex. 63).¹²⁸ The next set of minutes

¹²⁷This new evidence applicable to Atwood I. Williams, Jr., modifies the proposed finding, which stated in the Appendix:

There is no mention in the written record of any leadership activities exercised by Atwood I. Williams Jr., prior to his presentation of testimony at the 1976 CIAC hearing in regard to Eastern Pequot representation on the commission. At that time, identified as "Alton" I. Williams Jr., he stated that he never lived on the reservation and neither did his father, but he had visited his uncle, Albert Gardner, there, probably in the 1920's (CIAC Hearing 8/10/1976, [80-82]).

There was no further mention of him in the documents in the record until two obituaries at the time of his death three years later (Atwood I. Williams. *The Westerly Sun*. [Newspaper obituary, hand-dated 6/7/1979]; A.I. Williams Jr.; Chief of Eastern Pequot Indians. *Providence Journal*. [Hand-dated 6/8/1979]; #113 050 File, #113 Pet. 1994 A-6; #113 Pet. 1996 HIST DOCS I, Doc. 13; #113 Pet. 1996, GEN DOCS I). One obituary stated: "As Grand Chief Sachem, he was the leader of the Eastern Pequot Tribe, which has a reservation in North Stonington" and that he was a board member of the Rhode Island Indian Affairs Council (A.I. Williams Jr.; Chief of Eastern Pequot Indians. *Providence Journal*. [Hand-dated 6/8/1979]) (PEP PF 2000, 139).

¹²⁸The CIAC issued a decision on November 8, 1976. The essential features were that the CIAC required a 1/8 Eastern Pequot blood quantum for tribal membership, by descent from either Marlboro Gardner or Tamar Brushell. The CIAC found that both were full blood Eastern Pequot, but did not address the issue of descent from Rachel Hoxie (Jackson family). The decision was objectively inaccurate, in that Marlboro Gardner was at least 1/2 of Narragansett background by his own testimony (see PEP PF 2000, criterion 83.7(e)).

was for June 12, 1977, at which time the organization elected Helen LeGault as CIAC representative and Richard E. Williams as alternate; it also nominated officers for 1977-1978: Richard E. Williams, President; Raymond Geer, Vice President; Ruth Geer, Secretary-Treasurer, and Pat Brown, Helen LeGault, and John Holder on the Board of Directors. In accordance with the then-effective CIAC decision on membership, namely that Tamar (Brushell) Sebastian was defined as a ½ blood Eastern Pequot Indian.¹²⁹ Under this provision requiring 1/8 blood quantum, this CIAC decision disqualified Alton Smith, a descendant of Tamar, for tribal membership and a role on the CIAC. His mother, however, met the blood quantum requirement. PEP's antecedent organization took the following action:

Since Mrs. Phoebe Smith did not attend the meeting, Richard Williams moved that Mrs. Smith be sent a copy of our By-Laws and that she be requested to present her genealogical record & that she would meet regulations of membership. Motion was passed (Eastern Pequot Indians of Connecticut, Inc. Minutes 6/12/1977; PEP Response to Comments 9/4/2001, Ex. 63).¹³⁰

The minutes for July 17, 1977, noted that the CIAC requested the presentation of a membership list. "Raymond Geer moved that our tribal roll consist of only those persons at least 1/8 Eastern Pequot. So voted" (Eastern Pequot Indians of Connecticut, Inc. Minutes 7/17/1977; PEP Response to Comments 9/4/2001, Ex. 63).¹³¹

A BIA staff member brought the 1880 testimony (*Report of Commissioner on Narragansett Indians 1881*, 27, 31, 67, 71, 81) to the attention of PEP researchers in 1995, after having found it while preparing the TA letter for the 1994 PEP petition. It is not known whether, in 1976 and 1977, PEP members were genuinely unaware of their own Narragansett heritage or not. For purposes of Federal acknowledgment, the blood quantum issue is not relevant.

¹²⁹In December 1976, Bertha F. (Edwards) Brown, Helen (Edwards) LeGault, and Byron A. Edwards filed a lawsuit in New London County, Connecticut, against the CIAC and the Sebastians. Apparently in response to this lawsuit, on December 7, 1976, the CIAC filed notice of a new Eastern Pequot hearing. On April 14, 1977, the CIAC issued a second decision, which continued the prior finding that Marlboro Gardner was a full-blood Eastern Pequot, but found that Tamar (Brushell) Sebastian was only one-half Eastern Pequot.

According to a later statement by PEP chairman Raymond Geer, only three members of the Sebastian family were eligible to vote in tribal elections under this ruling (*Salvage of Pequot Elections Dubious. The Sun*, Westerly, Rhode Island, 2/14/1984; PEP #113 Pet. 1994 A-6). The CIAC's determination that Marlboro Gardner was a full-blood Eastern Pequot has not been substantiated by the documents generated in his lifetime.

¹³⁰This transaction was referenced subsequently as item 6, appended at the end of notes for the PEP meeting of December 10, 1982 (Notes 12/10/82; PEP Response to Comments 9/4/2001, Ex. 63).

¹³¹Helen LeGault submitted the membership list on August 2, 1977 (Austin, Political Authority 9/4/2001, 27; PEP Response to Comments 9/4/2001). Subsequently, PEP, apparently in response to documentation showing that Marlboro Gardner was not a full-blood Eastern Pequot, and that therefore many of the PEP members as of 1977 would not have met the 1/8 Eastern Pequot blood quantum requirement, placed in the currently effective (1993) governing document a provision that all those on the 1981 PEP membership list, and their descendants, shall continue to be eligible for membership (see discussion below under criterion 83.7(e)).

The next minutes in this sequence were for July 16, 1978:

Under old business Helen LeGault reported in depth as to the actions of the IAC. One high light of her report was that the injunction placed by the Sebastian group has been lifted. In essence, we may now proceed as "the tribe" and are the only recognized group of Eastern Pequots recognized by federal, state and IAC. We just now formulate rules and regulations for the tribe . . . (Eastern Pequot Indians of Connecticut, Inc. Minutes 7/16/1978; PEP Response to Comments 9/4/2001, Ex. 63).

On September 3, 1978, with 13 members present according to the minutes (Austin, Political Authority 9/4/2001, 28, indicates that 25 members were present; citing a September 18, 1978, letter, LeGault, Brown, and Edwards to CIAC in regard to permission to JoAnn Rogers to reside on the Eastern Pequot reservation; PEP Response to Comments 9/4/2001, Ex. #26), the following amendment to the By-Laws was adopted unanimously in the matter of "those not eligible without 1/3 Pequot blood":

Any tribal member of the E.P.I. of Conn. Inc. may submit the name of a direct descendant of any E.P.I. for adoption. Such adoption shall be subject to the Adoption Amendment.

Membership in the E.P.I. of Conn. Inc., shall be made by application or by adoption.

Adoption Amendment:

1. Adoptee be a direct descendant of an E.P.I and of at least 1/8 Indian blood.
2. Adoptee shall present proof of E.P. blood.
3. All applications for adoption be presented to the Bd. Of Directors for investigation, and if approved, submitted to the tribe for final approval.
4. All adopted members shall have the privileges and rights of all tribal members (Eastern Pequot Indians of Connecticut, Inc., Minutes 9/3/1978; PEP Response to Comments 9/4/2001, Ex. 63).

Subsequent minutes of April 22, 1979, indicated that the above minutes should have included the adoption of JoAnn Rogers into the tribe and "several members recalled a motion and its passing unanimously to adopt JoAnn" (Eastern Pequot Indians of Connecticut, Inc. Minutes 4/22/1979; PEP Response to Comments 9/4/2001, Ex. 63). There was no mention of this procedure in the notes for September 3, 1978 (PEP Notes 9/3/1978; PEP Response to Comments 9/4/2001, Ex. 63). CIAC minutes for December 5, 1978, indicate that the organization was also undertaking to remove Sebastian descendants from the reservation (Austin, Political Authority 9/4/2001, 28; citing CIAC Minutes 12/5/1978; PEP Response to Comments 9/4/2001, Ex. 45).

At the April 1, 1979, meeting, John Holder was removed from the Board of Directors for non-attendance, with Ralph Kilpatrick (a non-Indian spouse) named as his replacement as an alternate to Pat Brown. The same meeting “appointed Atwood I. Williams as chief - he is to be known as Grand Chief Sachem Leaping Deer” (Eastern Pequot Indians of Connecticut, Inc. Minutes 4/1/1979; PEP Response to Comments 9/4/2001, Ex. 63).

Petitioner indicates that:

In May 1979, Helen Edwards LeGault (who was then 71 years old) and Pat Edwards Brown discussed by phone the possibility of the Williams family (Agnes Williams Cunha and family, Richard Williams and family, and Francis [*sic*] Williams Young and family) moving onto the Lantern Reservation [*sic*] and taking up the lots that had been assigned to Pat Edwards Brown and Byron Edwards. Pat Brown wrote to her sister, Helen, on May 10, 1979, granting her permission to have the Williamses moving onto the Reservation lots in order “to help the tribe people” by preparing them to take Helen’s place in leadership after so many years (see letter, Pat Brown to Helen LeGault, May 10, 1979; Response Exhibit #45) (Austin, Political Authority 9/4/2001, 29; PEP Response to Comments 9/4/2001).

Petitioner asserts that:

Helen LeGault was concerned about preparing the next generation of leaders for the Paucatuck Eastern Pequot Tribe, and wanted to place them strategically on the Reservation as part of the Tribe’s effort to keep the Sebastians from moving onto the Reservation. Given her affection for the Reservation, the decision of Pat Brown to let another tribal member (especially someone not from her own immediate family) use her lot would have been a personal sacrifice. But she was willing to do it for the good of the Tribe (Austin, Political Authority 9/4/2001, 29; PEP Response to Comments 9/4/2001).

The CIAC subsequently granted the Williams family permission to reside (late May or early June 1979).¹³²

On June 17, 1979, because of the death of Atwood I. Williams Jr. on June 6, 1979, the group named Atwood I. Williams III known as Hock-i-Nock-i as Grand Chief Sachem (Eastern Pequot

¹³²Other examples, not cited in this PEP report, may be considered to be rejection of Sebastian requests to live on the reservation (Mary Sebastian interview) although LeGault and the PEP council were acting under color of state authority from 1973-1983. Authority was transferred from the State in 1989. Thereafter, each of the current petitioners’ organizations separately reviewed the applications of its members. The balance of the examples concerned the formation of the first organization that included the Gardners, and subsequent actions by LeGault as leader of that organization or as representative to the CIAC.

Indians of Connecticut, Inc. Minutes 6/17/1979; PEP Response to Comments 9/4/2001, Ex. 63). From 1979 onward, the minutes contained periodic discussions of the trading post and other business concerns.¹³³

On August 19, 1979, after discussion of incorporation, the organization adopted a motion "that the tribe be governed by the present By-Laws until new tribal rules are written . . . As soon as the incorporation papers are accepted we will be identified as the Paucatuck Eastern Pequot Indians of Conn."¹³⁴ (Eastern Pequot Indians of Connecticut, Inc. Minutes 8/19/1979; PEP Response to Comments 9/4/2001, Ex. 63). This meeting also added four members to the tribal council, after which it consisted of Agnes Cunha, Atwood I. Williams III, Helen LeGault, James Williams, Pat Brown, Richard Williams, and Ruth Geer; it elected Helen E. LeGault as CIAC representative, with Richard Williams as alternate (see correction in Eastern Pequot Indians of Connecticut Inc. Minutes 9/16/1979; PEP Response to Comments 9/4/2001, Ex. 63). In October of 1979, the PEP council requested CIAC approval for the release of \$3,000 for the repair of wells on the Lantern Hill Reservation; the approval was granted (Aganstata to Pac 10/2/1979; PEP Response to Comments 9/4/2001, Ex. 48).

The petitioner discusses extensively the November 30, 1979, ruling of the Superior Court of New London County in regard to the appeal of the April 18, 1977, CIAC decision in regard to Tamar (Brushell) Sebastian's blood quantum as one-half Eastern Pequot (Austin, Political Authority 9/4/2001, 31-32; PEP Response to Comments 9/4/2001). The entire discussion by PEP focuses on the inability of Roy Sebastian and other initiators of the lawsuit (*Sebastian v. Indian Affairs Council of the Department of Environmental Affairs*, No. 28949, 5; PEP Response to Comments 9/4/2001, Ex. 60) to convince the court that Tamar Brushell was a full-blood Eastern Pequot, and the consequences for membership eligibility under CIAC rules. PEP does not address in this connection, in any way, the circumstance that the CIAC determination that Marlboro Gardner was an Eastern Pequot full-blood was according to his own testimony,¹³⁵ in

¹³³A bait and tackle shop, and a proposal for a baked good shop were included. The occasional references in the notes to a "craft shop" appeared to pertain to the trading post. Consideration of grant proposals began in 1979. By the early 1980's there were other economic proposals such as, using Richard Hayward of Mashantucket as a consultant, the development of a Housing Authority proposal.

¹³⁴Petitioner did not start using this name until formally until 1982 (see below), but a set of meeting notes in Helen LeGault's ledger, dated May 29, 1980, was headed "Paucatuck Eastern Pequot Council Meeting" (LeGault Ledger 5/29/1980; PEP Response to Comments 9/4/2001, Ex. 63). The minutes and notes contained no information in regard to the choice of the name, and did not record that there was discussion of the change.

¹³⁵Marlboro Gardner attended the Narragansett detribalization meetings and took an active part in the proceedings, objecting to the inclusion on the membership list of Daniel Primos, 71" (Objection by Malbro Gardner)" (*Report of Commissioner on Narragansett Indians* 1881, 27) and subsequently withdrawing the objection (*Report of Commissioner on Narragansett Indians* 1881, 67). He was, in turn, objected to: "Malbro Gardner, age 42; lives at Stonington. never lived on the reservation. (Objection.)" (*Report of Commissioner on Narragansett Indians* 1881, 31). When he testified on his own behalf, he stated:

error, and that consequently, as of 1979, PEP's members should have been equally affected by the blood-quantum issue under existing Connecticut law.

PEP was aware of this issue. Indeed, elsewhere it cites the 1938 letter of Allen B. Cook that referred to, "Marlboro Gardner and Eunice (Wheeler) (George) Gardner who were both Indians, probably full bloods. Marlboro Gardner was at least part Pequot and possibly Narragansett. Eunice Gardner was Narragansett. As we were interested only in the Pequot, I did not follow it further" (Cook to Peale 6/29/1938; PEP Comments 8/2/2001, Ex. 39). Indeed, PEP cites this letter in its argumentation, as follows:

In their comments on the Proposed Finding, the Attorney General of the State of Connecticut and the Towns (North Stonington, Ledyard, and Preston) deny that Marlboro Gardner was an Eastern Pequot Indian. They are ignoring information in the State's own historical files regarding the ancestry of Marlboro Gardner. This letter by Mr. Cook clearly establishes his understanding, based upon genealogical research that he himself conducted in his capacity as a State employee, that Marlboro Gardner was an Eastern Pequot Indian (Austin, Political Authority 9/4/2001, 41; PEP Response to Comments 9/4/2001).

PEP, however, neglects to mention that this letter also contained data directly in conflict with the 1976 and 1977 CIAC findings that Marlboro Gardner was a full-blood Eastern Pequot.¹³⁶

Malbro Gardner, sworn.

Q. (By Mr. Carmichael.) Mr. Gardner, have you ever voted at the tribe meetings?

A. I never have. I have been principally a seafaring man, and haven't been here except occasionally.

Q. How long since you lived here in Charlestown?

A. I never lived here to make it my home.

Q. How old are you?

A. 42.

Q. Did your father ever live here?

A. Yes, sir.

Q. A member of the tribe?

A. Yes Sir; Harry Gardner.

Q. He voted here?

A. Yes, sir. My grandfather was Stephen Gardner.

(Still objected to by Mr. Cone.) (*Report of Commissioner on Narragansett Indians* 1881, 71).

He also stated: "I don't think I ever lived on the reservation, never voted anywhere. Father died when I was at sea. I have been here occasionally. Never voted in the tribe" (*Report of Commissioner on Narragansett Indians* 1881, 81).

¹³⁶There are other instances of omissions in the PEP Comments and Response. For example, PEP quotes that the 1979 decision found that "The CIAC did not act arbitrarily, capriciously or unreasonably in finding that the membership rules of the Eastern Pequot Indians of Connecticut, Inc. 'did not constitute sufficient evidence of authentic tribal custom and usage Rules of corporate membership can hardly be designated as an authentic tribal custom or usage'" (Austin, Political Authority 9/4/2001, 32; PEP Response to Comments 9/4/2001). PEP does

Neither does PEP's exposition of the 1979 decision explain clearly that the 1979 decision was based on the blood quantum issue (Austin, Political Authority 9/4/2001, 31-32; PEP Response to Comments 9/4/2001), and did not adopt PEP's hypothesis that Tamar Brushell did not have Eastern Pequot ancestry.¹³⁷

In March 1980, Helen LeGault contacted the North Stonington Democratic Committee "to lobby for assurances from State Legislator Patricia Handel that proposed changes in the placement of the CIAC in the State government would not 'result in non-tribal members being housed on their land'" (Austin, Political Authority 9/4/2001, 32; PEP Response to Comments 9/4/2001; citing Kluepfel to Handel 3/22/1980; PEP Comments 8/2/2001, Ex. 39). Petitioner cites this as "another occasion on which Helen LeGault was actively leading the Tribe by forming alliances with non-Indian politicians to prevent more non-tribal members (the Sebastians and others) from moving onto the Lantern Hill Reservation" (Austin, Political Authority 9/4/2001, 32; PEP Response to Comments 9/4/2001).

There were notes from a May 29, 1980, Paucatuck Eastern Pequot Council meeting in Helen LeGault's ledger. They mentioned a meeting schedule (council monthly and tribal meetings

not point out that "Eastern Pequot Indians of Connecticut, Inc." was the organization antecedent to petitioner #113, not the organization antecedent to petitioner #35.

A similar act of omission occurred in PEP's submission of the Civil War pension record of John Noyes Hoxie, brother of PEP's ancestress Rachel (Hoxie) Jackson (Noyes J. Hoxie, Ledyard, Co. K 29th (Colored) Regt. Inf. Military record submitted; pension record submitted (Record of Service 1889; #113 Pet. GEN DOCS I; Civil War pension record; PEP Comments 8/2/2001, Ex. 5). PEP submitted and discussed some of the affidavits in this packet: Fred W. Smart, March 12, 1891, res. Old Mystic, has known him 27 years; Gad W. Apes, July 12, 1901, has known him 30 years; and Charles E. Colebut, July 12, 1901, has known him 7 years. PEP omitted from its submission, *i.e.* did not include in the copy of the pension file that it submitted, two additional affidavits by Frank Sebastian, Sr. and Frank Sebastian, Jr. (photocopies in EP Comments 8/2/2001, Box 2, Folder Joyce [sic] Noyce Hoxie Civil War Pension Info.), which showed social ties between the Sebastian and Hoxie families.

EP also presented discussion: "Likewise Pequots attested to the character of John Noyes Hoxie (also known as Noyes John Hoxie). Layman Lawrence, a Mashantucket, indicated that he served in the same unit, the 29th Company K, with Hoxie. Gad Apes, a local native with Eastern Pequot kinship ties, claimed to have known him for 30 years, and to have seen him just about once a month. Mashantucket spouse Charles Colebut knew Hoxie for seven years and lived in the same house with him for two years (1898-99). "I have had to cut his firewood," Colebut wrote, "and carry it to him as he was unable to go down stairs." Eastern Pequot Frank Sebastian, Sr. was well acquainted with Hoxie, knowing him for 20 years. Frank Sebastian, Jr. added his remarks that he knew the veteran for the last seven years. An 1897 pension increase identified Hoxie as Indian and added that he needed glasses to read" (Gaza and Grant-Costa Report III, 141; EP Comments 8/2/2001; citing John Noyes Hoxie, Certificate No. 927, 222, Company K, 29th Connecticut Volunteers, Civil War and Later pension Files, 1861-1934, Rec. of the veterans Adm., R. 15, NARA, Washington, ED).

¹³⁷PEP no longer presents the issue as a matter of blood quantum under the 1977 CIAC decision and asserts that Tamar (Brushell) Sebastian's descendants are not eligible for residence on the Lantern Hill reservation even though Connecticut has subsequently abandoned the legally determined blood quantum requirement. See, for example, its reference to Ray Geer's 1986 objection to the 1983 CIAC decision as being, "yet more evidence of the Tribe's continuous effort to maintain its membership list and prevent interference from the State on this issue" (Austin, Political Authority 9/4/2001, 38; PEP Response to Comments 9/4/2001).

semi-annually in March and August), work on by-laws, a question about adoption, and referenced conflict with Howard and Larry Sebastian and stated, "Larry & Howard will destroy house on ledge before they will sell" (LeGault Ledger 5/29/1980; PEP Response to Comments 9/4/2001, Ex. 63). The formal book contained no further minutes until August 20, 1981, at which time Ray Geer served as acting Chairman and the minutes of the September 16, 1979, meeting were voted upon. On September 6, 1981, "it was decided to maintain the Tribal Council composed of the elders of the tribe" with Ray Geer as chairperson; Ruth Geer as secretary-treasurer; and a vice-chairperson to be named (PEP Minutes 9/6/1981; PEP Response to Comments 9/4/2001, Ex. 33). There was no indication in these minutes whether the incorporation planned on 1979 had taken place; the acting chairperson appointed the following committee for constitution and by-laws: Linda Strange, Agnes Cunha, Ruth Geer, and Ray Geer.¹³⁸

In February 1982, in consultation with Richard Hayward of the Mashantucket Pequot Tribe, PEP began the process of applying for a Department of Housing and Urban Development (HUD) grant for the purpose of establishing an Indian Housing Authority and constructing 10 to 15 units of housing on Lantern Hill (Austin, Political Authority 9/4/2001, 33-34; PEP Response to Comments 9/4/2001). This initiative continued to be mentioned in PEP documents through the 1990's.

The first mention of a Hoxie/Jackson descendant in this sequence of minutes came on April 5, 1982: "Received a letter from Arlene Brown requesting residency on Reservation. Voted to send her a letter requesting proof of ancestry - form enclosed" (PEP Minutes 4/5/1982; PEP Response to Comments 9/4/2001, Ex. 63). Petitioner asserts that:

After her house burned down in the 1970s, Arlene Brown took residence at Grasso Gardens, a retirement home. She was hospitalized before she sought to re-establish residence on the reservation in 1982. Reluctantly, however, the Tribe determined that her needs would be best attended to in a nursing home. For a month and a half, while they searched for a suitable facility, Arlene Jackson Brown lived with Agnes Cunha on the reservation. With her agreement, she joined her sister Rachel Crumb at the Groton Regency, where they spent the rest of their days and were often visited by members of the Tribe (Palma, On the Sebastian Assertions 9/4/2001, 6-7; PEP Response to Comments 9/4/2001).

Palma cited no documentary (written or oral) evidence to support the above assertion. There is no evidence of it in the minutes, and it does not conform with the indication of the minutes that the only action taken by PEP was to ask her to provide proof of her ancestry, which was not a

¹³⁸From this point onward, sequentially, the BIA researcher examined data from both "Meeting Minutes Vol. I" and "Meeting Minutes Vol. II" in chronological order. The material in "Meeting Minutes Vol. II" appears to have been the secretary's notes, not written into final form. The notes have been utilized for dates when no formal minutes were submitted.

requirement of the 1976 CIAC decision in regard to persons who were “lawfully resident” on Lantern Hill as of July 1, 1973 (CIAC Special Meeting Minutes 9/15/1976). Indeed, the minutes imply that the position taken by PEP in 1976 was that the Hoxie/Jackson descendants had not been “lawfully” resident.

The notes indicated that on March 17, 1982, “5. We voted to examine the number of houses occupied ‘illegally’” (PEP Notes 3/17/82; PEP Response to Comments 9/4/2001, Ex. 63; for discussion of this initiative, see Austin, Political Authority 9/4/2001, 34-36; PEP Response to Comments 9/4/2001). On June 13, 1982, the meeting “Voted to send letters of expulsion to the following individuals and that they have 90 days from the date of the letter 7/23/82 to comply. a) Mrs. Josephine Wynn; b) Mrs. Anna Carpenter; c) Mr. Lawrence Sebastian, Mr. Howard Sebastian, Mr. Arthur Sebastian, Ms. Barbara Moore (Paul Spellman’s sister); d) Miss Lillian Sebastian; e) Wm. & Idabelle Jordan (PEP Minutes 6/13/1982; PEP Response to Comments 9/4/2001, Ex. 63). This again indicates that as of 1982, the leadership antecedent to the current petitioner did not regard itself as including the Hoxie/Jackson descendants, but rather was attempting to expel Ms. Moore, as well as the Sebastians, from the Lantern Hill reservation. Similarly, the undated genealogical notes from Helen LeGault’s journal (prepared about 1980 from internal evidence) included only descendants of Marlboro Gardner (LeGault Ledger c. 1980; PEP Response to Comments 9/4/2001, Ex. 63).

The minutes of July 18, 1982, referenced both “Eviction procedure for ‘illegal’ residents” and “Land held by persons who are non-Indians and who purchased sites in good faith” (PEP Minutes 7/18/1982; PEP Response to Comments 9/4/2001, Ex. 63). There was no further definition of the latter category. The same officers were retained in office. The minutes for September 5, 1982, recorded approval of Chairman Ray Geer’s application to reside on the reservation on the former Paul Spellman property and indicated that, “Sebastians continue to refuse to recognize the authority of the Paucatuck Eastern Pequot Indians of Conn. regarding residency” (PEP Minutes 9/5/1982; PEP Response to Comments 9/4/2001, Ex. 63). PEP evaluates the eviction initiative as follows: “This evidence demonstrates the Paucatuck Eastern Pequot Tribe was exercising its sovereignty by protecting its land base from encroachment by non-tribal members;” (Austin, Political Authority 9/4/2001, 34; PEP Response to Comments 9/4/2001).

A December 10, 1982, meeting first mentioned a “land claim issue” and stated that the Native American Rights Fund “recommend that we seek Federal Recognition” which was then passed unanimously (PEP Minutes 12/10/1982; PEP Response to Comments 9/4/2001, Ex. 63). It then noted:

- 5) Sebastian Issue: There are several questions
 - a) Who does the State recognize?

b) Was Tamer Brashel 5 [illegible] or ?¹³⁹

c) What about the Gardner line?

Don Levenson said at the CIAC meeting that the 1979 decision cannot be challenged.

[illegible], Larry Sebastian was asked if he wished to challenge Helen LeGault's seat on the CIAC. His reply was, "No, not at this time" (PEP Minutes 12/10/1982; PEP Response to Comments 9/4/2001, Ex. 63). [footnote added]

The chairman, Ray Geer, also requested Helen LeGault "to ask George Stone for an affidavit on Mary McKinney" (PEP Minutes 12/10/1982; PEP Response to Comments 9/4/2001, Ex. 63). On January 9, 1983, Helen LeGault announced that there would be a special CIAC meeting on January 22, 1983, "to review the new evidence which the Sebastians have." It was also recorded that, "Helen LeGault was able to get an affidavit from George Stone on Mary McKinney Randall. However, he was reluctant to sign it; therefore it is signed 'Anonymous'" (PEP Minutes 1/9/1983; PEP Response to Comments 9/4/2001, Ex. 63). The February and March meeting minutes did not address this issue (PEP Minutes 2/20/1983, PEP Minutes March [illegible] 1983; PEP Response to Comments 9/4/2001, Ex. 63).

At the April 1983 meeting, Helen LeGault requested to be relieved as CIAC representative; the group designated Richard Williams in her place (PEP Minutes April [illegible] 1983; PEP Response to Comments 9/4/2001, Ex. 63). On May 8, 1983, "Ray Geer reported that he and 'Skip' Hayward had conversation relative to our recent problems with the Sebastians. 'Skip' said that a Jack Campeezie (sp?), a noted anthropologist and genealogist may be of some assistance to us" (PEP Minutes 5/8/1983; PEP Response to Comments 9/4/2001, Ex. 63).¹⁴⁰ The minutes for the July 3, 1983, meeting did not address the CIAC hearing that had been scheduled for June 4 (PEP Minutes 7/3/1982; PEP Response to Comments 9/4/2001, Ex. 63).

¹³⁹In the notes, undated but corresponding in content to this date, the line reads: "2. Tamer Brashel – blood line 50 % more" (PEP Notes n.d.; PEP Response to Comments 9/4/2001, Ex. 63).

¹⁴⁰Hayward had testified before the CIAC that Tamar (Brushell) Sebastian was not Indian (8/10/1976, CIAC hearing on membership in the Eastern Pequot Tribe of Connecticut 8/10/1976; (#113 Pet. 1996, HIST DOCS II, Doc. 71). The Towns referenced this testimony of Richard Hayward, Mashantucket Pequot, saying that his grandmother Elizabeth George; her mother and grandmother, asserted that Tamer Brushell was not Eastern Pequot, but West Indian (Lynch 1998, 5:152).

By contrast, in a 1988 interview, Kenneth Brown Congdon indicated that he regarded Hayward's ancestors, the Mashantucket George family (related to the Eastern Pequot Gardners through their maternal line) as "white" (Congdon Interview 10/1988, [1]), but referred to Tamar (Brushell) Sebastian as a Pequot (Congdon Interview 10/1988 (Congdon Interview 10/1988, [6-7])).

The following set of minutes, for July 17, 1983,¹⁴¹ indicated the retention of the same officers and that: “Ted [no surname provided], one of the guests, spoke at length on the establishment of a tribe and the documents necessary. Jack Campisi spoke on Federal Recognition and Richard Dauphinais spoke on National Indian Rights Foundation” (Minutes 7/17/1983; PEP Response to Comments 9/4/2001, Ex. 63). The September meeting discussed the CIAC hearing to be held on September 28 (PEP Minutes 9/23/1983; PEP Response to Comments 9/4/2001, Ex. 63). The October 16 meeting indicated that Jack Campisi was working on the Sebastian genealogy and would pursue the Gardner genealogy at a later date, as well as referencing the land claim and other business issues (PEP Minutes 10/16/1983; PEP Response to Comments 9/4/2001, Ex. 63).

On December 19, 1983, [all members were given a copy of the Gardner genealogy *[sic]* as compiled by Linda Rodgers” and “[t]he remainder of the meeting was spent discussing a reversal of the decision by the CIAC as to the membership issue of the Pequot Tribe. Those present voted unanimously to appeal this decision as the first step to be taken” (Minutes 12/19/1983; PEP Response to Comments 9/4/2001, Ex. 63).

Most of the minutes for July 1, 1984, and August 27, 1984, dealt with the residency application of a PEP member, as did those for April 7, 1986 (PEP Minutes 7/1/1984; PEP Minutes 8/27/1984; PEP minutes 4/7/1986; PEP Response to Comments 9/4/2001, Ex. 63).

The next set of minutes, for November 25, 1984,¹⁴² indicated that, “Ray Geer then opened a discussion on the status of the tribe by stating that the December 3, 1983 decision stated only the qualification for membership is changed. At this point in time we have no seat on the CIAC because of our seat being challenged. A lengthy discussion of Tamer Brushel followed.” The notes also indicated discussion of PEP’s denial that the State had jurisdiction on the reservation (Minutes 11/25/1984; PEP Response to Comments 9/4/2001, Ex. 63).

An agenda distributed by Raymond A. Geer, with handwritten notes by Ruth Geer dated July 20, 1986, indicated that of the six items of business, three dealt with the appeal of the CIAC’s 1983 membership decision, “3. Review of the research work done by Dr. Jack Campisi for the Native American Rights Fund at my request concerning the Sebastian family’s claim to membership,”¹⁴³ and a “4. Motion/Vote from Tribal Members which will direct the Tribal Council on how they are to pursue the Sebastian’s *[sic]* claim to tribal membership” (Agenda 7/20/1986; PEP Response to Comments 9/4/2001, Ex. 63). The notes stated: “Re: #4 above: It was decided to have a committee look for more proof of the Sebastians’ lineage. This was done by 2 of the 6

¹⁴¹The various minutes are sequential, often on facing pages of the notebook, so it does not appear that the petitioner omitted to submit extant minutes for intervening meetings.

¹⁴²The corresponding notes were dated Dec. 25, 1984 (PEP Response to Comments 9/4/2001, Ex. 63).

¹⁴³Campisi, Jack. Memorandum to Richard Dauphinais re: Report on the Tribal Status of Tamar Brushel 12/1/1985.

volunteers. Proof of lineage remains dictatorial [*sic*] - conflicting - and proves nothing more than what we already had been told” (Meeting Notes 7/2/1986; PEP Response to Comments 9/4/2001, Ex 63) For discussion of the accompanying memorandum from Richard Dauphinais to Raymond Geer, dated November 5, 1984, see below under criterion 83.7(d). While indicating that the petitioner had originally contacted the Native American Rights Fund (NARF) in regard to a land claim, most of it dealt with the membership controversy in regard to the Sebastians (Dauphinais to Geer 11/5/1984; PEP Response to Comments 9/4/2001, Ex. 63).

The notes dated January 4, 1987, read in their entirety as follows:

Helen LeGault - Ray Geer - Ruth Geer
Jim Williams Agnes Cunha -
Rcy Seb - Ashbow - William - Genevieve
John Perry - Shelley Jones - Winifred
Jones - Dawn Sebastian

Introduction –
Purpose –
Merger –

Suggestion –

Official document stating that 2 groups are trying to work out problem.
(PEP Notes 1/4/1987; PEP Response to Comments 9/4/2001).

Petitioner specifically noted that Helen LeGault “participated in the 1987 meeting when Chairman Raymond Geer proposed a merger plan for the Tribe. She was a major force in objecting to that proposal” (Austin, Political Authority 9/4/2001, 25-26n10). Raymond Geer resigned as PEP president in February 1987 after failure of this merger attempt. The submissions do not contain PEP minutes between February 1987 and February 1989.¹⁴⁴ Petitioner states that, “[a]fter Raymond Geer, Jr. resigned as Tribal Chairperson, Helen LeGault encouraged Agnes Cunha to step in as chairperson; At the next tribal election, in 1988, Agnes Cunha was elected Tribal Chairperson, and has been reelected in every Tribal Chairperson contest ever since” (Austin, Political Authority 9/4/2001, 40; PEP Response to Comments 9/4/2001).

Another account states, though not citing documentation or interviews, that there was a discussion of a merger proposal in 1987 at “Ray Geer’s home. Political opposition from Paucatuck tribal elders was so strong, that Chairman Geer didn’t allow the issue to come to a vote . . . Tribal members present at this meeting included Beverly Kilpatrick, Hazel Geer

¹⁴⁴PEP Minutes from February 5, 1989, through January 5, 1996, were submitted with the 1996 Response to TA letter (#113 Pet. 1996, Supplemental Documentation); those from 1996 through the present were submitted in the PEP Comments on the proposed finding.

McVeigh, Linda Strange, Helen LeGault, Pat Brown, Ruth Geer, Agnes Cunha and James Williams, Sr. Other tribal members registered their opinion by telephone" (Examples of Misstatements in Petitioner #35's August 2001 Comments, 2; PEP Response to Comments 9/4/2001, Ex. 23) The account did not cite any specific sources, did not assign an exact date to this meeting, and probably overstates the degree of negativism towards the proposal. It is unlikely that Geer would have proceeded with a series of meetings and proposals over a sustained period of time if there were not a significant amount of political support, even if not whole hearted. Geer's account of the events indicated that the merger did have significant political support, however reluctant (BIA Interview, Raymond Geer).

CIAC Membership Hearings and Decisions; Connecticut Court Decisions and Legislation in Regard to Tribal Membership, 1976-1989. Between 1976 and 1983, the CIAC held a series of hearings that preceded its issuance of three decisions in regard to Eastern Pequot membership. 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). This is not true, as indicated by the relevant portions of the consolidated documentary finding aid on petitions #35 and #113 which the BIA prepared and furnished to the petitions and third and which listed the submissions of these hearing transcripts.¹⁴⁵

The first hearing was held on August 10, 1976. The CIAC issued a decision in September, but revised it after the filing of a lawsuit by the Sebastian group. The CIAC issued a final decision on November 8, 1976. The essential feature was that the CIAC required a 1/8 Eastern Pequot blood quantum for tribal membership, by descent from either Marlboro Gardner¹⁴⁶ or Tamar

¹⁴⁵Consolidated 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 th , 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 th , 1983. [Submitted by both petitioners and included in the CT FOIA.] |

¹⁴⁶The CIAC based the blood quantum on the hypothesis that Marlboro Gardner was a full-blood Eastern Pequot because he appeared on the 1873 Eastern Pequot petition. His father was Narragansett, and Marlboro Gardner participated in the 1880-1880 Narragansett detribalization proceedings (*Report of Commissioners on Narragansett Indians* . 881, 71).

Brushell. The CIAC found that both were full blood Eastern Pequot, but did not address the issue of descent from Rachel Hoxie (Jackson family) (CIAC Minutes 9/15/1976; CIAC Proposed Decision 9/16/1976; CIAC Minutes 10/5/1976; CIAC Minutes 10/20/1976; #113 Pet. 1996, HIST DOCS II, Doc. 71).¹⁴⁷

PEP now asserts that in the first half of the 1970's, the Jackson family was part of its antecedent group and was led by Helen LeGault. The following action recorded in the CIAC minutes does not support PEP's contention.

Discussion: No evidence was submitted by any party claiming membership in what is described in the State genealogies as the Jackson family.

Amos George moved that no evidence was submitted by the descendants of Harry Jackson and Rachel Hoxie. It is the finding of this Council that the Jackson family, so descended, failed the burden of proof and are not recognized as members of the Eastern Pequot tribe for the purposes of residing on the reservation and the selection of a representative to sit on the Indian Affairs Council.

This decision does not affect the residence of those persons who lawfully resided on the Eastern Pequot reservation on July 1, 1973. Second.

Motion carried: 5 in favor 1 abstention (Piper) (CIAC Special Meeting, 15 September 1976. Minutes).

There is no evidence in the discussion that Helen (Edwards) LeGault in any way opposed this move to exclude a family line, the Jacksons, which PEP now claims to have been, even then, politically a part of PEP.

The focus of the ensuing CIAC hearings, decisions, and lawsuits was only on the Sebastian line's eligibility.¹⁴⁸ In December 1976, Bertha F. Brown, Helen E. LeGault, and Byron A. Edwards filed a lawsuit in New London County, Connecticut, against the CIAC and the Sebastians. No members of the Hoxie/Jackson lineage (not even the descendants of Atwood I.

¹⁴⁷See also: Documents relating to CIAC Eastern Pequot hearing 6/14/1976 - 8/7/1976; CIAC List of Exhibits, Hearing of the Eastern Pequot Indians of Conn. 8/10/1976; CIAC Hearing Transcript. CIAC hearing on membership in the Eastern Pequot Tribe of Connecticut 8/10/1976 (#113 Pet. 1996, HIST DOCS II, Doc. 71).

¹⁴⁸On September 15, 1976, an attorney representing the PEP antecedents wrote to the attorney representing the EP antecedents that: "Mrs. LeGault has given me a 'Notice of membership Meeting' . . . enclosing a copy of the Appeal . . . We do not in any respect recognize any lineal descendants of Tamer Brushel Sebastian as being Eastern Pequot Indians nor do we recognize any authority or right for them or for you as their attorney to hold a tribal membership meeting to establish an official tribal rule or adopt by-laws for the Eastern Pequot Indians of Connecticut" (Wilson to Shasha 9/15/1976; PEP Comments 8/2/2001, Ex. 2).

Williams who were also Gardner descendants) were named as parties to this suit.¹⁴⁹ Apparently in response to this lawsuit,¹⁵⁰ on December 7, 1976, the CIAC filed notice of a new Eastern Pequot hearing to be held January 18, 1977. On April 14, 1977, the CIAC issued a second decision, which continued the prior finding that Marlboro Gardner was a full-blood Eastern Pequot, but found that Tamar (Brushell) Sebastian was only one-half Eastern Pequot.¹⁵¹ This decision did not address the membership qualifications of the Hoxie/Jackson lineage, which had been excluded from eligibility in a prior CIAC proceeding (see above).

PEP notes that in September 1982, CIAC again took up the issue of membership eligibility:¹⁵²

Apparently, Larry Sebastian had been scheduled for removal from the membership list maintained by the CIAC by October 23, 1982. At the regular September 1982 CIAC meeting, the CIAC requested that the Paucatuck Eastern Pequot Tribe provide Mr. Sebastian with a 60-day extension before excluding him from the membership list. The CIAC requested that the Paucatuck Eastern Pequot Tribe provide the grounds for denying the Sebastians membership in the Tribe . . . (Austin, Political Authority 9/4/2001, 34-35; PEP Response to Comments 9/4/2001).

PEP argues that these procedures show the “complete separateness of the Paucatuck Eastern Pequot Tribe and the Sebastian family” and that the Sebastians did not vote in PEP elections or sit on the PEP tribal council “contradicts the claims of the Sebastian family that the Paucatuck Eastern Pequot Tribe and the Sebastians are factions of a single tribe. Mr. Sebastian was not being selected personally, but was being evicted from the Reservation because he was not a

¹⁴⁹Bertha (Edwards) Brown was not related to Arlene (Jackson) Brown. Bertha Brown and Byron Edwards were sister and brother of Mrs. LeGault.

¹⁵⁰“Mrs. LeGeault [*sic*] filed suit in December, charging the first council decision, ruling Tamar “Bruschel” [*sic*] was an Indian, was based on insufficient evidence and was improperly made . . . Mrs. LeGeault said the ruling was illegal since it was not made by the majority of the full membership of the Council. The attorney general, in an informal opinion, agreed with Mrs. LeGeault’s last charge and recommended the council conduct another public hearing and go through its procedures a second time” (Tribe Membership Requirements Deliberations Will Begin March 1 [newspaper article hand-identified NB [*Norwich Bulletin*] 2/2/1977; #113 Pet. 1994 A-6).

¹⁵¹“Brenden Keleher, the Indian Affairs coordinator the Department of Environmental Protection, said Friday the councilors had no explanation attached to their decision on why they changed their minds about Mrs. Bruschel [*sic*]. ‘They just wanted to put it simply,’ he said. The chairman of the council, Irving Harris, could not be reach for comment Friday night” (Indian Council’s Ruling Dampens Heirs’ Claims [unidentified, undated newspaper article]; #113 Pet. 1994 A-6).

¹⁵²PEP contends that, “No Sebastians who applied membership [*sic*], formally or informally, were ever rejected” (Austin, Political Authority 9/4/2001, 34n12; PEP Response to Comments 9/4/2001). This assertion is not fully congruent with the narrative in regard to CIAC and the Larry Sebastian proceedings in 1982.

tribal member” (Austin, Political Authority 9/4/2001, 35; PEP Response to Comments 9/4/2001).¹⁵³

The third CIAC decision issued on December 3, 1983, stated that, “. . . it is not reasonable to assume that a one-eighth blood quota is a valid single criterion in the Eastern Paucatuck tribe,” and said that additional criteria should include evidence that an individual’s family was historically accepted in the Eastern Paucatuck Pequot tribe or other tribes that had a historical relationship with it. It also declared the Eastern Pequot seat on the CIAC vacant until a government could be established that included the “whole tribe” (CIAC Eastern Paucatuck Pequot Decision 12/3/1983; PEP Response to Comments 9/4/2001, Ex. 40).¹⁵⁴ News coverage at the time of the 1983 CIAC decision focused on its impact only upon the Gardner and Sebastian family lineages (with no reference to Hoxie/Jackson, Fagins/Watson, or Fagins/Randall),¹⁵⁵ as did the ensuing lawsuit against the CIAC filed by PEP¹⁵⁶ and a further CIAC procedure of December 3, 1985, and January 13, 1986, which led to the failed merger attempt of January and February 1987 (for discussion, see PEP PF 2000, 142-147).¹⁵⁷

Petitioner #113 asserts:

While viewed as unfair by the CIAC in 1983, the fact that the Sebastians had not been allowed to vote on the Paucatuck Eastern Pequot tribal constitution and by-laws was consistent with Paucatuck Eastern Pequot Tribe’s historical practices of not recognizing the Sebastians as tribal members. It was also consistent with the decisions of the CIAC for the preceding ten years. In 1989, the CIAC and the

¹⁵³ Another PEP submission was aimed at the argumentation submitted by petitioner #35 (Palma, On the Sebastian Assertions of Factionalism 9/4/2001; PEP Response to Comments 9/4/2001).

¹⁵⁴ PEP raises the issue of the broader “color” politics on the CIAC and among the various Connecticut tribes, attributing changes in 1983 as a result of the chairmanship of Stilson Sands and the opposition to PEP of Kenneth Piper (Austin, Political Authority and Leadership 9/4/2001, 36-38; PEP Response to Comments 9/4/2001) rather than court actions of the Sebastians forcing CIAC’s hand.

¹⁵⁵ Regarding the dispute as to who may live on the Lantern Hill reservation, a newspaper reported that, “The Connecticut Indian Council has ruled that the [Gardner and Sebastian] families should join forces, forming one tribe which will be known as the Eastern Paucatuck Pequot tribe. The council’s decision gives both families full tribal membership and calls for the construction of a new tribal government.” . . . “The investigation took a year and a half to complete” (McDonald, Maureen. Peace Made in Pequot Clan Feud; hand-identified and hand-dated *Norwich Bulletin* 12/16/1983; #113 Pet. 1994 A-6).

¹⁵⁶ Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council. Appeal from Indian Affairs Council. New London Judicial District. Superior Court 12/23/1983.

¹⁵⁷ On March 28, 1989, a Connecticut Appellate Court found that the CIAC did not have the jurisdiction to decide the qualifications of individuals entitled to be Indians (Connecticut, State of. Appellate Court. 18 Conn.App. 4. Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council. No. 6292. Argued Jan. 17, 1989. Decided March 28, 1989. Cite as 555 A.2d 1003 (Conn.App. 1989)).

Attorney General acknowledged that the 1983 action of the CIAC was improper, as is discussed below (Austin, Political Authority 9/4/2001, 37; PEP Response to Comments 9/4/2001).

In the matter of “improper,” PEP states subsequently:

On January 5, 1990, the Connecticut Attorney General filed a brief on behalf of the CIAC with the Superior Court for Hartford and New Britain as part of that Court’s further proceedings in the Paucatuck case.

In the brief, the Attorney General stated that the CIAC now conceded that it had acted improperly in reaching the December 3, 1983 decision to vacate the Paucatuck Eastern Pequot Tribe’s seat on the CIAC. The Attorney General urged the Superior Court to sustain the Tribe’s appeal because the CIAC did not have the factual basis for its 1983 action and had not provided the Tribe with proper notice and an opportunity to present evidence (Austin, Political Authority 9/4/2001, 42; PEP Response to Comments 9/4/2001).

Petitioner states that:

The Tribe’s prosecution of its appeal of the December 1983 CIAC decision demonstrates the Tribe’s tenacity. It pursued its legal action to determine Reservation rights and tribal membership for seven years in the face of changing tribal leadership and through appeals to several courts. This is an indication of how strongly the tribe has continuously felt about these issues for over 100 years (Austin, Political Authority 9/4/2001, 43; PEP Response to Comments 9/4/2001).

Essentially, the 1990 decision (Memorandum of Decision. DN 290617. *Paucatuck Eastern Pequot Indians of Connecticut vs. Connecticut Indian Affairs Council* 10/24/1990) declared that the 1989 legislation had rendered the whole fight moot, as PEP itself indicates: “Judge Hale concluded that the 1989 amendments to the CIAC statute rendered the Paucatuck Appeal moot because the CIAC could not grant any practical relief in the event that the appeal was sustained” (Austin, Political Authority 9/4/2001, 43; citing *Paucatuck Eastern Pequot Indians of Connecticut v. Connecticut Indian Affairs Council*, No. CV 84-02906175; PEP Comments 8/2/2001, Ex. 60). It did not have the effect of, as PEP asserts, “restoring the status quo which had existed prior to December 3, 1983” (Austin, Political Authority 9/4/2001, 43). The 1990 decision was not the end of the matter (Memorandum of Decision. DN CV 92 09522833S. *Paucatuck Eastern Pequot Indians of Connecticut v. Weicker, Lowell, Governor State of Connecticut*. Judicial district of New London at New London. Superior Court 3/1/1993).

Petitioner notes that: “Raymond Geer, Ruth Bassetti (who appeared for Helen LeGault) and Agnes Cunha from the Paucatuck Eastern Pequot Tribe” testified on March 20, 1989, before the

Environment Committee of the State Assembly at a hearing on HB. 7479, which would subsequently be implemented as Public Act 89-363, while there was “no participation in the hearing from the Sebastians” (Austin, Political Authority 9/4/2001, 41; PEP Response to Comments 9/4/2001).

While a 1989 interview with Helen LeGault focused on the Sebastian issue, she was still maintaining that only her own family, i.e. the Gardner descendants, had a right to reside on the Lantern Hill reservation: LeGault said, “My family is the only legal Indian family that can live on the reservation. We have documented proof that we are native American Indians. But now we have squatters on our reservation who claim that they are Pequots.” (Tomaszewski, Lea, Portland Powwow Airts Indians’ Woes, History. Newspaper article, hand-identified, hand-dated, *The Middletown Press* 8/26/1989; #113 Pet. 1994, A-6).

1989-Present. The proposed finding stated:

1987 to the Present. The petition does not provide a discussion of the political processes in the group as it exists today, beyond the recitation of the events in the conflicts with the Eastern Pequot and dealings with the CIAC. There is no presentation of how the council and leadership have functioned in relation to the membership, what functions they have carried out and how they may have responded to the opinions of the membership. The petitioner did submit a substantial number of minutes of meetings, but with no accompanying analysis or summary of these (PEP PF 2000, 150).

Under the February 2000 Directive, no analysis was made of this body of documents for the proposed finding, because the Directive stated that the BIA would not do extensive analyses of data submitted but not analyzed. This material, along with additional minutes, has been utilized for the final determination (see below).

There is some current tendency for political alignments within PEP to follow the division between the two Gardner sublines. This, with further data and analysis, could provide evidence to show significant political processes within the petitioning group by demonstrating that issues dealt with are of importance to the membership and that there is substantial political communication among members in connection with these. A limited analysis of BIA interview materials indicates that the petitioner may be able to establish that there is substantial political communication between the membership and the leadership. The petitioner also has documentation which might make it possible for it to evaluate the extent of membership participation in the political processes of the group (PEP PF 2000, 150).

Much of the PEP petition's discussion of and documentation about events between the 1970's and the present describes events but does not show how the

individuals acting in the name of the group got their position and whether they were responding to the membership. It is to a significant degree, a recording of events external to the group, rather than the internal events which would show political influence and processes. Because the leaders are dealing with outside authorities on matters which may be of consequence to the membership (see definition of political influence in 83.1) it would not take extensive evidence to show that the named leaders are acting with the knowledge and approval of members. PF 140 (PEP PF 2000, 141)

PEP' Comments stated:

Members of these family groups know and gossip about each other, allowing for informal social and political control. When there are tribal elections, or there is conflict within the tribe, members of these family lines sometimes form alliances with members of other family lines, forming factions that are an important part of the tribe's political life (Austin II 8/2/2001, 20; PEP Comments 8/2/2001).

The tribal council meets monthly. The monthly council meetings are open to all members. The members usually come to the meetings with some time to spare so that they can catch up on gossip from other members. While attendance at the meetings tends to be relatively small, in terms of percentage of overall adult membership, participation is high. At the three monthly council meetings attended by the anthropologist (August, September, and October 1999), about 12 members were present on average, including the council. This is approximately 14 percent of the adult membership (12 of 84 adult members). The meetings usually entail lively discussions of both social and political interest. The members who come to the meetings seem well-informed on the issues. As already discussed, annual meetings are also held, and the participation at those meetings is much higher. The annual meetings are both social and political events (Austin II 8/2/2001, 39; PEP Comments 8/2/2001)

The PEP report does not cite to specific interview or other data for these conclusions.

The State comments concerning political influence within the present-day PEP are primarily quotes of statements by PEP leaders that attendance at council meetings by members was often sparse, that council meetings in some periods were closed and that information on attendance at annual meetings was limited (*State of Connecticut August 2001*, Appendix 19-20).

Developments as Reflected in PEP Minutes, 1989-1993. In February 1989, the PEP chairperson was Agnes Cunha.

The petitioner asserts that when Pat Brown, Helen LeGault's sister, at some time between 1989 and 1993 wrote to the AS-IA requesting that "she and her relatives 'be formally recognized,

pursuant to the Indian Reorganization Act of 1934, as a community of half-bloods, and that our Reservation be taken into trust by the United States for our benefit',” she did this as a “tribal elder and leader” and that this was “an issue that was of longstanding importance to Paucatuck Eastern Pequot Tribe members, the removal of the Sebastian family from the Lantern Hill Reservation.” PEP indicates that as a former BIA employee, Ms. Brown knew about the IRA “and the possibility of organizing as a community of half-bloods under its provisions” (Austin, Political Authority 9/4/2001, 40; Brown to Brown n.d.; PEP Response to Comments 9/4/2001, Ex. 27). PEP’s argumentation fails, however, to point out that of the PEP membership at the time, only the writer of the letter and her brother (possibly also her sister if the letter was written before April 13, 1990), thus two or three individuals out of approximately 144 PEP members¹⁵⁸ were “half-blood” and that the remainder of “her relatives” did not meet the prerequisite for such an organization.

The PEP Tribal Meeting minutes of February 5, 1989, the first set in the record since February 1987, noted that members of the council¹⁵⁹ were to get lists of tribal members “or to keep lists where they are centrally [*sic*] located and easy to get at a request” and “a need for a tribal genealogy.” This meeting adopted several amendments to the membership by-laws, discussed the activities of Connecticut’s American Indian Task Force, discussed various financial

¹⁵⁸PEP stated that there were about 100 total members, including adults and children, in 1987 and are now 153 (Austin, Political Authority 9/4/2001, 39; PEP Response to Comments 9/4/2001). This does not accord with the count from the membership list submitted for the final determination.

¹⁵⁹The officers elected at this meeting were: Agnes Cunha, Chairman; Lisa Parker, Vice Chairman; James Cunha, Secretary; Ruth Geer and James Cunha, Treasurer. Ruth Bassetti, the newly accepted member, was designated as CIAC representative, with Agnes Cunha as alternate. At the July 30, 1989, meeting, James Williams was appointed Chief in place of the late Atwood Williams III; Beverly Kilpatrick was “placed on the Tribal Council. She will be a life time member” (PEP Minutes 7/30/1989; #113 Response 1996, Supplemental Documentation).

The notes for the same date indicated that when a vacancy occurred in the PEP Elders, the annual meeting would elect a replacement who would serve in such position for life (PEP Meeting Notes 7/30/1989; #113 Pet. 1996, Supplemental Documentation). This procedure was modified February 28, 1991, by a “motion to have elders earn their life time positions on tribal council” (PEP Meeting Notes 2/28/1991; #113 PET 1996, Supplemental Documentation).

From 1989 through 1991, non-Indian spouses voted in PEP meetings and, one served at least temporarily as secretary. As of 1991, all elected officers were from the Gardner/Williams Lineage (Agnes Cunha, Chairperson and CIAC Representative; Chris Cunha, Vice-Chair; Jim Cunha, Secretary and Treasurer; Jim Williams, Alternate CIAC Representative) (PEP Meeting Notes 7/21/1991; #113 Pet. 1996, Supplemental Documentation).

The specific notation that the governing document had been changed to eliminate voting by associate members “per BIA” appeared in the annual meeting minutes of July 18, 1993 (PEP Minutes 7/18/1993; #113 Pet. 1996, Supplemental documentation).

transactions, and admitted a non-Eastern Pequot individual to membership (PEP Minutes 2/5/1989; #113 Pet. 1996, Supplemental Documentation).¹⁶⁰

The move to include Hoxie/Jackson (non-Gardner) descendants in the organization appears to have been developing in late 1989 (PEP submitted no membership lists between that of 1981 and that of 1992). The meeting notes for November 1, 1989, in addition to the continuing controversy with the Sebastians over the CIAC seat and about the Brushell genealogy,¹⁶¹ referred to “Spellman will come at our request about Sebastians; Ron Jackson not related to Browns or Spellmans; Arlene Brown to verify legally” (PEP Meeting Notes 11/1/1989; #113 Pet. 1996, Supplemental Documentation). However, it was not until the August 9, 1990, meeting that the notes indicated: “Jackson & Spellman. Contack Desendents [*sic*]. See if they want to participate. Find them and get them involved” (PEP Meeting Notes 8/9/1990; #113 Pet. 1996, Supplemental Documentation).¹⁶² On December 27, 1990, the minutes listed two members of the Jackson family as potentially eligible for tribal housing (PEP Meeting Notes 12/27/1990; #113 Pet. 1996, Supplemental Documentation). On January 3, 1991, Harold Jackson was elected to a one-year term as a commissioner of the Paucatuck Eastern Pequot Housing Authority. The same meeting had a “motion to remove Ashbow from Spellmans house” (PEP Meeting Notes 1/3/1991; #113 Pet. 1996, Supplemental Documentation). On February 28, 1991, a motion was made to “have Sebastians removed from tax exempt at town hall with the new law” (PEP Meeting Notes 2/23/1991; #113 Pet. 1996, Supplemental Documentation).

The minutes for July 26, 1992, had a follow up of the issue of the Spellman house: “Ray asked about Ashbow. Discussed how he received permission through B.S. More” [*sic*] (PEP Minutes 7/26/1992; #113 Pet. 1996, Supplementary Documentation). The same meeting indicated that a “Group of people from Mashtuckets. Wanted us to merge. No merging - trouble there” (PEP Minutes 7/26/1992; #113 Pet. 1996, Supplementary Documentation).¹⁶³

¹⁶⁰The PEP minutes from 1989 through July 1993 were not in completely chronological order; some were meeting notes rather than adopted minutes; some pages were undated (#113 Pet. 1996, Supplemental Documentation).

¹⁶¹These themes continue throughout this sequence of minutes and meeting notes, as does discussion of finances (business activities, grants, pow wows, etc.) and Federal acknowledgment. For example, September 28, 1992, “Working with D.E.P. to get our seat back. D.E.P. Backing us on Reservation. Stop electricity coming into Sebastians. . . . Tamar Brushell found in library as Black servant” (PEP Minutes 9/28/1992; #113 Pet. 1996, Supplementary Documentation).

¹⁶²Helen LeGault died in May 1990 (Helen LeGault, 82. Served on Indian council [unidentified newspaper obituary]; #113 Pet. 1994, A-6). The first PEP membership list which included Hoxie/Jackson descendants who were not also Gardner descendants was dated 1992, after her death (see discussion in PEP PF 2000, criterion 83.7(e)).

¹⁶³New Officers: Agnes Cunha, Chairman; Brenda Geer, Vice Chairman; Jim Cunha, Treasurer; Jeanie Potter, Secretary; Jim Cunha, CIAC Representative; Agnes Cunha, Alternate CIAC Representative.

These meeting notes continued to be rather cryptic. For example, on August 27, 1992, the minutes indicated:

Court case.

State of Ct wants case dismissed. They have sovgn amunity [*sic*].

Sebastians want it dismissed because they are the recognized tribe, and we are the outsiders.

Now it can be told - Letter to Geraldo about our situation.

Letter to Jack Kemp and President Bush

...

Take on Weicker - he doesnt want gaming lets try that approach.

Mashentikets, Narragansetts used Silver Star to gain federal acknowledgment, we are going to use it in our favor (PEP Minutes 8/27/1992; #113 Pet. 1996, Supplemental Documentation).

There is no evidence in BIA files that either the Mashantucket Pequot or Narragansett tribes “used Silver Star to gain federal acknowledgment.”

The minutes for January 28, 1993, were accompanied by a one-page list of “OPTIONS w/Sebastian Stituatio”[*sic*], which included such possibilities under “2) Deal with State” as “Get diff. Land base (Reservation . . . Make Sebastian 6th Indian Tribe , give them our land base, give up Title 3 Gaming, give up land claim for Cash Settlement” (PEP Minutes 1/28/1993; #113 Pet. 1996, Supplemental Documentation). The “motion to go into gaming Industry” was passed on April 15, 1993 (PEP Minutes 4/15/1993; #113 Pet. 1996, Supplemental Documentation). At the tribal meeting of July 18, 1993, Mildred (Spellman) Jones was elected to the tribal council – the first non-Gardner descendant to fill such a role in PEP or its antecedent organizations since 1973 (PEP Minutes 7/18/1993; #113 Pet. 1996, Supplementary Documentation).¹⁶⁴ She ceased attending council meetings in the spring of 1998 (PEP Minutes 5/28/1998; last attendance signed in on March 26, 1998; PEP Comments 8/4/2001, Ex. 94).

Developments as Reflected in PEP Minutes, 1996-2001.¹⁶⁵ No significant new themes appeared in the minutes for this period, although they were kept in much greater detail.

The PEP Comments and Response to Comments do not attempt to quantify extent of political participation. Because the total number of adults is so small (82 as calculated by PEP; Austin, Political Authority 9/4/2001, 11; PEP Response to Comments 9/4/2001), rates of participation were not calculated here. As far as participation *per se*, officers and meeting participants are

¹⁶⁴ After this meeting, the 1996 petition submission contained attendance lists through 1996, but no minutes or meeting notes (#113 Pet. 1996, Supplementary Documentation).

¹⁶⁵ The next sequence of minutes (formal, typed minutes) covers from January 21, 1996, through April 26, 2001 (PEP Comments 8/2/2001, Ex. 94).

drawn almost entirely from the two Gardner branches. The Atwood Williams, Jr., and Hazel (Edwards) Geer subbranches are represented by numerous individuals who were officers, committee members, or visible in council meetings.

The Town notes occasional mentions in the PEP interviews of “little membership interest” (*Towns August 2001*, 289). These references are not good evidence of a lack of interest, given that small organizations often have trouble getting unpaid positions filled, regardless of the level of interest.

The PEP response also states that, “[a]s already discussed, annual meetings are also held, and the participation at those meetings is much higher. The annual meetings are both social and political events” (Austin II 8/2/2001, 40; PEP Comments 8/2/2001). Additional data specifically about annual meetings was not cited or described. The proposed finding indicated that annual meetings might be a useful additional area to analyze. A limited review of sign-up sheets for the annual meetings indicates attendance by members is substantially higher than for the average council meeting, but BIA did not prepare a quantification of this. There was no substantial data about the activities at annual meetings which might provide evidence concerning community or political influence.

Political Issues. The same issues that are described for the post-1930 historical period are described by the PEP Comments for 1976 to the present, namely access to the reservation and rejection of the Sebastians as Pequots.

Conflicts. PEP did not respond to the proposed finding's suggestion that internal conflicts be examined for evidence of political processes (PEP PF 2000, 120, 150), other than in brief comments in one report (Austin, get cite; PEP Comments 8/2/2001). An analysis of the available data provides two examples which support the petitioner's general statements of internal divisions and conflicts within the PEP membership in the modern era. This evidence is the best evidence that political alignments occur within the membership that go beyond the immediate leaders active in them, as well as there being political issues of significance.

One example is a political conflict in 1996 led by one of the Geer portion of the Edwards, Jeffrey Tingley (Tingley 1999). Allied with him was the Linda Strange, also a Geer, who had been the first chairman of the organization. The interview descriptions of the events indicate that there was a conflict in which the supporters divided more or less along family lines. A council member, a Geer, that sided with the Williams on this matter said she felt like an outcast from her relatives because of the antagonism from what she called “her side” (Kilpatrick 1999). The conflict revolved in part at least around concerns with how the organization was being run, as well as possibly some of its immediate goals, and whether its affairs were sufficiently open to the scrutiny of members. One result is a continued practice of reviewing practically every piece of correspondence and e-mail in council meetings, which are open all members to attend (and which, at least from 1996 to the present, were attended by 4 or 5 members at a given meeting).

There are probably additional issues to this conflict that a more complete investigation could have uncovered.

The descriptions of the political sides taken within PEP in regard to Ray Geer's working with EP in late 1986 and early 1987 also indicate that sentiment was mobilized beyond the immediate leaders, as well as being an issue of significance. The interview description by then chairman Raymond Geer states his calculation of the political possibilities of gaining approval if the issue had been put to a vote. He stated that he and Richard Williams, with whom he had a personal friendship, raised the issue with William Sebastian. He stated that probably half the membership would have left if it had gone through. He indicated that he would have had the strongest support on the Geer side, but that members of the Gardner/Williams family were mostly against it, along with, not surprisingly, Helen LeGault and Pat Brown, who were his great aunts (Raymond Geer 1999). This evidence is useful because it is in conflicts that the structure of an organization tends to become clear.

Analysis of PEP Argument Concerning a Single Historical Eastern Pequot Tribe Which Did Not Include the Sebastians. The conclusion of the proposed finding is affirmed in so far as it concluded that there was a historical Eastern Pequot tribe that continued to have political influence or authority over its members during the colonial period. However, there is no evidence that this influence or authority extended to the petitioner's major antecedent family line, Gardner/Wheeler, during that time period, since no named, identified, ancestors of that family appear in the Eastern Pequot records for the colonial period.

The conclusion of the proposed finding is affirmed in so far as it concluded that there was, from the American Revolution to 1872, a historical Eastern Pequot tribe that continued to exercise political influence within the tribe and among its members. However, there is no evidence for this time period that the Gardner family, ancestors of the largest PEP antecedent lines, were taking part in the tribe's activities. Therefore, although the Hoxie/Jackson family was taking part, there is no evidence that the direct antecedents of the current PEP membership exercised such influence or authority over a subgroup made up of their members, as distinct from the larger entity of the Eastern Pequot tribe, which also comprised the antecedents of petitioner #35.

The documents from the period 1873-1883 show antecedents of petitioner #113 (Gardner and Hoxie/Jackson) listed or signing together with antecedents of petitioner #35 (Brushell/Sebastian, Fagins/ Randall Fagins/Watson), the antecedents of both modern groups appearing in the same documents as other Eastern Pequot families. The proposed finding is affirmed in concluding that these documents provide evidence of political influence or authority within the historical Eastern Pequot tribe as a whole. However, these documents do not provide evidence of political leadership or influence within a separate, delimited group made up solely of PEP ancestors. In the documents for this decade, and prior periods, the ancestors of PEP's current members either do not appear at all or appear only as part of a larger entity that included the antecedents of petitioner #35 and well as other members of the historical Eastern Pequot tribe.

There is no contemporary documentation in regard to leadership within a distinct group antecedent to PEP and comprising the Gardner and Hoxie/Jackson lineages for the period 1884-1929. The interview evidence indicated that there was some leadership within these two lineages, but is not sufficient to determine that this reached the level of tribal leadership, particularly when State documents of the period define the historical Eastern Pequot tribe as also encompassing the antecedents of petitioner #35. Additionally, there is only minimal evidence that during this period the lineages antecedent to PEP, namely Gardner and Hoxie/Jackson, acted cooperatively in any political arenas. Thus, the evidence for this period does not show that PEP, as distinct from the entire Eastern Pequot tribe, meets criterion 83.7(c).

As of the late 1920's through the 1930's, the activities of Atwood I. Williams, and his recognition as chief of the Eastern Pequot tribe by the New London County Superior Court, provide some data in regard to the exercise of political influence and authority. Williams's activities appear to have diminished throughout the second half of the 1930's.

From 1929 to the present, there is evidence that there was a group within the Eastern Pequot tribe which defined itself by opposition to the presence of the Brushell/Sebastian descendants on the Lantern Hill reservation. It is not clear from the evidence, however, that this group, throughout much of the period, comprised the family lines that today make up PEP. It did, throughout almost all of the period, include prominent members of the Gardner/Edwards and Gardner/Williams lineages but did not clearly include the Jacksons.

The limited evidence that does exist for 1941 to 1973 in regard to the activities of Atwood I. Williams and Helen LeGault shows that from 1929 to 1955 and from 1991 to the present, the leadership of Atwood Williams, Sr. and Agnes Cunha has encompassed members of the Hoxie/Jackson lineage who were not also Gardner descendants. In 1954, additionally, the Office of the Commissioner of Welfare recorded that an applicant to reside on the Eastern Pequot reservation must obtain authorization or permission from Williams, ratifying the appointment that the Superior Court for New London County had made in 1933. It is not clear, however, that in the 1950's and 1960's, the activities of Helen LeGault represented any supporters.

For a significant period, however, from 1955 through 1990, there is no evidence that Helen LeGault provided leadership for the Hoxie/Jackson subgroup and there is significant evidence that she excluded them from membership in PEP's antecedent organizations. From 1973 through 1989, although there was political activity among the Gardner/Edwards and Williams (Hoxie/Jackson-Gardner) descendants in organizations antecedent to petitioner #113, it is not clear throughout most of this period, certainly from 1973 through 1982, that these groups encompassed both the family lines now asserted to be antecedent to petitioner #113.

The evidence does not indicate that PEP and its antecedents exercised political influence or authority over its members, as an entity distinct from the historical Eastern Pequot tribe, from historical times to the present.

Conclusion. See 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:

The petitioner has submitted its Articles of Government, dated July 18, 1993 (Articles of Government of the Paucatuck Eastern Pequot Indian Tribe of the Paucatuck Eastern Pequot Indian Reservation 1993; #113 Pet. 1994, Narr. Ex.). Article II of this document contains a statement on membership eligibility.

The 1993 constitution was not separately certified as the current governing document of the petitioner by the governing body. However, the governing body of #113 did certify the petition as a whole (Paucatuck Eastern Pequot Indian Tribal Nat. on, Resolution 2/24/1996). In the absence of any more recent governing document in the submission, and in light of the background material submitted for the 1993 Articles of Government in the 1996 Response, the BIA has made the assumption that they are the current governing document of the petitioner (PEP PF 2000, 121).

The Towns, alleging “irregularities” in the proposed finding, asserted that 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) (PEP 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 (PEP PF Chart 83.7(d)), containing the following two statements:

Articles of Government, July 18, 1993, Article II, Membership. This consists of eight sections, covering eligibility, the filing of membership applications, review of membership applications, burden of proof, handling of applications for residency on the reservation, dual enrollment, and relinquishing membership.

The basic eligibility consists of: (1) all persons whose names appear on the Paucatuck Eastern Pequot Indian Tribal Roll as of August 20, 1981, and their descendants; (2) all persons who prove that they are of one eighth (1/8) according to Paucatuck Eastern Pequot Indian law.

The membership criteria do not provide a definition of “Paucatuck Eastern Pequot Indian law,” nor does any other portion of the governing document (PEP PF 2000, Chart (d)).

The Towns received a copy of the PEP governing document through FOIA. Additionally, the Towns were furnished with a copy of the draft technical report on PEP prepared by a BIA staff member, of which section VIII. #113 PAUCATUCK EASTERN PEQUOT GOVERNING DOCUMENTS, ENROLLMENT ORDINANCES, AND MEMBERSHIP LISTS, comprising pages 120-145, included the current enrollment provisions on pages 133-134. Thus, the Towns had the document itself and the BIA’s analysis of it.

The April 6, 1976, Articles of Incorporation for The Eastern Pequot Indians of Connecticut, Inc. (predecessor group of PEP) provided:

Persons desiring to become a member of the Eastern Pequot Tribe of Indians shall submit to the Tribe an application for membership accompanied by a birth certificate and legal proof that he or she is directly related to an Eastern Pequot Indian and that said applicant is at least one eighth (1/8) Indian (Articles of Incorporation 1976, PEP Comments 8/2/2001, Ex. 39).

On February 22, 1980, testifying in regard to an “Indian Definition Study, Office of Assistant Secretary for Education,” Helen LeGault stated:

Our tribal membership is determined by the fact that we go back to the old tribal rolls of 1846. One’s family must have been registered and show legal documentation proving Indian ancestry. Our tribe is small, we know who our people are, but we certainly don’t need others to tell us who our membership must be (LeGault Testimony 2/22/1980; PEP Comments 8/2/2001, Ex. 39).

PEP has not submitted “old tribal rolls of 1846” to the BIA, nor did any of the governing documents submitted by PEP reference such a membership standard.

A PEP meeting on January 9, 1983, indicated that, “[w]e must develop guidelines for reviewing applications for membership in the tribe, criteria for reviewing applications for residency and possibly rewriting the application for membership” (Notes Jan 9 1983; PEP Response to Comments 9/4/2001, Ex. 63). A memorandum submitted by petitioner #113, from Richard Dauphinais to Raymond Geer, dated November 5, 1984, in regard to an October 30, 1984, meeting, did not indicate that the organization was using the standard referenced by Ms. LeGault in 1980, but rather indicated that:

On October 30th, we talked about the Sebastians’ claim to tribal membership in light of the need to petition for federal recognition. The first point to come out of the discussion was that a dispute about tribal membership would probably be fatal

to recognition. What needs to be done, then, is for the Tribe to establish criteria for acceptance of persons as tribal members that would be acceptable to FAP and a procedure to deal with applications for membership.

As to membership criteria, the Tribe will need to decide on (1) a baseline list of historical tribal members, (2) the means of descent from baseline list members, and (3) whether to have a blood quantum requirement and if so, what quantum. As to applications, the Tribe will have to specify the documentation necessary to demonstrate descent from a baseline list member and blood quantum (Dauphinais to Geer 11/5/1984; PEP Response to Comments 9/4/2001, Ex. 63).

In so far as the BIA could determine from the submissions, the current governing document of petitioner #113 remains the 1993 Articles of Government of the Paucatuck Eastern Pequot Indian Tribe of the Paucatuck Eastern Pequot Indian Reservation.¹⁶⁶ It contains the following provisions:

ARTICLE II - MEMBERSHIP

Section 1. Eligibility - the membership of the Paucatuck Eastern Pequot Indian Tribe shall consist of the following:

- (1) Voting Members- Those persons eligible for full rights of membership, including voting, office holding, and housing include:
 1. All persons whose name appear on the Paucatuck Eastern Pequot Indian Tribal Roll as of August 20, 1981, and their descendants.
 2. All persons who prove that they are of one eighth (1/8) or more Paucatuck Eastern Pequot Indian blood, according to Paucatuck Eastern Pequot Indian law. Such persons and their descendants will be added to the Tribal Rolls of August 20, 1981 (#113 Pet. 1994, Narr. Ex.).

Section 2. Membership Application Filing-Applications for membership of the Paucatuck Eastern Pequot Indian Tribe shall be accompanied with certified birth records and genealogical proof of Paucatuck Eastern Pequot decent [*sic*]. All documentation shall be filed with the secretary of the Paucatuck Eastern Pequot Indian Tribe.

Section 3. Review of Membership Application- Applications for membership shall be presented to the Paucatuck Eastern Pequot Indian Tribal Council for

¹⁶⁶The minutes of February 24, 2000, mentioned the Articles of Government, mentioning that they had been approved in 1993, with a suggestion that revisions be considered (PEP Minutes 2/24/2000; PEP Comments 8/2/2001, Ex. 94). The minutes of July 27, 2000 also indicated that the Articles of Government "need to be revised at some point" (PEP Minutes 7/27/2000; PEP Comments 8/4/2001, Ex. 94).

consideration and acceptance or rejection. Membership decisions of the Paucatuck Eastern Pequot Indian Tribal Council shall be final and non-reviewable; provided that an unsuccessful applicant may seek one (1) reconsideration of his/her rejection before the Paucatuck Eastern Pequot Indian Tribal Council if such request for reconsideration is made in written form and filed with the Secretary of the Paucatuck Eastern Pequot Indian Tribal Council within sixty (60) days of the applicant's receipt of his/her membership rejection by the Paucatuck Eastern Pequot Tribal Council.

Section 4. Burden of Proof- The burden of proof of eligibility for membership in the Paucatuck Eastern Pequot Indian Tribe rests solely on the applicant or others acting on the applicant's behalf.

Section 5 and Section 6 pertained to residency applications; Section 7 to dual enrollment; and Section 8 to the relinquishment of membership (Paucatuck Eastern Pequot Articles of Government 1993, 2-3).

This document was accompanied by blank copies of the Application for Membership and the Application for Residency (#113 Pet. 1994, Narr. Ex.) This document did not define the meaning of the phrase "according to Paucatuck Eastern Pequot Indian law" in Article II, Section 1(a)(2). Section 8 made no provision concerning the handling of children or grandchildren of a member who relinquished membership. All of petitioner #113's members met the above eligibility requirements at the time the proposed finding was issued.

For the final determination, the petitioner did not submit any additional governing documents, so it is assumed for purposes of the final determination that the 1993 document submitted for the proposed finding remains the petitioner's governing document at present.

Conclusion. Therefore, 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 Eastern Pequot Tribe. The proposed finding concluded:

Final Determination: Paucatuck Eastern Pequot Indians of Connecticut

Extensive genealogical material submitted by the petitioner, by petitioner #35, and by the third parties indicates that the petitioner's current members are descendants of Marlboro and Eunice (Wheeler) Gardner and of Rachel (Hoxie) Jackson. As those individuals were, during their lives, members of the Eastern Pequot tribe as ascertained by evidence acceptable to the Secretary, the descendants of these individuals descend from the historical tribe.

The lines of descent for individual families from these three key ancestors have been verified through the same types of records used for prior petitions: 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 (PEP PF 2000, 137).

The Towns challenged in detail the petitioner's descent from the historical Eastern Pequot tribe within the meaning of the 25 CFR Part 83 regulations (*Towns August 2001*, 286-287, 308-313). These same arguments were advanced by the Towns prior to issuance of the proposed finding (Lynch 1998a, 3) and were addressed then (PEP PF 2000, 122). The BIA used the Towns' pre-April 5, 1999, 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 been considered for the final determinations.¹⁶⁷

The State did not directly address the issue of descent from the historical tribe in its comments (*State of Connecticut August 2001*).¹⁶⁸ 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

¹⁶⁷See listing above in the Administrative Chronology section.

¹⁶⁸The State's argumentation, "It 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).

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 determination solely on the basis of the office's genealogical chart (Danielczuk 7/27/2001. 2).

The above statements are in accordance with the conclusions reached by the proposed findings in regard to EP and PEP.

The Towns would establish a requirement that EP and PEP show individual genealogical descent from a historical tribe as it existed at the time of first sustained contact with non-Indians (Lynch 1998a, 3; *Towns August 2001*, 286-287, 308-310), although they are aware that in prior cases Federal acknowledgment determinations have used 19th and early 20th century rolls as a basis for establishing descent from a historical tribe under 25 CFR Part 83 (*Towns August 2001*, 315). The BIA previously responded to this argument in the proposed finding (PEP PF 2000, 121).

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; see also (*Towns August 2001*, 311-312, 321, 326). The standard advocated by the Towns has never been required under criterion 83.7(e), which looks at descent from a strictly genealogical point of view. The Towns' issues properly arise under criteria 83.7(b) and 83.7(c). This aspect of the Towns' argument was already addressed in the proposed finding (PEP PF 2000, 122).

The Towns desire to establish a requirement for documentation equivalent to the detribalization lists used in the Narragansett, Mohegan, and Gay Head determinations (*Towns August 2001*, 319-324), which is impracticable, since in this case the historical Eastern Pequot tribe was never detribalized and the reservation land was never allotted to individual families.

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 Towns 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),¹⁶⁹ of the 19th 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 20th century membership lists accepted by the New London County Superior Court and by the Connecticut State Park and Forest Commission (*Towns August 2001*, 317)¹⁷⁰ as being acceptable documentation for showing a connection between the petitioner's current members, their 19th century ancestors, and the historical Eastern Pequot Tribe. This final determination affirms the conclusion of the proposed finding that such documents do constitute evidence of tribal descent acceptable to the Secretary under 25 CFR Part 83 (PEP PF 2000, 120).

The Towns also 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.

PEP accepts the validity of the 19th century petitions and overseers' reports as showing Eastern Pequot membership for the ancestors of its own members (see comment in regard to the overseer's description of Rachel Hoxie: Cunha in: Austin Interview of James Cunha, Jr. 7/21/2000, 53; PEP Comments 8/2/2001, Ex. 75), but does not accept the validity of the same reports as showing Eastern Pequot membership for EP ancestors (PEP Comments 8/2/2001, Austin Report II:12, II:40; PEP Response to Comments 9/4/2001, McMullen 4-6), stating that, "the accuracy of some overseers' reports is questionable or indicates a lack of first-hand knowledge of tribal members" (McMullen 9/4/2001, 5; PEP Response to Comments 9/4/2001) and attributing to the overseers of the 1870's and 1880's "confusion over the very different concepts of 'reservation resident' and 'tribal member'" (McMullen 9/4/2001, 6; PEP Response to Comments 9/4/2001). PEP posits that this is the case even when the names of the ancestors of

¹⁶⁹ "The overseers' reports and lists in this case did not list 'descendants,' were not based on descendancy, 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 [*sic*] responsibility for the poor" (*Towns August 2001*, 317).

¹⁷⁰ "Those in the 20th century that claimed to be a genealogical record only established linkage to the previous unreliable links and records" (*Towns August 2001*, 317).

both petitioners appear in the same document.¹⁷¹ PEP asserts that: “the advent of problems with defining the membership and controversies over this begins around the time of the stewardship of Charles Chipman and Gilbert Billings” (PEP Response to Comments 9/4/2001, 5).¹⁷² Of note, these were the overseers of the Eastern Pequot at the time Marlboro Gardner first appeared in the tribe’s records (see discussion above under criterion 83.7(c)).

PEP also addressed the issue of multi-tribal descent as raised by the Towns (PEP Comments 8/2/2001, Austin II:2-4, 9-12).¹⁷³

¹⁷¹ PEP takes the same stance in regard to 20th-century Connecticut State lists that include both its own antecedents and those of petitioner #35 (Austin, Political Authority 9/4/2001, 9; PEP Response to Comments 9/4/2001).

¹⁷² Lack of close, personal oversight may explain some of these problems, but the poor records of 1875 to 1881 and the oversight of Charles Chipman—who did not record a “list of the tribe”—made it difficult for subsequent overseer Gilbert Billings to know or determine who was or was not a tribal member: he had to rely on the contemporary claims of individuals to a far greater extent than had his predecessors. And since Billings does not appear to have really understood the detailed genealogies of tribal members or their family connections, he may have been a “softer touch” than some of the earlier overseers (McMullen 9/4/2001, 5; PEP Response to Comments 9/4/2001).

McMullen attributes the appearance of Calvin Williams, Jesse Williams, Mary Ann Potter, Tamer Emeline Sebastian, and Tamer Brushel Sebastian, to this oversight on Gilbert Billings’ part (McMullen 9/4/2001, 5; PEP Response to Comments 9/4/2001). It was he, however, who also first placed Marlboro Gardner on the overseer’s lists. Petitioner #113’s assertion: “Despite the suggested inclusion of Tamer Brushel Sebastian on the 1873 petition and other Sebastian family members on later overseers’ reports, such inclusion is not sufficient evidence that the Sebastians were deemed Eastern Pequots by actual members of that historic tribe” (McMullen 9/4/2001, 8; PEP Response to Comments 9/4/2001), is, in essence, the same argumentation utilized by the Towns, with the exception that the Towns apply it to both petitioners, whereas PEP applies it only to the antecedents of EP.

¹⁷³ Regarding the Siefer Report, the petitioner states that:

There is a vital link between criterion 83.7(e), which requires descent from a historic Indian tribe, and 83.7(b), which requires the maintenance of a distinct social community from historic times to the present. That link was ignored in Ms. Siefer’s report because she chose to concentrate on the topic of genealogical descent through the male line only. While this may be understandable given her position as a genealogical researcher, the resulting evaluation is both erroneous and misleading (Austin II 8/2/2001: 14; PEP Comments 8/2/2001).

Of note, the BIA’s genealogical researchers trace Indian tribal ancestry through both the paternal and maternal lines. This has been the precedent in all acknowledgment decisions.

Petitioner did not define the “vital link” mentioned in the above passage. Descent under criterion 83.7(e) does not require that all intervening ancestors have maintained tribal relations. It is a genealogical assessment, and thus distinct from the petitioner’s own membership requirements, which were stated as:

One of the most important points that can be made about the Paucatuck Pequot Tribe in this century is that it has maintained consistent, unwritten rules about the criteria for membership in

The BIA does not accept PEP's methodological approach as valid. To accept it would require applying different standards to the same evidence for different petitioners. As the proposed findings indicated, the evidentiary material for the Eastern Pequot ancestry of both petitioners is essentially equivalent.¹⁷⁴

The proposed findings were not, as PEP asserts, based solely upon an assumption that, "overseers of the later nineteenth century were in fact completely knowledgeable about the

the tribe. The primary rule has been to include as members only those who have continued to maintain tribal relations with the Paucatuck Pequot Tribe (Austin II 8/2/2001, 15; PEP Comments 8/2/2001).

No such requirement concerning the maintenance of tribal relations, however, is stated in the petitioner's constitutional eligibility requirements (1993 Articles of Government of the Paucatuck Eastern Pequot Indian Tribe of the Paucatuck Eastern Pequot Reservation). See under criterion 83.7(d) above.

While the petitioner is correct in stating that the acknowledgment regulations do not impose any blood quantum requirement under 83.7(e) (Austin II 8/2/2001, 6-7; PEP Comments 8/2/2001), it should be noted that the petitioner's constitution does impose one. See discussion under criterion 83.7(d) above.

¹⁷⁴ 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 petitioner #35's response 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 Erushel, 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 Fagain (EP Comments 8/2/2001, Items ACDE).

people under their stewardship” (PEP Response to Comments 9/4/2001, McMullen 4). Evidence from the overseers’ reports was not, as the Towns assert, used instead of “certified vital documents such as birth, marriage, and death records” (*Towns August 2001*, 317) but in addition to them (PEP PF 2000, 137). The evaluation of the evidence also utilized Federal census records.

No significant new genealogical information was presented for the final determination in regard to the three key ancestors of petitioner #113, Marlboro Gardner, his wife Eunice Wheeler, and Rachel (Hoxie) Jackson/Orchard. The evidence acceptable to the Secretary that was in the record at the time of the proposed finding was surveyed there (PEP PF 2000, 123-126).

The researchers for the Towns presented a considerable amount of unsubstantiated speculation (see sample in footnote).¹⁷⁵ Some of the speculation was based on inaccurate readings of the documents.¹⁷⁶

Petitioner #113 asserted that the following entry pertained to Eunice (Wheeler) George who later married Marlboro Gardner: “June 29, 1854: Pequot Tribe of Indians in Account with Isaac W. Miner of North St [illegible in margin, transcriber read as Stonington]: S Shunt up; Maranta Douglas; Thomas Need; Samuel Shunt up; November 17 four quarts of meal for Eunice George, Leonard Brown (#35 Pet. OVERSEERS)” (PEP Comments 8/2/2001, Genealogical Records III, Family Group Sheet). However, the overall context and pattern of the overseer’s reports for this time period makes it more probable that this entry referred to Eunice Fagins, wife of George Cottrell. It does not, therefore, provide evidence of Eastern Pequot membership for Eunice (Wheeler) Gardner:

¹⁷⁵“The 1840 Census for North Stonington had Hoxie Nedson listed with 5 members in the family (1840 U.S. Census New London Co., No. Stonington, CT). Since the name Ned Hoxie and Hoxie Nedson are so similar and basically reversed, it could be that they are the same person. Hoxie Nedson was shown as Free Colored Persons with 2 males and 3 females. There was one female under 10 years who would have fit the age of Rachel Hoxie (born circa 1833). It is a possibility that Rachel could have been the daughter of Hoxie Nedson. If she was this could explain where she came by the names of Hoxie and Ned. Rachel also used the name of Anderson. It is unclear why she used this surname. Perhaps her mother’s surname was Anderson. She had a child and a conjecture was made that the child’s father’s last name was Ned which was why she used this name. There was no documentation to indicate this would be accurate. Also it would be questionable as the North Stonington Overseer stated . . . If the father of Rachel’s child had been a member of the tribe, most likely the Overseer would not have issued a note. The 1839 Public Statute Laws of the State of Connecticut prohibited rendering a judgement against any Indian other than for rent of land (1839 Public Statute Laws of the State of Connecticut: p. 357). The 1849 Revised Statutes of the State of Connecticut also declared no judgement could be made against an Indian except for rent of land (1849 Revised Statutes of Connecticut: p. 442)” (Siefer Report April 1999, 16).

¹⁷⁶“Ned Hoxie was listed on the Groton 1800 Census under ‘All other free person excluding Indians and not taxed.’” (Siefer Report April 1999, 4n1). The researcher also presented a copy of the census record in question (Siefer Report April 1999, Exhibit 44). It clearly says “Ned Hops,” – not Hoxie – with 3 persons in the home; this man was Edward or Ned Hops aka Edward or Ned Jeremy, a pensioned Revolutionary veteran (Brown and Rose 1980, 186-187; see also Hopps/Hops, Edward, Black, W10111, SECT:186 (NSDAR 2001, 61)).

In light of the argumentation by the Towns that Rachel (Hoxie) Jackson was more probably Narragansett than Eastern Pequot (Siefer Report April 1999, 11-13, 15-19), the following information from the 1900 Federal census in regard to her surviving brother, John Noyes Hoxie, is pertinent:

NARA T-623, Roll 149, ED 469, Sheet 14. 1900 June 30, Twelfth Census of the United States, Connecticut, New London County, North Stonington, Indian Population/Special Enquiries Relating to Indians

Jackson, William, head, Black, male, DOB Nov. 1869, 30, married, POB CT, FOB RI, MOB CT, Carpenter, reads/writes/speaks English, rents farm. Half breed, father unknown, mother Pequot, no white blood.

....

Hoxie, Noyes, Uncle, Black, male, DOB May 1830, 70, widower, POB CT, FOB RI, MOB RI, no read/write/speak English. Narragansett; father Narragansett; mother Pequot, no white blood. . . . [other household members omitted]

This record indicates that the family's Pequot ancestry lay in the maternal line.¹⁷⁷

¹⁷⁷In the 1991 interview, Alice Barbara (Spellman) Moore referred on several occasions to the ghost of an "Uncle Leonard" who used to walk through the Jackson house on the Lantern Hill Reservation (Moore Interview 12/8/1991, 43-45, 104; PEP Comments 8/2/2001, Ex. 86). "My mother said that's actually where this (inaudible) whoever tells this was. We never asked questions, but she said that's your Uncle Leonard. . . . But she knew him. So it must've been one of the - one from my grandparents or both or brothers or somebody or, I don't know. But she said that's your Uncle Leonard. So that's our side of the Hoxies" (Moore Interview 12/8/1991, 44).

If Leonard Ned/Nedson/Brown actually was the uncle (rather than a "courtesy uncle") of Phoebe and William Henry Jackson, then this would indicate that the appearance of the name "Ned" for the woman usually called Rachel Hoxie indicated that she was a descendant of the Ned family.

August 28, 1858 - Pequot Tribe of Indians: Than Ned, Eunice Cotrell, Thomas Ned, Marinda Douglas. 1859, Names of the Tribe so far as I can ascertain - Thankful Ned, Thomas Ned, Eunice Fagans, Lucy Fagans, Abby Fagans, Charity Fagans, Lucy Ann Fagans, Lorry Farens, Marinda Douglas, Rachel Skeeux, Caraline Ned, Lucy Hill, Rachel Anderson, Leonard Brown, Calvin Ned, Joseph Fagans, James Kiness, George Hill, Andrew Hill. Lorry Watson wife Albert Watson 5 Children; Rachel Ned Anderson 1 Child (#35 Pet. Overseers Reports).

1861 overseer's report: Names of the Tribe as far as I can Asertain on of North Stonington Tribe Indians: Thankful Ned, Eunice Fagins, Lorry Fagins 4 Ch, Abby Fagins, Charity Fagins 5 Children, Lucy An Fagins, Lucy Fagins, Maranta Ned Dec, Rachel Skeesux, Carrutin[?] Ned, Rachel Ned et, Lucy Hill, Thomas Ned ["1861 Decest" added], Leonard Brown, Ezra Ned Dec, Calvin Ned, Joseph Fagins, James Kiness, George Hill, Andrew Hill, Isaac Ned (#35 Pet. Overseers Reports).

1861, another list: George Hill, Leonard Brown, Calvin Ned, Joseph Fagans, James Kiness, Andrew Hill, Eunice F Chrell, Maranda N Duz, Lucy a Fagans, Charrity Fagem, Lorry Fagans 5 Children, Lucy Hill, Abby J Jack 5 Children, Rachel N orchard 2 Children, Aroline Ned, Rachel Skeesux Dec. Same year, mention of coffin for Thankful Ned (#35 Pet. Overseers Reports).

Her paternity has not been identified, though several clues are now available.¹⁷⁸

Membership Lists.

Prior Membership Lists. Petitioner #113 submitted minutes from the period 1976-1984 that included a list headed "Membership - 1978". One page had 21 numbered names; the second page contained 34 unnumbered names, with considerable duplication, followed by a two-page, undated, list of names and addresses, both of which the BIA researcher added to the Family Tree Maker data base (Membership 1978; PEP Response to Comments 9/4/2001, Ex. 63).¹⁷⁹ All but one of the 1978 numbered names appeared on the July 15, 1979, list discussed in the next paragraph; ten of the 34 names on the unnumbered 1978 list did not appear on the July 15, 1979, list.

¹⁷⁸While the BIA was unable to confirm the paternity of Rachel Hoxie during preparation of the final determination, some documentation submitted by the Towns provides clues which indicate that it would be profitable to trace the family of Charles Hoxie/Hoxey (who does appear on Narragansett tribal records) and his wife Lydia (nee Cook?), who were residents of North Stonington during the first third of the 19th century. The following data is provided for the convenience of researchers:

Town of Stonington Town Accounts 1792 to 1872 Book 1 Call number 70286 - Connecticut Historical Society. January 2, 1826. "At a meeting of the Selectmen at the Boro' Hotel Monday Jany 2nd 1826. The Selectmen entered into a complaint to the Justeries(sp) to remove the following persons, they having been warned. To Wit -- . . . Charles Hoxie col'd man, Jack Noyes col'd man, . . ." (Siefer Report April 1999, Exhibit 41).

5 May 1831, Petition of the Naragansett Tribe of Indians in Charlestown County of Washington to the General Assembly of Rhode Is and; whereas James Kinyon and others in regard to the 1811 law in regard to Debt: . . . Charles X Hoxsey (Towns Comments on the Eastern Pequot and Paucatuck Eastern Pequot Petitions, Siefer Report April 1999, Exhibit 40).

Town of Stonington Town Accounts 1792 to 1872 Book 1 Call number 70286 - Connecticut Historical Society. 4 March 1833. "At a meeting of the Selectmen at the Town met. 4 March 1833 upon the petition of William Lord an others that sundry familys [sic] in the town of Stonington. Viz. . . . Charles Hoxie & Jack Noyes - all inhabitants of other state and are Liable to become chargeable to said town and that the selectmen would caus them to depart said town whereupon the selectmen fired (sp) a warnings to the aforesaid inhabitants unanimously warning them to depart" (Siefer Report April 1999, Exhibit 41).

The following document apparently reversed the surnames of Charles Hoxie and his wife: NARA R. 75. Entry 903. New York Indians, Kansas Claims. #2871, Eliza L. Hilton, 38 Harris Av. Arlington R.I.; Providence Co., b. Charleston, RI. 11 March 1847; her parents are Benjamin Thomas and Mary Hokey, father b. RI; mother b. CT. Their children Frederick D. Thomas, Benjamin F. Thomas, Hannah M. Hazzard; father D.C. 188?; mother d.c. 1878; grandparents on father's side, Augustus Thomas Narragansett and Hannah M. Niles Narragansett and Brother town; on mother's side Charles Cook and Lydia Hokey; resided Rhode Island.

In regard to Lydia (nee Cook?), some slight clues indicate that further investigation of the Tocus/Tokus/Toad family of North Stonington might prove useful.

¹⁷⁹All of the lists in these minutes had columns designating "P" or "A." These apparently indicated presence or absence at meetings rather than being a membership code.

This submission also included a numbered list headed "Paid Membership - 7/15/79" containing 24 names (two names were stricken off as duplicates and the number 22 and 23 re-used). All were adults; eight were non-Indian spouses, leaving 11 members. This list was entered into the Family Tree Maker data base by the BIA researcher: it contained no Hoxie/Jackson descendants who were not also Gardner/Wheeler descendants ("Paid Membership 7/15/79; PEP Response to Comments 9/4/2001, Ex. 63).

The meeting notes for September 5, 1982, were followed by a list headed "Membership" which included some addresses and phone numbers, but was not sufficiently well-organized beyond the first page to be placed in the Family Tree Maker data base (PEP Notes 9/5/1982; PEP Response to Comments 9/4/2001, Ex. 63). The first page, on which individuals were marked "Pd." accorded with the lists for 1978-1979 in that the 24 names included eight non-Indian spouses. There were no names that had not appeared on prior lists, and two names of persons who had previously been noted in minutes as removed from the membership at their own request.

Petitioner #113 submitted one additional prior membership list, dated January 1, 2000, for the final determination (PEP Comments 8/2/2001, Genealogy Records, Volume I). This list was intermediate in date between that used for the proposed finding and the one submitted for the final determination. The BIA researcher entered this list into the FTM data base for comparison with earlier membership lists and the July 19, 2001, membership list used for the final determination. There were no significant variations from the list used for the final determination (see below).

PEP Membership List for the Proposed Finding. The #113 membership list used for preparation of the proposed finding was submitted by the petitioner on February 15, 1996 (Supplemental Documentation for Criterion 83.7(e). The Paucatuck Eastern Pequot Tribal Nation: Data on Present Membership; Minutes of Tribal Council Meetings, 1989-1996. February 15, 1996; #113 Pet. 1996). This list, cited in the proposed finding as "Paucatuck Eastern Pequot Membership List 2/15/1996," contained 128 members. It was not separately certified by the petitioner's governing body. However, the governing body did certify the petition as a whole (Paucatuck Eastern Pequot Indian Tribal Nation, Resolution 2/24/1996).

PEP Membership List for the Final Determination. The Federal acknowledgment regulations under criterion 83.7(e) (2) require that "The petitioner must provide an official membership list . . . of all known current members of the group." For the final determination, petitioner #113 submitted "Paucatuck Eastern Pequot Tribal Nation Tribal Rolls as of July 19, 2001" (PEP Comments 8/2/2001, Genealogy Records, Volume I), certified by a resolution of the petitioner's council (PEP Comments 8/2/2001, Genealogy Records, Volume 1, Resolution of the Tribal Council of the Paucatuck Eastern Pequot Tribal Nation, July 19, 2001, RS000077). This membership list was numbered from 1001 through 1150. Four individuals who had appeared on the February 15, 1996, list were marked as deceased; two individuals who had appeared on the February 15, 1996, list were annotated as, "Removed from rolls no birth certificate." The total

membership presented for the final determination is thus 144 persons. The list contained birth dates, but no addresses.

The BIA researcher entered this list into the FTM data base for comparison with prior membership lists. The 22 persons numbered #1129 through #1150 did not appear on the February 15, 1996, membership list. Of these, 17 persons had been born since February 15, 1996. All of these were children of individuals who appeared on the February 15, 1996, list. The other five persons, in one family, were born in 1960, 1978, 1981, 1982, and 1993. The progenitor of this family unit was the daughter of a man who appeared on the 1996 list. All of the additional members met the petitioner's own membership criteria and are descended from persons who appeared on 19th century lists of the historical Eastern Pequot tribe.

Potential for Membership Expansion. The proposed finding stated:

The genealogical charts submitted by the petitioner indicated that all identified descendants of the Gardner/Edwards and Gardner/Williams lines are included on the membership lists. Further potential for membership expansion may exist in the different lines of Hoxie/Jackson and Hoxie/Jackson/Spellman, as the records did not account for all of the descendants of these families. In the absence of a definition of "Paucatuck Eastern Pequot Indian law" in the membership provisions of Article II in the Articles of Government, there is no way for the BIA to evaluate how PEP would treat applications from members of such 19th century Eastern Pequot families as Simons, Hill, or Ned if descendants applied (PEP PF 2000, 137).

PEP states that there are approximately 300 individuals whose membership applications are pending (PEP Comments to PF 8/2/2001, Nell 5).¹⁸⁰ However, one of the interviews indicated that the possibility for expansion exceeds that number, including not only Hoxie/Jackson descendants, but also descendants of the line of Harriet (Gardner) Simons, whose children appeared on Connecticut lists of Eastern Pequots as late as 1935 (Austin Interview of James Cunha, Jr.).¹⁸¹ The current official position of PEP was taken by resolution:

¹⁸⁰Prospective members have continued to apply for tribal membership. The applicants have been placed on a pending status until the Federal recognition process is completed. Approximately three hundred applicants are requesting tribal membership. Currently one hundred forty-seven members comprise the tribe" (PEP Comments 8/2/2001, Nell 5).

¹⁸¹Transcription of Steve Austin's interview with James Cunha, Jr. 7/21/2000 (PEP Comments 8/2/2001, Ex. 75, 42-44):

MR. CUNHA: . . . You know what, we've got tons of people who are trying to come into us, like the Gardner family and the SPELLMAN coming back.

I (inaudible) Easers (inaudible). I anticipate this tribe to be close to about 700 or 800 people by

TRIBAL MEMBERSHIP

On 3 October 1997 the Tribal Council of the Paucatuck Eastern Pequot Indian Tribal Nation approved the following:

Tribal Rolls will be closed from this day of October 3, 1997, until after we receive our Final Determination of Federal Acknowledgment unless Council deems to do something different

the time we're done.

MR. AUSTIN: Why don't you talk a little bit about the family that's thinking about coming in, they're in the process of making applications just to get that story on the record because again, this is a family that in terms of the race issue, shows that racism is not the point. It's who belongs to the tribe.

MR. CUNHA: A family who descends through Ha'p'orth Gardner who are predominantly Black, who (inaudible) I wish they had done this a little earlier. Our requirements are like the old (inaudible) you have to prove one-eighth Paucatuck blood or descend from people who are here.

The tribe is in a dilemma because they stem from (inaudible) Gardner; the family last appears on the reservation up until 1935. From 1935 to current for MIA, the oldest living member right now only can prove one-sixteenth. If they had done this 10 years earlier, there would be no question, they'd make the one-eighth criteria and be in.

But we're in the dilemma and being where we are in the process, we're worried about the community aspect because they're gone. It's not like we're (inaudible) having the Mashantucket (inaudible) this year. Okay, poof, you're in. We don't care, we've got (inaudible) year or the last 90 years, you can just come in.

We're looking at this family very seriously and I think that not only is the Tribal Council, I think, divided on the issue, I think we're just confused and I think the tribal membership is a little confused, too, because we're worried about the criteria of them making to recognition and we don't want to risk that precedent (Austin Interview of James Cunha, Jr 7/21/2000, 42-43; PEP Comments 8/2/2001, Ex. 75).

It should be noted that the applying family descended from Gardner was on the overseer's and State Park and Forest Commission lists to 1935, but was never, as far as the documentation shows, "on the reservation."

Cunha also referenced the Hill family and asked, "If they come back, how are we going to deal with that. Don't know. They've missing [*sic*] from our community for a long period of time and I think that makes a difference (Cunha in: Austin Interview of James Cunha, Jr. 7/21/2000, 44). Additionally, he stated: "And not only that, we also have another family who are trying to claim - - are claiming that they come through Fannie Jackson, who are 700 strong, who are predominantly all Black but we don't feel that they have a case built up as well as the Harriet Gardner line does" (Cunha in: Austin Interview of James Cunha, Jr. 7/21/2000, 45-56). This individual referenced by Cunha would presumably be Fannie E. (Jackson) Crumb Corn, but this identification was not specified in the interview.

See also the PEP minutes for August 31, 2000, re: other applications and for February 24, 2000, which mentions putting a "community clause" in the constitution (PEP Comments 8/2/2001, Ex. 94).

at that point (Weekly Tribal Council Meeting Minutes, Friday, 3 October 1997 [Report Document #2])

The Council's intent in "closing the roll" was that they would add children born to members already on the roll and no one else until the Federal recognition process was completed (PEP Comments 8/2/2001, Nell 5).

If any of the current applicants demonstrate ability to meet petitioner #113's current membership requirements, it appears that the petitioner plans to accept them into membership after completion of the Federal acknowledgment process:

MR. AUSTIN: How many people does the Harriet Gardner line represent?

MR. CUNHA: Two hundred and seventy-three, I believe.

MR. AUSTIN: So this would, I mean, even the fact that you're considering this seems significant to me. This would not double but basically triple your membership or nearly triple your membership.

MR. CUNHA: Absolutely.

MR. AUSTIN: But you're willing to consider bringing them in but - -

MR. CUNHA: We're not worried about bringing in large numbers, Steve. Large numbers don't bother us because we believe in equal representation as we discussed this year at the annual meeting of the members went for is that family grouping (inaudible) and each family grouping has three votes on the Council and depending on what family comes in (inaudible) only keep you out of the Tribal Council.

If you have 10 families then obviously you're going to have a 30-member Tribal [sic] council. If you have five families, you're going to have a 15-member Tribal Council. If you have two families, you have a six-member Tribal Council. You can do things where everybody gets their fair share or fair say (Austin Interview of James Cunha, Jr. 7/21/2000, 45-46; PEP Comments 8/2/2001, Ex. 75).

It also appears that the petitioner is giving serious consideration to altering its membership criteria and abolishing the current requirement that a newly-entering individual (one not included on the 1981 PEP membership list, through whom descendants with a lesser blood quantum can qualify), must have 1/8 Eastern Pequot blood quantum. This would be a change from the provisions of the governing document used for the proposed finding and final determination:

MR. CUNHA: This tribe has actually looked at doing a core list from 1845 to 1866 and then people who descend from those people also would have rights to come in and doing that for a time period and opening up the rolls and saying, okay, if you can prove (inaudible) or descent.

Or we look at - - or being lateral, Eunice Wheeler, Barbara [*sic* – should be Marlboro] Gardner and Rachel (inaudible) then you'll be able to come in. Illustrate (inaudible) of the tribe. But we're looking at different ways to do this, it's just that, you know, we're in a dilemma because we're in this process and don't really know how to change it and we're in the process of getting (inaudible) on it and still being pressured by lots of families who want applications (Austin Interview of James Cunha, Jr., 7/21/2000, 45; PEP Comments 8/2/2001, Ex. 75).

However, Cunha stated, for the time being, PEP is continuing to maintain its constitutional provisions:

MR. CUNHA: . . . We look at our regulations; what they say today; you know, if they say one-eighth, I can't take you in if you're one-sixteenth. I guess I've to bend that rule (inaudible) I've got to bend it for everybody and that actually takes a power of the government to change and what will (inaudible) we'll keep you on file. If (inaudible) going to change, we'll do it.

And you know, (inaudible) and we change it later, we will still grandfather you because when they (inaudible) and we'll (inaudible). But I just want to make sure - - may (inaudible) (Austin Interview of James Cunha, Jr. 7/21/2001, 47-48; PEP Comments 8/2/2001, Ex. 75).

While apparently being willing to consider applications from the Harriet Gardner and Fanny Jackson descendants, PEP has apparently excluded the Fagins/Randall and Fagins/Watson descendants from eligibility for PEP membership on the grounds that their members have broken tribal relations – in the case of the Randalls, specifically at some time between 1935 and the present (Austin IV 8/2/2001, 8n3; PEP Comments 8/2/2001).

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.

Analysis of Comments and Responses. The enrollment presently is 144 by the BIA's calculation from the membership list submitted for the final determination, although PEP's researcher stated that there were 147. The petitioner did not submit a list of the pending applicants and the BIA

has no data on which to base an evaluation of these pending applicants' ancestry and descent from the historical Eastern Pequot tribe. However based on the description of these applicants in the interviews, acceptance of these applications by PEP would effectively make it a different group than the one reviewed for acknowledgment.¹⁸² The regulations prohibit such an expansion and require the submission of a complete list of members as a prerequisite for evaluation under the criteria.

The Department's position is that changing the membership roll after acknowledgment to the extent that the addition would fundamentally alter the character of the group being recognized so that the group is effectively no longer the group that was reviewed for acknowledgment is not permissible. In adopting the present regulations, the Department commented, concerning § 83.12, that:

Section 83.12(b)

Comments: Several commenters approved of the limitations prescribed by this section on the base membership roll of a newly acknowledged tribe. Others considered the limitation an infringement on tribal sovereignty.

Response: The provision was included to clearly define tribal membership prior to acknowledgment. It was also included so that membership for purposes of Federal funding cannot later be so greatly expanded that the petitioner becomes, in effect, a different group than the one acknowledged. The acknowledgment decision rests on a determination that members of the petitioner form a cohesive social community and exercise tribal political influence. If the membership after acknowledgment expands so substantially that it changes the character of the group, then the validity of the acknowledgment decision may

¹⁸²One of the most important points that can be made about the Paucatuck Pequot Tribe in this century is that it has maintained consistent, unwritten rules about the criteria for membership in the tribe. The primary rule has been to include as members only those who have continued to maintain tribal relations with the Paucatuck Pequot Tribe. This membership rule, in conjunction with differential fertility, has resulted in there being only three confirmed Pequot ancestors for the tribe as it exists today: Marlboro Gardner (d. 1893), his wife Eunice Wheeler (d. 1912), and Rachel Hoxie Anderson-Jackson (d. 1884; a descendant of the Ned family) (Austin II 8/2/2001, 15; PEP Comments 8/2/2001).

It is important that the BAR researchers bear in mind that, because of the limited number of Paucatuck Pequot ancestors, the family tree for this tribe is fairly narrow. For example, there are no descendants of John Hoxie, brother of Rachel Hoxie, in the membership of this tribe. This is because his descendants are part of the Mashantucket Pequot tribe, as a result of his daughter's, Martha Ann Hoxie's, marriage to a Western Pequot, or they have otherwise broken tribal relations with the Paucatuck Pequot Tribe. Likewise, there are no descendants of the siblings of Marlboro Gardner or Eunice Wheeler on the current membership list. That is because their siblings either produced no offspring or they broke tribal relations with the Paucatuck Pequot Tribe (Austin II 8/2/2001, 15; PEP Comments 8/2/2001).

become questionable. The language of this section does allow for the addition to the base roll of these individuals who are politically and socially part of the tribe and who meet its membership requirements. (59 FR 9292).

The entire PEP petition is premised on the narrow definition of the group's membership. The petitioner's presented case under criteria 83.7(b) and 83.7(c) rests heavily on the proposition that the 144 present enrollees form a small, closely related kin group limited to those who have actually maintained social and political relations (see, for example, Austin, Political Authority 9/4/2001, 11; PEP Response to Comments 9/4/2001). There are many descendants of the same family lines, tracing back to the mid-1800's, who are not on the membership roll submitted with the petition (see discussion of Harriet (Gardner) Simons and Fannie E. (Jackson) Crumb Corn, above). The alteration of the membership to include those referenced in the interviews would fundamentally change the nature of the group that has been evaluated under criteria 83.7(b) and 83.7(c) and is not permissible.

The BIA brings to the petitioner's specific attention the following provision of the 25 CFR Part 83 regulations:

§ 83.12 (b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners [sic] documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of § 83.7(3) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

Conclusion. The petitioner's current membership, on the basis of documentation acceptable to the Secretary, descends from the historical Eastern Pequot tribe (PEP PF 2000, 137).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 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) (PEP PF 2000, 138).

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 (PEP PF 2000, 138).

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 83.7(g) is affirmed.

See also the conclusory section of this document.