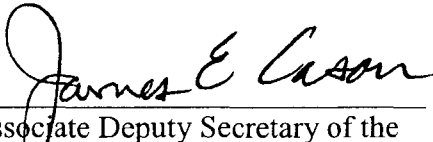


Summary of the Evaluation Under the Criteria and of the Evidence for  
Reconsidered Final Determination Denying Federal Acknowledgment  
to the  
Eastern Pequot Indians of Connecticut  
and the  
Paucatuck Eastern Pequot Indians of Connecticut

Prepared in response to petitions to the Assistant Secretary - Indian Affairs for Federal acknowledgment as an Indian Tribe and in response to the Interior Board of Indian Appeals decision of May 12, 2005, *In Re Federal Acknowledgment of the Historical Eastern Pequot Tribe*.

Approved OCT 11 2005  
  
Associate Deputy Secretary of the  
Interior

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## INTRODUCTION

### **Administrative History**

#### *Office of Federal Acknowledgment.*

On July 28, 2003, the Branch of Acknowledgment and Research (BAR), the office in the Bureau of Indian Affairs within the Department of the Interior principally responsible for administering the regulations, 25 CFR Part 83, became the Office of Federal Acknowledgment (OFA) under the Assistant Secretary - Indian Affairs (AS-IA). The duties and responsibilities of OFA remain the same as those of BAR, as do the requirements set forth in the regulations. The AS-IA makes the determination whether a petitioner meets the requirements to be acknowledged as a tribe within the meaning of Federal law, as set forth in the regulations, as one of the duties delegated by the Secretary of the Interior to the AS-IA (209 Department Manual 8). In this reconsidered Final Determination (reconsidered FD), OFA should be read to mean BAR when discussing activities conducted prior to July 28, 2003.

By Secretarial Order 3259, dated February 8, 2005, as amended August 11, 2005, the Secretary redelegated the duties, functions and responsibilities of the AS-IA to the Associate Deputy Secretary (ADS). Therefore, the ADS issues this reconsidered FD.

#### *The Eastern Pequot and Paucatuck Eastern Pequot Petitioners for Federal Acknowledgment.*

The Eastern Pequot Indians of Connecticut (EP) submitted a letter of intent to petition for Federal acknowledgment as an Indian tribe on June 28, 1978, and was assigned petition #35. The Paucatuck Eastern Pequot Indians of Connecticut (PEP) submitted a letter of intent to petition on June 20, 1989, and was assigned petition #113. Both petitioners claimed descent and continuity from families of historical Eastern Pequot Indians which have been associated with the Lantern Hill Reservation in Connecticut since the 19th century. In 1998, the AS-IA placed the EP group's petition on active consideration, and, after notification of the EP and consultation with other groups on the "ready, waiting for active consideration" list, waived the priority provisions of 25 CFR 83.10(d) in order to consider the PEP petition simultaneously with the EP petition (Gover to Cunha 4/2/1998).

The AS-IA issued proposed findings (PFs) to acknowledge both the EP and PEP on March 24, 2000, but left open the question of the "nature of the potentially acknowledgeable entity for the period from 1973 to the present" as to whether there was one tribe or two (65 FR 17301). The PFs invited additional evidence and arguments for evaluation for the final determination (FD) for the period from 1973 to the present under criteria 83.7(b) and (c). (See the Administrative History in the EP and PEP PF's and the EP and PEP FDs for additional details.) The comment period closed on August 2, 2001.

The AS-IA issued two FDs on June 24, 2002. The Department published notices in the Federal Register on July 1, 2002, that the Historical Eastern Pequot (HEP) tribe, represented by and composed of the two petitioners, EP and PEP, who were both resident on the State's Eastern Pequot Reservation at Lantern Hill, was a single tribe that satisfied the seven mandatory criteria for Federal acknowledgment.

On September 24, 2002, a group known as the "Wiquapaug Eastern Pequot Tribe" (WEP), and on September 26, 2002, the State of Connecticut (State) and the Towns of Ledyard, North Stonington, and Preston, Connecticut (Towns), as interested parties, filed requests for reconsideration of the FDs with the Interior Board of Indian Appeals (IBIA) under the provisions of 25 CFR 83.11 (See 41 IBIA 1 for details). The State and Towns submitted exhibits with their request for reconsideration. The AS-IA's transmittal letter to the IBIA (See AS-IA, Exhibit A 1/17/2003), identified the State and Towns exhibits that were new evidence. These documents have been considered for this reconsidered FD. The WEP submitted ten exhibits with its request for reconsideration; however, only one of the exhibits, genealogical drop-charts showing the claimed descent of some of the WEP, may be considered new evidence.<sup>1</sup>

After the FDs were issued, the EP and PEP formed a single governing council, representing the Eastern Pequot Tribal Nation (EPTN), an organization comprising the membership of both EP and PEP petitioners. The EPTN submitted its response to the requests for reconsideration on March 14, 2003 (EPTN Answer Brief 3/14/2003; 41 IBIA 12, fn 5). However, this response did not include evidence concerning the formation or functions of this governing council or the combined entity. There is only limited, incidental evidence in the record concerning the EPTN and this reconsidered FD does not consider the petitioners after the date of the FDs.

On May 12, 2005, the IBIA vacated the final determinations and remanded the EP and PEP FDs to the AS-IA "for further work and reconsideration" (§ 83.11(c)(10)). The Board's decision also described additional alleged grounds for reconsideration that were not within the IBIA's jurisdiction (83.11(f)) (41 IBIA 1-29). The regulations at 83.11(g) require the AS-IA to issue a reconsidered FD within 120 days of receipt of the IBIA's decision. This period was extended an additional 30 days by the Associate Deputy Secretary on September 9, 2005.

The IBIA noted that the EP and PEP FDs "share certain identical sections addressing common issues, such as the Assistant Secretary's consideration of the State relationship and the reservation" (41 IBIA 6), reflective of the conclusion that the petitioners represented a single Indian group. For the sake of convenience, the Board referred to the two FDs as one finding for the HEP; however, there was no single FD issued for such an entity. This reconsidered finding refers to the EP and PEP FDs as two actions with two separate FDs issued. Where there is common language in the two FDs, the EP FD is

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<sup>1</sup> The other nine exhibits include correspondence from the OFA to WEP or from WEP to OFA, pages from the published FDs, some of WEP's partially documented petition for Federal acknowledgment, and a 2001 newspaper article about the PFs. (See the section on the WEP's request for reconsideration elsewhere in this RFD for additional details.)

cited in this reconsidered FD. This reconsidered final determination constitutes a reconsideration of the FDs for each of the two petitioners (EP #35 and PEP #113), as they existed at the time of the FDs.

*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)).<sup>2</sup>

The FDs were issued on June 24, 2002, and the Federal defendants informed the court of that fact on the following day. On July 9, 2002, the Federal defendants filed a second motion to dismiss the lawsuit, which was granted in an opinion dated April 23, 2003. The State and Towns appealed the dismissal to the United States Court of Appeals for the Second Circuit. On May 24, 2004, the Court of Appeals summarily affirmed the judgment of the district court dismissing the complaint for lack of jurisdiction.

**Bases for the Reconsidered Final Determination**

The record for this reconsidered final determination includes the evidence that was before the AS-IA for the PFs and the FDs, including 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 record also includes the evidence and comments that were submitted to the IBIA by interested parties with their requests for reconsideration and comments submitted by the EPTN in response to the requests for reconsideration. The record for this reconsidered finding also includes some documents from the OFA resource file labeled "Connecticut FOIA." This file includes the State's responses to OFA's request for information on May 5, 1995, that pertain to the Eastern Pequot. The record also includes a certified digital image and clearer photocopy of the June 26, 1873, petition by the North Stonington Indians from the Connecticut State Library, as well as a few other documents acquired by OFA in the course of verifying the evidence in the record.

Two sets of records, the report submitted with the Towns' comments dated March 6, 2000, and the WEP's comments submitted on March 19, 2001, were inadvertently not reviewed for the FD's (1/17/2003 Transmittal to IBIA). These comments have been reviewed as part of this reconsidered FD.

The materials that were submitted by the third parties or the petitioners to the IBIA did not concern the petitioners after the date of the FDs. This reconsidered FD evaluates the

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<sup>2</sup> See FDs for detailed history of this litigation until the issuance of the FDs in 2002.

petitioners up to the date of the FDs. This reconsidered FD presents no conclusions concerning events after that date and such events do not impact the analysis of the evidence and events before that date.

Where the FDs are inconsistent with this reconsidered FD, the reconsidered FD supersedes the FDs. Analyses and conclusions in the FDs not rejected or revised by this reconsidered FD are affirmed.

### **Scope of the Reconsidered Final Determination**

Under 83.11(e)(10), “The Board shall vacate the Assistant Secretary’s determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds” for reconsideration under 83.11(d)(1-4).

The acknowledgment regulations describe the scope of the “further work and reconsideration,” stating that,

The Assistant Secretary’s reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. (83.11(g)(2))

The regulations further define the scope of the reconsideration by stating that, “The Assistant Secretary’s reconsideration may address any issues and evidence consistent with the Board’s decision or the Secretary’s request” (83.11(g)(2)). This provision is permissive. It allows the Assistant Secretary to consider issues and evidence related to the subject of a reconsideration, where that consideration is necessary to fully reevaluate and reconsider the grounds for vacating the decision and any described grounds that the Assistant Secretary has accepted or the Secretary has referred.

The Board’s decision, in addition to vacating the final determinations, described a number of grounds outside of its jurisdiction which it referred to the Assistant Secretary. This reconsidered FD final determination reviews these referred grounds and discusses the ADS’s reasons for accepting or rejecting them. The ADS accepts one of these described grounds (Item 5) and reconsiders the FDs on the basis of this ground as well as the Board’s decision concerning state recognition as evidence.

### **Overview of the Proposed Findings**

*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 findings, issued in 2000, 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 (EP PF 2000, 63).

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

*Conclusions under the Mandatory Criteria.* In regard to the individual mandatory criteria, the proposed findings' 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 petitioners as groups which existed within that entity. Therefore, the petitioners met criterion 83.7(a) (EP PF, 66).

· Criterion 83.7(b). The historical Eastern Pequot tribe, including the antecedents of both petitioners, meets criterion 83.7(b) through 1973 (EP PF 2000, 62). State recognition added to the evidence between 1940 and 1973 (EP PF, 100-101).

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 (EP PF, 62, 100).

· Criterion 83.7(c). The historical Eastern Pequot tribe, including the antecedents of both petitioners, met criterion 83.7(c) through 1973 (EP PF, 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 (EP PF, 62).

· Criterion 83.7(d). Both petitioners submitted their current governing documents, which included a statement of membership eligibility. Therefore, they met the requirements of 83.7(d) (EP PF, 62).

Criterion 83.7(e). Extensive genealogical material submitted by the Eastern Pequot and the Paucatuck Eastern Pequot demonstrated that the petitioners' current members were descendants of members of the Eastern Pequot tribe. The lines of descent for individual families from ancestors of the petitioners' membership have been verified through Federal census records from 1850 through 1920; public vital records of births, marriages, and deaths; and to a lesser extent through church records of baptisms, marriages, and burials, as well as through use of state records concerning the Lantern Hill reservation (EP PF, 133; PEP PF, 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 19<sup>th</sup> century, and that the current members of both petitioners thus descend from the historical Eastern Pequot tribe. In many cases, Connecticut's state records, overseer's reports, petitions, and similar records carried the names of direct and collateral ancestors of both petitioners on the same documents. Therefore, the petitioners met this criterion (EP PF, 33, PEP PF, 133).

- Criterion 83.7(f). No members of either petitioner were enrolled with any other federally acknowledged tribe. Therefore, the petitioners met criterion 83.7(f) (EP PF, 63).

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

The proposed findings concluded that the two petitioners overall met the requirements of 83.7 but that there was insufficient evidence to determine whether this was as one tribe or two (EP PF, 24). The proposed findings invited and urged the petitioner and third parties to comment on the issues of whether there were, for the period since 1973, one or two tribes and whether the Department had authority to recognize two tribes, given the situation analyzed for criteria 83.7(b) and 83.7(c) (EP PF, 61). The Department provided, in the appendices to the proposed findings, suggestions for research and analysis that the petitioners and third parties could pursue in regard to the period from 1973 to the present.

### **Overview of the Final Determinations**

#### *Determinations as to the Evidence from the State Relationship.*

The conclusion of the FDs, published in 2002, to acknowledge EP and PEP together as the Historical Eastern Pequot Tribe was based, in part, on the continuous existence of a state-recognized group with a reservation. The AS-IA concluded that continuous recognition by the State of Connecticut and continuous existence of a state reservation since the colonial period provided a defined thread of continuity through periods when other forms of documentation were insufficient by itself to demonstrate a criterion. The FDs concluded that State recognition under these circumstances was more than the identification of an entity, because it implicitly reflected the existence of a political body. The State's relationship with the Eastern Pequot provided additional evidence for criteria 83.7(b) and (c) where there was direct evidence for these criteria but was not a substitute for direct evidence at a given point in time or over a period of time. The continuous State relationship, although its nature varied from time to time, was considered to provide additional evidence in part because of its continuity throughout the entire history of the Eastern Pequot.

*Conclusions under the Mandatory Criteria.*

In regard to the individual mandatory criteria, the FDs found that EP and PEP satisfied all criteria, as follows, as the Historical Eastern Pequot Tribe:

Criterion 83.7(a). This criterion requires that the petitioner have been identified as an American Indian entity on a substantially continuous basis since 1900. The FDs concluded:

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) (EP FD, 15).

Criterion 83.7(b). This criterion requires that a predominant portion of the petitioning community comprise a distinct community and have existed as a community from historical times until the present. The FD concluded in part:

The evidence demonstrates that the historical Eastern Pequot tribe maintained a distinct social community within which significant social ties existed historically since first sustained contact with non-Indians and which has continued through the present. These ties within the membership encompass the members of both petitioning groups, even after the development of their separate formal organizations.

The FD concluded that from 1973 to the present, the evidence for community as presented to the Department by the two petitioners reflected increasing polarization of social ties but that the overall picture demonstrated by the evidence is that there continued to be one tribe, with two subgroups, the EP and PEP petitioners (EP FD, 20). The FD relied upon the state relationship and evidence for political processes linking both groups to conclude there was one community from 1973 to 2002, the date of the FDs.

The Historical Eastern Pequot Tribe met criterion 83.7(b).

Criterion 83.7(c). This criterion requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The FDs concluded that the historical Eastern Pequot, which included

the families antecedent to both petitioners, met criterion 83.7(c) from colonial times up to 1913, based on a combination of evidence including petitions to the State over grievances.

Criterion 83.7(c) was met by the historical Eastern Pequot from 1913 to 1973 based on a combination of evidence, particularly the State recognition of Atwood Williams, Sr., as chief, between 1929 and 1955. The state relationship here provided additional evidence to demonstrate the criterion was met, where the direct evidence was insufficient (EP FD 22, 24; 67 FR 44238). From 1973 to 2002, the FD concluded, "The events of the 1970's which led to the formation of the two organizations demonstrated a high level of political processes within the tribe which involved the main kinship segments." It further concluded that there was substantial evidence of political processes within each petitioner after those organizations formed and that state recognition as a single groups, and parallel political processes demonstrated that a single group existed which met criterion 83.7(c) (EP FD, 27; 67 FR 44238-9).

Therefore, the Historical Eastern Pequot Tribe met criterion 83.7(c).

Criterion 83.7(d). This criterion requires that the petitioner provide copies of the group's current governing document and a statement of membership criteria. Both petitioners had submitted their current governing documents. The Historical Eastern Pequot Tribe met criterion 83.7(d) (EP FD, 27).

Criterion 83.7(e). This criterion states that the petitioner's membership must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Extensive genealogical material submitted by the petitioners and by the third parties indicated that the members descended from the historical Eastern Pequot tribe through several lineages. The lines of descent were 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. The Historical Eastern Pequot Tribe met criterion 83.7(e) (EP FD, 27).

Criterion 83.7(f). This criterion states that the petitioner's membership must be composed principally of persons who are not members of any acknowledged North American Indian tribe. No member of the two petitioners were members of acknowledged Indian tribes. Therefore the Historical Eastern Pequot tribe met criterion 83.7(f) (EP FD, 28).

Criterion 83.7(g). This criterion states that neither the petitioner nor its members can have been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. There was no evidence that the two petitioners were subject to congressional legislation that has terminated or forbidden the Federal relationship. Therefore the Historical Eastern Pequot Tribe met criterion 83.7(g) (EP FD, 29).

Conclusion

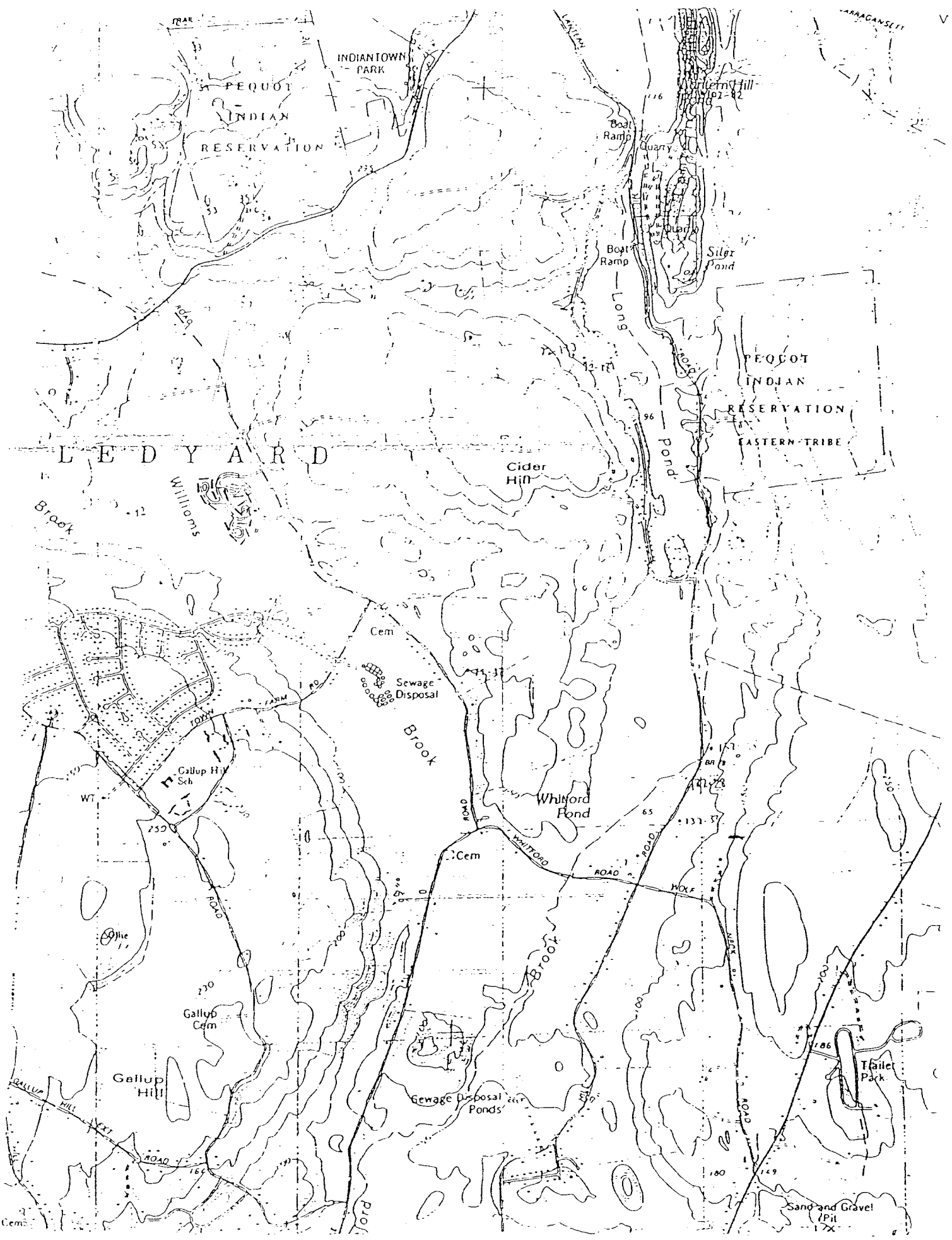
The FDs concluded:

The evidence in the record for the final determinations demonstrates that the two petitioners comprise a single tribe and together meet the requirements for Federal acknowledgment as the historical Eastern Pequot tribe from first sustained contact with Europeans until the present. This final determination therefore acknowledges that the historical Eastern Pequot tribe comprising the membership of the two petitioners, the EP (petitioner #35) and the PEP (petitioner #113), exists as a tribe entitled to a government-to-government relationship with the United States.

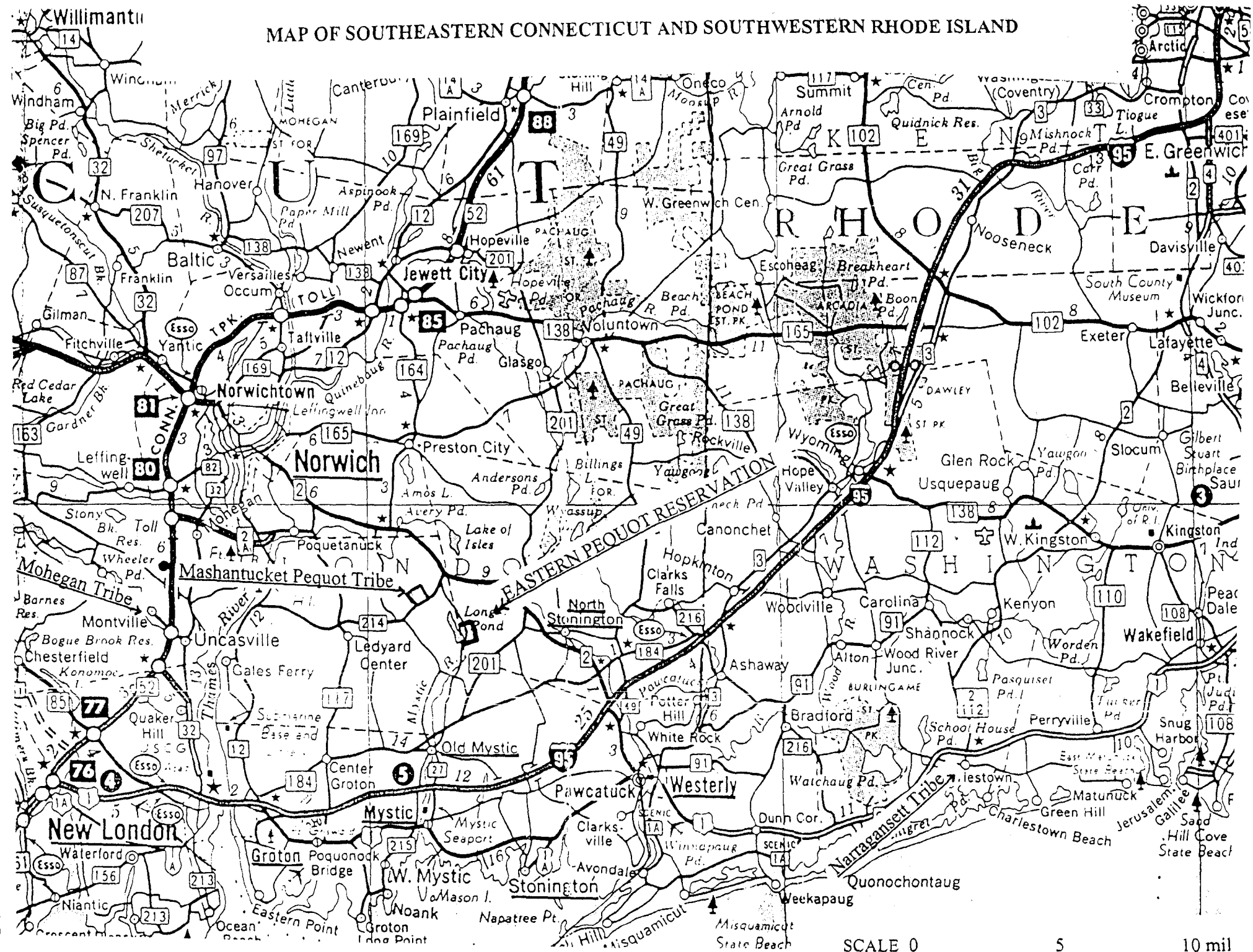
The EP and PEP petitioners, constituting a single tribe, met all seven mandatory criteria and therefore met the requirements to be acknowledged as a tribe.

Abbreviations and Acronyms Used in the Reconsidered Final Determination

ADS	Associate Deputy Secretary of the Interior.
APA	Administrative Procedure Act.
AS-IA	Assistant Secretary - Indian Affairs.
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs.
BIA	Bureau of Indian Affairs.
Board	Interior Board of Indian Appeals.
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).
EPTN	Eastern Pequot Tribal Nation (post FD combination of petitioners #35 and 113).
Ex.	Documentary exhibit submitted by petitioner or third parties.
FD	Final Determination.
FR	<i>Federal Register</i> .
HEP	Historical Eastern Pequot (the combined EP and PEP petitioners, after the FDs).
IBIA	Interior Board of Indian Appeals.
Narr.	Petition narrative.
NP App.	Narragansett Petition for Federal Acknowledgment, Appendix.
OFA	Office of Federal Acknowledgment (formerly known as BAR).
OD	Obvious deficiencies letter issued by the BIA.
PEP	Paucatuck Eastern Pequot Indians of Connecticut (Petitioner #113).



# MAP OF SOUTHEASTERN CONNECTICUT AND SOUTHWESTERN RHODE ISLAND



Important 20th Century Figures in Relationship to Family Lines

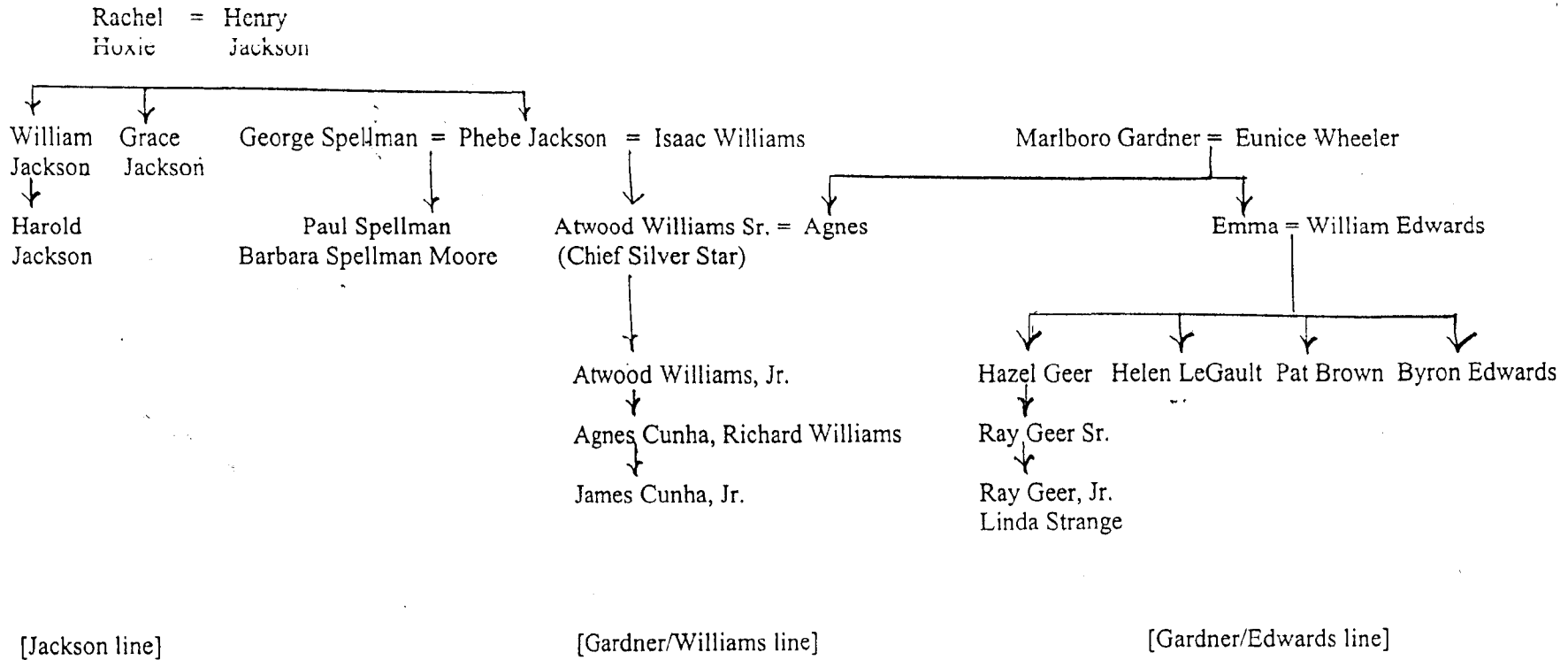
*Eastern Pequot Petitioner*

<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%.

Important 20th Century Figures in Relationship to Family Lines

*Paucatuck Eastern Pequot Petitioner Antecedent Families*



= sign means marriage

Reconsidered Final Determination: Eastern Pequot and Paucatuck Eastern Pequot

- OTR            On the Record technical assistance meeting.
- PF            Proposed Finding.
- TA            Technical assistance by the BIA or OFA.
- WEP          Wiquapaug Eastern Pequot

Standardized Spellings

When discussing Indian tribes and bands, and names of individuals, this reconsidered Final Determination uses the current standardized spellings. Where specific historical documents are quoted, these names are spelled as found in the original. Text quoted from documents retains the original spellings.

## OVERVIEW OF THE IBIA DECISION CONCERNING STATE RECOGNITION AS EVIDENCE

### *Introduction.*

The IBIA decision vacating the Historical Eastern Pequot decisions rejected the use made in EP and PEP FDs of the historically continuous State of Connecticut relationship with the Eastern Pequot as evidence for criteria 83.7(b) and (c) (see IBIA Items 1-3). It described the circumstances under which the state relationship could provide evidence for criteria 83.7(b) and (c). Under the decision, the state relationship must be treated as evidence to be evaluated on the same terms as any other evidence for these criteria.

The IBIA did not accept the State's argument that state recognition could never be used as evidence because it was not listed as a form of evidence in 83.7 (b) and (c), though explicitly listed as evidence for criterion (a) (41 IBIA 15).

### *Summary of the FDs' Treatment of Continuous State Recognition as Evidence.*

The EP/PEP FDs summary conclusions concerning continuous state recognition as evidence were:

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.

The FDs explained this in part, stating:

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 FDs described how state recognition was to be weighed together with other evidence:

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 (EP FD, 14).

*IBIA Conclusions Concerning the Use of State Recognition as Evidence in the FDs.*

The IBIA decision described its reasoning for rejecting the manner in which state recognition was used in evidence in the FDs:

We have considered the voluminous discussion in the FD concerning the state relationship with the EP and the underlying specific evidence relied upon to characterize those elements and that relationship. We have also considered the extent to which the FD does, or does not, articulate how that relationship is used for demonstrating particular elements within the definitions of “community” and “political influence or authority.” We are left with the firm conviction that the ‘implicit’ state recognition of the Eastern Pequot as a political entity, and the underlying elements of the relationship, at least as used and explained in the FD, are of little or not probative value as evidence to demonstrate that the group actually met the definitions of “community” and “political influence or authority (41 IBIA 21).<sup>3</sup>

The FD treats the significance of state recognition in this case on far too general a level for us to be convinced that it is evidence that can be considered reliable or probative for the entire definition of the community, and the FD makes no distinction between the components of that definition in considered the state relationship as probative (41 IBIA 18).

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<sup>3</sup> The IBIA decision elaborated on this, noting “The FD reached this conclusion even while noting that the ‘nature’ of the relationship itself varied from time to time (EP FD, 14). Alternatively, the FD characterized the ‘political underpinnings’ of this relationship as ‘less explicit’ during that 170-year time span but emphasized that the three legal and administrative elements of the relationship remained.”

The decision stated further that “whether such evidence is relevant, reliable or probative, and the proper weight afforded it, must be determined on a case- and fact-specific basis” (41 IBIA 16).

Although not explicitly stated, the IBIA, in vacating the EP and PEP FDs, rejected one of the determinations' central rationales, that the historical continuity of the state relationship, as existing through essentially throughout the history of the Eastern Pequot, entitled the existence of the relationship (as opposed to specific interactions between the group and the state) to be given weight as evidence under criteria 83.7(b) and (c).

*Citizenship and Maintenance of a State Reservation as Elements of State Relationship.*

The decision further discussed two of the elements of the state relationship: whether the Eastern Pequot were distinct as non-citizens and the maintenance of a reservation for them by the State. The Board's decision noted a “voluminous discussion” of the citizenship evidence in the FDs, but concluded, as it did for other elements of the state relationship, that the FDs failed “to articulate how that status is probative of actual interaction, social relationships, or a bilateral relationship between the group and its members” (41 IBIA 21). The decision concluded concerning Eastern Pequot citizenship status that, “it was far from clear . . . that their legal status under state law in any way actually reflected or was tied to a . . . continuation of the actual internal group activities or processes that would direct demonstrate the requirements of criterion b or (c).” The decision noted in this regard that the “evidence suggesting uncertainty among State officials concerning their citizenship status,” and the PF's conclusion (not revised for the FD) that from 1941 to 1973 there was “no evidence in the record that the State of Connecticut was looking at 'membership' in any meaningful sense” (41 IBIA 20). The IBIA decision considered it unnecessary to specifically address the question of what the actual citizenship status of the Eastern Pequots was, noting the inclusion of new evidence in the materials submitted to IBIA (41 IBIA 23).

The IBIA decision did not extensively address the substantial weight given in the FD to the State's maintenance of a distinct, separate landbase for the group. However, it rejected the maintenance of a reservation as necessarily significant evidence, concluding that

its probative value as indirect evidence would seem to depend on a more specific showing that the State's action in maintaining the reservation reflected one or more components of the definitions of community or political authority for the group (41 IBIA 20).

*Standard for State Relationship as Evidence for Community and Political Influence.*

The decision describes further the bases on which the state relationship could provide probative evidence, stating:

In order for the State's relationship with the EP to be shown to be reliable and probative evidence of community and political processes, the FD must articulate more specifically how the State's actions toward the group during the relevant time period(s), reflected or indicated the likelihood of community and political influence or authority within a single group. And it may be that the State's interaction may be probative for some purposes but not others (41 IBIA 18).

The decision stated further regarding the state relationship that,

The evidentiary relevance and probative value of such a relationship depends on the specific nature of the relationship, and how that relationship and interaction reflect in some way one or more of the elements in the definitions of "community" or "political influence or authority" contained in section 83.1 (41 IBIA 16).

The decision described how the state relationship might provide probative evidence, stating concerning (c), citing the discussion of political influence in the *Miami FD* (Miami FD, 15). The decision stated:

As with criterion (b), this criterion requires at least some evidence of interaction within the group -- leaders influencing followers and followers influencing leaders. Once again, we fail to see how "implicit" state recognition of the group as a political entity constitutes probative evidence that the group actually exercises political influence or authority, and that there are actually leaders and followers in a political relationship. Rather, there needs to be more than "implicit" recognition, and the relationship between the State and the group needs to be expressed in some way that reflects the existence or likely existence -- not simply theoretical or presumed -- of political influence or authority within the group, as defined by section 83.1 (41 IBIA 18).

The IBIA decision rejected the State and Towns argument that valid evidence of political influence or authority is "limited to direct evidence of internal interaction within a group." The IBIA stated that evidence of political influence or authority "includes, for example, evidence that shows that leaders are 'making decisions for the group which substantially affect its members or are 'representing the group in dealing with outsiders in matters of consequence,'" quoting the definition of political influence in 83.1 (41 IBIA 19, fn 8).

*Nature of the "Further Work and Reconsideration."*

The Board's decision concerning criterion 83.7(c) during the 20th century, stated that,

for the pre -1973 period, the FD's evaluation of the evidence of political influence and authority within the group as a whole appears to have been closely connected with reliance on state recognition. Therefore, we leave

it to the Assistant Secretary, on reconsideration, to reevaluate the evidence as a whole for the pre-1973 period (41 IBIA 24). [Emphasis supplied.]

This comment concerning reconsideration of the FDs calls for the reconsidered decision to articulate which elements of the state relationship and state actions, if any, have weight as specific evidence and to reevaluate the evidence in the record, including valid evidence, if any, from the state relationship.

## **GROUNDINGS DESCRIBED BY THE IBIA AS OUTSIDE OF ITS JURISDICTION**

### **Introduction**

Requests for reconsideration to the IBIA may include arguments and evidence which are outside the Board's jurisdiction. The Board is required to describe these grounds in its decision (83.11(f)(1)). The regulations state,

The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)(4) of this section alleged by a petitioner's or interested party's request for reconsideration (83.11(f)(1)).

If the Board affirms the decision, the described grounds are sent by the Board to the Secretary, who reviews them after receiving comment from the petitioner and interested parties (83.11(f)(4)). The Secretary has the discretion to request that the AS-IA reconsider the final determination on these grounds (83.11(f)(2)). If the Board vacates the decision, as it has done here, the grounds outside the Board's jurisdiction are described in the Board's decision and are sent directly to the Assistant Secretary (83.11(g)(2)). The regulations state that,

The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request (83.11(g)(2)).

Where the Board has vacated a decision and remanded it to the Assistant Secretary, the regulations are silent concerning any opportunity for the petitioner or third parties to comment or submit additional evidence concerning the additional grounds described in the decision as outside the Board's jurisdiction, unlike the opportunity for comment afforded when grounds are sent to the Secretary as possible grounds for reconsideration.<sup>4</sup>

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<sup>4</sup> The Historical Eastern Pequot and Schaghticoke Tribal Nation decisions are the first in which the Board has vacated a decision. In previous cases, decisions were affirmed but material grounds were described to the Secretary who reviewed them and in some but not all instances requested that Assistant Secretary reconsider the final determination on specific grounds.

The Acting Principal Deputy Assistant Secretary -- Indian Affairs concluded in the present case not to accept unsolicited comment or new evidence (Olsen 5/23/2005).

In the Historical Eastern Pequot decision, the Board described its interpretation of the requirement to describe arguments outside its jurisdiction. It stated:

The Board recognizes that allegations falling outside of its jurisdiction may or may not state grounds that actually would warrant *reconsideration* of the FD, as distinct from simply repeating arguments that were fully considered in the FD or provide no real basis for reconsideration. The regulations, however, require that the Board “describe” for the Assistant Secretary alleged grounds for reconsideration that fall outside the Board's jurisdiction. 25 C.F.R. § 83.11(f)(1). Given the absence of any explicit role -- or standard -- for the Board to screen such allegations, the Board's general practice is to refer such allegations to the Secretary or Assistant Secretary, who have jurisdiction to decide whether further reconsideration is appropriate. In limited circumstances, however, the Board has declined to refer allegations to the Secretary or Assistant Secretary. See, e.g., Snoqualmie Tribal Organization, 31 IBIA 299, Snoqualmie Tribal Organization, 31 IBIA 260 (41 IBIA 38 fn 13). [Emphasis in the original.]

For this reconsidered decision, the ADS has reviewed each of the described grounds to determine whether the issues raised, as described by the IBIA, merit inclusion in the process of further work and reconsideration. Where the IBIA in describing a ground referenced specific allegations and comments in the petitioner's or interested parties' briefs, a review has been made of the third parties' statements and any responses by the petitioner.

#### **Evidence of Community in the 20th Century (IBIA Item 4)<sup>5</sup>**

##### *Introduction.*

The Board's decision concluded that the continuous state relationship was used as evidence to demonstrate criterion 83.7(b) in the 20th century (41 IBIA 7, 24). The Board stated in part,

Whether or not the evidence as a whole -- in the absence of reliance on implicit state recognition -- would be sufficient to find that criterion (b) is satisfied, is an issue that is not within the Board's jurisdiction. In any event, it is something that the Assistant Secretary will have to reexamine in light of our conclusion about state recognition” (41 IBIA 24).

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<sup>5</sup> As referenced above, Items 1-3 of the Board's decision concerned state recognition, which was within the Board's jurisdiction.

The Board's decision concerning demonstration of criterion 83.7(b) in the 20th century did not accept challenges by the State to the evidence used to demonstrate community, but suggested the AS-IA might wish to reevaluate the use made of interview evidence, particularly summaries of interviews.

*The State Relationship.*

Concerning criterion 83.7(b), the Board's discussion of the State relationship as evidence for 83.7(b) stated that, "the FD did not specifically identify for any time period or periods to what extent the State's relationship with the Eastern Pequot was considered as relevant evidence or what weight was being given to such evidence" (41 IBIA 7). The Board in another part of the decision stated that, "With respect to criterion (b), it is not clear to what extent the FD actually relied upon state recognition, but the FD does suggest that it made the difference for at least one or more time periods" (41 IBIA 17).

The Board's discussion cited the FDs' general discussion of state recognition as evidence. The cited section stated concerning state recognition that, "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" (EP FD, 78). The Board concluded that "As such, the FD indicates that absent the evidence of the State's relationship with the Eastern Pequot, the evidence for criterion (b) was insufficient for at least one or more unspecified time periods" (41 IBIA 7).

*Discussion*

For the EP and PEP FDs, the evidence for criterion 83.7(b) before 1973 was sufficient without relying on the state relationship.<sup>6</sup> The evaluations of 83.7(b) before 1973 did not refer to the state relationship (EP FD, 15-18).<sup>7</sup> The evaluation of criterion 83.7(b) after 1973 did not directly make use of the state relationship to conclude that a single community rather than two communities existed, but did conclude that the state relationship demonstrated that there was a single political body and therefore only one community existed. Since the use of the state relationship as evidence did impact criterion 83.7(b) for the post-1973 period, a separate discussion is provided below together with the review of the additional questions concerning that time period raised by the Board's decision in Item 5.

The Board's decision also cited the State's contention that "the evidence, without reliance on state recognition, is insufficient to support a finding that one or both petitioners, or a single Eastern Pequot tribal as a whole, satisfied the 'community' criterion for much of

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<sup>6</sup> The PFs, by contrast, relied in part on the state relationship to demonstrate 83.7(b) for 1920 to 1973. There was additional evidence submitted in response to the PFs, hence the FDs did not rely on the state relationship for criterion 83.7(b) for 1920 to 1973.

<sup>7</sup> The FDs only relied on state recognition as additional evidence for criterion 83.7(c) where the existing direct evidence was insufficient, between 1913 to 1973. The FDs relied on state recognition between 1973 and 2002 to conclude there was a single political entity.

the 20th century” (41 IBIA 24). The State, in the portion of its request for reconsideration that were cited by the Board, argued that the evidentiary weighing in criterion 83.7(b) was altered based on state recognition although state recognition was not specifically mentioned (State's Request, 2002, 37-40, 45-47). The State disagreed with how the evidence was weighed, and concluded that, therefore, state recognition must have been added.

The EP and PEP FDs' summary evaluations discussed the specific evidence used to conclude the criterion was met, and how evidence was weighed, with regard to each criterion for each time period. The detailed summary evaluations of the evidence for criterion 83.7(b) in the FDs did not reference the state relationship before 1973. Although the general language in the FDs concerning the state relationship indicated state recognition could provide evidence for criterion 83.7(b), the FD did not rely on state recognition for its conclusions concerning criterion 83.7(b) before 1973 (EP FD, 15-18).

#### *Specific Forms of Evidence.*

The Board did not accept the State's arguments concerning specific forms of evidence concerning community, their conclusions about Fourth Sunday Meetings and essentially all of their critiques of the use of interview evidence (41 IBIA 24-25). The Board reviewed the State's specific challenges to 20th century community and concluded, “that the State has not demonstrated, by a preponderance of the evidence, that the evidence of meetings and social activities involving Eastern Pequots, and the interview summaries are unreliable or of little probative value” (41 IBIA 24). It stated further, that, “although interview summaries may be a less desirable form of evidence than interview transcripts, we are not prepared to rule that interview summaries are necessarily unreliable or of little probative value,” noting that the FDs specifically took into account the concerns raised by the State and Towns (41 IBIA 24). The Board noted that the State argued that the, “FD's conclusion that the Jackson family served as a 'bridge' between the otherwise estranged Sebastian and Gardner families is based on unreliable interview summaries” (41 IBIA 24-25).

The Board's decision stated that it could not “second guess the weight the FD gave this evidence,” as the State wished, but suggested the AS-IA might want to address State's argument that, with regard to certain specific evidence of community which derived from interviews, “too much weight was afforded to too little evidence” (41 IBIA 24). The Board here noted: “We recognize that there is not always a clear line between weight of evidence and reliability or probative value . . .” (41 IBIA 24).

The State did not identify any substantial issue in the use of interview evidence not addressed by the FD. The use of interviews, including certain interview summaries, as a general question, and the specific issues of using them in evaluating community raised by the State were reviewed in detail for the FDs (EP FD, 117-124). The FDs noted that there was a substantially larger body of interview materials in the record than there had been for the PF. The FD cited contemporary documentation and interviews with full transcripts to demonstrate the relationship between the Jacksons and the other two family

lines, hence the conclusion that this family line served as a bridge did not depend on the interviews for which there were only summaries.

### *Conclusions*

This reconsidered final determination declines to reevaluate the FDs concerning community in the 20th century before 1973 because state recognition was not used as evidence that criterion 83.7(b) was met and because all of the issues raised with regards to the use of interview evidence and other evidence of community including Fourth Sunday meetings were fully reviewed for the FDs.

### **Evaluation of Criteria 83.7(b) and 83.7(c) after 1973 (IBIA Item 5)**

#### *IBIA Decision.*

The IBIA raised two questions that concern the FDs' evaluation of 83.7(b) and (c) post-1973. First the IBIA described the following as a ground outside of its jurisdiction, stating,

Should the FD be reconsidered on the ground that the FD improperly disregarded a lack of evidence of connections between EP and PEP, or of a single political framework, and improperly relied on “parallel political processes” within EP and PEP, and competition for the same resource and status, as evidence that EP and PEP were factions within a single political entity (41 IBIA 25). [Emphasis supplied.]

The Board stated that these arguments, which were presented by the State, “challenge the FD’s analysis and interpretation of the evidence, in finding that EP and PEP constituted factions of a single political entity, rather than two separate entities, during the post-1973 period” (41 IBIA 25).

Second, the IBIA decision’s discussion of how state recognition should be evaluated as evidence, an issue within its jurisdiction, reviewed the use of such evidence in the FDs’ conclusion that the EP and PEP met criteria 83.7(b) and (c) as a single group in the post-1973 period (41 IBIA 17). The Board concluded that, “the State’s continuous relationship was given some indeterminate weight for the post-1973 period to support the FDs’ finding that the two petitioners in fact constituted two factions of a single tribe (FD 26-27).” The Board in describing the factual background of the FDs’ conclusion that criterion 83.7(c) was met in the post-1973 period quoted the FDs’ conclusions that “The continuous historical State recognition and relationship was based on the existence of a single Eastern Pequot tribe,” and that this provided “added evidence that the petitioners meet the regulations as a single political body, notwithstanding current divisions and organization (67 FR 44239, col.3)” (41 IBIA 9).

The ADS, as described below, concludes that Item 5 is not grounds for reconsideration of the FDs.

*Proposed Finding.*

The PFs raised the issue of whether there was a single community with political processes, “one tribe with political factions,” or two tribes, and solicited comments on this question (EP PF, 120). The PFs and the on-the-record technical assistance meeting after the PFs provided guidance on evidence and analysis pertinent to address this issue. The petitioners and interested parties provided comments in response to the PF. The following from the PFs provides background to the FDs:

*1973 to the Present.* 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 (see for example, *Paucatuck Eastern Pequot Indians of Connecticut et al. v. Connecticut Indian Affairs Council et al.* No. 6292, Appellate Court of Connecticut, decided March 28, 1989, which describes each current petitioner as a “faction of the tribe”). This reflects in part the apparent recentness of the political alignments reflected in the petitioners after their formal organization in the early 1970’s. A finding concerning community in this time period will be presented in the final determination (EP PF, 120).

The PFs also commented that,

The petitioners have failed to provide adequate evidence to permit the Department to determine that the petitioners formed a single tribe after 1973. For example, neither side presented an analysis of the conflict between them, which is focused around the relationship with the state, which would provide useful evidence whether there is a political conflict between two parts of one group or mobilization of political sentiment within two separate groups over a common issue. Even more significantly, neither petitioner addressed the role of the Hoxie/Jackson family in the conflicts from 1973 through 1976, although the documents submitted as part of the record clearly indicated that at that time, the tribe had a third political group (EP PF, 141).

*The FDs’ Conclusion that a Single Tribe Existed Post-1973.*

The FDs, in concluding that criterion 83.7(c) was met as a single tribe post-1973, discussed the continuity of the post-1973 conflicts with the past history of the group as evidence for the post-1973 period. The FDs stated,

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 (EP FD, 26).

The FDs also stated,

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 (EP FD, 45-46).

The FDs noted that “each separate organization in the modern period had demonstrated substantial political processes within their own membership” (EP FD, 25). They noted,

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 (EP FD, 25).

The criterion 83.7(c) evaluations in the FDs cited the state relationship as evidence that a single political body still existed, stating,

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 (EP FD, 27).

Concerning criterion 83.7(b), the FDs concluded that each of the petitioners separately had substantial direct evidence of internal cohesion for this time period (EP FD, 19-20). This conclusion was not based on the state recognition. The FDs relied on the conclusion that there was a single political entity to conclude that the two groups formed a single community which met 83.7(b) rather than two communities and in this way indirectly relied on state recognition. The FDs stated,

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 (EP FD, 20).

*Reconsideration of the State Relationship as Evidence.*

The FDs relied on the general, historical state relationship to conclude that the two petitioners met 83.7(c) as a single group from 1973 to 2002 (the date of the FDs). This reconsidered final determination has reviewed the evidence in the record concerning the relationship between Connecticut and the Eastern Pequot between 1973 and 2002, including the laws the State enacted in 1973 and afterwards and numerous specific state actions from 1973 to 2002, especially the actions of the CIAC. The State's actions in response to the conflicts between EP and PEP were not based on an evaluation whether they were two separate groups or political factions of a single group. The State's actions for the most part focused on who could legitimately represent the Eastern Pequot and how to resolve the conflict between EP and PEP. Although the State, in its laws and administrative actions, treated the Eastern Pequot as a single group since 1973, there was not evidence that this was based on a detailed contemporary evaluation that the two Eastern Pequot groups formed a single political entity. The State's treatment of them as a single group was based on the historical relationship with the Eastern Pequot. It treated the Eastern Pequot as a single political entity but this action was not based on a contemporary evaluation of this assumption (see detailed discussion of the state relationship after 1973, below).

Because of a lack of state investigation or actual knowledge that a single political entity existed, this reconsidered final determination concludes that the state relationship does not provide evidence to demonstrate that the Eastern Pequot formed a single political community from 1973 to 2002, the date of the FDs.

*Review of the Evidence in the FDs Concerning Whether a Single Political System with Factions Existed.*

The FDs' summary evaluations concluded that the two petitioners formed a single political system with factions from 1973 to 2002. This conclusion was based on the history of the conflict over the reservation, the political issues that the group shared, the evidence that historically there was only a single Eastern Pequot group encompassing both petitioners, and the State recognition of a single group (EP FD, 25-27).

The PFs presented a definition of factionalism and a discussion of the evidence necessary to demonstrate that factions existed. The EP PF stated, "A factional dispute is effectively an uncontrolled, persistent conflict for power between relatively permanent divisions within a single political system, not a conflict for power between two groups which are

not connected” (EP PF, 152). This discussion cited as precedent the Samish, Miami, and Tunica-Biloxi FDs.

The EP FD also described the evidence necessary to determine whether there was a single political system with factions. The FD stated, “The primary focus of inquiry is a purely descriptive one -- is there a single political system, which implies also a single community, within which a conflict is occurring” (EP FD, 176). The EP FD went on to note that EP’s response to the PF had not presented the kind of evidence necessary to answer this question. The FD stated, “In the present instance, the EP Comments did not focus on the issue of whether there are political and social contacts between members of the two sides, or any institutional framework uniting them” (EP FD, 176). The FDs concluded that,

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 (EP FD, 25).

The EP FD described and commented on the evidence submitted by EP in response to the PFs concerning the relationship between EP and PEP. It noted,

EP presented little direct evidence, data, and description to show a single political system, in the sense of a single social community and social and political relationships between the leaders, rather than being an argument between two separate groups contending for the same prize, other than the conflict itself, the common issues and the actions in response. There was little data to show any present community connection between the members of the two groups or to demonstrate that the dispute takes place within a framework in which there are relationships between the members and/or leaders of the two memberships (EP FD, 176-177).

The EP FD noted concerning PEP’s response to the PFs that,

PEP limited its Comments to providing instances where events, gatherings or meetings were held in which EP members did not participate and from which they were perhaps deliberately excluded, although the latter wasn’t definitely shown. They also commented frequently that there had never been a political relationship between the two groups.<sup>8</sup> (EP FD, 177).

At the same time, both petitioners submitted substantial new data which, as analyzed by the FDs, provided stronger evidence for criterion 83.7(c) within the separate petitioners (EP FD, 168-177, PEP FD, 170-175).

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<sup>8</sup>The FDs and this reconsidered FD reject the PEP petitioner’s arguments that the Sebastians were not Pequot and that the PEP’s ancestors had never associated with them at any time in the past.

The FDs' conclusions that there was one group with factions were based on the conflict itself and the common issues that each petitioner was concerned with, together with the conclusion that the state relationship provided evidence that there was only one group. This reconsidered FD concludes that without evidence from the state relationship, the remaining evidence and the conflict between EP and PEP at the time of the FDs, and for some years before, do not provide sufficient evidence to meet the requirements, stated in the FDs and PFs, to demonstrate a factional conflict within a single political system. This reconsidered final determination follows precedent in concluding that there were at the time of the FDs two separate groups, not two factions in conflict within a single political system, notwithstanding the recentness of the separation of the two groups and the existence of some residual connections between them.

*Departmental Policy Concerning Divisions within Petitioners.*

The FDs described the Department's policy concerning splits within groups which may become federally acknowledged as tribes. This policy was part of the reasoning behind the FDs that there was one tribe, given the analysis for the FDs. The FDs prefaced the policy statement with the conclusions that while the two groups had "been evolving in different directions" the evidence did not indicate "a complete split has occurred" (EP FD, 46).

This reconsidered FD affirms this policy (see discussion below). However, a substantially different analysis of the evidence, as a result of the IBIA decision, has resulted in different conclusions concerning the EP and PEP petitioners after the early 1980's (see discussion of criterion 83.7(c) below). While the Department continues to consider the policy to be an appropriate one where two factions exist within a single political system, even if badly divided, this reconsidered FD finds that the policy does not apply here because the revised analysis demonstrates that the two petitioners after the early 1980's were separate rather than factions of a single political entity.

*Consideration of Issues Concerning Community Raised in IBIA Item 4 Pertaining to the Post-1973 Period.*

For the post-1973 period, this reconsidered FD has taken into account the Board's comments in Item 4 concerning the use of state recognition as evidence for community for the post-1973 period (41 IBIA 23-24).<sup>9</sup> The evaluation of criterion 83.7(b) after 1973 in the FDs did not directly make use of the state relationship to conclude that a single community rather than two communities existed. It concluded, however, that the state relationship demonstrated that there was a single political body and that therefore a single community existed.

All of the issues within the grounds in Item 4 concerning the evidence for community, other than state recognition, primarily concerning the use of interview evidence, were fully reviewed for the FDs, including their use as evidence for the post-1973 period. Therefore, the ADS declines to review the post-1973 period on the grounds described by

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<sup>9</sup> See discussion above concerning state recognition as community evidence until 1973.

the IBIA in Item 4 other than state recognition. However, this reconsidered FD reconsiders whether the petitioners meet criteria 83.7(b) and (c) after 1973 and whether they do so as one group or two.

*Conclusions.*

The central issue for reconsideration is whether EP and PEP constituted a single political body with substantial internal conflicts from 1973 until 2002, or had at some point after 1973 separated into two distinct entities.<sup>10</sup> The FDs in reaching the conclusion that the two petitioners met criterion 83.7(c) as one group in this period gave some weight to the state recognition of the Eastern Pequot as a single group which it considered to be a political entity. This reconsidered final determination concludes that the state relationship post-1973 does not provide evidence that a single political system existed within the meaning of the regulations (see below, discussion of the state relationship). The remaining evidence about community and political processes and the conflict between EP and PEP at the time of the FDs and for some years before did not provide sufficient evidence to meet the requirements and precedents, as stated in the PFs and FDs, to demonstrate there was a single political system with factions or that there was one community. For these reasons, the ADS concludes that the EP and PEP FDs should be reconsidered concerning criteria 83.7(b) and (c) for the post-1973 time period.

**The Two 1873 Documents (IBIA Item 6)**

*The Described Ground.*

The IBIA stated that the Towns contended the FD gave improper weight to the June 26, 1873, petition and a June 27, 1873, list of Eastern Pequot members to tie the petitioners' ancestors to the historical Eastern Pequot tribe, and in particular to include Tamar Brushel, an ancestor of EP members (41 IBIA 25). The IBIA cited the Towns' argument that the "origins and validity" of the petition were "very questionable" (Towns Request 2002, 52), and the Towns' contention that the list of tribal members was "of questionable reliability" (Towns Request 2002, 56).

The IBIA stated that it did not have the jurisdiction to review the authenticity of the historical records and that determining "improper weight" was not within its jurisdiction (41 IBIA 25). Therefore, the IBIA referred the allegations to the AS-IA for reconsideration:

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<sup>10</sup> Following IBIA's referred description of the State's allegations, this review reconsidered the evidence and arguments whether there was a single group rather than two groups. The FDs' evidence and conclusions that there was substantial evidence to demonstrate community and political influence *within* each petitioner separately are not at issue, since these conclusions did not rely on state recognition and are not part of the IBIA's referred grounds. They did not rely on state recognition or on the conflicts between the two organizations except to the extent that the latter provided evidence about *internal* political processes, but relied on other, specific evidence.

Should the FD be reconsidered on the ground that the authenticity of the 1873 petition and list has not been satisfactorily demonstrated, or on the ground that the FD gave improper weight to those documents? (41 IBIA 25).

*Discussion.*

This reconsidered FD reviewed the two 1873 petitions in order to determine whether the Towns' allegations have merit. This review first addressed issues of the "origins and validity" of the two 1873 documents, and second, addressed the "weight" that was given these documents in the EP and PEP FDs.

For determining the validity and authenticity of the June 26, 1873, petition and the June 27, 1873, list of members, the OFA analyzed the photocopies in the record, and obtained a certified, digital copy, and a better quality photocopy from the Connecticut State Library.<sup>11</sup> For determining whether the FD gave "improper weight" to these two documents, the OFA also analyzed the discussions weighing these documents' significance in the EP and PEP PFs and FDs. The OFA's analyses of these two issues are included in this reconsidered FD, in a section called *Origins and Validity of the June 26, 1873, Petition* and *Origins and Validity of the June 27, 1873, List* in the *Political Influence or Authority 1873 to 1920* under criterion 83.7(c). The reconsidered FD's detailed analysis of what the Towns' considered to be irregularities in the names, signatures or use of "x" marks, and ages of individuals who signed the document appears in the Appendix.

The Towns did not submit, nor did OFA find, any evidence to support the Towns' allegations concerning the origins and validity of the June 26, 1873, petition, or the origins and provenance of the June 27, 1873, list of Pequot Indians. As seen by the analyses under criterion (c), they are consistent with the other documentation from that time period in the record.

After a careful reconsideration of the record from that time period, there is no reasonable evidence to support the Towns' claims of discrepancies or irregularities that would discredit the origins and validity of the June 26, 1873, petition and June 27, 1873, list of Pequot Indians.

The June 26, 1873, petition and June 27, 1873, list of Eastern Pequots were discussed in the PFs and FDs (EP PF, 109; EP FD, 88-89; PEP FD, 121-125). Some of the arguments raised by the Towns were not previously addressed in the PFs or FDs; however, petitioner #113 argued that the petition was not valid because the "new" 1873 petition included "Tama [*sic*] and Har nin children." The FDs explained that the copy available for the FDs was more legible than the one considered for the PFs, making it possible to

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<sup>11</sup> See Fleming to Jones letter 6/3/2005; Stark to Fleming 8/12/2005 letter and enclosed copy of the document labeled, "Petition from the Pequots at North Stonington to the Superior Court of New London, June 26, 1873," found in RG, Records of the Judicial Department, New London County Superior Court, Box 1, Eastern Pequot, 1856-1877, which was certified by the State Librarian on August 12, 2005.

decipher more information than previously, including the listing of “Tamar S and Har nin children.”

*Conclusions.*

The ADS concludes that the two June 1873 documents were not unreliable or fraudulent. The ADS also concludes that undue weight was not attributed to them. The ADS has considered the arguments and the evidence in the record and finds that the Towns have not demonstrated that the 1873 documents were fraudulent. Therefore, the ADS declines to reconsider the EP and PEP FDs based on the Towns’ allegations concerning the two 1873 documents.

**Weight Placed on Reservation Residency Evidence (IBIA Item 7)**

*Described Ground.*

The IBIA decision described a claim by the Towns that the FD “placed ‘improper and incorrect weight’ on the purported residency of Petitioners’ ancestors on the Lantern Hill Reservation” (41 IBIA 26). It noted, moreover, that the Towns asserted that “. . . incomplete or inadequate research resulted in a ‘critical’ and incorrect determination in the FD that a majority of Petitioners’ ancestors resided on the reservation in the pre-1873 time period” (41 IBIA 26, citing the Towns Request, 2002, 57).

The IBIA also found under Item 7 that,

that the Towns have not satisfied their burden of proof to demonstrate that the petitioners’ or BIA’s research was incomplete or inadequate in some material respect. The Towns offer their own analysis of census data from 1850 through 1920, but do not contend that it is “new evidence” or that the census data was not part of the record considered by the Assistant Secretary Indian Affairs (41 IBIA 26).

The IBIA stated that “In effect, the Towns contend that the Assistant Secretary made a critical error in how he analyzed the available evidence, which is different from showing that the research itself was inadequate or incomplete” (41 IBIA 26). The Board found that the allegations challenged the analysis or interpretation of the evidence in the FD and were not within its jurisdiction. Therefore, the Board referred the following question to the AS-IA:

Should the FD be reconsidered on the ground that it placed improper or incorrect weight on evidence regarding the residency of Petitioner’s ancestors on the Lantern Hill Reservation?

*Discussion.*

This reconsidered final determination reviews the evidence in the record and the statements in the FDs in order to determine whether the Towns' allegations had merit, and if so, how the EP and PEP FDs' conclusions for meeting criterion 83.7(b) for community might have been affected by the residency analysis.

The Towns' analysis of Federal censuses submitted to the IBIA was considered in the FD and is not new evidence. In addition, the Towns' analysis of these censuses is methodologically flawed.

To support its assertion that too much weight was placed on reservation residency the Towns commented that the EP FD stated that a majority of the Eastern Pequot had lived on the reservation, and had cited this as evidence under 83.7(b)(2)(i). The Towns also asserted that evidence to meet 83.7(b)(2)(i)[residency] had not been presented.

This review for the reconsidered FD finds that the FDs' conclusions that the Eastern Pequot met criterion 83.7(b) from the 1600's to 1873 were based on a combination of evidence under 83.7(b)(1) which was sufficient to demonstrate that the criterion was met. The FD's evaluation incorrectly referenced (b)(2)(i) although no specific analysis of residency to demonstrate 83.7(b)(2)(i) was presented in the finding. This reconsidered FD clarifies the sections of the FDs that discussed how criterion 83.7(b) was met for the colonial through 1873 time period based on a combination of evidence, without reliance on evidence under 83.7(b)(2)(i).

Therefore, the ADS concludes that IBIA Item 7 concerning the weight placed on residency on the reservation in the EP and PEP FDs is not a ground for reconsideration.

*Review of the Towns' Census Analyses.*

The Towns' analysis of the 1850 to 1910 censuses<sup>12</sup> claimed to demonstrate that the:

BIA incorrectly determined in the FD that a majority of the petitioners' ancestors resided on the reservation. As demonstrated by the analysis set forth in Exhibit 86, BIA erred on this important point. This analysis was prepared by researching the census data from 1850 through 1920 and identifying the residence of the ancestors of the petitioners. It shows that most of the ancestors of today's petitioners were not on the Lantern Hill lands. Indeed, at times, almost no one lived on these lands. As a result, BIA's conclusions regarding "reservation residency" were in error. This

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<sup>12</sup> The Towns' Exhibit 86 is a list of the Eastern Pequot people whom they identified on the censuses 1850 through 1910, although the text said "through 1920." Exhibit 86 is an abstract of information from each of the census years. It did not include the names of all of the other Eastern Pequot Indians, whose names were known from the overseers' reports or other records, who were also living during each of those census years but did not show on some of the censuses.

is a critical error of research and analysis made by BIA, which gave considerable weight to the incorrect conclusion that a majority of the tribal members resided on the reservation and theoretically maintained social and political ties. This faulty conclusion by BIA compels reconsideration based upon incomplete and inadequate research (Towns Request 2002, 57).

The interpretation presented to IBIA by the Towns is not new and is not reliable. In December 1998 the Towns submitted for the record a document titled “A Report on the Lineage Ancestry of the Eastern Pawcatuck Eastern Pequot Indians: An Independent Survey and Analysis Prepared by James P. Lynch.” This document contained the same analysis of the 1850 to 1910 censuses as was submitted to IBIA, and the author(s) of the request for reconsideration of the EP and PEP FDs simply abstracted the information from the 1998 report, which was previously considered in the Final Determination. Moreover, in April 1999, the Towns submitted to the record a second report titled “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.” This report also analyzed residency patterns based on the same censuses. A third report submitted to the record by the Towns in June 1999, entitled “A Report on the Lineage Ancestry of the Eastern and Pawcatuck 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,” also analyzed the same censuses. These reports asserted that the petitioners’ ancestors were not descended from the “historic Pequot tribe” and that the petitioners’ ancestors did not live on the reservation. The PFs and FDs found that both of those assertions were unsubstantiated and those conclusions are reaffirmed by this reconsidered FD.

The FDs, after having weighed the evidence in the record, including these three reports presented by the Towns in 1998 and 1999, said:

The Towns’ discussion of the period from 1800 to 1900 also concentrated primarily on the political and legal status of the Eastern Pequot Indians (*Towns August 2001*, 109-155), tying the issue of community . . . to the political function, or, as in the discussion of the appearance of new surnames on petitions and overseers’ lists, [ftn] to criterion 83.7(e) (*Towns August 2001*, 111). The Towns did not submit new evidence for this period, but rather advanced once more their interpretation of materials already evaluated in the proposed finding (EP FD, 88). [Emphasis added.] [Footnote in the original reads: “The appearance of new surnames is frequently a consequence of outmarriage by women in a tribe, rather than evidence that a family has died out; the 25 CFR Part 83 regulations do not require descent through the male line only.”]

Using evidence acceptable to the Secretary, the EP and PEP FDs also found that the petitioners' ancestors, whether resident on the reservation or not, were descendants of the historical Eastern Pequot tribe (EP PF, 121-132; PEP PF, 121-126).<sup>13</sup>

The Towns' request for reconsideration based their arguments on flawed methodology. First, the Towns used data from the censuses from 1850 through 1910, rather than from data for the colonial period (1600's) through 1873, which was the time period discussed in the section of the EP FD that they cited (EP FD, 135). The portion of the FDs that the Towns challenged concerning reservation residency relied on the 1850, 1860, and 1870 census years, the only census years that overlap with the time frame addressed in the section of the FDs that the Towns quoted concerning residency (see below).

Second, the Towns' summaries of the 1850, 1860, and 1870 censuses in Exhibit 86 listed some of the Eastern Pequots who were living in various towns in Connecticut and Rhode Island, and one man and his family who were in Wisconsin in 1850, and concluded that this evidence showed that the FDs' analysis was faulty. However, the Towns failed to account for the fact that the 1850 and 1860 Federal censuses excluded "Indians not taxed," that is Indians living on reservations or "in tribal relations." Thus, a significant number of Eastern Pequot Indians, who were identified in the contemporary overseers' reports and probably resident on the reservation, would not have been listed on the censuses if the enumerator followed instructions correctly. In fact, Pol Ned, Thankful Ned, H. Shantup, Thos. Ned, Saml. Shantup, and Rachel Hoxie were named in the 1849, 1850, or 1851 overseers' reports, but were not listed on the Towns' analysis of 1850 census. The PFs and FDs properly included these Eastern Pequots in its analysis of reservation residency in the mid-19th century population.

In 1870, the census enumerator listed on one page seven households with 28 individuals in them as "Indians of North Stonington," which the PFs referred to as a "residential cluster" (EP PF, 76). This listing was separate from the rest of the enumeration for the town of North Stonington, and, although not explicitly stated, it is inferred that this was the reservation population as of June 1, 1870. The Towns' analysis includes three other households (Lucy Hill, Marlboro Gardner, and Abby and John Randall) of Eastern Pequot Indians listed among the general population of the town of North Stonington. This listing indicates that they were not living on the reservation.

The Towns' methodology undermines the validity and usefulness of their reports.

*Review of the FDs' Evaluation of Reservation Residency and Other Evidence for 83.7(b).*

This reconsidered FD has reviewed the FDs and confirms that the evidence, and the FDs' analysis, did not demonstrate that the majority of the Eastern Pequots resided on the reservation at the same time at any point throughout the time period. Although the FDs cited 83.7(b)(2)(i), they in fact relied on a combination of evidence under (b)(1) to

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<sup>13</sup> The PEP petitioner also previously alleged that the EP's ancestors were not a part of the historical Lantern Hill reservation community, an argument that was rejected in the FDs and is reaffirmed by this reconsidered FD.

demonstrate criterion 83.7(b). The PEP FD cited to 83.7(b)(2)(i) in the summary evaluation but did not refer to it in the analysis of the evidence. The EP FD referred to it in both locations. These references were in error.

The FDs relied on a combination of evidence to demonstrate community, none of which were listed in 83.7(b)(2). The FDs said:

*Analysis of Comments and Responses.* The proposed finding concluded that on the basis of precedent, using evidence acceptable to the Secretary, the historical Eastern Pequot tribe met criterion 83.7(b) from the colonial period through 1873 (see EP PF 2000, 69, 72, 79, 98). A review of the evidence in the record at the time of the proposed finding and submitted for the final determination indicated that no significant new evidence was submitted in regard to the nature of the historical Eastern Pequot community in the colonial period or in regard to the nature of the historical Eastern Pequot community from the era of the American revolution into the third quarter of the 19th century. The arguments to the contrary presented by the third parties were essentially the same as at the time of the proposed finding. They were not persuasive, in that throughout this time period, there remained a reservation enclave with a majority of the tribal members resident in it, if not continuously, at least regularly, with other individuals and families having maintained contact, which is demonstrated by moves on and off of the reservation and their continuing presence on the overseers' reports. This is sufficient evidence under the regulations (83.7(b)(2)(i)). Contrary to the argumentation presented by PEP, there was significant evidence that the direct antecedents of petitioner #35 were a part of that historical community centered upon the Lantern Hill reservation (EP FD, 135).

The Summary Discussion of the Evidence Under the Mandatory Criteria in the EP and PEP FDs also affirmed the findings in the PFs concerning community for the same time period (EP FD, 16).

The Towns argue that by citing 83.7(b)(2)(i), the FD "gave considerable weight to the incorrect conclusion that a majority of the tribal members resided on the reservation and theoretically maintained social and political ties" (Towns Request 2002, 59). However, as seen in the following analyses, the evidence concerning residency was not the sole basis for meeting criterion 83.7(b) in the PFs or the FDs and the reference to 83.7(b)(2) was in error.<sup>14</sup>

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<sup>14</sup> The FDs did not include an analysis for a showing of the majority, or otherwise invoke the conditions of criterion 83.7(b)(2)(i), which says:

- (b)(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:
- (i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community.

All of the pages in the PF which were cited and affirmed in the FD statement on page 135 quoted above, invoked the combination of evidence that applied under criterion 83.7(b)(1). In particular, the PFs stated:

From establishment of the Lantern Hill reservation (purchase 1683; survey 1685), the Eastern Pequot tribe had a distinct land base. Occupation of a distinct territory by a portion of a group provides evidence for community, even where it is not demonstrated that more than 50 percent of the total group resides thereon (Snoqualmie PF). From 1685 to the end of the Civil War, the documents show a continuous reservation community with an essentially continuous population, allowing for normal processes of inmarriage, outmarriage, off-reservation work, and interaction with neighboring tribes (see draft technical report, Table 2, Tabulation of Identified Eastern Pequot Population 1722-1788). The documentation throughout this period contributes to a showing of community under 83.7(b)(1)(viii), "The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name," since it clearly refers to the same group of Indians, whether they are called Momoho's band, or the Pequots at Stonington, or by other phrases (EP PF, 69).<sup>15</sup>

The EP and PEP PFs' discussion of the post-Civil War to 1883 era, specifically the section concerning the 1870 and the 1880 censuses, stated:

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 patterned outmarriage [footnote removed], particularly with the Western Pequot and with the Narragansett, the Eastern Pequot tribe meets criterion 83.7(b) for the period through 1883 (EP PF, 79).  
[83.7(b)(1)(i)]

In addition, the FDs referenced the PFs which found that there was "the persistence of a named, collective Indian identity continuously over a period of more than 50 years . . ." (EP PF, 72), and thus provided evidence under 83.7(b)(1)(viii). The FDs cited also the EP PF which described a combination of evidence without any reference to 83.7(b)(2)(i) (EP PF, 98). The PFs also referenced evidence under (b)(1)(ix), stating:

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<sup>15</sup> The draft technical report referred to in this quote contained "Table 2, Tabulation of Identified Eastern Pequot Population 1722-1788," a year-by-year list of Pequots named in petitions, but it does not include information showing whether the individuals were living on or off the reservation. The draft technical reports do not include comparable tables for 1788 to 1870 or other time periods. Neither the PFs nor the FDs described any extensive analysis of the number of Eastern Pequots living on the reservation at specific points in time, either based on information in this table, or on other evidence in the record for later time periods. This reconsidered finding does not find that such analysis was necessary since the criterion 83.7(b) was met with other evidence in the record.

...much of the specific evidence cited provides evidence for both community and political influence. Under the regulations, evidence about historical political influence can be used as evidence to establish historical community (83.7(b)(1)(ix) and vice versa (83.7(c)(1)(iv)). (EP PF, 68, which also states that the summary for criterion 83.7(b) is to be read with the historical overview and the summary discussion for criterion 83.7(c); and EP PF, 101-111) (83.7(b)(1)(ix)).<sup>16</sup>

Thus, the EP and PEP PFs and FDs relied on a combination of evidence under 83.7(b)(1) to find for community. Although the EP and PEP FDs' summaries found that no new evidence was submitted to contradict the PFs, and therefore affirmed the findings in the PFs, the FDs did not clearly lay out all of the conclusions from the PFs that were affirmed concerning criteria 83.7(b) from the colonial period through 1873 (and later time periods), as set out above.<sup>17</sup>

The summary evaluations for criterion 83.7(b) however, repeated the reference to criterion 83.7(b)(2)(i) that appeared in the description and analysis (EP FD, 16, 135; PEP FD, 18). Neither the EP and PEP PFs nor the FDs included any specific analysis demonstrating 50 percent of the membership were on the reservation at any given point in time, as required for a showing of 83.7(b)(2)(i). Significantly, neither the EP or PEP PFs nor the EP or PEP FDs used 50 percent residency rates under (b)(2), as "carryover" evidence that the historical Eastern Pequot tribe met criterion 83.7(c) for political

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<sup>16</sup> Also see the discussion in the Historical Orientation section of the PFs for evidence of internal political authority, such as signing petitions, organizing protests of land sales, and some named leaders, for the period from first contact through the end of the Civil War (EP PF, 13-60).

<sup>17</sup> The EP and PEP PFs did not measure marriage rates within the group or "patterned out marriages" at different points in time or by decade for the colonial to 1873 time period, and only briefly summarized marriage information concerning the 1883 to 1936 time period. A section on "Marriage Patterns and Community" in the EP PF stated that the petitioner had submitted a chart of intermarriages on the Brushell/Sebastian line, but not "... a complete measure of rates of marriages within the group and with neighboring Indians" (EP PF, 90). The BIA did not undertake the considerable amount of time and new analysis that would have been necessary to establish such a finding for marriage rates "for the entire group historically," but stated that,

a partial reconstruction and analysis was possible, based on the materials prepared in evaluating tribal ancestry for criterion 83.7(e). This counted marriages extant in the years between 1883 and 1936 for all for the Eastern Pequots that could be identified. It thus includes ancestors of the present Eastern Pequot petitioner as well as the ancestors of the Paucatuck. This count found that of 167 total marriages, 54 (39 percent) were with other Eastern Pequot. Another 17 were with Western Pequot (10 percent). Narragansett spouses accounted for 25 marriages (15 percent) and marriages with miscellaneous other Indians or Indian descendants was six percent [*sic*]. The balance of 61 (36 percent) were with non-Indians. This count substantiates the petitioner's position that marriages within the tribe and with neighboring tribes were common, and provides good evidence to demonstrate community. However, it does not reach the 50% rate of endogamous marriage sufficient in itself to demonstrate community under 83.7(b)(2)(ii) (EP PF, 90).

influence or authority. This further shows that that the FDs did not rely on an analysis under 83.7(b)(2)(i).

The FDs also did not rely solely on the evidence that a “majority of the tribal members were resident on the reservation, if not continually, at least regularly,” to meet criterion 83.7(b). The FDs relied on a combination of evidence that the historical tribe met the requirements for community in the colonial to 1873 time period, including reservation residence. The citation on page 135 of the EP FD should have more properly read 83.7(b)(1).<sup>18</sup> This reconsidered FD revises this language.

*Conclusions.*

This reconsidered FD concludes that the EP and PEP FDs did not rely on evidence under 83.7(b)(2) and thus did not place improper weight or incorrect weight on the evidence regarding residency on the Lantern Hill reservation for the colonial time (1600’s) through 1873. Rather, the combination of evidence set out in the PFs is sufficient evidence that the petitioners meet criterion 83.7(b) from colonial times through 1873. This reconsidered FD affirms this conclusion.

This reconsidered FD clarifies that criterion 83.7(b) through 1873 is met by a combination of evidence: there was evidence that the community as a whole maintained a high rate of intermarriage and patterned outmarriages, there was the evidence for the persistence of a named, collective Indian identity over a period of more than 50 years, there was the evidence for historical political influence which demonstrated community. The occupation of a distinct territory, even where it is not demonstrated that more than 50 percent of the total resides thereon, and interaction with neighboring tribes contribute to the meeting of criterion 83.7(b). This reconsidered finding also corrects the citation found in summary statements for this time period and which were repeated in the summary evaluation statements: The combined evidence described above is sufficient for demonstrating community under 83.7(b)(1).

This correction does not change the ultimate conclusion in the FDs, which is affirmed in this reconsidered finding, that the petitioners met criterion 83.7(b) for the colonial period through 1873.

Therefore, the ADS finds that the Towns’ assertions concerning the use of reservation residency as evidence are not grounds to reconsider the FDs. This reconsidered FD, however, corrects and clarifies the summary evaluations under 83.7(c) for this time period to more accurately and completely reflect the analyses in the FDs and PFs, which are reaffirmed.

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<sup>18</sup> The PEP FD did not include the 83.7(b)(2) language, but discussed PEP’s use of the PF finding for community during the colonial through 1873 time period to further its own claims (PEP FD, 91-96).

### **Acknowledgment Based on Two Acknowledgment Petitions (IBIA Item 8)**

#### *IBIA Description.*

The EP and PEP FDs acknowledged two petitioners, the Eastern Pequot and the Paucatuck Eastern Pequot as a single tribe. The IBIA's decision described the following ground: "Should the FD be reconsidered on the ground that recognition of a single tribe, based on two separate acknowledgment petitions, is not permitted under the regulations?" (41 IBIA 26). The IBIA decision referenced pages 57-59 of the State's brief and identified this question as outside the scope of the Board's jurisdiction, without further discussion.

#### *Proposed Finding and Final Determination*

The PFs raised the issue of whether the EP and PEP petitioners formed a single tribe, soliciting comment from the petitioner and parties. The proposed findings specifically invited the submission of comments on the issue of the Secretary's authority (EP PF 2000, 61). The State's comments in response to this portion of the PFs primarily addressed the issue of whether there were in fact two or one groups, rather than the Secretary's authority to acknowledge a single tribe represented by two petitioners (State Comments 2001, 57-59).

The FDs, after review of the evidence, and the comments from the State and other parties, concluded that the two petitioners formed a single tribe and that "The Secretary has authority to acknowledge tribes – not to acknowledge petitioners *per se*" (EP FD, 36). The FDs noted section 83.2 of the regulations, which states "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))." The FD went on to say:

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 (EP FD, 38).

#### *Discussion.*

Concerning the Secretary's authority, the State in its request for reconsideration asserted that the regulations speak only in terms of dealing with "petitioners" and therefore limit the Secretary to acknowledging, or declining, individual petitioners (State Comments 2002, 61-63). The FDs, as cited above, examined the wording and purpose of the

regulations and concluded that the purpose of the regulations was to acknowledge tribes and that the regulations did not limit the Assistant Secretary to acknowledging or declining to acknowledge individual petitioners where circumstances indicated otherwise.

The State also raised the question of whether criterion 83.7(d), presentation of a governing document, and criterion 83.7(e)(2), which requires a complete membership list, could be met where there were two separate petitioners. The FDs concluded concerning criterion 83.7(d) that the requirements were met because all of the members were covered by one or the other governing document. The FDs concluded “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” (67 FR 44239).

Regarding the membership lists, the FDs stated “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” (EP FD, 28). The FDs did not specifically address the fact that there were two rather than one list, but concluded in effect that the technical requirement to submit a complete list of members was met by the separate submissions.<sup>19</sup>

#### *Conclusion.*

Since this reconsidered FD declines on other grounds to acknowledge the EP and the PEP either separately or as one tribe, there is no reason to reconsider the FDs overall or the FDs specific conclusions concerning the governing documents and membership lists on this ground. This reconsidered FD, however, affirms the general principle described in the FDs that the regulations permit acknowledgment of a single entity composed of more than one petitioner when the Department is reviewing two or more fully documented petitions, in accord with the basic intent of the regulations and the Secretary's authority that the regulations provide for acknowledgment of tribes rather than petitioners per se. The ADS therefore declines to reconsider the EP and PEP FDs on this ground.

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<sup>19</sup>The Federal Register notices for the FDs said,

Because this final determination recognizes a single historical tribe represented by two petitioners, the Assistant Secretary will deal with both petitioners in the process of developing a governing document for the historical Eastern Pequot tribe. Pursuant to 25 CFR § 83.12(b), the base roll for determining future membership of the tribe shall consist of the combined membership lists of the two petitioners submitted for these final determinations. ((67 FR 44240)

Subsequent to the FDs, the two petitioners established a single governing council, under a new governing document, and held elections under this document.

### **Expansion of Membership Lists (IBIA Item 9)**

#### *IBIA Description.*

The IBIA decision described the following as a ground outside its jurisdiction: “Should the FD be reconsidered on the ground that the tribal membership rolls do not reflect the requisite tribal relations” (41 IBIA 27). The IBIA decision discussed the ground further, stating that,

The State contends that the tribal membership rolls don't reflect the requisite tribal relations and that the Assistant Secretary failed to account for a recent 'massive enrollment drive,' which added individuals with little or no prior contacts with Petitioners. State Request for Recon. at 48. The composition of a petitioner's membership is not an issue that is within the Board's jurisdiction to review (41 IBIA 26).

#### *Discussion.*

The State's comment, which referred only to the Eastern Pequot petitioner, was about whether the petitioner meets criteria 83.7(b) and (c). “Tribal relations” means “participation by an individual in a political and social relationship with an Indian tribe” (83.1).

The State questioned the increases in the size of the membership lists from the initial EP membership list made in 1976, which had 70 individuals, to the PF list of 647 and the FD list, with 1004. Similar questions were raised by the Towns in response to the proposed finding and reviewed in the FD. The EP FD reviewed the increases in size of the membership lists (EP FD, 132-135).

The State comments referred to the expansion of membership as a “recruitment drive.” The State comments cited no evidence, other than the increase in size of membership lists itself, that there was an active “drive” to recruit new members. The FD concluded that there was not an “open enrollment” of Eastern Pequot descendants, regardless of social and political ties to the group, but an enrollment of individuals who were part of an existing community. The EP documentation about its enrollment did not indicate the group had sought out Eastern Pequot descendants to enroll. This is in contrast to the Nipmuc Nation decision which the State referenced, where documented there was an active “drive” to recruit new members based on ancestry alone (Nipmuc Nation FD 2004, 127-128). It also differs from the the Indiana Miami case, which described a process of recruitment of descendants with no previous contact with the organization (Miami FD, 72-73).

The State comments cited statements in interviews with Eastern Pequots about the character of more recent enrollees, citing them as evidence that EP was enrolling individuals with whom it had no prior contact. These interview statements had also been cited by the Towns in its comments on the PF about membership list expansion. They

were reviewed in the EP FD, which concluded these materials did not support the claim EP had conducted an open enrollment of individuals with Eastern Pequot descent who were not part of an existing community (EP FD, 184-186). In one instance, a cited statement by an individual that “people were coming out of the woodwork” was followed by a discussion of establishing the list by identifying who they knew and who their relatives were (EP FD, 133).

The State also cited the addition to the EP membership submitted for the FD of two family lines which were not on the PF list, the Albert Sebastian line (14 percent of the FD list) and Fagins/Randall line (10 percent). The State also cited the EP FD’s characterization of the degree of social contact maintained by those lines (see EP FD, 133). The State did not cite specific evidence other than the FD itself. The FD examined the Fagins/Randall line’s social contacts in some detail, noting that the PF had identified them as part of the group even though not on the PF list (EP PF, 129-130; EP FD, 134-135).

Concerning the Albert Sebastian line, the FD considered their degree of connection, concluding “There is limited interview information, without much detail, which describes this line as one which was not central or highly involved with the EP.” However, the EP FD noted that this family was not unknown to the other Sebastians (EP FD, 134). The acknowledgment regulations, based on precedent, do not require that all of a group maintain close contact; some families may be maintaining more limited contact (see Snoqualmie FD, 15-16).

The State also cited the EP FD statement that “the EP organization may also have seen itself as an organization of actives, at first, rather than a complete enrollment” (EP FD 132-133), characterizing this as an unsupported hypothesis. The State’s comment incorrectly interpreted the meaning of the statement as saying that the EP was initially not a community. The correct meaning is that the EP organization, immediately after the conflicts began in 1973, only listed individuals participating in the activities fighting with the CIAC and PEP. The initial listing was explicitly a listing of only part of a known community (see Alton Smith 1999). The EP FD concluded that the earliest lists were not complete enrollments of the existing group, and that the increase resulted from a process of completing a listing of individuals with whom the group was in contact (EP FD, 193-195). In part, the earliest lists were limited to adults or were created as part of the effort of certain portions of the larger Sebastian family line to combat PEP efforts to influence the State to exclude Sebastian descendants from membership after the passage of the CIAC legislation in 1973 (Alton Smith 1999).

Finally, the State noted the EP FD statement that a portion of the increase was due to the enrollment of minors, claiming there is no analysis of what proportion this represents (State 2002, 53-54). The EP FD, in discussing the increase of 347 in enrollment between the PF and FD, stated it consisted of 239 from the Albert Sebastian and Fagins/Randall lines and that “The balance is largely accounted for by the addition of minors, as well as some siblings of previously enrolled members (see also discussion of enrollment changes under criterion 83.7(e)).” The balance, of minors and siblings, is thus 108, about 10

percent of the FD list. The addition of children and siblings to an existing list, consistent with precedent, represents the listing of additional individuals who can be assumed, on the basis of close kinship to individuals already listed, to be maintaining social ties to the group.

In addition to the above, the EP FD concluded that the complete body of evidence for the FD concerning EP demonstrated that the present group met the requirements of 83.7(b). This conclusion was based on a much larger body of evidence than that concerning enrollment practices.

*Conclusion.*

Because no new evidence was submitted concerning the increase in membership, and the questions raised by the State concerning that increase were examined in the EP FD, the ADS finds there is not sufficient reason to reexamine the EP FD's conclusions and therefore declines to reconsider the EP FD on these grounds.

**Notice and Opportunity to Comment on the Post-1973 Period (IBIA Item 10)<sup>20</sup>**

*Introduction.*

The IBIA described the following issue: “Should the FD be reconsidered on the ground that the proposed findings denied interested parties of proper notice and meaningful opportunity to comment with respect to the post-1973 period?” (41 IBIA 27).<sup>21</sup> The IBIA references pages 59-63 of the State’s Request for Reconsideration as the basis of this issue.

*Summary of the State’s Arguments.*

The State’s Request for Reconsideration makes three points under its broad argument that the PFs “did not do what the regulations require them to have done - - to make a proposed finding about the nature of the potential tribe so that interested parties would have adequate notice and an opportunity to comment. A meaningful opportunity to comment was utterly lacking” (State Request, 2002, 59). These three points are:

- (1) That the failure of the PFs to conclude whether there was one tribe or two denied parties the required notice (State Request, 2002, 59),

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<sup>20</sup> The Towns and State in their responses to the PFs raised the issue of whether the Secretary should have issued amended, revised or supplementary proposed findings for criterion 83.7(b) and 83.7(c) for the period from 1973 to the present. The FDs reviewed these arguments, which were similar to those presented in the requests for reconsideration, and concluded it was appropriate to issue final determinations rather than amended, revised, or supplementary proposed findings (EP FD, 31-33). This reconsidered FD affirms the FDs on this issue.

<sup>21</sup>The issue is equally applicable to notice to the petitioners.

(2) That the parties were not on notice that a “combined entity” could be acknowledged - - interested parties “appropriately assumed” that “one, both or none of the petitioners could be acknowledged, not that a new combined entity could be acknowledged” (State Request 2002, 60), and,

(3) That the PFs should not have been issued as positive proposed findings:

[N]owhere in the regulations is it even hinted that the BIA may issue a proposed finding that a petitioner should be acknowledged where it has concluded that there is an insufficient basis for determining that the petitioner has satisfied the criteria. Indeed, the opposite is mandated by the regulations (State Request 2002, 62).

In addition, the State argues that the proposed findings, technical assistance meetings – both formal and informal – “are empty gestures if there is no proposed finding, including the analytical basis for the proposed finding, on which to comment or obtain assistance.” (State Request 2002, 60-61).

*The Parties Had Actual Notice That The FDs Might Conclude That The Two Petitioners Were In Fact One Tribe For The Post-1973 Period.*

The State’s second argument is addressed first. This argument is that although the State had notice that the AS-IA might acknowledge the EP petitioner as a tribe, or might acknowledge the PEP petitioner as a tribe, or acknowledge both tribes, the State nonetheless was denied meaningful opportunity to comment because it did not have notice that the Department might acknowledge a “combined entity” (State Request 2002, 60). This reconsidered FD concludes otherwise.

The Federal Register notice for the PFs provided actual notice that the two petitioners might be factions of a single tribe. It stated:

[F]or the period from 1973 to the present, with regard to criteria 83.7(b) and 83.7(c), the Department finds that the petitioners and third parties have not provided sufficient information and analysis to enable the Department to determine that there is only one tribe with political factions (65 FR 17301). [Emphasis added.]

This reference to “only one tribe with political factions” is specific notice that a “combined entity” was a possible conclusion in the FD.

Similarly, the EP PF specifically provided that the proposed positive findings for both petitioners “do not prevent the Department, in the final determination stage, from recognizing a combined entity” (EP PF, 62). Also, it provided: “There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe after 1973” (EP PF, 100). The EP PF also stated: “[T]he evidence in the

record does not allow a full evaluation of whether the EP/PEP conflicts since the 1970's have been occurring within a single political and social system or between two independent groups" (EP PF, 152). The PFs thus provided parties with actual notice that the FDs might find a single tribe composed of both petitioners.<sup>22</sup>

The issue of a combined entity was discussed also at the formal on the record technical assistance meeting held August 8 and 9, 2000. Based on the State's proposed agenda item for the formal technical assistance meeting,<sup>23</sup> the agenda to the formal meeting listed as topic III of the morning session on August 8 as "Whether this [is] one tribe with factions or two tribes." Topic XIII for the afternoon session on August 9 was "What evidence and analysis concerning community and political influence would show one group with factions as opposed to two groups?" (Bird Bear to Blumenthal, July 25, 2000). The AS-IA's e-mail of March 16, 2000, also raised this issue and was a handout at this meeting.<sup>24</sup> There was, thus, notice that a single entity composed of EP and PEP as factions was a possibility.

The transcript from the formal meeting also provides numerous references by the Department staff to the possibility of petitioners together being one tribe. For instance, the moderator noted, "We will also not address questions concerning how the BIA would deal with the two groups if the final determination concludes to acknowledge them as one group" (Pequot OTR Meeting Transcript 8/8/2000, 11). And, the Branch Chief noted this issue twice: "Now the question. Is this one tribe with factions or two tribes?" (Pequot OTR Meeting Transcript 8/8/2000, 55, 58, referencing EP PF, 135) and, "[S]ubmit 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" (Pequot OTR Meeting Transcript 8/8/2000, 67).

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<sup>22</sup> As part of its argument that it lacked notice that the final determination might find one tribe made up of both petitioners, the State argues that the AS-IA could not "acknowledge a group that, up to that point, did not exist" (State Request 2002, 59-60). To the extent this argument refers to the pre-1973 period, it conflicts with the conclusion in the proposed findings that the historical Eastern Pequot tribe, including the antecedents of both petitioners, met the criteria through 1973 ( EP PF 62; 65 FR 17298). If the argument is that a "combined entity" did not exist post-1973, the argument is one on the merits that is addressed under the criteria.

<sup>23</sup> Page 24 of the State's proposed agenda for the formal technical assistance meeting inquired about significant social relationships and whether the group was "distinct" in the context of criterion (b) "in respect to the overall Eastern Pequots as a whole, including both petitioners and their antecedents, both before and after 1973, as well as within . . . each petitioner after 1973" [Emphasis added.] (State to OFA June 30, 2000).

<sup>24</sup> This e-mail provided:

More troublesome is the issue of whether there is one tribe or two . . . We should point out the common ancestry of the two groups and specifically invite comment on the issue of whether we can and/or should recognize both tribes or just one. We could even go so far as to say that the petitioners actually present a stronger case as one petitioner rather than two. [Emphasis added.]

During the formal TA meeting, the in-depth discussion provided parties direct notice of the possibility of a single tribe. As stated by the OFA anthropologist:

Are you looking at a situation which we use the definition as factional - which is two parties within a single political system duking it out - or are you now looking at a situation where whatever there might have been in the past, the parties have now separated out to the point that they are two distinct groups, they don't connect as communities . . . are we looking at one political system . . . or are these now really separate. . . .(Punctuation added) (Pequot OTR Meeting Transcript 8/8/2000, 443-444).

Finally, the State's comments on the PFs addressed the issue of a "combined entity" after 1973 stating, "[T]here is but one group. This group is split by two divided factions . . . [N]either faction, together or separately, can satisfy the mandatory criteria for recognition" [Emphasis added] (State of Connecticut August 2001, 55, as quoted in EP FD, 43).

The State's argument in its request for reconsideration that it had no notice that a "combined entity" might be acknowledged is rejected. This argument does not present a ground for reconsideration of the FD.

*The Parties Had A Meaningful Opportunity To Comment On The Post-1973 Period Even Though the PF's Did Not Define the Acknowledgeable Entity.*

The State argues that the AS-IA, "expressly and admittedly failed to make the requisite findings" for the post-1973 period (State Request 2002, 62). The State argues that,

[N]owhere in the regulations is it even hinted that the BIA may issue a proposed finding that a petitioner should be acknowledged where it has concluded that there is an insufficient basis for determining that the petitioner has satisfied the criteria. Indeed, the opposite is mandated by the regulations" (State Request 2002, 62).

The PF made the "finding" for the post-1973 period that there was an acknowledgeable entity based on the evidence presented. The PFs addressed that evidence, advising the parties on the type of evidence and analysis that could be submitted to address the more narrow issue of whether it was one tribe or two (or none). (EP PF, 135-140 on criterion 83.7(b); EP PF, 141-152 on criterion 83.7(c)). The PF articulated the question presented for that period under criteria (b) and (c) *not* as a question of *insufficient* evidence within the meaning of 25 CFR 83.6(d), but as whether the available evidence supported one entity or two:

The reason that this provision [83.6(d)] 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 (EP PF, 61; See also EP FD, 32).

Thus, the PF found that the evidence was sufficient under the regulations for positive proposed findings, but that the specific acknowledgeable entity was undefined.

The State's argument views the proposed findings in isolation, ignoring the other opportunities in the administrative process that provided it notice, including the formal on the record Technical Assistance meeting and informal TA. Even assuming that the PFs here did not provide the parties with an understanding of the issues to be addressed in comments and in the FD, a position which is rejected here, no due process was denied, given the other procedures available to which the State availed itself.

As stated by the State, the acknowledgment regulations contemplate a process in which parties are given notice of findings under the mandatory criteria, including the underlying evidence, reasoning, and analyses that form the basis for the PFs in order for parties to have a meaningful opportunity to comment prior to issuance of a FD (State Request 2002, 60). This goal of affording notice and meaningful opportunity to comment was met by the PFs as well as by the rest of the administrative process preceding the FDs. As discussed below, the parties received all the process due them under the regulations, or otherwise required by due process, enabling them to participate meaningfully in the administrative process.

As required by the regulations, the evidence and reasoning behind the proposed findings was laid out in them; no reasoning or analysis was omitted (Pequot OTR Meeting Transcript 8/8/2000, 22, 39). The PFs include a 152 page summary of the evidence under the criteria for the EP, and a 150 page summary for PEP, including an analysis of the evidence from 1973 to the present. A total of 527 pages of draft technical reports on the two petitioners also was provided. The appendix in the PFs indicated what evidence and evaluation should be submitted during the comment period for the post-1973 period to address the proposed findings.

The State also received all of the documentation relied on in the proposed findings within the constraints of the Freedom of Information Act - over 48,000 pages of documents, including petition materials, historical documents, reports submitted by EP and PEP, transcripts, and OFA's researchers' work notes, as well as over 40 OFA interview tapes. The PFs, together with the right to technical assistance, enabled the parties to focus their comments, arguments and evidence, providing an opportunity to comment meaningfully.

The State received extensive technical assistance in numerous phone conversations and in the formal on-the-record two-day formal technical assistance meeting. As evidenced by the transcript of the formal TA meeting, the State asked extensive questions of OFA staff concerning the PFs, including questions about the evaluation of the evidence from 1973 to the present (Pequot OTR Meeting Transcript 8/8/2000, 438-468).

The State also received two days of informal technical assistance on July 10 and 11, 2001, where the State had full opportunity to raise all of their questions regarding the Department's analysis with OFA researchers. The Department provided an extensive road map for the parties to use to submit comments on the proposed findings (EP PF, 135-152; PEP PF, 139-150). With all analysis and evidence used by the Department available to them, as well as the opportunity to question the OFA researchers, all parties had notice of what the evidentiary basis for the FDs would be and full opportunity to submit meaningful argument and analysis during the comment period, and did so.

Moreover, even if the proposed findings were "negative" based on "insufficient evidence," as proposed by the State, the parties would be in the identical position as they were after these proposed findings. The same information and evidence and analysis would be in front of them, except with the label "negative" attached. In short, the parties obtained all the process that was due and have suffered no cognizable harm from the treatment of the post-1973 period in the PFs.<sup>25</sup>

The State argues that it was placed "at a substantial disadvantage" because it could not comment on the "novel theory that the two fractionalized petitioners were 'unified' by separate but parallel political processes" (State Request 2002, 63). This argument is rejected here because it ignores the specific direction provided in the appendix to the PFs, the specific advice at the formal meeting, as well as the process available before IBIA. For instance, the following excerpts from a cursory review of the transcript to the formal meeting specifically direct the parties to the evidence that needed to be addressed if the petitioners were "unified." As stated by the OFA historian: "[I]t is not so much the recentness of the alignment of the families as it is the recentness of the development of the separate organizations. It is possible to have bitter conflicts within a single organization" (Pequot OTR Meeting Transcript 8/8/2000, 440). And, as articulated by the OFA anthropologist:

[L]ook at the evidence by which issues are addressed in the group, by which leaders are selected to see if the processes cross the boundaries of the groups (Pequot OTR Meeting Transcript 8/8/2000, 444).

Is there anything that holds these groups together or are they at least as this point separate (Pequot OTR Meeting Transcript 8/8/2000, 445)?

[T]he Jackson line . . . since they were a middle group, what are their continuing ties with either side and that would be an additional piece of information we would need to address (Pequot OTR Meeting Transcript 8/8/2000, 445).

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<sup>25</sup> Contrary to the State's argument that "There is no basis in the regulations to justify postponing the issue until the final determination on the basis of a lack of evidence," (State Request 2002, 62), the regulations do provide for a decision when there is a lack of evidence (25 CFR 83.6(d)). As such, the parties here had the same notice and process as when a negative proposed finding is issued when evidence is lacking or insufficient.

This TA meeting also discussed control of the reservation, conflicts within the body of the group, leaders influencing behavior, specific examples from the field interviews, and the need to review the information in the tribal council minutes (Pequot OTR Meeting Transcript 8/8/2000, 449-470). The parties had all notice required under the regulations or otherwise required by due process in order to comment meaningfully before issuance of the FDs.

Finally, the regulations do not require that every analysis or conclusion that may be reached in the FD appear in the proposed finding. In fact, the regulations anticipate that a petitioner may be denied for a lack of evidence or insufficient evidence (83.6(d)) and that the comment period may be used to address these deficiencies – resulting in analysis occurring for the first time in the FD.<sup>26</sup> The State's argument that it could not address parallel political processes during the comment period, thus, is not grounds for reconsideration.

### *Conclusions.*

This reconsidered final determination concludes that the parties received all the notices required under the regulations and otherwise required by due process. The parties in fact had actual notice that a "combined entity" could be the basis of a FD. The parties thus had an opportunity to comment meaningfully on the PFs and on the post-1973 period.

The parties had the same meaningful opportunity to comment irrespective of whether the PFs were positive or were negative based on insufficient evidence. The PFs as well as the technical assistance meetings provided substantial notice of the evidence in the record, the issues to be addressed in the comment period and in the FD, and what evidence is pertinent to those issues, permitting full opportunity to comment.

Also, the regulations anticipate that new evidence and argument submitted during the comment period may result in a change in the analysis used in a PF, resulting in the reversal of a conclusion in the PF, whether positive or negative. As stated in the preamble to the 1994 revisions of the regulations: "These changes accord with the Department's view that a proposed finding is a proposal subject to change based on additional analyses and evidence" (59 FR 9290).

Finally, the regulations provide for formal and informal technical assistance after the PF, providing additional notice before the FD is issued as provided here. The regulations also provide additional review before the IBIA after the FD. Therefore, the State's argument that it was denied adequate notice and process because the specific bases of the FD were not articulated in the PF has no foundation and is without merit.

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<sup>26</sup> Followed to its logical conclusion, the State's argument is that a PF denying acknowledgment based on insufficient evidence does not provide adequate notice and a meaningful opportunity to comment. Since the regulations specifically permit a negative PF for lack of evidence, and, following comment, an FD, the State's argument ultimately attacks the procedures in the regulations themselves. Due process, however, does not require more notice than provided in the existing procedures.

This reconsidered FD concludes that the parties in this case had all the required notice and process required by the regulations, or otherwise required by due process, and had an opportunity to meaningfully comment. Therefore, the ADS concludes that Issue 10 described by the IBIA is not a ground for reconsideration of the final determination.

### **Other Alleged Procedural Irregularities, including the 2000 Directive (IBIA Item 11)**

#### *Introduction.*

The IBIA referred the following issue to the Assistant-Secretary: “Should the FD be reconsidered on the ground that the proceedings were marked by irregularities, including the Assistant Secretary’s issuance of the February 11, 2000, memo concerning BIA research in acknowledgment proceedings?” (41 IBIA 27). This topic is addressed in the State’s Request for Reconsideration (State’s Request 2002, 63-68).

#### *Summary of State’s Arguments*

The State argues that the role of former AS-IA Kevin Gover in issuing the proposed findings “had a continuing impact on the recognition of the Eastern Pequot tribe” (State’s Request 2002, 65).<sup>27</sup> The State also argues that the February 11, 2000, directive limited OFA researchers from “conduct[ing] any form of independent research” (State’s Request 2002, 67), causing continuing error, and that the decision to hold certain submissions for review in the FDs and not in the PFs is grounds for revisiting the FDs (State’s Request 2002, 67 fn 15). The State concludes that the FDs were “an edifice built upon an unsound foundation” that must be “razed and rebuilt upon a fair, impartial and proper framework” (State’s Request 2002, 68).<sup>28</sup>

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<sup>27</sup> The State argues that the former ASIA was biased, had a conflict of interest because of a former client Golden Hill Paugussett (State’s Request 2002, 66), and overruled OFA researchers and relied on novel rules (State’s Request 2002, 68), including State recognition as a “gap filler” (State’s Request 2002, 66). By letters dated July 7, 2000 and October 2, 2000, the Deputy Solicitor and the Solicitor, respectively, addressed the State and Towns concerns of bias and recusal. The Deputy Solicitor concluded that it was not appropriate for the AS-IA to recuse himself from EP and PEP petitions. The Solicitor concluded that the issues were moot because a new Administration would make the final determinations.

<sup>28</sup> The State argues that the regulations do not provide adequate guidance (State’s Request 2002, 64). In response, the Department noted that the regulations withstood a judicial challenge that they were vague and did not provide sufficient guidance (*Miami Nation of Indians of Indiana* (887 F. Supp. 1158 (N.D. Ind. 1995)), *aff’d* 255 F.3d 342 (7<sup>th</sup> Cir. 2001), *cert. denied* 534 U.S. 1129 (2002)). Also, extensive guidance is provided by prior acknowledgment decisions, by the PFs and accompanying reports, and by the informal and formal technical assistance provided in the acknowledgment process. This allegation is not grounds for reconsideration of the FD.

*Any Alleged Bias Of The Prior AS-IA Had No Continuing Impact On The FD.*

Former AS-IA Kevin Gover resigned from the Department on January 7, 2001. That resignation and a statutory bar, 18 U.S.C. § 207(a)(1)(c), precluded his further involvement in the decision-making process on these petitions. Mr. Gover's involvement in the acknowledgment proceedings ended when his employment with the Department ended.

The State argues that Mr. Gover's alleged biases continued to taint these acknowledgment decisions because the FDs did not revisit the PFs. To the contrary, the FDs did revisit the PFs in light of the comments and evidence submitted during the comment period. The text of the FDs clearly demonstrates that numerous portions of the PFs were revisited – some approved and some expressly rejected. For example, “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” (EP FD 23). Also, the FDs rejected the PF's reliance on *Passamaquoddy v. Morton* (EP FD, 54). The FDs also used the conclusion there were “distinct political entities” recognized by the State rather than the PFs' characterization of the State's relationship as “government-to-government” (EP FD, 78). The FDs also rejected the conclusion in the EP PF that certain individuals were informal leaders between 1940 and 1973 (EP FD, 23). Finally, the decisions were made by a new AS-IA, which insulated the FDs from any alleged bias of the prior decision-maker (*Koniag v. Andrus*, 580 F.2d 601, 611 (D.D.C. 1978)). The allegations of bias do not constitute grounds for reconsideration of the FDs.

*The Limitation On Research By OFA Researchers In The February 11, 2000, Directive Does Not Modify The Regulations Or Cause Error.*

The State argues that the February 11, 2000, directive included a “prohibition on independent research” by OFA staff and was imposed unlawfully because it “failed to follow the notice-and-comment provisions” of the Administrative Procedure Act (APA) (5 U.S.C. §553(b)) (State Request 2002, 66-67). This argument is not grounds for reconsideration of the FDs because the directive merely modified certain internal agency procedures, did not impact the rights of any parties, did not “ban” all independent research by OFA, and falls within the APA's exemption from the notice-and-comment process.

The February 11, 2000, directive, published in the Federal Register, addressed “Changes in the Internal Processing of Federal Acknowledgment Petitions” (65 FR 7052). It changed certain internal and informal agency procedures within the framework of the existing regulations and clarified other procedures “in order to resolve more expeditiously pending petitions” for federal acknowledgment.

The directive limits staff research “to that necessary for the decision” (65 FR 7053). This direction is consistent with the acknowledgment regulations that provide: “[t]he Department shall not be responsible for the actual research on behalf of the petitioner”

(25 CFR 83.5(c)). The directive expressly allows staff research “needed to verify and evaluate the materials” submitted (65 FR 7052). The directive thus limited only the discretionary research under 83.10(a), which was conducted by OFA staff to supplement a petitioner’s research.<sup>29</sup> The directive provided that instead, “submissions by the petitioner and third parties during the comment period [should] . . . remedy such deficiencies” (65 FR 7052-7053). This limitation does not change the regulations or violate any parties’ substantive rights under the regulations. It therefore is not a ground for reconsideration of the FDs.

The State also argues that the directive required notice-and-comment rulemaking under the APA. The APA, however, provides an exemption from its notice-and-comment rulemaking procedures for “interpretative rules, general statements of policy, or rules of agency organization, procedure or practice” (5 U.S.C. § 553(b)(3)(A)). An internal procedures directive need only comply with the APA’s publication provisions as was done here (5 USC 552(a)(1)).<sup>30</sup>

An internal agency practice or procedure is one that is “primarily directed toward improving the efficient and effective operations of an agency, not toward a determination of the rights or interests of affected parties” (*Batterton*, 648 F.2d 694, 702, n.34 (D.C. Cir. 1980)). The critical feature of the procedural exception in the APA is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency (*JEM Broadcasting Co. v. Federal Communications Commission*, 22 F.3d 320, 326 (D.C. Cir. 1994)) (quoting *Batterton*, 648 F.2d at 707).

Consistent with the purposes underlying the procedural exemption in the APA, the issuance of the 2000 directive stemmed from the need to manage agency workload in light of competing demands upon staff time (65 FR 7052). It limited but did not preclude discretionary staff research while maintaining the research necessary to evaluate the materials submitted by petitioners and third parties in order to make a decision. The directive did not alter substantive rights under the regulations. It is not grounds for reconsideration of the FDs.

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<sup>29</sup> The acknowledgment regulations provide that the AS-IA “may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner’s status” (83.10(a)). Prior to the directive, the OFA professional staff supplemented research by petitioners (65 FR. 7052). The regulations specifically leave this type of additional research to the discretion of the AS-IA (65 FR 7053).

<sup>30</sup> The purpose behind the §553 exemptions is to “accommodate situations where the policies promoted by public participation in rulemaking are outweighed by the countervailing considerations of effectiveness, efficiency, expedition and reduction in expense” (*American Hospital Assn. v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987) (quoting *Guardian Federal Savings & Loan Assn.*, 589 F.2d 658, 662 (D.C. Cir. 1978)). By including a specific exemption for internal agency procedures, Congress intended “to ensure that agencies retain latitude in organizing their internal operations” (*Batterton v. Marshall*, 648 F.2d 694, 707 (citing to Judiciary Committee Print 18 (June 1945)), reprinted in “Administrative Procedure Act Legislative History,” 79<sup>th</sup> Cong., 2d Sess., S. Doc. No. 248 (1946)).

*The Review Of Submissions In The FDs And Not In The PFs Does Not Demonstrate Grounds For Reconsideration.*

Once the Department was well into drafting the PFs on the EP and PEP, OFA decided, as it had in other cases, that it would focus on drafting the PF and not continue to revise the draft when additional submissions arrived at the agency. Rather, OFA would review the later submitted material in preparing the FDs. The State argues that this decision to hold those submissions for review in the FDs unfairly impacted interested parties and violated 25 CFR 83.10(f) (State Request 2002, 67).

The decision to hold comments for subsequent review, rather than repeatedly hold up and update an already drafted document, was a decision within the discretion of the agency for managing its workload and its internal procedures. This decision was fully consistent with the regulations and did not impact any of parties' rights.<sup>31</sup>

The regulations anticipate the submission of material by third parties, but do not include detailed provisions for the submission of them before the proposed finding. Rather, the regulations state only that notice of the receipt of the letter of intent "shall . . . serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment" (25 CFR 83.9(a)). The regulations provide also that the "Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties" (25 CFR 83.10(a)). [Emphasis added.] The regulations provide also that petitioner shall be notified of any substantive comment on its petition received prior to active consideration and be given the opportunity to respond to such comments (25 CFR 83.10(f)(2)).

The State claims a regulatory right to have all of its submissions considered in the proposed findings, no matter when they are submitted. There is no such regulatory right nor do general principles of due process imply one. The parties had any time between when the EP and PEP petitions were submitted (1978 and 1989) and April 5, 1999, to submit materials that were considered in the PFs. The State did so. The regulations do not expressly provide that parties may submit materials while the findings are being drafted and the regulations do not dictate when such materials, if any, must be considered. In contrast, the regulations expressly provide for a third-party comment period after the proposed finding is issued and include a specific date after which time the AS-IA shall not consider unsolicited material (25 CFR 83.10(l)(1)).

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<sup>31</sup> The OFA determined that any documents submitted after April 5, 1999, would be reviewed for the first time in the FDs. The PF was being drafted at that time and the record needed to be set in order to finalize the PF for public comment. The parties were not notified of this decision. Subsequently, the February 11, 2000, directive was issued. It provided that comments submitted after the start of active consideration would be held for review for the FDs, a more restrictive timetable than used in the EP and PEP proposed findings. Interested parties raised questions about the directive and were informed that staff had previously decided to hold submissions because the PFs were already being drafted prior to the submissions' arrival.

The State cites 83.10(f) of the regulations as support for mandatory consideration in the proposed finding, no matter the timing of the submission. This section of the regulations provides only that the “petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed findings, and shall be provided an opportunity to respond to such comments.” Neither this section nor any other section of the regulations mandates that these comments, or the petitioners’ response, be considered in the proposed finding. The regulations thus afford the AS-IA the ability to set a window in which to submit evidence for consideration in a PF and hold evidence for consideration for the first time in the FD.<sup>32</sup> This practice is fully consistent with the regulations and does not modify any parties’ rights under them. In addition, the parties’ ability to make their case before the agency is not impacted because a proposed finding is only a preliminary decision that may be changed in the FD.

### *Conclusions.*

The April 5, 1999, date for submission of comments to be considered for the PFs did not impact any rights under the regulations because all submissions were reviewed before the agency made its final decision (the final determinations). This date only clarified that there is a window during which OFA professional staff can analyze the evidence and write their preliminary reports without needing to continue to revise the reports whenever a new document is submitted. The regulations leave the review of submissions before the PF to the discretion in the Department. Further, there is a practical necessity to justify such a date in order to conclude the PF stage of the process within the time limits of the regulations. The holding of submissions for review for the first time in the FDs is not grounds for reconsideration of the FDs.

The limitation on OFA independent research to that necessary to reach a decision, permitting research necessary to evaluate the materials submitted, only impacts research made discretionary in the regulations. These changes are within the agency’s discretion in administering the federal acknowledgment process and in balancing the competing demands on staff time.

Finally, any alleged errors caused by the former Assistant Secretary were remedied by the issuance of a final determination following public comment by a new decision-maker.

This reconsidered FD concludes that the acknowledgment process, the technical assistance meetings, and the issuance of the FDs by a different decision-maker without any further involvement by the former AS-IA remedied any alleged procedural

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<sup>32</sup> The logical extension of the State’s argument is that the parties, not the Department, would control the processing of the proposed findings based on the timing of their submission, requiring revision and rewriting of the proposed findings, *ad infinitum*. The general implementation of specific dates furthers the efficiency of the acknowledgment process by preventing the proceedings leading up to the preliminary findings from lingering on as long as parties have further comments to raise, further leaving the status of the petitioners undetermined.

irregularity at the proposed findings stage.<sup>33</sup> Further, neither the review of material for the first time in the FDs, nor the directive's limitation on research by the OFA staff is grounds for reconsideration of the FDs. Therefore, the ADS concludes that the grounds in Issue 11 are not grounds for reconsideration of the FDs.

### **Authority for the Acknowledgment Regulations (IBIA Item 12)**

#### *IBIA Decision.*

The IBIA referred the following issue to the Assistant-Secretary: "Should the FD be reconsidered on the ground that BIA does not have authority to recognize a currently non-federally recognized group as an Indian tribe?" This topic is addressed in the State's Request for Reconsideration pages (State Request 2002, 69-71).

#### *Summary of the State's Argument.*

The State argues that "Congress has never actually delegated the authority to acknowledge Native American groups as a federally recognized Indian tribe" (State Request 2002, 69). In the alternative, the State argues that the delegation of authority of "Indian affairs" is without "intelligible principles" to guide the Department's exercise of such authority, rendering the acknowledgment process unconstitutional (State Request 2002, 70).

#### *The Department Of The Interior Has Authority To Promulgate The Acknowledgment Regulations.*

Congress has charged the Secretary of the Interior with the supervision of public business relating to Indians (43 U.S.C. §1457). Numerous statutes deal with Indian tribes without defining what an "Indian tribe" is, and many condition eligibility for certain benefits on being a tribe that is "recognized by the Federal Government." The Department considered the question of what groups constitute tribes extensively in connection with tribal organization under the Indian Reorganization Act (Felix Cohen, *Handbook of Federal Indian Law*, 270 (U.S.G.P.O. 1942)). Subsequently, the Department's practices were formalized through notice-and-comment rulemaking in 1978 (43 FR 39361). The regulations were revised in 1994 through that same process, under the Department's general authority, 25 U.S.C. §§2 and 9, 43 U.S.C. §1457 (59 FR 9280).

The Department's authority to promulgate acknowledgment regulations was upheld in *James v. U.S. Department of Health and Human Services*, (824 F.2d 1132, 1137, 1138 (D.C. Cir. 1987)) which held "Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations 25 U.S.C. §§ 2, 9 . . . Regulations establishing procedures for federal recognition of Indian tribes certainly come within the area of Indian affairs and relations."<sup>34</sup> The regulations

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<sup>33</sup> Similarly, alleged irregularities at the FD stage can be remedied at the reconsideration stage.

<sup>34</sup> See also *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1165 (N.D. Ind.

themselves were upheld in *Miami Nation of Indians of Indiana v. Babbitt*<sup>35</sup> and in *United Houma Nation v. Babbitt*.<sup>36</sup>

When the regulations were adopted in 1978, 40 requests for recognition of tribal status were pending and the Department was aware of an additional 130 potential petitioners. With this administrative workload and the importance of the decisions, rule-making was a manifestly reasonable method of addressing the issue. Congress knew of the Department's actions and deferred to the Department.

Since the regulations were adopted, Congress has held numerous hearings on recognition or restoration of specific tribes and several oversight hearings on the acknowledgment process. Congress has not changed the criteria or process. If the regulations conflicted with Federal statutes and Congressional intent, Congress could have clarified this matter. Instead, Congress has knowingly deferred to the agency's interpretation. As stated in *United Houma Nation*, “[T]his court . . . cannot ignore the evidence indicating that Congress is aware of the agency’s regulations . . . but has nevertheless failed to act.” (1997 WL 403425, 8).

Finally, Congress has supported the decisions made under the administrative process by appropriating money to the “new tribes” budget line item following decisions by the Secretary of the Interior to acknowledge tribes under the regulations.

#### *Conclusion.*

Numerous courts have upheld the regulations, issued under the general delegation to the Department of authority over “Indian affairs.” In addition, Congress is very much aware of the administrative process and has acquiesced in it and its standards. This reconsidered decision concludes that the Department of the Interior has authority to promulgate the acknowledgment regulations. The ADS therefore concludes that Issue 12

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1995) (finding that acknowledgment regulations were promulgated under Congress' delegation of authority to the President and to the Secretary to prescribe regulations concerning Indian affairs and relations), *aff'd*, 255 F.3d 342, 346 (7th Cir. 2001), *cert. denied*, 534 U.S. 1129 (2002); *United Tribe of Shawnee Indians v. United States*, 253 F.3d 543, 549 (10th Cir. 2001) (finding that the Bureau of Indian Affairs has been delegated the authority to determine whether recognized status should be accorded to previously unrecognized tribes); *Kahawaiolaa v. Norton*, 222 F. Supp. 2d 1213, 1215 (D. Haw. 2002), *aff'd*, 386 F.3d 1271 (9th Cir. 2004), *cert. denied*, 125 S. Ct. 2902 (June 13, 2005) (finding that, pursuant to the Department's authority to adopt regulations to administer Indian affairs, the Department adopted comprehensive regulations that govern its decisions concerning tribal status); and *Burt Lake Band of Ottawa and Chippewa Indians v. Norton*, 217 F. Supp. 2d 76, 77 (D.D.C. 2002) (stating that “pursuant to this delegation of authority to [the Department], BIA promulgated regulations establishing procedures for federal recognition of Indian groups as Indian tribes”).

<sup>35</sup>887 F. Supp. 1158, 1165 (N.D. Ind. 1995), *aff'd*, 255 F.3d 342, 346 (7th Cir. 2001), *cert. denied*, 534 U.S. 1129 (2002).

<sup>36</sup>1997 WL 403425 (D.D.C. 1997).

is not a ground for reconsideration of the EP and PEP final determinations made pursuant to those regulations.

### **The Wiquapaug Eastern Pequot Request for Reconsideration**

#### *IBIA Description.*

The IBIA decision accepted the “Wiquapaug Eastern Pequot Tribe” (WEP) as one of the groups that filed a request for reconsideration. The IBIA noted WEP was a petitioner for Federal acknowledgment in its own right:<sup>37</sup>

WEP claims to be an Indian group descended from the historical Eastern Pequot tribe, and is separately seeking Federal acknowledgment in proceedings before the Department’s Office of Federal Acknowledgment (41 IBIA 1, fn 1).

The IBIA summarized WEP’s request for reconsideration as follows:

WEP’s primary contention is that the Assistant Secretary should have considered including WEP in the single Eastern Pequot tribe that the FD acknowledged. As explained below, the Board concludes that all of WEP’s alleged grounds for reconsideration, though sometimes cast in the language of the Board’s jurisdiction, are in substance outside the scope of the Board’s jurisdiction (41 IBIA 13).

The IBIA also stated that:

WEP’s fundamental objection to the FD is that the Assistant Secretary did not consider whether WEP, as a group also claiming descent from the historical Eastern Pequot tribe, should have been combined with Petitioners EP and PEP as constituting the present-day continuation of the historical Eastern Pequot tribe (41 IBIA 28).

The IBIA also said the WEP attempted “to bring at least some of the allegations within the Board’s jurisdiction by arguing that its submissions constitute ‘new evidence’ that the Board may review,” but that in substance all of the WEP’s allegations were outside of the

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<sup>37</sup> The Wiquapaug Eastern Pequot Tribe, c/o Mr. Byron O. Brown, Hope Valley, Rhode Island, submitted a letter of intent to petition and partial documentation on September 15, 2000, and was designated as petition #228. The WEP submitted some additional documentation on September 20, 2000, October 10, 2000, March 27, 2001, and March 29, 2001. WEP’s request for interested party status in the EP/PEP petitioners was granted on October 13, 2000. Because WEP has not submitted a fully documented petition, it has not had a technical assistance review of its petition materials, nor been found ready for active consideration.

Board's jurisdiction (41 IBIA 28). Specifically, the IBIA concluded that the WEP's procedural challenges and membership issues were outside the Board's jurisdiction.<sup>38</sup>

The IBIA referred all of WEP's allegations except one to the Assistant Secretary (41 IBIA 28). The IBIA declined to refer the allegation listed by WEP as Issue E, that the Assistant Secretary failed to provide relevant information under FOIA that WEP had requested (41 IBIA 28, fn.13) (WEP Request, 12). The Board declined because FOIA appeals are governed by 43 CFR 2.19.

*The WEP Allegations in the Request for Reconsideration.*

The WEP made six allegations (lettered A to F) concerning the EP and PEP FDs. Each of the allegations will be discussed in the following analysis except Issue E, which the IBIA declined to refer to the AS-IA.

*WEP Issue A*

Description of Issue A. The WEP alleged that the AS-IA failed to properly consider "all historical Eastern Pequot tribal petitioners" when he "combined" the Paucatuck Eastern Pequot and Eastern Pequot into one Historical Eastern Pequot Tribe. WEP alleges that if the AS-IA had conducted an "adequate review" of its petition, he would have included WEP in the combined entity (WEP Request, 4).

Analysis and Conclusion. The WEP claims that the AS-IA should have issued a "revised PF before 'combining' the two petitioners" (EP and PEP) in order to have provided the WEP an opportunity to properly comment on the decision. WEP claims this would have given them the opportunity to request that they also be combined. However, as discussed above in Item 10, the petitioners and interested parties were given notice in the PF that the Department could not determine whether one or two tribes existed and that the issue would be considered in the final determination. The WEP petitioner along with the other parties had notice in the PF that the Department considered there may be one single tribe, represented by petitioners #35 and #113.

The WEP asserts descent from some of the same 17th and 18th century individuals, who were identified in the findings as being part of the historical Eastern Pequot tribe, as evidence that WEP should have been considered as evidence that "they, too, when combined with the two petitions considered, represented a recognizable segment of the Historical Eastern Pequot Tribe" (WEP Request, 4). None of the correspondence or other documents submitted by the WEP in response to the PFs, or in its own petition materials, identified individuals who were considered part of either the EP or PEP petitioner in the 19th or 20th centuries.<sup>39</sup> (Also see Issue F below.) Indeed, the WEP correspondence and

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<sup>38</sup> IBIA noted that if WEP's submission was considered new evidence, "the WEP's only argument is how this 'could affect' the determination is that it could change the composition of the tribal membership" (41 IBIA 28).

<sup>39</sup> The WEP's claimed ancestors and members were not named in the EP or PEP membership

comments on the PF repeatedly claim that its members descend from a group of Eastern Pequot who left the reservation about 1800. WEP's own allegations indicate that they were not part of the community that continued to reside on or associate with the Lantern Hill reservation. Therefore, because WEP claimed a history separate from the history of the antecedents of the two petitioners since at least since 1800, and because descent alone is not the basis of an acknowledgment decision, this allegation by WEP is not a ground for reconsideration of the FDs.

The review under 25 CFR 83 evaluates a particular group, defined by its membership list, which claims descent from a historical tribe or tribes that combined and maintained continuous existence as a political community. It does not evaluate all descendants of a historical tribe. A historical tribe may over time divide into several distinct groups (See discussion in the EP FD, 34-46). Thus, there may be more than one current petitioner and/or recognized tribe that can trace descent to a tribe as it existed in early historical times.

The Snoqualmie Final Determination noted that: "There is no requirement under the regulations that a petitioner be descended from most of the historical tribe. The requirement is to show descent as a tribe" (Snoqualmie FD, 17). In that case, other Snoqualmie descendants formed part of the recognized Tulalip Tribes, and another petitioner, the Snoqualmoo of Whidbey Island, also claimed descent from the historical Snoqualmie tribe. The Snoqualmie decision acknowledged only the specific group of individuals identified as the membership of the Snoqualmie petitioner. There are other precedents for recognition of groups that are descended from only part of an historical tribe. For example, in the late 18th and early 19th centuries, "a significant body of Narragansetts broke with the tribe and joined the intertribal Brotherton movement led by Sansom Occum" (Narragansett PF, 3). Other examples are found in the Jena Band of Choctaw and Burt Lake decisions (Jena Band PF, 59 FR 54496; Burt Lake PF, 59). The division of the historical tribe did not prevent recognition of the Narragansett or the Jena Choctaw, and those petitioners satisfied the criteria laid out in 25 CFR 83.7.

During the course of evaluating a petition for Federal acknowledgment, the evidence may demonstrate that there are a number of individuals are a part of the petitioner's social and political group who are not on the current membership list (See Narragansett PF, 16-17). However, this was not the case with the WEP and the EP and PEP. During the evaluation of the EP and PEP groups, the OFA did not find evidence that there was a body of other Eastern Pequot descendants in either Connecticut or Rhode Island who were participating in the social and political community of either the EP or PEP, but who were not already listed on the membership list of either of the two groups.

The purpose of the evaluation under the regulations for the PFs and FDs was to determine whether the EP and PEP petitioners evolved from the historical Eastern Pequot tribe as a continuously existing community. There was no reason to attempt to do the opposite: start with the composition of the early historical tribe and discover all descendants living

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records or genealogical records, or identified in the contemporary 19th or 20th century overseers' reports as Eastern Pequots. Therefore, the PFs and FDs did not consider them as a part of the groups being evaluated.

in the present day. WEP's claims of a pre-colonial Wiquapaug group that continued to exist after leaving the Lantern Hill reservation in about 1800 will be fully evaluated when the WEP's petition is reviewed in its own right. Thus, a decision that the a historical Eastern Pequot tribe continued to exist at Lantern Hill would not prejudice how the Department will view the WEP petitioner who is claiming a separate history after 1800.

The ADS finds that WEP's issue A is not a ground for reconsideration of the FDs.

*WEP Issue B.*

Description of Issue B. The WEP alleged that the AS-IA did not "clearly establish the conditions under which other existing factions of the Historical Eastern Pequot Tribe will be afforded entry into the recognized group" and that thus other "similarly situated, recognizable groups" or "a significant subset of the Historical Eastern Pequot Tribe" (WEP Request, 6) were denied equal protection under the law (WEP Request, 6).

Analysis and Conclusion. The ADS has not found that the WEP is a "similarly situated, recognizable group" to the EP and PEP petitioners, as WEP claims (WEP Request, 7). As explained above, the ADS has not reviewed a fully documented WEP petition, and has not made any preliminary assessment concerning the group's origins and claims of continuous existence as a "segment of the surviving Historical Eastern Pequot Tribe." The WEP petition will receive a full and fair evaluation when it is ready for consideration. Neither the FDs nor this reconsidered FD prejudices the WEP petition.

Part of WEP's argument in issue B is that the Assistant Secretary should make official inquiries into the EP and PEP petitioners' membership practices, and claims in particular that there were individuals "who were purposefully excluded by the petitioners EP and PEP from their petitions" (WEP Request, 7). This allegation appears to arise in part from the fact that Mr. Joseph P. Soares Jr.'s wife and daughter had been unsuccessful in trying to "obtain membership in the Eastern Pequot Tribe and/or the Paucatuck Eastern Pequot Tribe" (Soares to Fleming 11/20/1997). Thus, WEP's complaint was that EP and PEP had membership policies that did not include all individuals who may have Eastern Pequot ancestry.

The EP and PEP PFs and the EP and PEP FDs examined the enrollment practices of both groups and did not find evidence that any substantial number of individuals who were a part of the community that had continued to exist had been purposefully excluded (See the EP/PEP Draft Technical Reports and EP PF, 121-123, PEP PF, 122-137.) The membership enrollment practices reflected the community, or communities, that had continued to exist.

The ADS finds that WEP issue B is not a ground for reconsideration of the EP and PEP FDs.

*WEP Issue C.*

Description of Issue C. The Wiquapaug claim the AS-IA “excluded relevant information provided in comments and concerns” submitted by the WEP in its interested party status, and quoted part of a sentence in the EP and PEP FDs, which WEP claims showed the BIA “intentionally neglected” the WEP’s March 19, 2001, comments (WEP Request, 9).

Analysis and Conclusion. There were two separate types of records submitted by WEP during the comment period on the EP and PEP PFs: WEP’s own petition materials<sup>40</sup> and its official comments on the EP and PEP PFs (WEP 3/19/2001). There was no deliberate attempt to ignore or neglect comments on the EP and PEP PFs.

The record shows that the WEP submitted “Comments and Concerns on the Preliminary Determination of the Secretary to Grant Federal Recognition to Petitioners #35 and #113” on March 19, 2001, which WEP also sent to the petitioners (WEP 3/19/2001). However, as the Department explained in its memorandum of transmittal to IBIA of portions of the record, “These comments were not considered in the final determinations because they were misfiled” and thus were not reviewed for the FD (AS-IA 1/17/2003, 6).

The WEP request for reconsideration took a comment in the EP and PEP FDs out of context and omitted a significant portion of the statement that explained that WEP documents received, which were part of the documentation of its petition for Federal acknowledgment, were not served on the EP and PEP petitioners (EP FD, 4-5). The FDs stated that “Therefore, they do not constitute formal comments on the proposed finding” (EP FD, 4 including fn 3; PEP FD 5 including fn 5)).

The regulations require that “interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner” (25 CFR 83.10(i)). Because they were not provided to the petitioners, OFA did not consider WEP’s partially documented petition as comments on the EP and PEP proposed findings; therefore, it was not reviewed for the EP and PEP FDs.

Also, as noted above the Department did not read and analyze the WEP’s March 19, 2001, comments, which were provided to the petitioners, because they were apparently misfiled. The Department regrets this clerical error. The March 19, 2001, comments are now in the record for the reconsidered finding, and are reviewed below. The earlier failure to consider the WEP’s comments is cured by this review. The EP and PEP FDs will not be reconsidered on this issue.

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<sup>40</sup> WEP submitted a letter of intent to petition signed on September 1, 2000; almost six months after the EP and PEP PFs were published. OFA received the WEP letter of intent on September 15, 2000, with initial documentation and additional documents for its petition on September 20, 2000, October 10, 2000, March 27, 2001, and March 29, 2001. Prior to the 2000 letter of intent, Mr. Joseph Soares, claiming to represent “a faction that descends from the Pequot,” wrote the BIA concerning his efforts to have his daughter enrolled in the EP or PEP and requesting informed, and eventually interested party, status for the “Wiquapaug Eastern Pequot Tribe.”

Analysis of WEP's March 19, 2001, Comments on the PF. The WEP's comments on the PFs consisted of a cover letter with the distribution list, the title page for the "Comments and Concerns submitted in Response to the Findings . . .," a 3-page preface, a 1-page list of correspondence from WEP to "BAR," and a 20-page "Brief History of the Wiquapaug Eastern Pequot Tribe" (See the review below). It also included nine pages of comments on the EP and PEP PFs, focusing on WEP's claim that it is the remnant of the "true historic Eastern Pequot tribe" and that the errors in the PFs could be resolved if the Assistant Secretary would simultaneously review the WEP petition.

The WEP petitioner stated in the preface to its comments that it supported both petitions, but with a distinction:

. . . the fine distinction being made that they are but two of those entities which have evolved, in recent times from the historic community represented by the Wiquapaug Eastern Pequot Tribe. While this discernment is expressed by the BAR in its summary, (and is specifically reviewed in these comments and concerns below) the factual basis for establishing the existence of the present day Wiquapaug Eastern Pequot Tribe must await a full review by the BAR of the Wiquapaug Eastern Pequot petition, the filing of which is forthcoming (WEP 3/19/2001, ii).

A major focus in WEP's comments was that OFA should have considered its petition materials simultaneously with the EP and PEP petitions, and that this "failure" was prejudicial to the WEP's application (WEP 3/19/2001, i).

The WEP's petition for Federal acknowledgment has not been "prejudiced" because its case was not reviewed with the EP and PEP petitioners. As stated above, OFA received the WEP's documents for their petition on September 15, 2000, September 20, 2000, October 10, 2000, March 27, 2001, and March 29, 2001, at least two years after the EP and PEP petitioners went on active consideration in 1998. The WEP petitioner did not have a fully documented petition when the EP and PEP PFs were issued in March 2000 or in June 2002 when the FDs were issued. The WEP petition is still incomplete as of the issuance of this reconsidered FD. Once the WEP petitioner certifies that its documented petition is complete, the Department will conduct the required initial technical assistance review to determine whether the WEP materials provide evidence addressing all seven of the mandatory criteria in order to consider the petition "ready for active consideration."

The WEP's comments on the PF referred to some of the same documents that were cited in the PFs, but disagreed with the PFs' conclusions that the post-1800 reservation population was a continuation of the pre-1800's tribe:

We strongly disagree with this applied methodology: the factual and historical record clearly show that our ancestors (pre-1800) objected to the migration of non-Indian individuals onto our Lantern Hill reservation, forcing our ancestors (the true aboriginal Eastern Pequots, lineal descendants of whom constitute the Wiquapaug Eastern Pequot Tribe,

Petitioner #228), to relocate, thus leaving our Lantern Hill reservation open to further immigration by those whose descendants now claim our heritage (WEP 3/19/2001, 2).

However, WEP confuses the requirements of criteria (b) and (c), that the petitioner demonstrate community and political influence or authority on a substantially continuous basis from historical contact to the present, with the requirements of criterion 83.7(e), that the petitioner demonstrate descent from the historical tribe. Under criterion (e), the petitioner need not trace descent from the tribe as it was composed at the time of first sustained contact, but may trace to the tribe as enumerated in historical documents such as overseers' lists, Federal censuses, annuity lists, treaty signers, claims distribution lists, or similar documents created in the 19th century, for example, that provides evidence of the membership of the tribe as of the date the document was created (see EP PF, 122). In the case of the EP and PEP, the overseers' reports and petitions from the Eastern Pequots identified members of the tribe in the 19th century. The fact that WEP may descend from persons that once resided on the Lantern Hill reservation and were part of the historical Eastern Pequots, just as the EP and PEP petitioners do, does not preclude WEP from petitioning successfully.

The WEP also disputed the PFs' conclusions that EP and PEP petitioners descended from the historical tribe, claiming that the overseers' reports were not reliable for determining Eastern Pequot descent, citing a statement in the EP petition that "Enumerations of tribal members living both on and off their North Stonington reservation do not appear in the overseers reports until 1823" (WEP 3/19/2001, quoting EP PF, 59).

The WEP alleged that the conclusion in the EP and PEP PFs that the two petitioners "evolved in recent times from the historical Eastern Pequot tribe" is a "flight from precedent." It alleged further that such action then entitles to acknowledgment a group predominantly composed of individuals who are not descendants of the historical tribe "existing prior to European contact," nor "aboriginal (Eastern Pequot)," but who were only "associated with a minority of 'true aboriginal descendants'" (WEP 3/19/2001, 3). WEP then concluded that such an action has 'unanticipated consequences,' apparently meaning it will affect the WEP petitioner's claims.

For instance, application of the 1790 Non-intercourse Act, to present day land claims made by Indians with aboriginal title may be confused where the defendant is an Indian tribe which evolved in "recent times" from those descended from those who, not being Indian at all, had taken land in violation of the act (WEP 3/19/2001).

In conclusion, WEP claimed that it is the remnant of the historical Eastern Pequot tribe and that the history of "our Eastern Pequot enclave in Rhode Island after the exodus is the Pleasant Street Baptist Church" was being used by the petitioners to "bolster their petition." The WEP claims that the genealogies of the EP and PEP petitioners shows that they do not trace back to the pre-1800's tribe, and that the "royal blood line" of Harmon Garrett (who died about 1678), "First Governor of the historic Eastern Pequot tribe,"

continues to govern the WEP today. As “the true remnant” of the historical Eastern Pequot tribe, WEP alleges “another more devastating wrong” because its “identity” has been “bestowed” on the EP and PEP petitioners. Thus:

The findings by the BAR recognizes [*sic*] only that relationship to the true historic Eastern Pequot Tribe through post-1800 associations. This post-1800 association does not truly confirm their Eastern Pequot aboriginal descent, and as these findings fail to recognize simultaneously, the petitioners who descend from the true historic Eastern Pequot (#228. WEP) [*sic*], the actions pending regarding the disputed findings will likely entail additional confrontation and possibly litigation, including but not limited to credible land claims. This result may be avoided by a thorough review of the material submitted and the anticipated review of the Wiquapaug Eastern Pequot petition (#228/WEP), resulting in a recognition of the true descendants of the historic Eastern Pequot Tribe (WEP 3/19/2001, 8).

WEP’s “Brief History Submitted as a Comment on the EP/PEP Proposed Findings. As mentioned above, the WEP comments included a 20-page “Brief History” beginning with the reported pre-Colonial migration of the Indians from the Upper Hudson Valley to Connecticut, the definition of the Wiquapaugs as “a band within the Pequot family” that settled on Pawcatuck River in 1638, only to be driven off by the English, and the story of “Wequashcook/Harmon Garret” as a leader in the 17th century with “royal blood lines” (WEP 3/19/2001, Brief History, 1-10). The Brief History also included a section on “A People in Transition” in the 18th century, the “Religious Conversion” of some of the 17th and 18th century Pequots, and very brief summaries of the Pequots/Wiquapaugs in the 19th and 20th centuries (WEP 3/19/2001, Brief History, 11-20).

The WEP did not identify the author of the undated “Brief History.” It was written in the most general of terms, very briefly interpreting some of the events detailed in the history provided in “Geographic Orientation” sections of the EP and PEP findings (EP PF, 9-60). WEP’s “Brief History” lacked dates for claimed events and frequently inserted “Wiquapaug” in the description of the event, so that it is difficult to determine when the alleged event occurred and who was actually involved. For example, in its section on “People in Transition”:

The eastern Pequot bands of the Paucatuck and Wiquapaug also had difficulties as the North Stonington residents did not want them in their area from the very beginning. Thus it took some two decades before these bands were granted the reservation lands which had been continually promised them. . . . The Wiquapaugs eventually would have a state overseer to monitor their lands (WEP 3/19/2001, Brief History, 11).

The WEP’s “Brief History” was not so much a comment on the EP and PEP PFs as method for presenting its own petition claims. As stated earlier, the WEP history will be considered when a documented petition is reviewed.

Conclusions About Issue C. The WEP's 3/19/2001 comments on the EP and PEP PFs do not provide new evidence that would change the conclusions in the PFs or the FDs. Other interested parties also submitted similar arguments concerning the continuation of the historical tribe, and the ancestry of the two petitioners, which were extensively discussed in both the PFs and FDs (EP FD, 16).

The ADS finds that WEP Issue C is not grounds for reconsideration. The review of WEP's 3/19/2001 comments show that they do not provide significant new evidence that would change the EP and PEP FDs. WEP's claims regarding its own history will be evaluated when their documented petition is under review.

*WEP Issue D.*

Description of Issue D. The Wiquapaug allege that the AS-IA "exceeded his legal authority in the recognition of non-Indians as Indians, thereby preempting to [sic] rights of future claimants raising claims under the Indian Trade and Intercourse Act of 1790, as amended. 25 U.S.C. §177" (WEP Request, 11).

Analysis and Conclusion. There is no evidence submitted by the WEP and no credible evidence in the record to support this allegation. The EP and PEP PFs' and FDs' evaluations under criterion 83.7(e) discussed at length the available evidence concerning descent and concluded that the EP and PEP petitioners descended from the historical tribe. The EP and PEP PFs and FDs discussed at length the evidence that Eastern Pequot Indians continued to occupy the reservation after 1800 and that Eastern Pequot Indians who were living either on the reservation or off-reservation were identified in the overseers' reports. WEP claimed that there was new evidence or interpretation in its arguments (Issue C: see above), not considered by the AS-IA that supported its claim that the AS-IA "exceeded his legal authority in the recognition of non-Indians as Indians" (Issue D). The WEP's arguments for these two claims is essentially the contention that its claimed ancestors were forced from the Lantern Hill reservation by non-Indians and the subsequent recognition of the descendants of alleged non-Indians as the Eastern Pequot. WEP argues that by not reviewing its new evidence and interpretations, the AS-IA improperly granted recognition to non-Indians combined as Historical Eastern Pequot.

Again, WEP's claims of descent from the "true Eastern Pequot tribe" will be carefully evaluated when the its fully documented petition is considered. The question here is to determine whether the WEP has submitted new evidence or arguments that would change the findings in the EP and PEP FDs. The basis for WEP's genealogical claim was descent from pre-1800's ancestors and several instances of marriage between Eastern Pequot and Narragansett. The PFs and FDs already noted patterned marriage between Eastern Pequot and other Indian groups in the region, including especially the Narragansett. The FDs dealt with later marriages, and noted that, for criteria 83.7(b), no "significant new evidence" was presented for the period through 1873 from the PF (EP PF, 90; EP FD, 15). The EP and PEP PFs did not include a marriage analysis for the colonial period, but the discussion concerning marriage patterns for the late nineteenth-

century showed Eastern Pequots marrying Indians from other groups. The as yet unverified genealogies submitted by the WEP on its own members show marriages between women identified as Eastern Pequot and men identified as, or presumed to be, Narragansett in the second half of the eighteenth century. This is consistent with the findings of the PF regarding Eastern Pequot marriage patterns for the later period.

The WEP introduced claims of its descent from the historical tribe that were based in part on some of the documents that were in the EP and PEP record. Although the WEP asserted these claims were evidence that refuted the FDs, the WEP in fact introduced evidence and arguments relevant to its own petition, based on documents in the EP and PEP record which were, therefore, reviewed for PFs and FDs. Its evidence and arguments as they pertain to WEP's own history will be more fully evaluated when the WEP documented petition is reviewed. As discussed below, the evidence and arguments presented by WEP do not undermine the evidence relied on in the EP and PEP FD.

The WEP also introduced the hypothesis that a breakdown of the fiduciary responsibility of the overseers after 1800 forced the true and legitimate Eastern Pequot to leave the Lantern Hill reservation, to be replaced by "non-Eastern Pequot immigrants." This formed the basis for its claim that the AS-IA improperly recognized non-Indians as Indians. WEP cited complaints from Eastern Pequots in the colonial era and early 1800s about livestock invading Pequot fields and about English squatters as proof of an invasion of the Lantern Hill reservation that forced the Eastern Pequot, the claimed ancestors of the WEP, to move elsewhere. If such a migration occurred, there is no evidence that all of the Pequot Indians left the Lantern Hill reservation after 1800. As stated above and throughout the EP and PEP findings, the historical evidence clearly shows some Eastern Pequot continued to live on the reservation. Similar arguments were made by the Towns and were addressed in the EP and PEP PFs and FDs. Thus, this argument is not new and is not valid.

WEP introduced a new argument that tried to link reported declines in the Indian population, as recorded on several colonial censuses, to increases in the number of Blacks living in Stonington. WEP inferred that a growing number of Blacks moved onto the Lantern Hill reservation and forced some of the Pequot Indians to move elsewhere. While this argument is new, there is nothing in the record to support this claim. There is no evidence that any ethnic or racial group replaced all the Indians on the reservation. Whether some non-Indians resided on the reservation as spouses of tribal members or as renters, as the historical record showed, it had no effect on the fact that Eastern Pequot Indians continued to occupy the reservation, and that they were identified by the overseers' reports. Some of the Eastern Pequots, who were not residing on the reservation, were also identified in the overseers' reports. Therefore, the new genealogical information submitted by WEP in support of its partially documented petition does not alter the conclusions EP and PEP FDs or this reconsidered FD as to the ancestry of the petitioners.

The ADS finds that this allegation is not a ground for reconsideration of the EP and PEP FDs.

*WEP Issue F.*

Description of Issue F. WEP alleges that the AS-IA has a duty to recognize “all qualified petitioner bands and Indian groups which may be combined and acknowledged as the Historical Eastern Pequot Tribe” and that the AS-IA “at all relevant times during the review process, had three petitions for recognition as Eastern Pequot tribes before him” (WEP Request, 13).

Analysis and Conclusion. In effect, Issue F also repeats WEP’s demand that the AS-IA’s decision be stayed and that the AS-IA reconsider the EP and PEP findings to include the WEP. (See issues A, B, C, and D above.)

The claims in Issue F contradict WEP’s claim that its ancestors left the Lantern Hill reservation in 1800 and that they have not been a part of the two groups on the reservation, which WEP claimed were primarily non-Indian. Part of WEP’s argument in Issue F introduced new claims that the membership of the Pleasant Street Church, which had been discussed in the EP and PEP FD as including members of the EP petitioner, included members of the WEP. The WEP also claimed that the new evidence it submitted showed its leaders and members “trained” the PEP on organizing and running pow-wows and also that they participated in EP events. It was not clear if these statements were made to show the leadership of the WEP individuals, or to show there was significant interconnectedness among the EP, PEP, and WEP.

As stated under Issue A, above, the evidence in the record for the EP and PEP PFs and FDs did not show that members of the WEP were significantly involved with the activities or community of either the EP or PEP. The WEP request for reconsideration included a photocopy of the Eastern Pequot Annual Powwow in 2000 program that listed the participants in a martial arts demonstration, including two individuals WEP claims as members. Neither the list of events nor the remarks by Mary Sebastian, the then leader of EP, referred to the WEP as a group participating in the event or to WEP leaders who may have helped organize the event. Non-members, including Indians from tribes around the country, as well as non-Indians also participate in powwows. The ADS finds that this new evidence is not significant and does not affect the EP and PEP FDs.

The ADS finds that the WEP’s claims in Issue F are not grounds for reconsideration of the EP and PEP FDs.

*Summary Conclusions Concerning WEP.*

The ADS reviewed the evidence concerning each of the WEP’s five allegations in WEP’s request for reconsideration referred by the IBIA and finds that they are not grounds for reconsidering the EP and PEP FDs.

## Failure to Consider a Report Submitted by the Towns

### *Introduction.*

The Department's memorandum transmitting critical documents to the IBIA, as required by 83.11(e)(8), noted that the Towns of North Stonington, Ledyard, and Preston, Connecticut (Towns) submitted a report dated March 6, 2000, that had not been reviewed for the final determination. The IBIA decision did not note this or refer it to the AS-IA. However, this reconsidered FD reviews the Towns' report as to whether it provides grounds to reconsider the FDs.

The Towns submitted "A Report on the Eastern Pequot Petitioner and the Paucatuck Eastern Pequot Petitioner under Federal Acknowledgment Criteria 83.7(b) and (c)" on March 6, 2000, in which they argue that the EP and PEP petitioners do not meet the criteria for community 83.7(b) and political influence or authority 83.7(c). The Towns also claimed that their previous submissions demonstrated that the petitioners had not satisfied criterion 83.7(e) for descent from the historical tribe. The Towns here included some new arguments concerning the origins and ancestry of at least two of the petitioners' ancestors, which the Towns' report appears to present as evidence that the petitioners' ancestors were not part of a "close geographic settlement" (Towns' Report 3/6/2000, 3).

### *Description of the Towns' Comments on Criterion (b).*

The Towns alleged:

To meet the criteria, the petitioners must demonstrate that they have continued to maintain the social and political characteristics of a Tribe since first contact with non-Indians. They must also show that they now resemble the same group of related and interactive families that constituted the historical Tribe from which they claim descent [fn cites the *Official Guidelines*, but does not quote them] (Towns Report 3/6/2000).

The Towns also asserted that the petitioners do not meet the criterion for community because:

Evidence of tribal geographic settlement patterns in Connecticut does appear in some documents for the first half of the 19th century. However, much movement occurred during that period as well, as evidenced by the mariner records of residences. This movement demonstrates the absence of any settled community relationships for either petitioner. For example, the Revolutionary War records of the Shellys and Nedsons illustrate that these families did not live in close proximity to one another. Nedson and Samuel Shelly joined the army from Connecticut, while Cyrus Shelly enlisted from New York. None enlisted at the same time, nor fought in the same units. The same is true of claimed Pequot ancestry during the Civil

War. Some ancestors were sailors, some soldiers, some from Connecticut, and some from Rhode Island (Towns Report 3/6/2000, 2).

*Analysis and Conclusions.*

The Towns' interpretation of the regulations appears to require that the group "resemble" the historical tribe as it existed at an earlier time. This argument is a variation of the Towns' arguments found in the August 9, 2001, submission, which was reviewed for the FDs. The requirements of criterion 83.7(b) are that the petitioner has maintained a continuous community from historical times to the present, although the composition of the group may have evolved through time. Overall, the petitioner must demonstrate that it descended from the historical tribe and have maintained a distinct community and political authority or influence on a substantially continuous basis from historical contact to the present. In addition, the Official Guidelines state: "The regulations require that your group be in some way distinct from the wider society, but this does not require that it have maintained your ancestors' pre-contact life style or even a separate culture" (*Official Guidelines*, 49). [Emphasis added.]

The Towns' argument regarding residency and enlistment in the military during either the Revolutionary War or the Civil War does not have a basis in historical fact. The Towns stated that the Eastern Pequot families did not live in close proximity to one another because Pequot men named Shelly (for example) enlisted from Connecticut and from New York, did not enlist at the same time, or fight in the same units. However, the historical record shows that men from the same community may have enlisted or been drafted in a local military unit together, but they also enlisted in different local units or the Continental Army for different reasons and at different times. In the Revolutionary War era men generally enlisted in a unit (army or navy) that was within about 25 miles of their residence, regardless of state or county boundaries.<sup>41</sup> In the case of residents of North Stonington, this would include Rhode Island as well as a large portion of eastern Connecticut. Enticements such as higher pay, limited terms of service, bounty land (free land in the public domain), age requirements,<sup>42</sup> or serving with friends or relatives may have been factors in determining when and where a man enlisted. During both the American Revolution and the Civil War, just as now, some men preferred serving in the navy to serving in the army. Such preferences have nothing to do with showing either "evidence of tribal geographic settlement patterns" or "absence of any settle community relationships" as alleged by the Towns (Towns Request, 2).

The various acts by the individual colonial governments or Continental Congress allowing the enlistment of Indians, free blacks and mulattoes, or slaves also affected

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<sup>41</sup> The local militia units were periodically "called up" for service for various lengths of time as the need arose. The Continental Army recruited from a broader area, and individuals enlisted for set periods of time, such as 9 months, or 1 year or 2 years. See *The Continental Army*, by Robert K. Wright, Jr. Center of Military History, United States Army, Washington, D.C. 1983

<sup>42</sup> The ages for militia service varied from colony to colony, but 16 to 56 was the general range for age of service. For example, Rhode Island took a census in 1777 of men over age 16 that were able to bear arms.

when and where Indians may have enlisted (See *African American and American Indian Patriots of the Revolutionary War*, National Society Daughters of the American Revolution, Washington, D.C. 2001.).

The Revolutionary War soldiers identified by the Towns as having enlisted in different units -- Cyrus Shelly, Samuel Shelly, and "Nedsons" [probably James Nedson] -- were all identified as Pequot Indians in the overseer's reports before and after the American Revolution. The EP and PEP PFs discussed the overseers' reports and other records that identified the Shellys and Nedsons as Eastern Pequots, quoting documents that had been submitted by the petitioners and previously by the Towns (EP PF, 46-51). The March 6, 2000, comments did not include evidence not otherwise considered in the PFs.

In a related topic, the Towns also claimed:

In addition, one of the claimed ancestors of the Paucatuck Pequot group, Marlboro Gardner, who testified in 1881 that his family was Narragansett, is reported to have a brother, Dwight Gardner, and in fact, Dwight Gardner was listed as a tribal member. However, the Civil War pension files of Dwight (a.k.a. Alvin D.) Gardner indicates that he died in 1886, yet the membership rolls listed him through 1910. If indeed Marlboro were his brother as claimed, would he not know of his brother's death? According to his Civil War pension file, Alvin D. Gardner stated that he was known as Dwight Gardner before the War, and his marriage record designates him as Indian. He lived in Attleboro, Rhode Island. This and other evidence indicates that the ancestors claimed by the Paucatuck group were not part of a close geographic settlement of Eastern Pequots" (Towns Report 3/6/2000, 3).

However, the Towns incorrectly analyzed the evidence, combining information about two different men (Alvin D. or Dwight Gardner, who they state applied for a Civil War pension, with Dwight Gardner, the Pequot Indian) and attributed all the information to the Pequot Indian, making it appear that there was just one Dwight Gardner.

Alvin D. Gardner (alias Dwight Gardner) did not apply for a Civil War pension. However, his widow, Sarah B. (Grubb) Gardner applied for a pension in 1894 based on her deceased husband's service in "Company G, 14th Regiment, R.I. H. Art'y," and in "Company G, 11th [or 14th] Regiment, U. S. C. H. A." [U. S. Colored Troops Heavy Artillery] (NARA, RG15, pension #570,286). The pension application identified the soldier as "Indian and white," but did not mention a tribe to which he may have belonged. The pension record also included a statement the soldier died on March 18, 1886, in Providence, Rhode Island.

The Towns also submitted a photocopy of an 1894 record in the Civil War pension application of Sarah B. Gardner, widow of Alvin D. Gardner, in which the town clerk from "Bristol S.S. Attleborough" attested to the fact that marriage records for Attleborough, Massachusetts, show that Alvin Gardner, Indian, resident of Attleborough,

who was born in North Stonington, was the son of Henry and Sarah (Watson) Gardner.<sup>43</sup> Alvin Gardner was 35 years old in 1883 when he married Sarah B. Grubb, age 29, resident of Attleborough, who was born in Wilmington, Delaware, the daughter of John E. and Sarah W. (Jordan) Grubb. The name of the state is not on the photocopy; however, Attleborough is in Bristol County, Massachusetts, and elsewhere in the pension application, Sarah Gardner stated that she was married in Attleborough, Massachusetts. The Towns' report stated that this Alvin Gardner lived in Attleboro, Rhode Island, but that appears to be a misinterpretation of the place where the marriage occurred.

Second, the Towns sent a copy of a death certificate for an Alvin Dwight Gardiner, who was 35 years old (born about 1851) at the time of his death on March 18, 1886, in Providence, Rhode Island. The death certificate identified him as "col'd," and a laborer who was born in Westerly, Rhode Island, but did not include his birthplace or parents' names. Both the marriage record and the death certificate were in the Towns' August 2001, Exhibit 91, and were noted in the FTW notes for Dwight Gardner and thus are not new evidence.

Although the birthplace in the death certificate conflicts with the birthplace cited in the marriage record, this is a minor discrepancy, since informants for the death records may not have firsthand or reliable, knowledge concerning the birth of the deceased. Overall, the marriage record, the death certificate, and the widow's pension application appear to refer to the same man: Alvin D. (alias Dwight) Gardner, son of Henry and Sarah (Watson) Gardner, who died in 1886 in Rhode Island.

The Towns attributed these three records to the Dwight Gardner who was on the June 27, 1873, list of Pequot Indians (see also Item 7) and who also appeared in the overseers' accounts from 1888/1889 to 1914/1915. His name appears as Dwight Gardner/Gardiner on the overseers' reports from 1888/1889 through 1904/1905, but as "Dwight Goodhere" on the reports from 1910/1911 through 1914/1915 (#35 Pet. Overseers Reports, EP Response Box 1, folder 9 and notes in FTW). As quoted above, the Towns also state that Dwight was "reportedly" the brother of Marlboro Gardner, and that since Marlboro did not know that the man [they presume] was his brother was dead, this was evidence that the "ancestors of the Paucatuck group were not part of a close geographic settlement of Eastern Pequots" (Towns Report 3/6/2000, 3).

There was a man named Dwight Gardner, of "landsman" rank in the Navy, who enlisted in Connecticut on September 8, 1862, the same day that Malbro [*sic*] Gardner enlisted.<sup>44</sup> (See *Record of Service of Connecticut Men in the Army and Navy of the United States During the War of the Rebellion*, Adjutants-General, Hartford, Conn., 1889, p. 932, and #113 Petitioner's "Genealogical Documents," Vol. I.) This coincidence of the two men

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<sup>43</sup> The Towns' Response to EP and PEP PFs, 2001, included as document #91, the Attleborough town clerk's transcript of the marriage record found in Sarah B. Gardiner's Civil War Pension application.

<sup>44</sup> Dwight Gardner, "landsman" was discharged on September 9, 1836/66. There is no evidence that he is the same man who enlisted in the Army in Rhode Island in 1865. Sarah (Grubb) Gardiner's widow's pension application stated that Alvin D. Gardner's only service was from February to October 1865.

enlisting on the same day may provides some circumstantial evidence to support the assertion that Marlboro and Dwight were brothers; however, related to Marlboro Gardner or not, this “landsman” is likely to be the Dwight Gardner/Goodhere who was listed as one of the Pequot Indians in 1873 and on the overseers’ lists from 1888 to at least 1915.

In their own lifetimes, Dwight Gardner/Goodhere and Marlboro Gardner were identified as belonging to the Eastern Pequot tribe, with Marlboro making some claims in the 1881 Narragansett detribalization hearing that he was also [half] Narragansett.<sup>45</sup> The affidavits in Marlboro Gardner’s Civil War pension application state he was Indian, “Pequot,” and receiving “support from his tribe.”

The EP and PEP findings did not make the conclusion that Dwight Gardner/Goodhere was Marlboro Gardner’s brother.<sup>46</sup> Research shows that the Towns have misinterpreted the evidence and drawn a conclusion that the man who died in 1886 was Marlboro Gardner’s brother. This is not supported by the evidence in the record. Instead, the evidence shows there were two men called Dwight Gardner: Alvin D. or Dwight Gardiner who died in Rhode Island in 1886 and Dwight Gardner/Goodhere who was a Pequot Indian who lived until at least 1914/1915. Thus, the Towns’ argument concerning these individuals does not indicate that there was not a close geographic settlement as they allege, or that there was a lack of community.

*Description of the Towns’ Allegations Concerning the Ancestry of Marlboro Gardner and Calvin Williams as Evidence for a Lack of Community.*

Description. Under the overall assertion that the Eastern Pequot had not maintained a community, the Towns’ comments also included allegations that Marlboro Gardner was not Eastern Pequot and that Calvin Williams was not an Indian, and that because they were “allowed to reside on the reservation and even sign petitions alleging themselves to be part of the Pequot community” that this was evidence the Pequot community had lost “community cohesion” (Towns Report 3/6/2000, 4). The Towns further alleged that this meant the group had lost control of determining membership and there was a lack of continuity resulting in the reservation residents not knowing “the tribal ancestry” (Towns Report 3/6/2000, 4).

Analysis and Conclusion. The allegations concerning a lack of community are not correct and are not supported by the evidence. The origins and participation of Marlboro Gardner were discussed in the EP and PEP PFs (PEP PF, 122-124) and the EP and PEP FDs (EP FD, 90-94). The evidence consistently showed that in their own lifetimes, Marlboro Gardner and Calvin Williams were identified and accepted by both the Eastern

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<sup>45</sup> Marlboro Gardner was rejected for inclusion in the Narragansett detribalization roll because of a lack of social affiliation with that tribe.

<sup>46</sup> The OFA FTW and the petitioners’ FTW databases attach Dwight Gardner, born about 1843, died after 1922, as the youngest child of Harry and Ann (Gardner) Gardner, and therefore Marlboro’s brother; however, there is no evidence in the record to support the claimed connection. Related or not, both Marlboro and Dwight Gardner were identified as Eastern Pequot in their own lifetimes.

Pequot Indians and the overseers as members of the Eastern Pequot tribe. Calvin Williams' origins were mentioned briefly in a footnote in the EP PF (EP PF, 78, fn 96.) See the discussion elsewhere under Issue # 6: "The Two 1873 Documents" which describes OFA's research showing Calvin Ned or Nedson, who was on the overseers' reports as early as 1857, and Calvin Williams to be one in the same. See also the discussion above regarding Marlboro Gardner as a Pequot Indian. The Towns' allegations that he was non-Indian are not accepted.

The Towns' allegations concerning Calvin Williams and Marlboro Gardner are not new and are not supported by the evidence.

*Other Allegations.*

Description of other Allegations. The Towns allege that the 19th century overseer reports and 1873 petitions do not provide "conclusive" proof of community.

Analysis and Conclusion. The Towns allegations set a higher standard of proof than required in the regulations that call for a reasonable likelihood of the validity of the facts (83.6(d)). The 1873 and 1874 petitions were not used in isolation as evidence that the petitioners met criterion 83.7(b) in the 19th century, but were part of the body of evidence showing a collective Indian identity, "a high degree of marriage among the Eastern Pequots and in culturally patterned marriages of Eastern Pequots with Narragansetts, Western Pequots, and other local Indians," and that there was a "geographical concentration of the membership during this time period [that] was close enough to facilitate social interaction" (67 FR 44236). (See also discussion concerning the evidence for community in Item 7, above).

The Towns' remaining arguments that the petitioners did not meet criteria (b) (concerning geographic core, 4th Sunday meetings, powwows or "important socio-cultural institutions," and kinship ties) are not new and were addressed in the FD (EP FD 96-128) (see also discussion of IBIA Item 4). The Towns' August 2001 comments, which addressed the same concerns, were cited in the EP and PEP FDs (EP FD, 102, 105, 106, 107, 109).

The Towns' arguments in this report that the petitioners did not meet criterion 83.7(c) for political influence or authority focused on two basic themes: the Eastern Pequots had not demonstrated leadership on a substantially continuous basis, and that the state relationship was not a substitute for direct evidence of political influence or authority within the group. The Towns' argued that,

The functioning influence or authority must be intrinsic to the group and cannot be provided by individuals not historically or genealogically related to the group, and certainly not by external individuals, such as overseers or members of a State judiciary (Towns Report 3/6/2000, 6).

These arguments were in the Towns' August 2001, comments and the State of Connecticut's August 2001 comments, and were addressed in the EP and PEP FDs (EP FD, 137-177). The issue of the state relationship as evidence was discussed at length in the IBIA decision that vacated EP and PEP FDs and is discussed elsewhere in this reconsidered finding.

## **REVIEW OF THE STATE OF CONNECTICUT'S RELATIONSHIP WITH THE EASTERN PEQUOT**

### *Introduction.*

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)). The FDs concluded that the existence of the relationship with the Colony and later the State did not rise to the level of a government-to-government relationship, but was based on an implicit recognition of a political body and therefore the state relationship itself provided evidence for criterion 83.7(c). This revised discussion of the state relationship for the reconsidered final determination concludes that the state relationship, at least that after colonial times until 1973 does not in itself offer evidence to meet the definition in 83.1. This reconsidered FD reaches this conclusion in the light of the IBIA decision and after a further review of the evidence and the arguments offered by the two petitioners and the third parties.

This reconsidered FD reexamines the relationship between the State of Connecticut and the Eastern Pequot from the colonial period to the present. The State did not implicitly or explicitly predicate its legislation and policies regarding the Eastern Pequots and other Connecticut Indians on the basis of the recognition of a government-to-government relationship with the Indians, or on the basis of any recognition of the existence of bilateral political relations within the group. This changed with the passage of legislation in 1973 and particularly in 1989 that did establish a government-to-government relationship between the State and the Eastern Pequots. The state relationship does not provide evidence for political authority and influence within the Eastern Pequot tribe. Moreover, for the period 1913 to 1973, there is minimal and insufficient evidence of political authority and influence within the group. The implicit state relationship had a foundation in the 300 year history of the maintenance of the Lantern Hill reservation by the Colony and later the State. However, on removing the implicit state relationship pursuant to the IBIA ruling, the evidence of the actual interactions between the different representatives of the State and the Eastern Pequot does not provide evidence of political authority and influence in the group.

The 20th-century State relationship evolved over some 300 years in often contradictory and *ad hoc* ways, in response to short-term issues of immediate concern, or based on

previous legislative actions that may have been out of date or in need of revision.<sup>47</sup> The reevaluation of the nature of the state relationship addresses several issues, including the citizenship status of the Eastern Pequot, the overseer system as one aspect of interactions between the Eastern Pequot and representatives of the State, and a discussion of the rationale given for the relationship between the State and the Eastern Pequot.

#### *Citizenship Status.*

State law defined the legal status of Indians within Connecticut society. Legislation passed in 1918 (Rev. Stat. Conn., Chap. 276, 1446), which was a revision of an earlier statute from 1902, linked the status of Indians not already granted state citizenship with that of non-citizen aliens. This legal definition remained in place until repealed by legislation passed in 1973 and again in 1975 that granted these groups full state citizenship rights (Conn. Gen. Stat., Title 47, Ch. 824, 1975). However, documents in the record show that Eastern Pequots considered themselves to be citizens, and there was no state policy or law that effectively prevented them from exercising citizenship rights, including the right to vote in state and Federal elections.

Documents in the record confirm that Eastern Pequots voted as early as 1875. In that year Malbro [Marlboro] Gardner appeared on the North Stonington electors list. (North Stonington List of Electors, 3/27/1875) A 1904 voter roll from North Stonington listed Atwood Williams, Fred Sebastian, and Jessie Sebastian. (North Stonington List of Electors, 9/17/1904). Subsequent voter rolls from North Stonington and Groton listed other Eastern Pequots. (North Stonington List of Electors, 9/17/1927; North Stonington List of Electors, 9/21/1935; North Stonington List of Electors, 9/17/1938; North Stonington List of Electors, 1948; North Stonington List of Electors, 8/16/1950; North Stonington List of Electors, 9/16/1939; 9/9/1967; Record of Persons applying as Voters in the Town of Groton, 9/23/1950; Record of Persons applying as Voters in the Town of Groton,, 7/18/1952; Record of Persons Admitted as Voters in the Town of North Stonington, 9/27/1972)

The non-citizen status of the Eastern Pequots was ambiguous at best, and in practice the evidence does not show that the State treated group members differently from other residents of Connecticut, except in the expenditure of funds to provide goods and services to reservation residents. The State did not have dealings with group members who lived off of the reservation, unless they applied for residency rights or otherwise received material support from group or State funds after the legislature established a line item for the Indians in the 1940s. The 1973 legislation repealed previous laws that had defined Eastern Pequots as non-citizens, but nothing in the record shows that this law gave group members rights they did not already exercise and have other than representation on the newly created Connecticut Council on Indian Affairs. The noncitizenship status of the Eastern Pequot, thus, does not provide evidence that the Eastern Pequot were distinct as a community or otherwise.

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<sup>47</sup> For a more detailed discussion of the Colonial and State legislation regarding Indians in Connecticut, see EP FD, 55-72; PEP FD, 66-77.

State laws that defined the theoretical legal status of Connecticut Indians were not predicated on the existence of a government-to-government relationship with the Eastern Pequots and other state-recognized tribes, or the recognition of the group as a political entity. The citizenship status of the Eastern Pequots does not provide evidence regarding criterion 83.7(c).

*Overseer System and Its Successors.*

The provision for the system of overseers to help the Indians as fiduciary agents continued in various guises during the period 1935 to 1973 with state officials filling the role of overseer previously held by individuals appointed by the New London Court. It was one element that defined the State relationship with the Eastern Pequot. The New Haven County Court retained responsibility for appointing and monitoring the overseers until 1935, after which two different state agencies assumed fiduciary responsibility for the group (EP PF, 65). The State modified its guardianship role for the Indians in Connecticut in 1935. The State transferred responsibility for the Eastern Pequot to the State Park and Forest Commission and abolished the overseer system overseen by the County Courts (Public Acts, 1925, Ch. 203, 3994; Supp. Conn. Gen. Stat., Title 51, Ch. 272, 1935). In 1941, authority over the Eastern Pequot, Western Pequot and Schaghticoke was transferred to the Commissioner of Welfare, and in 1959 the Commissioner of Welfare received authority and duties similar to the overseers in the pre-1935 system (Supp. Conn. Gen. Stat., Title 51, Ch. 272; Rev. Stat. Conn., Title 47, Ch. 824, 171-173).

No other group of residents of the State of Connecticut was placed under the unique guardianship of state agencies such as the Park and Forest Commission and the Commissioner of Welfare, although the State did not treat all Indian groups in the same way. Moreover, those non-Indians placed under the jurisdiction of the Welfare Commission were there because they were disabled or economically destitute. However, the jurisdiction of the Park and Forest Commission applied only to Eastern Pequots residing on the reservation, and the Commission did not have the authority to provide services to group members living off the reservation.

The creation and maintenance of the overseer system through 1935, and the transfer of jurisdiction over Connecticut Indian groups to two other state departments after that does not provide evidence that indicates or illustrates a bilateral political relationship within the group, or that the group interacted with the state as one polity to another. There is no evidence in the record that shows the exercise of political authority or influence within the group deriving from the overseer system, or of interactions between group members and representatives of the State that demonstrate political organization and activity. The State's guardianship role does not provide evidence to demonstrate criterion 83.7(c).

The IBIA notes in footnote 11 that PEP comments on the PF contended that the receipt of "welfare" benefits by Eastern Pequots was "contingent upon the existence of a bilateral political relationship between the individual and the Tribe" (41 IBIA 21, note 11). The evaluation of documents in the record reviewed for this reconsidered FD shows this

interpretation to have no validity. Eastern Pequots who received medical attention, supplies, or food paid for from group assets and later from State funds had to reside on the Lantern Hill reservation and to be recognized as group members by the State. Nothing in the record demonstrates that the State predicated financial support or assistance to individual group members on the existence of bilateral political relations within the group.

*Reservation Lands, Residency, and Management of Eastern Pequot Resources.*

The record includes evidence concerning the maintenance of the Eastern Pequot reservation known as the Lantern Hill reservation, the management of and expenditure of Eastern Pequot resources, membership, and residency on the reservation. Management by state officials was another instance where actions by the State would and did generate responses by the Eastern Pequot. One question central to defining the historical relationship between the Eastern Pequot and the State was the integrity and use of the Lantern Hill lands, and state initiatives that threatened the reservation as occurred in the 1870s, 1939, and again in 1953 (see discussion of these issues, below).

The Lantern Hill reservation was the focal point of the relationship with the Colony and later the State. Upon a reevaluation of the evidence, this reconsidered FD concludes that the maintenance of the reservation by the State was not predicated on a government-to-government relationship with the group or the existence within the group of bilateral political relations that provides evidence for political authority or influence. This aspect of the state relationship based on the maintenance of the Lantern Hill Reservation does not provide evidence for criterion 83.7(c). However, the responses of the Eastern Pequot to the State's actions are evidence to be evaluated under criterion 83.7(b) and (c).

*Rationale for the State Relationship.*

A review of the record indicates that there was no material in which the State or a judicial body articulated a specific reason or rationale for the distinct status of the State-recognized tribes during the long history of the relationship between the Colony and later the State and the Eastern Pequot, and particularly in the years 1913 and 1973, a period when there is insufficient evidence of political influence or authority within the Eastern Pequot. That is, the State recognized an obligation to the Eastern Pequot, maintained a somewhat undefined land status, and provided special and specific funding. The documents refer to "tribe" but do not, generally, characterize what a "tribe" was for the purposes of maintaining the reservation, management of group assets, and the provision of financial support and services. The exception to the lack of an articulation of a rationale by the State for the state relationship was two Attorney General (AG) opinions rendered in 1939 and 1955. Documents in the record also contained a variety of informal opinions and comments as to the character of the groups, and the status of the land or of the group's members. Some at least appeared to be informal opinions rather than reasoned conclusions. The AG opinions did not provide significant evidence about the character of the state recognized "tribe," although the opinions also do not assert a political basis for the relationship between the State and the state-recognized tribes.

An analysis of the two AG opinions does not show a clear definition of “tribal organization” as outlined in the opinions, nor does it demonstrate whether there was or was not political influence or authority within the group as defined in 83.1.

The 1939 opinion concerned whether “full-blooded” Indians in the State had a right to hunt, trap, or fish without a license. Such a right was claimed “by virtue of treaties.” The 1939 opinion included the statement:

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. (Pallotti 5/18/1939, 1)

. The 1939 decision concluded:

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 therefore. (Pallotti 5/18/1939, 2)

In other words, no Connecticut law granted Indians an exemption from the requirement to obtain a State license to hunt, fish, or trap off reservation. The opinion does not preclude the exercise of political authority and influence by Eastern Pequots within the definition of the regulations.

In the 1955 opinion the AG considered whether or not Connecticut Indians could claim reservation lands to be their property that could be hunted, fished, or trapped without a license (Report of the Attorney General 11/4/1955, 115). The State did not recognize land ownership rights of the Indians to the lands on the reservations granted by the colonial government of Connecticut, and instead argued that reservation lands actually belonged to the State.

In the 1955 decision, the AG cited case law from the United States Supreme Court, as well as two rulings from courts of other states. The opinion cited *State v. Newell* (84 Me. 464, 24 A. 943, a case decided in 1892 by the Maine Supreme Court concerning the status of state recognized tribes in Maine. This decision noted that,

They are completely subject to the State as any other inhabitants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor (*State v. Newell*, 84, Me. 464, 24A 943). [sic]

The AG opinion used *State v. Newell* to bolster its conclusion that,

[I]t is still an historical fact that the Indians who made such treaties have wholly lost their political organization and their political existence. There has been no continuity or succession of political life or power (Report of the Attorney General 11/4/1955, 115).

The opinion concluded that since the Eastern Pequot or other Indians did not own the reservations, and since Connecticut Indians did not reserve a right to hunt or fish by treaty with the Colony or with the Federal Government, they were not exempt from obtaining a license.

The findings in the two AG opinions indicate that the AG did not consider the Eastern Pequot to be exercising or possessing sovereign authority. The opinions, however, did not preclude the possibility of demonstrating political authority or the exercise of influence within the group within the meaning of the regulations through other evidence.

*The State Relationship as a Focal Point for Political Actions.*

The state relationship was at times the focus of political actions, that at times led to well-organized manifestations of political activity. The ability of group members to mobilize to oppose state actions, such as the proposed sale of reservation lands (1873) or the proposed detribalization of the Eastern Pequots (1953), at best indicates that more might have existed than is documented. On the other hand, that an organization is created temporarily may indicate that an internal political structure existed. The existing documentary record does give examples of political action by the Eastern Pequot in response to decisions made by the overseers such as the proposed sale of reservation lands in 1873, the appointment of the overseers, and the processing by state agencies of applications for group membership and reservation residency. However, this political activity tended to be episodic and short-lived, and did not demonstrate long-term sustained political organization, recognized group leadership, or a bilateral political relationship within the group.

**EVALUATION UNDER THE CRITERIA OF THE EASTERN PEQUOT AND PAUCATUCK EASTERN PEQUOT PETITIONERS**

**Introduction**

Presented here is the re-analysis of data for particular periods as required by the IBIA decision and the referred grounds (see above). This section incorporates the relevant FDs by reference and affirms them, except where they are inconsistent with this reconsidered FD.

This reconsidered final determination has reviewed the state relationship with the Eastern Pequots, consistent with the IBIA decision, and concludes that it does not provide an additional form of evidence to be weighed. It does not provide implicit evidence of a bilateral political relationship, or of political authority or influence within the group because the State did not predicate its relationship on evidence of such activity. It is not a substitute for direct evidence at a given point in time or over a period of time (see discussion of the state relationship above).

Therefore, this reconsidered FD reconsiders the FDs' evaluations where the state relationship was used as additional evidence for a criterion where that relationship, combined with the other evidence, provided sufficient evidence that the criterion was met. In accord with the IBIA decision, particular state actions in a given time period are evaluated in the same manner as other evidence, to determine whether they provide evidence to demonstrate that the petitioner did or did not meet the requirements of "political influence or authority" as defined in 83.1. The evaluations here are also reconsidered to the extent required by the review of grounds outside the IBIA's jurisdiction (see discussion above). Where not so modified, the conclusions of the FDs' are affirmed and are not restated here.

### **The Secretary's Authority to Acknowledge More than One Group Derived from a Single Historical Tribe**

#### *Issue.*

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. However, this precedent does not define how recent the separation may be that would still allow the acknowledgment of two separate tribes.

#### *Precedents.*

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 and Snoqualmie).<sup>48</sup>

The Poarch Creek Band, which was acknowledged under these regulations, derived from the historical Muscogee (Creek) Nation and the Jena Band derived from the Mississippi Choctaw. The Snoqualmie Tribe, also acknowledged under these regulations, is one band derived from the historical Snoqualmie tribe; most of the other Snoqualmie merged with other tribes to form the Tulalip Tribes. The date at which division took place in

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<sup>48</sup> These examples are not intended to be an exhaustive list of tribes that fall into these categories.

regard to tribes acknowledged through the 25 CFR Part 83 process has varied. In these cases a specific historical date was not determined when the petitioning group became separate from the historical tribe. The Poarch Creek separated from the Creek Nation in the early part of the 19th century, Jena Choctaw from the Mississippi Choctaw in the latter 19th century, and the Snoqualmie Tribe from the rest of the Snoqualmie no later than the 1920's.<sup>49</sup> Thus the precedent from these cases does not deal with a division as recent as this reconsidered FD concludes the two petitioners became completely separate.

*Interpretation 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(d)). The language of 83.3(d), and the related criterion 83.7(f), pertains to petitions submitted by groups whose membership is composed principally of persons who are currently enrolled with acknowledged North American Indian tribes.

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 community continues to exist, the Department will acknowledge the entire tribal unit.

*Conclusions.*

The Secretary does not have the authority to acknowledge part of a tribe. Thus, an otherwise acknowledgeable group that divides now would not be acknowledgeable as two or more tribes because neither would constitute the complete community or political entity within which political influence was exercised.

The Secretary has the authority to acknowledge groups that have evolved into separate entities derived from a single historical tribe in those cases where this happened before the present-day. In the present instance, where the evolution into distinct groups did not result in two completely separate groups until the early 1980's, after the petitioning process was started, the separation is too recent to accord with the Department's policy of discouraging splits within groups that might become Federally acknowledged.

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<sup>49</sup> Additionally, there is the distinction, not applicable to these petitions, that Poarch Creek, Jena Choctaw and Snoqualmie separated from tribes recognized at the time. The Snoqualmie are further distinct in that they continued to be recognized as a separate band for some years afterwards. The Poarch Creek and Jena Choctaw were not recognized after they separated. See also relevant discussion in HPI and MBPI PFs and FDs.

The Eastern Pequot separation is a recent one, within the lifetimes of most of the adult membership of the two petitioners. The two petitioners do not separately meet the requirements of 83.7(b) because of the recentness of the evolution and division into separate groups. Therefore, this reconsidered FD concludes that the EP and PEP neither separately nor together meet the requirements of criterion 83.7(b) to demonstrate existence as a community from historical times until the present, notwithstanding that as a single group, the historical Eastern Pequot, from which the petitioners derive, meets criterion 83.7(b) from early colonial times until the early 1980's.

This reconsidered FD concludes that there is insufficient evidence of political influence or authority within the historical Eastern Pequot between 1913 and 1973 to meet the requirements of criterion 83.7(c). Neither petitioner has maintained political influence or authority over their members as an autonomous entity from historical times until the present. Thus the petitioners do not meet criterion 83.7(c) irrespective of the recent division.

**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.**

External identifications by the State of Connecticut and others identified a single Eastern Pequot group from 1900 until the present which includes the members of or ancestors of the current memberships of the EP and PEP petitioners. There were no identifications of a separate EP or PEP entity until the creation of the now-existing organizations during the 1970's. Before 1973, the antecedent families of the petitioners were mentioned, if they were distinguished at all, as subgroups with internal conflicts within the Eastern Pequot. Since the 1973-1976 period, the majority of external identifications, particularly by the State of Connecticut, continued to be identifications of a single Eastern Pequot "tribe" with internal conflicts. There are also a substantial number of identifications after 1973 of the EP and PEP as distinct entities, both as separate groups and as entities within a single Eastern Pequot group recognized by the State. Thus, there have been substantially continuous identifications of a single Eastern Pequot group from 1900 to the present as well as separate identifications of the two petitioners after 1973.

The regulations state that the principle that when affirmative external identifications of an Indian entity are made on a substantially continuous basis, a petitioner will not fail to meet this criterion where there are in the same time period also some external observers denials of the existence of an Indian entity (83.7(c)). On this basis, the continuing identifications of a single Eastern Pequot entity after 1973 would not preclude a finding that the identifications of the petitioners as separate Pequot entities in the same time period are sufficient for those petitioners to meet this criterion.

Criterion 83.7(a) under precedent does not require that external identifications correctly characterize Indian groups (RMI FD, 12). The actual character of a petitioner as identified, as to its history as a community, political influence within, and/or ancestry from the historical tribe are determined by criteria 83.7(b), (c) and (e). Precedent does require evidence that the external identifications cited actually pertain to a petitioner or to groups actually antecedent to it (Duwamish FD, 15-16). The identifications here pertain accurately to both the overall Eastern Pequot group and to the separate petitioners after the early 1980's.

This reconsidered FD concludes that the Eastern Pequot and Paucatuck Eastern Pequot petitioners meet the requirements of 83.7(a) because they and the historical Eastern Pequot from which they derive have been identified as an Indian entity from 1900 to the present.

**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.**

*Revised Descriptive Sections for the Reconsidered FD*

*Further Analysis of Community, Post-1973.*

The FDs' conclusion that the two petitioning groups formed a single community from 1973 to 2002, the date of the FDs, rested on the conclusion that there was a single group politically (EP FD, 20). That conclusion in turn rested primarily on the evidence from the state recognition and dealings with a single group rather than on direct evidence. For at least a major portion of this time period, there was not substantial other evidence to show that the petitioners formed a single community.

The analysis above under IBIA items 4 and 5, and the further analysis of the specific state relationship and state actions in that period did not provide evidence that the two petitioners formed a single political system from 1973 to 2002. Therefore, this reconsidered FD evaluates the evidence concerning whether and when the petitioners formed one or two communities under criterion 83.7(b). The FDs concluded and this reconsidered FD affirms that in 1973 there was still a single community, albeit one already substantially divided as a result of the social conflicts of the preceding decades.<sup>50</sup>

This reconsidered FD concludes that the petitioners as they existed in 2002, at the time of the FDs, were essentially completely separate. The FDs also concluded there was significant evidence for social cohesion within the memberships of each of the petitioners

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<sup>50</sup> The FDs concluded that the Eastern Pequot formed a single community from colonial times until 1973. That conclusion did not rely on evidence from state recognition.

separately, at the time of the FDs (EP FD, 19-20). Those conclusions are not impacted by this reconsidered FD's conclusion that there was not direct evidence that there were political processes after the early 1980's that encompassed the membership of both petitioners. Absent the evidence from state recognition, this reconsidered FD concludes that the remaining evidence demonstrates that the two petitioners at the time of the PFs and FDs were two distinct communities with at best residual ties between them.

This discussion is to determine the approximate date when the two groups became essentially separate. This analysis should be read together with the parallel discussion below of the concurrent process of change after 1973 from a single community with political processes to the separate petitioning groups with separate political processes that existed at the time of active consideration.<sup>51</sup>

The available evidence indicates that a process of separation between the family lines within the Eastern Pequot had been going on since before 1973. This was demonstrated by the conflicts and opinions within the Eastern Pequot community, which stressed divisions between the family lines. These conflicts and opinions in turn resulted in withdrawals from, or refusal, of certain interfamily social contacts, especially between the Gardners and Sebastians (see discussion of the attitudes of Helen LeGault and Atwood Williams, Sr. under criterion 83.7(c) below). The evidence for the loss of social contacts is the reports of attitudes and the age-profile of those who did and did not have such social relationships. The interview evidence indicates that at the time of the FDs, the older generation still had such contacts, consistent with the documentary evidence concerning community before 1973. The lack of social contacts between family lines, especially Gardner and Sebastian, among younger members at the time of the FDs indicates that over time social contacts had become fewer. As a result, internal divisions became more and more distinct over time as members of the oldest generation died, especially those born in the 1920's to the 1940's or before.

This reconsidered FD concludes that in the early 1980's the separation became substantially complete except for some residual links. This date is an estimate based in part on the evidence that community existed in 1973 and that the present-day groups are essentially separate. Determining an exact date when the social separation between the EP and PEP families became substantially complete is not necessary for this evaluation and no determination has been made for this reconsidered FD.

The FDs reviewed the evidence for community for the membership of the petitioners as they were at the time of active consideration. EP's membership at the time of the FDs comprised the Sebastians and two separate Fagins lines while the PEP's membership at the time of the FDs consisted of the Gardners, with their two sublines (Gardner/Edwards and Gardner/Williams) and a few remaining Hoxie/Jacksons.

There was little or no evidence in the record to demonstrate social links between the two sides at the time of the FDs. The groups became more and more distinct over time as

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<sup>51</sup> Between 1913 and 1973, there was insufficient information to demonstrate that the single community had political processes which met the requirements of 83.7(c).

members of the oldest generation, who had more social contacts between the two sides died and were replaced with a younger generation without such ties. The evidence, from interviews was that only the very oldest members alive at that time still had connections across family lines, based on their earlier lives (see Harold Jackson 1999, Lillian Sebastian 1999, Alton Smith, Sr. 1999) (see EP FD, 123).<sup>52</sup> Historical documentation supported the interview descriptions of contacts (EP FD, 117-124). By contrast, individuals under 60 did not have social ties across the divide and generally did not know much, other than public knowledge, about the other group (see Mark Sebastian 1999). This age differential indicates that, in 1973 and the decade or so after that, there would have been more individuals, from the same generation as these survivors, who also had these social ties. Those from this generation who did not live as long were not represented in the data interview collected from 1996 to 2002 from the current membership by OFA and the petitioner.

In addition to this generational change, the Eastern Pequot community also became more divided because the Jackson family became smaller until there were almost none left. In the 1970's, because there was still a body of adult Jacksons in the Eastern Pequot community, there was not the same separation that there was at the time of the FDs, when there were almost none. This line played a bridge or connecting role between the two family 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 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 (see EP FD, 117-124).

The Jackson family had diminished by 1980 to approximately half a dozen older individuals. Some of the descendants of the Jackson line as it existed in the 1920s did not have children. Others have joined other Indian groups, and the rest lost contact with the Eastern Pequots (see Austin 2001, 4-12).<sup>53</sup> Arlene Jackson, an older Jackson (born 1909) who had led a protest against Helen LeGault in 1973, by 1982 was no longer able to participate, and moved in that year to a nursing home. She died in 1992. Paul Spellman, a long-time reservation resident well known to Eastern Pequots from all of the family lines, died in 1981. Olive Jackson, another reservation resident died in 1986. These individuals left no descendants or their descendants are not involved with the Eastern Pequot (Harold Jackson 1995, PEP Ethn. Doc. 73, 1999).

The petitioners responded to the PF's conclusions that there was little such evidence, based on the interviews in the record, of links between the two sides. The PEP petitioner continued to assert that they had never had any connection with the Sebastians. EP in response to the PFs provided additional interviews as well as documentary information.

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<sup>52</sup> At least three of the individuals interviewed on this subject are since deceased: Harold Jackson, Lillian Sebastian and Alton Smith, Sr.

<sup>53</sup> The 10 Jacksons who were enrolled in PEP as of 1999, were the children of an individual who had been adopted by non-Indians as a small child and had only made contact, with PEP, within the past decade, hence had no social connections with the Sebastians nor past connections with the Gardners.

However, this information, while providing further evidence for a single community in earlier periods, did not provide evidence for a single community which included the Gardners after the early 1980's.

*Evaluation Under Criterion 83.7(b)*

*Introduction.*

The FD's evaluation under criterion 83.7(b) from colonial times through 1873 is unaffected by the reconsidered FD and is affirmed. It is restated as follows below.

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 for each pertinent 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 19<sup>th</sup> century. There is evidence, specifically petitions and overseers' reports, that the direct antecedents of both current petitioners were a part of that historical community in the 19<sup>th</sup> century.

This reconsidered finding concludes that although the summary evaluations in the FDs referenced evidence of residency under 83.7(b)(2) the EP and PEP FDs did not rely on evidence under that section and thus did not place improper weight or incorrect weight on

the evidence regarding residency on the Lantern Hill reservation for the colonial time (1600's) through 1873 as alleged by the Towns (see review of IBIA Item 7 above for a detailed discussion). Rather, the combination of evidence set out in the PFs is sufficient evidence that the petitioners meet criterion (b) from colonial times through 1873.

This reconsidered finding clarifies that, as the PFs stated, criterion 83.7(b) is met by a combination of evidence: there was evidence that the community as a whole maintained a high rate of intermarriage and patterned outmarriages, there was the evidence for the persistence of a named, collective Indian identity over a period of more than 50 years, and there was the evidence for historical political influence which demonstrated community. Reservation residence, the occupation of a distinct territory, even where it is not demonstrated that more than 50 percent of the total resides thereon contributes to meeting criterion 83.7(b). The combined evidence described above is sufficient for demonstrating a single Eastern Pequot community under 83.7(b) for the colonial period through 1873.

*Community 1873 to 1920.*

The FDs' evaluation for 1873 to 1920 is unchanged by the reconsidered FD and is therefore affirmed.

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 the 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 for the FD which filled in the time span from the 1880's through the early 20<sup>th</sup> century. These submissions provide further evidence that there was a distinct Eastern Pequot community and that this community included the Sebastian family.<sup>54</sup>

The final determination affirmed 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 petitioners 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 for the FD concerning the

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<sup>54</sup> See further analysis for this RFD under IBIA Item 6.

geographical distribution of all of the Eastern Pequot confirmed the factual conclusions for this time period.

Substantial evidence and new analyses showing patterns of social association within the Eastern Pequot was submitted in response to the proposed finding as well as in additional documentary and interview evidence. New documentary evidence in the 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 existed at the time the petitions were considered.

*Community 1920 to 1940.*

The evaluation of community for 1920 to 1940, which concluded there was sufficient evidence for community is unchanged and is therefore affirmed. This evaluation did not rely on state recognition as evidence.

In the time period from 1920 to 1940, there continued to be strong evidence for community, with additional evidence submitted. The FD affirmed 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 was submitted for the FDs, which confirmed the social cohesion among that portion of the Eastern Pequot. A review of existing and additional documentary and interview evidence also clearly indicated social ties between the Sebastians and other major family lines, the Jacksons and Fagins/Randall lines, during this period. Social ties between these families and the Gardners were shown by several intermarriages, such as that between Atwood Williams, Sr. and Agnes Gardner, as well as interview evidence.

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. 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 to have been a continuance of the religious meetings of a similar character, which had been held for a number of years before 1913 by Eastern Pequot organized by leader Calvin Williams, who died in 1913 (see criterion 83.7(c)). After 1913, the meetings were organized by Williams' wife, Tamer Emeline Sebastian Williams. 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.

The Eastern Pequot meet criterion 83.7(b) from 1920 to 1940 as a single community, without reliance on the state relationship.

*Community 1940 to 1973.*

The evaluation for this time period is modified slightly to be reflect the revised analysis of community and political influence after 1973. The evaluation that criterion 83.7(b) is met between 1940 and 1973 is otherwise affirmed, without reliance on the state relationship.

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/Randall line in the same time period. Better and more detailed geographical data confirmed the patterns identified in the proposed finding as providing supporting evidence for community among the EP and PEP memberships and thus for the Eastern Pequot 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 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.

The Eastern Pequot meet criterion 83.7(b) from 1940 to 1973 as a single community, without reliance on the state relationship.

*Evaluation of Criterion 83.7(b), 1973 to 2002.*

The FDs' evaluation of criterion 83.7(b) after 1973 concluded "Each of the major segments, EP and PEP, has significant internal social cohesion" (EP FD, 20). The FDs' conclusion that there was substantial evidence to demonstrate community within each petitioner separately is not at issue for this reconsidered FD, since the analyses did not rely on state recognition. Further, the ADS did not accept for reconsideration the IBIA described ground concerning the analysis of the evidence for demonstration of community other than as impacted by state recognition in the 20th century (see discussion of IBIA Items 4 and 5).<sup>55</sup>

The FDs' conclusion that these two segments formed a single community relied primarily on the conclusion in the evaluation of 83.7(c), that there was a single political entity. This reconsidered FD concludes that the two petitioners did not form a single community or political entity at the time of the FDs and for a substantial period of time before that (see also criterion 83.7(c) evaluation). Therefore, since there were not political processes as a single group, there is not evidence from criterion 83.7(c) that there was a single community. There was no other evidence for the FDs that the two groups formed a

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<sup>55</sup> All of the issues within the grounds in Item 4 concerning the evidence for community, other than than state recognition, were fully reviewed for the FDs. These primarily concerned the use of interview evidence, for all periods, including the post-1973 period. Therefore, the ADS has declined to review the post-1973 period on the grounds described by the IBIA in Item 4 other than state recognition.

single community. The available evidence demonstrates that in the early 1980s the Eastern Pequot had separated into two groups.

The FD also concluded,

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) (EP FD, 20).

This precedent applies when there is a demonstration of a single community. This reconsidered FD concludes that this precedent does not apply to the relationship between EP and PEP because the evidence shows that there were two distinct communities at the time of the FDs rather than differences in the degree of social contact within a single community.

This reconsidered FD concludes that the two petitioners at the time of the FDs did not constitute a single political system, and state recognition and actions after 1973 do not provide evidence that the two groups constituted a single community. Therefore, the two petitioners do not meet the requirements of 83.7(b) as a single community from the early 1980's until 2002, the time of the FDs.

This reconsidered FD affirms the analysis of the evidence in the EP FD that there was substantial evidence under 83.7(b) within the Eastern Pequots who subsequently became members of the EP petitioner, from 1973 to the present. The geographic pattern of residence past and present among the EP is sufficiently close to be supporting evidence of social connections which other evidence demonstrates directly. The PF concluded that the most substantial evidence for community was the predominance in the EP membership of the Sebastian line. This family line had expanded greatly in size in the past several decades, meaning that a substantial portion of the EP membership was closely related on the basis of descent that line. The majority of the Sebastians were descended from only some of the children or grandchildren of Tamer Sebastian, making them even more closely related. Interview evidence indicated that this family line remained a kinship group whose members maintained social ties well beyond immediate kinsmen (EP PF, 158).

The EP FD concluded that community among the EP membership in the present-day was also demonstrated by the evidence from criterion 83.7(c) because of EP's substantial control of and allocation of most of the reservation land among members since the 1980s. The regulations, and the precedents in interpreting them, allow evidence of strong political processes to be used also as evidence to demonstrate modern community because they "require and are based on the existence of social ties and communication for them to operate" (Snoqualmie PF, 11,18, FD, 6). In this instance, strong political processes are demonstrated in part by allocation of reservation resources, among the EP membership.

This reconsidered FD affirms the PEP FD's conclusion that the PEP membership was small and fairly closely related, with 90 percent drawn from the two Gardner family sublines.<sup>56</sup> There is direct evidence that kinship relations are recognized within its two main subdivisions, the Gardner/Edwards and the Gardner/Williams family lines. There is some evidence that kinship relations between the two lines are still recognized by members. 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 membership, which is comprised almost entirely of the Gardner family line, is close enough that significant social interaction is feasible but is not so concentrated as to provide in itself supporting evidence of community. However, there is direct evidence of actual social contact and interaction. PEP presented an analysis of relationships within the Gardner family line, based on defining a core social group with which approximately 90 percent of them had demonstrable close kinship ties and/or social contacts. This analysis was generally consistent with available interview information about social contacts within the PEP membership.

The PEP have exercised control over and allocation of a portion of the Lantern Hill reservation resources, though to a more limited degree than EP. This is evidence for the existence of political processes and supporting evidence for the existence of community within the PEP membership (see discussion above).

The available evidence indicates that a process of separation between the EP family lines and those of the PEP had been going on since before 1973, and that the groups became more and more distinct over time as members of the oldest generation died. The separation resulted in part from the decline in the size of the Jackson family line. The Jackson family, which had long been a link between the Sebastian and Gardner/Edwards sides, had diminished substantially by 1980, to a small number of older individuals.<sup>57</sup> There were at most a dozen adults in contact with the Eastern Pequot, who comprised approximately several hundred adults at the time. The separation also resulted from the decrease in the size of the older generation of Eastern Pequots in general, which had more social contacts between family lines. As this happened, the Eastern Pequot became more and more divided as members of this oldest generation died and were replaced with a younger generation without such ties. Determining the exact date when the social separation between the EP and PEP families became substantially complete is not necessary for this evaluation and no determination has been made for this reconsidered

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<sup>56</sup> As of 1999, the balance of PEP's membership, from the Hoxie/Jackson (not Gardner) line, consisted of only 10 persons. These numbers are too small to require specific analysis here.

<sup>57</sup> Some of the descendants of the Jackson line as it existed in the 1920s did not have children, while others have joined other Indian groups or lost contact with the Eastern Pequots. The 10 Jacksons who were enrolled in PEP as of 1999, were the children of an individual, a grandchild of this older generation, who had been adopted by non-Indians as a small child and had only made contact (with PEP) within the past decade, hence had no past connections with the Gardners social connections and none with the Sebastians.

FD. It is sufficient to say that the separation appears to have been substantially complete by the early 1980's. This conclusion revises the FD conclusion that the process of division within the Eastern Pequot was not complete at the time of the FDs (see EP FD, 25).

This reconsidered FD affirms the FDs' conclusion that there is substantial direct evidence under criterion 83.7(b) within the membership of each petitioner from 1973 to 2002, the time of the FDs. In addition, there was sufficient evidence that in 1973 the family lines comprising the historical Eastern Pequot were still linked in one community, as they were before that time. However, a process of separation, which had been going on for some time, continued after 1973, resulting in the eventual complete separation of the historical Eastern Pequot in the early 1980's into two separate groups comprised of different family lines. This analysis of the post-1973 period contrasts with the FDs' conclusions that the process of separation was not yet complete at the time of the FDs (EP FD, 25).

The Eastern Pequot separation is a recent one, within the lifetimes of most of the adult membership of the two petitioners. The two petitioners do not meet the requirements of 83.7(b), from the early 1980's to 2002 because the division is too recent and because they do not form a single community from the early 1980's to 2002. The two separate communities that existed after 1983 are not the same community as existed previously, although they shared a common origin. Therefore, this reconsidered FD concludes that the EP and PEP neither separately nor together meet the requirements of criterion 83.7(b) to demonstrate existence as a community from historical times until the present, notwithstanding that as a single group, the historical Eastern Pequot from which the petitioners derive meets criterion 83.7(b) from early colonial times until the early 1980's.

**83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**

*Revised Descriptive Sections for the Reconsidered FD*

*Political Influence or Authority: Reanalysis of Evidence Concerning the 1873 Eastern Pequot Petition and Other Documents.*

The majority of the new analysis and evidence submitted in response to the PFs pertained to the period from 1883 to the present. However, the FDs' detailed analysis for the final determination began with 1873 because of the presence of significant new information in regard to the June 26, 1873, Eastern Pequot petition. This reconsidered FD presents additional analysis in response to grounds describe by the IBIA and a better copy of the June 26, 1873 petition. (This text replaces the text found on pp. 142-143 of the EP FD and pp. 122-127 of the PEP FD).

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.<sup>58</sup> 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).<sup>59</sup>

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 the 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:

Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson, Fanny ", Irean ", Phebe ", Lucy ", Wm. H ", Jane M J, Leonard Brown, [illegible], [illegible], Janes [James?] M Watson, Sarah J Watson; [following page, may or may not represent a continuation] Mercy Williams her mark, [illegible], [illegible], [illegible] Hill ( #35 Pet. Petitions; Lynch 1998a 5:81-82; Grabowski 1996, 114) (PEP PF 2000, 104).

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<sup>58</sup>See, 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 Duglas, Caroline Ned, Lucy Hill, Rachel Orchard 4 Children, Abby Fagans or Randall 5 Childrer., Leonard Ned Brown, Calvin Ned, Joseph Fagans, James Kiness, George Hill, Andrew Hill" (#35 Pet. Overseers Reports).

<sup>59</sup>Aside 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).

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 for the FD, the names appeared 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).

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, 104)

The ability to identify the additional names on this document is the result of there being a better photocopy in the evidence in the FD.

The June 26, 1873, petition was also signed by members of the Hoxie/Jackson family (antecedents of the petitioner #113, PEP) and by Abby (Fagins) Randall, one of her children, and the children of Laura (Fagins) Watson (antecedents of the petitioner 35, EP). 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, concluding 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 in response to the PF 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,"<sup>60</sup> although these are the first Eastern Pequot documents on which the name of PEP ancestor Marlboro Gardner appears and are, therefore, of some significance in understanding the development of the current petitioner.<sup>61</sup> 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 show political leadership or influence within the historical Eastern Pequot tribe comprised of both EP and PEP ancestors. They also demonstrate that there was no distinct group or subgroup comprised of the Hoxie/Jacksons and the Gardners.

Origins and Validity of the June 26, 1873, Petition. The Towns' request for reconsideration of the FDs questioned the "origins and validity" of the June 26, 1873, petition, based on what it considered to be irregularities in the names, signatures or use of "x" marks, ad ages of individuals who signed the document. The Towns' submission to IBIA included a transcription of the names it claimed were on the June 26, 1873, petition, which varied somewhat from the list of names that was used for either the PF or the FD.<sup>62</sup>

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<sup>60</sup>March 31, 1874, "Remonstrance to Superior Court, New London, against sale of land": "We the undersigned most respectfully state that we are members of and belong to the Pequot tribe of Indians of North Stonington." This petition again requested the removal of Leonard O. Williams as overseer. Signers were:

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

<sup>61</sup>The immediately subsequent overseers' reports did not include Marlboro Gardner or Eunice (Wheeler) Gardner: 2 August 1876 - 1 April 1877, C. P. Chipman as Overseer for the North Stonington Tribe of Pequot Indians. "And report makes that the following is a list or schedule of the members of said Tribe, as nearly as can be ascertained, viz: Eunice Fagan 1, Abby Randall & two Children 3; Amanda Williams 1; Lucy Hill 1; Rachael Jackson & 6 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).

<sup>62</sup> The OFA reviewed the Towns' allegations and evidence concerning the "origins and validity" of the June 26, 1873, petition protesting the sale of Pequot land and requesting the removal of Leonard C. Williams as overseer, and the June 27, 1873, list of Pequot Indians. The Towns' issues were:

1. There "appears to be different handwritings for people who allegedly signed" and some names, such as the Jackson names, were all in the same handwriting;
2. Some individuals, in particular Rachel Jackson's children, were too young to sign the petition;
3. The same individuals who used signatures here, used "x" marks instead of a signature on other documents;

As noted in the FDs, the photocopy that had been submitted for the PF was very faint and many of the names were illegible or partially illegible. The EP submitted better quality copies of the June 26, 1873, petition and June 27, 1873, list in its response to the PF (EP Response 8/2/2001, 156-162 and 9/4/2001), which allowed the OFA to conduct additional analysis and interpret the names that were not previously visible. For this reconsidered finding, OFA reviewed the copies of the documents available for the FDs and the new, certified copy of the June 26, 1873 petition, which is an even more legible copy than that used for the FDs. This better copy allowed a clearer interpretation of the spelling and names. Any changes in the interpretation of names, based on this reconsidered FD review of the certified copy, are noted in bold type in the “OFA Remarks” column in Table I below.

The copy of the June 26, 1873, document in the record for the FDs consisted of two photocopied pages, the front and back of the same piece of paper. There was writing and signatures on both sides of the original. The photocopy shows creases and small tears on the first page that correspond in reverse order with the creases and irregularities on the second sheet, indicating that the same sheet of paper (the original document) was photocopied front and back. The names on the petition appear in various handwritings, indicating that some are actual signatures, but some names appear to have been written by one individual, probably the parent, “signing” for the children in the family. Some of the names are much fainter than others, indicating that some of the original signatures were made using differing inks or leads.<sup>63</sup> The irregularities in spelling, writing style, and legibility are typical of a document from the 1800’s. There are no obvious erasures, smudges, or lines to indicate that the photocopy submitted to OFA was anything other than an unaltered photocopy of the original document.

The Towns reported that they examined the original in the Connecticut State Library, but did not send a more legible copy or a certified copy of the original June 26, 1873, document that the copy used for the PF or FD had been tampered with or was fraudulent. The Towns did not submit evidence that the photocopy that was used for the FD (or the photocopy that had been submitted for the PF) altered in any way the names on the

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4. The name preceding Tamar’s name on the 1873 petition is “\_\_\_ Brushel,” but Tamar’s name is not followed by “Brushel”;
  5. The “Brushel” children are not listed in the same manner as other children are: they were only identified by the total number rather than by name as the Jackson and Watson children had been identified; and
  6. There are discrepancies among Overseer Leonard C. Williams’ lists, previous overseers’ reports, and the two 1873 documents that show the two 1873 documents are “anomalies” (See Towns Request, 51-57.)

See Appendix II for a detailed analysis of these six specific issues.

<sup>63</sup> The cover letter from Bruce P. Stark, Assistant State Archivist, Connecticut State Library, stated “The copy did not reproduce well due to the whiteness of the paper and the faintness of some of the ink used. Also included is a photocopy of the document that provides for greater clarity” (Stark to Fleming 8/12/2005). Neither the digital copy nor the photocopy showed any evidence that the original had been tampered with or altered.

original record. The Towns did not submit evidence from the Connecticut State Archives or a forensic report that the original document had been altered at anytime in the past. Rather, the Towns question the “validity of the signatures” because of the ages of the individuals listed, how their names appeared on other records in the same time period, or because of their appearance on this petition rather than on the overseer’s accounts in the same time period (Towns Request, 52).

The following table lists names on the June 26, 1873, petition as they were transcribed for the FDs by the OFA researchers and by the Towns in their request for reconsideration. The Towns did not include the birth years for all of the individuals. The column of OFA Comments includes birth dates, maiden names, and other remarks to help clarify the identities of these individuals.

**Table I: Names on the June 26, 1873 Pequot Petition**

<b>List of names on the Petition as Found in the Towns Request for Reconsideration</b>	<b>List of Names on the 6/26/1873 Petition as Found in the FD</b>	<b>OFA’s Comments [Information in Bold from the 8/12/2005 certified copy, if different from the FD findings]</b>
Calvin Williams	Calvin Williams	b. 1832, son of Ammon and Mercy Williams, probably AKA, Calvin Ned or Nedson
Amanda Williams	Amanda Williams	b. 1827, Amanda or Miranda Ned or Nedson, dau. of Thomas and Mary (Shelley) Nedson.
E. Cottrell	E. Cottrell	<b>[possibly: “E_is,” “E B,” or “E F” Cottrell]</b> Eunice (Fagins) Williams Cottrell, b. 1801
Rachel M. Jackson	Rachel M. Jackson	Rachel (Hoxie) Anderson Jackson Orchard, b. 1836, & on overseer’s accounts in 1849 & 1850’s
Fanny J.                      Born 1862 <sup>64</sup>	Fanny J	Fanny Jackson b. 1862, daughter of Rachel
Irean J.                      1863-4	Irean J	Irene Jackson b. 1863-64, daughter of Rachel
Phebe J.                      1865	Phebe J	Phebe Jackson b. 1865, daughter of Rachel
Lucy A. J.                      1867	Lucy A. J.	Lucy A. Jackson, b. 1867, daughter of Rachel
W. H. J.                      1866	Wm. H J	William Henry Jackson, b. 1869, son of Rachel
Jane M. J.                      1872	Jane[y?] M J	Jenny Jackson, b. abt 1872, daughter of Rachel
_____ Brushel	Leanard Brown[e?]	<b>Leonard Browne</b> , AKA Leonard Ned or Nedson, b. abt 1825; son of Thankful Ned
Tamer S and has nine children	Tamar S and Har nin cheldren	Tamar (Brushel) Sebastian, b.

<sup>64</sup> These dates appear in the table on page 52 in the Towns’ Request.

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	[takes two lines]	1822, daughter of Moses Brushel, & on overseer accounts as a child
James M. Watson	James M Watson	b. 1853, son of Laura (Fagins) Watson
Sarah J. Watson	Sarah J Watson	b. 1856, daughter of Laura (Fagins) Watson
Mercy Williams (X her mark)	Mercy Williams her x mark	b. abt 1785, mother of Calvin & Jesse [possibly, Mercy Quash]
L. _____ (X mark)	[illegible] H x	<b>JesS W</b> or <b>L S H</b> [See below.]
Isaac _____ (X mark)	[illegible] x	<b>Isaac T_acy</b> , Isaac Tracy, b. abt 1850: on reservation, 1870 census
George W. Hill (X mark)	George W Hill x	b. abt 1817 & on overseer accounts as early as 1857
F Irson Randall 1858	[illegible]san Randall	<b>Flrsan</b> Randall: Florence Randall, b. 1858, daughter of Abby (Fagins) Randall
A B Randall	A.B. RAnDIl [sic]	Abby (Fagins) Randall, b. 1823

The OFA's transcription and the Towns' are essentially the same, except for the following interpretations:

1. The Towns state that the "name written above Tamer [sic] is indistinguishable, except for 'Brushel.'" However, the FDs listed this individual as "Leonard Brown[e]" [sic: Leonard Brown]. Although somewhat illegible, the name is clearer on the certified photocopy reviewed for this reconsidered FD. The names "Leonard" and "Br\_ nwe" [sic: Brownē] are somewhat clearer, confirming how OFA interpreted the name in the FD. The name Leonard Brown[e], AKA Leonard Ned or Nedson, is seen in the overseers' reports between the 1850's and the early 1900's. His burial was paid out of the Eastern Pequot funds in 1905. "Brushel" was the maiden name of "Tamar S" [Tamar (Brushel) Sebastian], who appears next on the 1873 petition. According to the overseer accounts, John Brushel [half-brother of Tamar] was a child in 1831 ("keeping John Brushel a child of Moses Brushel two months @ 50 cents, 4.50"). John, Emily, and Hannah Brushel appear on the June 27, 1873, "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. [See notes in FTW genealogical database for John Brushel]. The name does not appear to be "Brushel," as the Towns asserted, rather than "Brown." In either case, both Leonard Brown (or Ned/Nedson) and the Brushel family members were listed as members of the Pequots in the overseer's accounts and on petitions signed by members of the group in the 1800's.
2. The new, certified copy of the June 26, 1873, petition confirms that one of the names that was listed as "illegible" on the OFA list, but identified as "Isaac \_\_\_" by the Towns, is "Isaac Tracy." The name Isaac Tracy also appears on the March 31, 1874, petition protesting the sale of land, and in the overseers' accounts in August 1875 that record payment for a "coffin for Isaac Tracy."
3. The FDs interpreted "A B Randal" as Abby (Fagins) Randall (born 1823), and "[illegible]san Randall" as one of her children. The Towns stated "two of Abby

Fagins Randall's children were named" on the 1873 petition, but did not name the two children in the narrative. The Towns' transcription of the list included the year 1858 after "F lerson Randall," implying that this was Florence Randall (born April 7, 1858), but did not include a birth date for the "A B Randall." Since this is the only other Randall on the 1873 petition, it appears that the Towns assumed this is the other child of Abby, rather than Abby (Fagins) Randall herself. However, in the next paragraph, the Towns state that "A.B. Randall" was one the individuals old enough to sign the petition, implying that this could only be Abby and not one of her minor children. Therefore, the Towns allegations are internally inconsistent: either the "A. B. Randal" is either Abby (Fagins) Randall or one of her minor children, perhaps Alexander H. (born April 24, 1859), but perhaps not two of Abby Randall's children as the Towns claim. The Towns did not provide additional evidence that one of the previously illegible names was that of a Randall child.

4. The name following Mercy Williams, which was previously illegible, but transcribed as "L" by the Towns and "illegible H" in the FDs can now be more clearly deciphered on the new, certified copy of the June 26, 1873. The handwriting is still very irregular and faint in part, but appears to be "JesS W" [followed by an "x" mark], for Jesse Williams, born about 1824, the son of Mercy Williams and a brother of Calvin Williams. The "Jesse Williams" signature on the December 3, 1883, petition requesting a new overseer is very similar to the June 26, 1873, set of initials, especially the distinctive "W." (See "Being an Indian in Connecticut," Report IIC, 160, for a copy of the December 3, 1883, document.) However, the writing is very poor, and could be interpreted as "L S H," perhaps for Lucy Hill, the sister of George W. Hill. In either case, both individuals were listed as Eastern Pequots in the overseers' reports in the 1800's.

*Origins and Validity of the June 27, 1873 List.* The Towns also stated that the "BIA relied on the June 27, 1873, list as evidence of tribal membership" [citing "FD: 91"], but the Towns disputed the validity of that document (Towns Request 2002, 56):

Upon examination of the original document in the Hartford, Connecticut State Archives, it was discovered that there was no provenance given. No one signed this document, nor was the creator of the document noted. Also, it was not attached to any document, nor was it addressed to anyone. This document therefore was of questionable reliability, yet BIA used it as evidence that the descendants of these individuals established a link to the historic Pequot Tribe. BIA stated that "the Gardner and Jackson families (antecedent to petitioner #113) appear in common with the members of the Sebastian, Fagins/Randall and Fagins/Watson families (antecedent to petitioner #35) signing the same documents for the same purpose" (FD: 91). This was an extraordinarily important finding to base upon a document of such questionable reliability (Towns Request 2002, 57).

The Towns included a list of the names it claimed were on the list; however, this review finds that some of the names were omitted and some were not properly transcribed. (Also see the list of names transcribed in the EP PF Summary, 110.) The following compares the list of names in the Towns' Request with the OFA's transcription and remarks based on evidence in the record that identify the individuals. OFA's comments

were taken from notes in OFA's genealogical database used for the EP and PEP petitioners' PFs and FDs, and from data in the overseers' accounts and Federal censuses.

**Table II: Names on the June 27, 1873 List of Pequot Indians**

<b>List of Names on 6/26/1873 Petition in Towns' Request</b>	<b>OFA's Transcription from copy in EP's Response to the PF</b>	<b>OFA's Remarks</b>
Francis Watson Mary C. Watson	Francis T. Watson Mary E. Watson Edgar Watson	b. abt 1844, child of Laura Fagins Watson b. abt 1848, child of Laura Fagins Watson Augustine Edgar, b. 1850, child of Laura Fagins Watson
Emily Ross	Emely Ross	Unknown: possibly Emily Watson b. ca. 1842 or Emily Swan, b. 1832 wife of Horace Ross, a Narragansett
Mary A. Potter	Mary A. Potter	b. abt 1813, daughter of Ammon & Mercy Williams & sister of Calvin Williams
Harriet Merriman	Harriet C. Merriman	b. abt 1830, daughter of Ammon & Mercy Williams & sister of Calvin Williams
Jesse L. Potter	Jesse L. Potter	b. abt 1843 son of Mary A. (Williams) Potter
Amman Potter Wm Merriman	Ammon Potter Wm. Merriman	b. 1848, son of Mary A. (Williams) Potter b. 1866, son of Harriet (Williams) Merriman
John Brushel	John Brushel	b. bef. 1832, son of Moses Brushel & half-brother of Tamar Brushel Sebastian
Calvin Nedson	Calvin Nedson	No parents identified: the name appears in overseer reports 1857-1876: probably AKA Calvin Williams, b. 1832
Lucy Williams	Mercy E. Williams	b. 1787, mother of Calvin Williams, Harriet Merriman & Mary A. Potter
Harriet Williams Wm Williams Emily Brushel John Randall Charity Fagins	Harriett Williams Wm. Williams Emily Brushel John Randall* Charity Fagains* [sic]	b. 1862, daughter of Jesse L. Williams b. 1866, son of Jesse L. Williams probably Emeline Brushel b. bef 1815 b. 1852, son of Abby Fagins Randall b. bef 1821, probably a sibling to Abby and Laura
Hannah Brushel Joseph Nedson	Hannah Brushiel Joseph Nedson	b. bef 1852 parents unknown, possibly Joseph Orchard, AKA Williams, b. abt 1826, possibly a son of Rhoda Orchard
Caroline Nedson Fanny Sherly	Caroline Nedson Fanny Sherley	b. abt 1836, parents unknown unknown, possibly "Shelley," an EP family
Lucy George	Lucy George	b. 1832, daughter of Lucy Fagins and Peter George

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Lucy A. Simon	Lucy A. George	b. 1803, Lucy Fagins, wife of Peter George
Russell Simon	Harriett Simon	b. 1834, Harriet Gardner, sister of Marlboro and wife of Russell Simon
Eunice Gardner	Eunice Gardner	b. 1835, Eunice Wheeler, wife of Marlboro Gardner
Marlboro Gardner	Marlbrow Gardner	b. abt 1833-38, son of Harry and Anna Gardner
Dwight Gardner	Dwight Gardner	Unknown, but possibly the son of Harry and Anna Gardner
Martin Nedson	Martin Nedson	parents unknown, probably b. bef. 1852
Lucy Hill	Lucy Hill	b. 1814, sister of George W. Hill
Thomas S. Skesux	Thomas S. Skesux	parents unknown, estimated b. bef 1852, Skesucks/Skeesux, etc. in Pequot overseer reports in 1700's and 1800's
	Gracy Skesux	parents unknown, estimated b. bef 1852, may be the wife of Thomas S.

\*The names John Randall and Charity Fagains are on the reverse side of the list, along with the phrase "these are the name and there is others may the Lord have Mercy and healp us and save for Jesus Sake."

The Towns questioned the provenance of the June 27, 1873, list, but did not submit any new evidence to demonstrate that it is anything other than what the plain language of the document says it is: a list of the Pequot Indians in 1873. The handwriting and condition of the photocopy of the June 27, 1873, list do not indicate that the original was either recently manufactured or has been altered in any fashion at some time in the past. The apparent size of the paper and the creases from folding appear to be very similar to the paper and creases in the June 26, 1873, petition. The Towns did not send any forensic evidence refuting the age or composition of the document, or statements from the State Library concerning any inappropriate access to or mistreatment of the file where the documents were located. The Towns did not include a statement from the Connecticut State Library concerning the alleged lack of provenience.

The statement "these are the name and there is others may the Lord have Mercy and healp us and save for Jesus Sake" is a clue that the author was Calvin Williams, a well known minister. The handwriting appears to be the same throughout the text and list of names. It appears to be the same handwriting as that of the signature of Calvin Williams on the June 26, 1873, petition and the handwriting for the text of the March 31, 1874, petition. It appears that Calvin Williams signed the June 26, 1873, petition and then made a list of many other Pequots, including individuals who had not signed the petition, to record a broader body of Pequots.

OFA compared the handwriting and signatures in these documents with the handwriting on the June 27, 1905, letter from "Rev. Calvin Williams" to Mr. J. C. Averill regarding choosing another overseer. The handwriting appears to be the same on all three documents. Thus, it appears that Calvin Williams was the author of the June 27, 1873, list of members of the Pequot tribe and the March 31, 1874, petition to remove Leonard Williams as overseer, and was the first signer of the June 26, 1873, petition. The name Calvin Williams does not appear on the June 27, 1873, list, but the name "Calvin

Nedson” appears just before the name Mercy E. Williams, mother of Calvin Williams. The possibility that Calvin Williams and Calvin Ned or Nedson were one in the same was not discussed in the FD. This probability is based on a new analysis of the records that were available for the FD, which was conducted as a result of the review here in response to the Towns’ allegations of the origins and credibility of these two historical records.

The Towns did not submit, nor did OFA find, any evidence to support the Towns’ allegations concerning the origins and validity of the June 26, 1873, petition, or the origins and provenance of the June 27, 1873, list of Pequot Indians. The documents are neither fraudulent nor unreliable. They are consistent with the other documentation in the record.

After a careful reconsideration of the record, ADS does not find that there is reasonable evidence to support the Towns’ claims of discrepancies or irregularities that would discredit the origins and validity of the June 26, 1873, petition and June 27, 1873, list of Pequot Indians.

Review of the Towns’ Allegation that Undue Weight was Given to the Two 1873 Documents. The Towns alleged that the FD gave “considerable” and “undue” weight to the two 1873 documents despite their “questionable nature” (Towns Request 2002, 51, 57). The discussion above responds to the question of the validity of the documents. The Towns have not demonstrated that the records were fraudulent or unreliable; therefore, any weight given them was not based on faulty evidence.

The Towns’ request for reconsideration quoted the FD section that responded to new evidence submitted for the FD, specifically, overseers’ accounts and the more legible copies of the June 26, 1873, and June 27, 1873, documents. Previously illegible names on the June 26, 1873, list could be read on the better copies to include Leonard Brown and Tamer Sebastian, and the June 27, 1873, list clearly included Gardners and Brushels. The PEP petitioner denied this was evidence that their ancestors were “part of a common tribal social community or political community with the other signers” (FD, 90). The FD discussed the June 26 and June 27, 1873, documents as part of a sequence of documents, including overseer reports, that named antecedents of both the EP and PEP petitioners’ families as being part of the Pequot tribe at Stonington.

The two petitioners, the Towns, and the State did not submit evidence that the overseer or other members of the Pequot tribe protested the inclusion of any of the Gardners, Sebastians, Williams, Watsons, Fagins, or Randalls on any of these contemporary records (1870’s-1905) that identified members of the Pequot tribe. [See in particular the footnotes 38-43 in the FD, 91-93.] Although the two 1873 documents were important because they were the first to include Tamar (Brushel) Sebastian as an adult, she had clearly been identified in the overseers’ reports as a part of the tribe when she was a child, as well as later in her adult life.

The FD Summary Under the Criteria discussed these documents as a part of the evidence for community in the 1800’s. It stated: “These submissions provide further evidence that

there was a distinct Eastern Pequot community and that this community included the Sebastian family” (EP FD Summary, 16). [Emphasis added.] Thus, neither the PF nor the FD gave undue weight to the two 1873 documents, but saw them as part of a long sequence of records that identified the ancestors of the two petitioners as being part of the same tribe throughout the 1800’s.

Conclusion Concerning the 1873 Petition and 1873 List. The June 26, 1873, petition and June 27, 1873, list of Eastern Pequots were discussed in the PFs and FDs (EP PF, 109; EP FD 88-89; PEP FD 121-125). Some of the arguments raised by the Towns were not previously addressed in the PFs or FDs; however, petitioner #113 argued that the petition was not valid because the “new” 1873 petition included “Tama [*sic*] and Har nin children.” The FDs explained that the copy available for the FD was more legible than the one considered for the PFs, making it possible to decipher more information, including “Tamar S and Har nin children.” The ADS concludes that the two June 1873 documents were not unreliable or fraudulent. The ADS also concludes that undue weight was not attributed on them. This reconsidered FD affirms the conclusions in the FDs that the June 26, and June 27, 1873, documents were a part of a sequence of records that identified the membership of the historical Eastern Pequot tribe as it existed in the 1800’s.

*Analysis of Evidence Concerning Political Influence or Authority 1928 to 1973.*

Introduction. This section concerns the reevaluation of evidence concerning political influence or authority from 1928, when Atwood Williams Sr. was appointed or elected “chief” of the Eastern Pequot until 1973. This section replaces the FD text in the PEP FD on pp. 132-143. It supersedes the EP FD text on pp. 150-151, which primarily cross-referenced to the PEP FD text.

1928-1940. The PEP petitioner claimed 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” (Austin, Political Authority 9/4/2001, 5n4; PEP Response to Comments 9/4/2001).<sup>65</sup> 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 most detailed and continuous evidence of Williams' activity and state actions dealing with him and identifying him as leader is between 1928 and 1941. In this period, both overseers, Charles Stewart and Gilbert Raymond, as well as Judge Allyn Brown of the New London Superior Court, and the Connecticut Parks and Forest Commission (CPFSC) identified Williams as the elected or appointed leader of the Eastern Pequot.

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<sup>65</sup>Williams, born in 1881, was the oldest son of Phoebe Jackson and a nephew of William Gardner’s wife, Grace Jackson. The PEP petitioner did not presented any arguments in regard to a leadership role for William Albert Gardner other than the quoted statement and no such evidence was found in the record. The FDs rejected the claim of leadership for Phoebe Jackson.

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). A review of the evidence indicates that Williams became chief in 1928, rather than 1929 as the FD stated (Stewart 10/8/1928).

The Election or Appointment of Atwood Williams, Sr. Overseer Stewart, writing in 1928, stated, "Some time during the present year, the Eastern and Western Branches of Pequot Indians, by common consent, appointed Atwood Williams of Providence their chief Sachem. He accepted the appointment and functions as such chief sachem under the name and style of 'Chief Silver Star' (Stewart 10/8/1928). This is a year before Williams' name first appeared on the Eastern Pequot membership lists.

Another contemporary account of Williams' selection is found in a newspaper account of the 1933 Superior Court hearing, which quoted the judge as saying concerning Atwood Williams, that "I am informed has been recognized as the sachem, as evidenced by a paper executed by at least a majority of the members of the two tribes" (Newscip, unidentified, 6/18/33). Williams himself provided an account in 1947, reported in a newspaper article which stated "The chief, according to his own statement, when interviewing legislators on the subject, is Atwood Williams, chosen by unanimous consent of the tribe members taking part in the election and later confirmed by the superior court" (Westerly Sun 5/5/1947). The article said, further, that at the 1933 hearing the judge admonished overseer Raymond strongly for characterizing Williams as a "self-proclaimed chief," threatening to censure him for this.

Two accounts of Williams selection describe him as chief of both the Eastern and Western Pequot (Stewart 10/8/1928). Despite the initial nominally dual chieftainship, it was Atwood Williams' objection to the residence of a Western Pequot, Franklin Williams, on the EP reservation, a point of conflict with the overseer Stewart, that led to a 1933 Superior Court hearing that resulted in a court order describing Williams as leader of the Eastern Pequot (see below).<sup>66</sup> At the hearing, Williams reportedly announced that he had appointed John George (his son-in-law) as chief of the Western Pequot (Raymond Ledger 1933-1937).<sup>67</sup>

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. Williams, Jr. stated his father "had to go to Hartford and I went with him and I don't know the exact procedure that he went through but I know that he was recognized by the State in Hartford[,] that he was a chief Satchem[,] that the people elected him" (CIAC Hearing Transcript 8/10/1976, 83-84). Williams, Jr., testified that he had never lived on the

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<sup>66</sup> Franklin Williams, a Sebastian on his mother's side, was no relation to Atwood Williams.

<sup>67</sup> The court's orders from this hearing identified George as chief of the Western Pequot and called for consultation with him concerning residence on the Western Pequot reservation (In re Ledyard Tribe 1933). A news article the next month still identified Williams, who had been interviewed for the article, as chief of both groups (Poor but Proud, *Hartford Courant* 7/9/1933).

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

Helen LeGault testified in 1977 that she knew Atwood Sr., but that unlike her sister she did not go out on the road shows (i.e., the pan-Indian activities). She credited Williams as being a leader but does not clearly indicate whether the election she referred to was Williams' election to the leadership of the pan-Indian American Indian Federation (which occurred approximately 1931) or for the Eastern Pequot. 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." LeGault further noted that "[H]e [Atwood Williams] questioned Tamar Brashell (sic) too, that's where it came from in the beginning" (CIAC 1977a, 69). LeGault's 1977 testimony does not describe who elected him or provide an indication whether other than the Gardner/Edwards families, her own, were involved. There was no other information to support the statement that there had been more than one election.

Overall, there is not information in the documentary descriptions to determine that those electing or "appointing" Williams included individuals from each of the three major lines of the Eastern Pequot as they existed at the time or a majority of the Eastern Pequot membership. Reports of the 1933 Superior Court hearing described those signing the "appointment" paper as a majority of "the two tribes" (an apparent reference to the Eastern and Western Pequot), while Williams in 1947 reportedly characterized his election as unanimous on the part of "tribe members taking part." Stewart's 1928 report gives no indication of numbers, while mentioning participation by both Pequot groups. The two later, 1976 oral history accounts also do not provide useful information.

Activities of Atwood Williams Sr. and Others. 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 PEP Draft TR 2000, 61-63).<sup>68</sup> 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).<sup>69</sup> Overseer Gilbert

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<sup>68</sup>This did not prevent Kenneth Brown Congdon, a Mashantucket (Western Pequot) interviewed 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 Jacksons and Spellmans, and knew that he had worked on the railroad.

<sup>69</sup>It 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

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 [*sic*] 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.<sup>70</sup> This listing once more omitted the Fagins/Randall descendants.

A newspaper article described an appearance of Atwood Williams, Sr., before the judiciary committee of the legislature in either 1929 or 1930. The article stated that "Chief Silver Star and the Pequot Indians (both Stonington and Ledyard) appeared before the judiciary committee of the general assembly of Hartford and urged adoption of a bill looking to the welfare of his people." The article stated "The law now provides that the county superior court shall appoint an overseer for them, and Chief Silver Star told the committee yesterday that one overseer in office 22 years had visited the reservation only twice." The article reported the Pequots wanted the overseer appointed from a list of "three distinguished persons nominated by the tribe for such purpose" (Pequots Seek to Name Overseer c. 1930 [hand-dated]).

In 1933 a hearing was held before Judge Allyn Brown of the New London Superior Court, over the matter of Williams' opposition to allowing Franklin Williams to reside on the Eastern Pequot reservation. Atwood Williams had been opposing this since 1928, interacting with Overseer Stewart and then his replacement, Gilbert Raymond, and eventually with Judge Brown. The judge ordered that the existing membership lists compiled by the overseers would be the official membership list, and that any applications for additions, were to be sent to Williams as Chief of the Eastern Pequot, although it was not clear that Williams had a right of approval or not.<sup>71</sup> Another order

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(#35 Pet. Overseers Reports).

<sup>70</sup> Although 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 (Williams) Cunha.

<sup>71</sup> 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).

resulting from the hearing established a residential application process that called for approval by either Williams or two reservation residents of applications for residence (the following section reviews the evidence indicating the process was not in fact used). (See PEP PF for a detailed discussion of this hearing and judge's orders).

In 1935, Williams appeared before the judiciary committee to support legislation "looking to the welfare of his people" (PEP Resp. Austin Ch. 4. 31, New London Day 1939). He complained again about an overseer who had only visited the reservation twice in 2 years and again wanted a system of appointing overseers where the Pequots could nominate a list of three people to choose from. The hearing subject was apparently the legislation to transfer jurisdiction over the reservations from the Park and Forest Commission to the Welfare Department (see EP PF, 114).

A report written in 1934 for the Bureau of Indian Affairs by Gladys Tantaquidgeon, on nine New England Indian tribes suggested that the position of Everett Fielding as Mohegan chief was "honorary" (PEP Comments 8/2/2001, Austin IV:32). Concerning the Eastern and Western Pequot, Tantaquidgeon wrote "Chief elected serving both tribes" However, the report also stated that with the exception of the Tantaquidgeon's own tribe, the Mohegan, "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 PEP petitioner's response to the PFs argued that Tantaquidgeon's:

. . . 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).

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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*).

Tantaquidgeon's research was accomplished during 1934. She submitted her report to Commissioner of Indian Affairs 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).

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 evidence of any significant degree of leadership by Atwood Williams within the historical Eastern Pequot tribe in the mid 1930's.

A notation in CPFSC genealogical charts in 1936 said that Atwood I. Williams "appears to be a self appointed Chief whose influence is quite largely gone (1936)" (Connecticut Park and Forest genealogical charts; #35 Pet., Genealogy, Jackson 1-3-1, sheet 2). These comments contrast with Park and Forest Commission (CPFSC) minutes of 1936 which identified him as chief without any qualifying language.<sup>72</sup>

In 1938, the Connecticut State Park 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

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<sup>72</sup> An account which said Williams only accepted paid members appears to be a reference to his simultaneous activities as head of the American Indian Federation (AIF) (Williams 1941, [24]). There was no other evidence to support the idea of an Eastern Pequot paid membership system at any point, whereas the AIF had a formal membership system with printed ID cards.

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).

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.

There is no specific information in the record for 1937 and 1938 concerning Atwood Williams. There was no indication of his participation in 1937 and in 1939 in connection with the legislation to transfer responsibility for the Indians to the Welfare Department. A 1939 book referred to Williams as chief of the Pequots and as "still maintaining a tribal organization" (cited in PEP Resp. Ch. 4 p. 40). 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).

1941-1973. In addition to Atwood I. Williams, Sr., Atwood I. Williams, Jr., and Helen (Edwards) LeGault, the PEP Response to Comments also claimed Paul Spellman (a Jackson) 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).<sup>73</sup>

For the final determination, the PEP 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).<sup>74</sup> The PEP argued that this showed active political leadership by Atwood I. Williams 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 reported Williams had “interviewed legislators,” opposing legislation to sell three of the cottage sites on Long Pond. There was no documentation in the record for this finding of any testimony, nor whether his action had the support of members of the Eastern Pequot. The bill, also opposed by the State representatives from the immediate reservation area, did not pass. The article referred to Williams’ “own statement, when interviewing legislators on the subject,” which implies that he interviewed legislators. The proposed bill to permit sale of reservation land that is referenced in the article was not submitted for the record for the EP and PEP findings. The documentation in the record for the period up to May 1947 included only discussions of extending the term of the leases – a request which the State refused.<sup>75</sup> The article does

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<sup>73</sup>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).

<sup>74</sup>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).

<sup>75</sup>Letter 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,

not indicate that Williams did anything in regard to the proposed bill authorizing land sales, except possibly contact some in the legislature, but does provide documentation that he still had an interest in the topic (Stallman 5/5/1947; PEP Comments 8/2/2001, Ex. 52).

After 1941, State documents showed no further indication of any intervention by Williams in Lantern Hill reservation matters, with the possible exception of his 1947 contact with the legislature, until May 2, 1949. Even though there is documentary evidence in the record concerning state activities on the reservation from 1941 to 1949, none of the documents concerning these mention Williams.

In 1949, Welfare Commissioner Squires in a memorandum reported that Williams had visited him and requested a house (on the Western Pequot reservation) for John George, his son-in-law, a Western Pequot (and nominally chief of the Western Pequot). In Squires' memorandum concerning the request, he identified Williams as chief of the Eastern Pequot (Squires 5/2/1949). Squires noted that Williams made reference to the 1933 Judge's order as well as the issue of non-Indian leases on Long Pond, the same issue he addressed in the 1930's (Squires 5/2/1949). It was not clear from the memo whether Squires was aware of the 1933 hearing and orders. The memorandum noted that, "He [Williams] 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."

Squires asked Williams to compile "an up-to-date list of known members of the tribe" (Squires Memorandum 5/10/1949; *Towns August 2001*, Ex. 106). It is not clear from the memorandum if this referred to the Eastern or Western Pequot, or possibly both. Williams' visit was followed by a few days by one from Helen LeGault which concerned in part the desire of a Western Pequot friend of LeGault's to live on the EP reservation. Squires also asked LeGault for a list of "members of the tribe," with apparent reference to all of the Pequot (Squires 5/10/1949). There was no information submitted for the record of Williams or LeGault having provided a list.

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. By 1954, Williams was almost certainly no longer active

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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).

(see below). 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).

There was no information concerning the reason for this nominal "revival." This was a single identification of Williams as leader, with no information about any related actions by Williams nor indication of substantial knowledge of him by the State in so identifying him. There is no evidence that the State identified Williams as chief after 1949, except for the 1954 memo. There was no evidence that anything was done by the State between 1949 and 1954 concerning Williams, or information about why the 1954 memo was issued.

Atwood Williams, Sr. died in 1955. His obituary indicated that he had not been substantially active for a number of years, although it was unclear whether the obituary was referring his pan-Indian activities or as Eastern Pequot leader (Atwood Williams, Sr., Pequot Indian Chief, is Dead at 74 [hand identified *The Westerly Sun* 9/30/1955.]) Other sources indicated the pan-Indian activities had ended much earlier, around 1939 (Williams Notebook c. 1941).

There was not sufficient evidence that Atwood I. Williams, Sr., although regularly identified by the State as the leader of the Eastern Pequots from 1928 to 1936, and occasionally thereafter until 1954, was leader of the entire Eastern Pequot group. There is no evidence that Williams represented the entire Eastern Pequot group or had been elected or appointed by the entire group. The available evidence indicates that he was not. In addition, there is no evidence that that State's actions identifying him as leader were based on knowledge that he was actually functioning as a political leader.

Concerning Helen LeGault's leadership activities before 1955, the PEP stated 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 and similar ones in 1949 do not indicate that she wrote as the representative of any political subgroup, or even that she wrote on behalf of others than herself. She did not identify herself as a leader nor did the State identify her as such in these documents.

1953 Proposed Connecticut Legislation. In 1953, legislation was proposed in the Connecticut General Assembly in regard to the State's four Indian reservations (see:

Hoover, Albert C., Acting Director, Public Welfare Council. Statement in Favor of Senate Bill 502 "An Act Concerning Indians" before the Joint Legislative Committee on the Judiciary. Prepared by the Public Welfare Council as a result of its study of the state welfare laws made under the provisions of Special Act No. 615 of 1951, 3/18/1953).

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).<sup>76</sup>

A group of Lantern Hill reservation residents traveled to Hartford to protest a bill (CT Senate Bill 502 1/30/1953) to sell the Lantern Hill reservation and terminate State responsibility for the Eastern Pequot tribe. Catherine Harris's journal stated: "1953 To the upholding [sic] 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, Lillie Sebastian, Catherine Harris, Marion Robinson, Gertie Grizzer" (Harris Journal 7; EP Comments 8/2/2001, Box 1, Folder Harris). This listing did not include anyone from the Gardner line, or from the Fagins/Randall or Fagins/Watson lines: all belonged to either the Hoxie/Jackson or Brushell/Sebastian lines, with Grizzer an unidentified and apparently non-Pequot individual.

This material does not show that she organized a political action, but it does demonstrate that there was at this point a political action in which she participated, and which had considerable significance in regard to the State's proposed disposition of the Lantern Hill reservation and its resources. Although the documentation does not show specific leadership upon the part of Catherine Harris, it does show political influence that comprised members of family lines antecedent to both EP and PEP.

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<sup>76</sup> "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.

Leadership 1955-1973. The proposed finding's evaluation of whether Helen LeGault was a leader concluded there was little evidence to show this between 1955 and 1973. The PEP PF stated in part 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).

The FDs' analysis of the Gardner (both surlines) and Hoxie/Jackson family lines examined evidence about whether they were distinct within the Eastern Pequot, as well as evidence about distinctions within the two main branches of Marlboro Gardner descendants. The PEP presented the view that Helen LeGault led these families, identified by PEP as its 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 LeGault also sought to keep non-Indians from continuing to rent on the reservation.

The PEP Comments in response to the PFs took the changed 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 the period of leadership claimed for Helen LeGault (before 1955) corresponds with decline in the recorded activities of Atwood I. Williams, Sr. LeGault was most active after 1948, after Atwood Williams had apparently become inactive, and remained active until her death in 1989. There was little or no information to show her working together with Atwood Williams, Sr. although his wife was her aunt, and she knew him, and her sisters had participated in Williams' AIF activities (CIAC 1977a, AIF membership cards).

The record from 1948 until her death contains regular complaints by her to state authorities that the Sebastians were not Indians and should not have been allowed to live on the reservation.<sup>77</sup> The complaints occur against the backdrop, from the later 1920's to the 1970's, of a significant number of Sebastians moving onto the reservation or seeking unsuccessfully, for a number of reasons, to do so.<sup>78</sup> LeGault's few other contacts with the State concerned with gaining residence for herself on the reservation and complaints about non-Indians on the reservation.

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 question 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 Gardner descendants in the PEP conducted in the late 1990's. It appears, from the available interview evidence, that her ideas did in fact influence the next generation, creating, or more likely reinforcing, the common opinions among members of that family line about the Sebastians. 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 provide some evidence of leadership where she may have been acting on issues of importance to members of the Gardner families as well as influencing those individuals. However, that there isn't direct evidence in the actions cited and statements made by LeGault that she was acting in response to this "membership," although PEP asserts that she was (Austin II 8/2/2001, 35; PEP Comments 8/2/2001).

The specific examples cited by PEP about LeGault are a 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

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<sup>77</sup> LeGault earlier is quoted in a 1933 news article as objecting to the marriage of Indians with other races (Poor but Proud, *Hartford Courant* 7/9/1933).

<sup>78</sup> The Sebastian family expanded rapidly in the late 19th century and during the first half of the 20th century and by the 1930's were probably the largest part of the Eastern Pequot.

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. The latter did not die until 1959, but was no longer residing on the same property when LeGault wrote (Austin, Political Authority and Leadership 9/4/2001, 10, 12; PEP Response to Comments 9/4/2001). In those letters, LeGault made similar objections to those she had made previously.

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 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 other Eastern Pequot, including other Gardners, nor of communication with such individuals about the specific issues and complaints (see discussion of pre-1973 gatherings at "Aunt Helen's house"(PEP PF 92, FD 110)). Because the conflict concerned a right to a specific, extant resource rather than a long past loss, and, given that Eastern Pequot from different families lived on/had been living on, or had immediate relatives living on the land, this is evidence that the conflict over residence and membership is likely to have been an issue of importance to the Eastern Pequot, including but not limited to the Gardners.

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 of the Gardners. Notably, a substantial number of Sebastians were also involved in the political activities between 1973 and 1976, and Jacksons were also active (Eastern Pequot Response, Report 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).

In regard to Atwood I. Williams, Jr., the son of Atwood Williams, Sr., the proposed finding noted that, contrary to the PEP petition statements, there was no record of his appearing with a leadership designation until he testified before the CIAC in 1976, and that the PEP 1994 narrative text had cited LeGault's activities in the 1960's rather than his (PEP PF, 2000, 114-116, 119).

In its response to the PFs, the PEP petitioner changed its position concerning Atwood Williams, Jr., concluding he was not a leader in any significant sense. PEP in its response concluded that Atwood Williams, Jr., did not succeed his father in any significant fashion. It described his role as largely ceremonial, and indicates that he was unable to exercise significant leadership because he lived at a distance 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," as 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. This conclusion is supported by interviews with PEP members from Williams' family (Jean Williams 1999).

Additional Analysis of Comments and Responses. As noted in the proposed finding, there are no written records of the pre-1973 PEP meetings reportedly held by LeGault, 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 by LeGault 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) (EP FD, 123). Social gatherings at Catherine Sebastian Carpenter's place on the reservation (during and after her residence there) would have been occurring more or less simultaneously (EP FD, 107-8).

The documentary record provides no indication that, for the period between 1955 and 1973, after the death of Atwood I. Williams Sr. in 1955,<sup>79</sup> Helen LeGault provided leadership for any organization, or that her activities 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). 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 or 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 as Eastern Pequot is contradicted by the contemporary documentary evidence.

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<sup>79</sup> The 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.

In regard to Helen LeGault, Alice Barbara (Spellman) Moore claimed 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 LaGault or something. She claimed to be some Indian” (Moore Interview 12/8/1991, 48; PEP Comments 8/2/2001, Ex. 86).

James Cunha (born in 1962) recalled interaction between his grandfather Atwood I. Williams Jr. and the latter’s Spellman (Jackson) 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.

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 to have continued his father’s Indian cultural demonstrations but not other activities (Jean Williams 1999). He signed a 1973 petition for the 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 PEP response to the PFs argued that the testimony that Helen LeGault provided at a hearing on the above bill was an example of LeGault “providing effective leadership” for the petitioner’s claimed antecedents, *i.e.*, for only the Gardners and the Jacksons. They asserted 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). This change was made in the legislation, apparently at least in part in response to her suggestion. However, the evidence in the record is that her request was viewed by the legislators as a personal rather than a group expression, judging by a legislators’ letter to her after the hearing (Evelyn Fisher to Legault PEP Resp. Exh. 26).

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." She also testified that "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).

After some further discussion concerning non-Indian residents, people whom she described as squatters, Mrs. LeGault entered into a dispute with legislator 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 PEP petitioner revolved around Paul (Jackson) 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 Residency and Membership Application Process, 1933 to 1973*

The 1933 ruling by the New London Superior Court with jurisdiction over the Eastern Pequots created a formal procedure for consulting with Atwood Williams or with group members on applications for membership and residency. There is no evidence in the record that shows actual consultation by the overseers under these procedures with Atwood Williams, Sr., or any other group members on membership or residency between the 1933 ruling and 1935, when the State transferred jurisdiction over Connecticut Indians to the Park and Forest Commission.

In 1935, the State discontinued the existing overseer system for the Eastern Pequot and transferred jurisdiction over the two Pequot reservations to the State Park and Forest Commission. Although the State assumed a greater direct role over Eastern Pequot, the nature of the relationship did not fundamentally change. In 1936, the Park and Forest Commission established a list of Eastern Pequot group members, based on the last report of the overseer prepared in 1935, that also incorporated the names recognized in 1933 by Judge Brown. In meetings on February 5, 1936, and March 11, 1936, the Commission ratified and certified the membership list that consisted of sixteen people living on the reservation, twelve living in other locations in Connecticut, and fifteen living in other states. The Commission also identified Atwood Williams as the Eastern Pequot leader. The previous year, the Commission had codified the process to be used for applications for inclusion on the Eastern Pequot roll and for permission to reside on the reservation that had been laid out in the 1933 Brown decision. The criteria and process adopted were:

- (a) Children of resident members will be members by birth.
- (b) Children of non-resident members will be eligible for membership upon proof of such parentage.
- (c) All other admissions to a tribe will require written application, accompanied by reasonable proof of descent and presence of Indians blood. Such applications should be endorsed by the recognized Leader of the tribe, if any, or in lieu thereof the endorsement of two resident members. In doubtful cases the Commission will hold a public hearing with due notice to the interested parties before granting or refusing the application (Park and Forest Commission Minutes 3/11/1935).

In the only instance in the record, on 1937, the Park and Forest Commission consulted with group members regarding the membership application of Ralph Powers, Sr. In a letter to Powers dated May 12, 1937, the Superintendent noted that Power's application document "shows the endorsement of Mrs. Grace Boss and Mrs. Calvin Williams, members of the Eastern tribe of Pequot Indians and residents on the tribal reservation at North Stonington, Connecticut" (Superintendent 5/12/1937).<sup>80</sup>

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<sup>80</sup> Mrs. Boss was a Jackson, and Mrs. Williams (Tamer Emeline Sebastian Williams) a Sebastian.

The minutes of the August 10, 1938, Parks and Forest Commission meeting recorded the approval of the residency applications of a Leroy Buffet and his two daughters, and Arthur Sebastian, grandson of Tamar Sebastian (Park and Forest Commission Minutes 8/10/1938). The document titled "Permit For Residency" granted Arthur Sebastian permission to reside on the Lantern Hill reservation for five years, at which time he would have to reapply for residency rights, but it did not "confer tribal rights." The document identified Sebastian as being "a person of Pequot blood, but not a member of the tribe" (Filley 8/22/1938). Arthur Sebastian apparently had not been formally included on the Eastern Pequot membership roll but later documents specifically identify him as a member. There is no evidence in the record that indicates that the Park and Forest Commission consulted with Atwood Williams or other group members regarding Buffet or Arthur Sebastian.<sup>81</sup>

A 1938 letter provides further evidence for the process actually followed in membership applications, and the extent of consultation with group members. In the letter Allen Cook, an official of the Parks and Forest Commission, responded to a query made by Ellsworth Gray, regarding the status of Benjamin Sebastian. In the letter Cook noted that,

His [Benjamin Sebastian] grandfather, Sebastian, was a "black" Portuguese 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. Under these conditions Benjamin Sebastian would have a right to live on the Reservation (Cook 12/12/1938).

Although some group members, including Atwood Williams, Sr., had previously challenged membership rights of the descendants of Tamar Brushell Sebastian, the Court had recognized their rights and Benjamin Sebastian's right to reside on the reservation, if he had the means to build a house for his use. However, although Cook's letter referenced the belief of some group members that the descendants of Tamar Brushell Sebastian were not group members, there is no evidence that the Park and Forest Commission specifically consulted Atwood Williams or other group members regarding Benjamin Sebastian's residence application.

Although the New London court in 1933 had laid out guidelines for determining group membership and residency and the Park and Forest Commission codified the guidelines as agency rules, the documents in the record do not show consultation with the group on membership and residency applications, with one exception. In the case of the

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<sup>81</sup> There was no information in the record for these reconsidered FDs to identify who Leonard Buffet was.

membership application of Ralph Powers, there is clear evidence of consultation. In the other cases considered by the Park and Forest Commission, there are no documents in the record that show consultation. Although the court and then the Park and Forest Commission identified Atwood Williams as the Eastern Pequot leader, there are no documents in the record that show that the Park and Forest Commission consulted him on membership or residency applications.

The EP PF noted concerning the period from 1941 to 1973 that residency and membership were not based on a determination by the State of membership in a community. It stated:

Throughout the mid-20<sup>th</sup> century, from transfer to the Welfare Department in 1941 to eruption of the CIAC controversy in 1973, there is no evidence in the record that the State of Connecticut was looking at “membership” in the Eastern Pequot tribe in any meaningful sense. Therefore, the records from this period provide no direct evidence concerning political authority and/or influence, or community. The State’s definition of eligibility to reside went entirely by descendancy, on the basis of the lists transferred to them from the State Park and Forest Commission. Connecticut paid no attention to anyone who didn’t apply for reservation residency, and evaluated that simply on the basis of being able to show descent and 1/8 blood (very vaguely defined and certainly not scientifically computed). Unless an individual applied to reside on the reservation, which from at least 1936-1972 was being administered as state-owned lands on which certain defined individuals were rather grudgingly permitted to live, the state apparently had no interest in the tribes and certainly didn’t keep track of potential “membership” in any meaningful sense after the compilation of the genealogies of the late 1930s and the J.R. Williams Notebook c. 1941. At the same time, since the Welfare Department limited payment from tribal funds to reservation residents, it no longer maintained data on tribal members who were not resident, while the majority of the records on actual residents pertained only to those who were elderly, infirm, ill, or otherwise in need of assistance (EP PF, 89).

Documents in the record show that there were 21 residency applications between 1941 and 1973: 2 in 1941; 3 in the 1950s; 8 in the 1960s and another 8 between 1970 and 1973 (Connecticut FOIA, Various Documents). The record shows communications between Welfare Commissioner Clayton Squires or other employees of the Welfare Department and applicants for reservation residency.

The series of communications between Squires and Mrs. Charles Lewis in 1954 was typical (Connecticut FOIA Squires 7/27/1954; Lewis 8/1/1954; Squires 8/6/1954; Lewis 8/10/1954; Squires 8/11/1954; Allyn 8/23/1954). The communications between Squires and Mrs. Lewis concerned the estimated cost of building a house on the reservation. No document in this exchange indicated consultation with Atwood Williams or any other Eastern Pequot regarding the application. Moreover, the standardized residency

application form developed by the Welfare Department titled "Application For Permission To Reside On Indian Reservation" did not contain a place for endorsement of the application by Eastern Pequot leaders or group members, despite the guidelines issued by Clayton Squires in 1954 which restated most of the language of the 1933 court order. The 1972 residency application of Arlene (Jackson) Boyd was typical (Connecticut FOIA 11/3/1972). Boyd supplied information on her Eastern Pequot ancestry, and on her husband who would live with her on the reservation with approval of her application. However, there is no indication on her application of endorsement by a representative or representatives of the Eastern Pequot group. None of the documents in the record show consultation with group leaders or members by the Welfare Department on residency applications.

*Review of the Post-1973 State Relationship and State Actions as Specific Evidence for Criterion 83.7(c).*

Although the State, in its laws and administratively has treated the Eastern Pequot as a single group since 1973, there was not found specific evidence that this was based on a contemporary evaluation of the group as a single political body. The treatment as a single group was based on the historical relationship with the Eastern Pequot. This relationship was not in turn based on a detailed evaluation of what that relationship was or of the contemporary character of the Eastern Pequot. The State, however, was clearly knowledgeable of the conflict between the two petition groups of Eastern Pequots, since that conflict had come to center on who the State (primarily in the form of the CIAC) would accept as representative of the group as a whole, and, initially, who was eligible to be considered a member. The CIAC held several hearings on the subject and a court also considered the dispute.

Under the IBIA decision, whether the state relationship post-1973 provides probative evidence depends in part on whether the State of Connecticut in passing either the 1973 or the 1989 acts was knowledgeably considering the state recognized tribes to be political entities, in the sense of having made some kind of investigation or evaluation of them. Such evidence that is the basis of specific knowledge is evaluated in the context of the criteria. There is no evidence in the record that either piece of legislation was based on such an evaluation.

In 1973, the Joint Standing Committee of the Connecticut Legislature held hearings on the 1973 bill regarding the status of Indians in Connecticut. During the course of the hearing, Mr. Boyle, Deputy Commissioner of the Welfare Department testified extensively (Joint Standing Committee on Corrections, Welfare & Human Institutions Hearing Minutes, 1973). Nothing in his testimony or other testimony in the hearing suggests that the State knowingly and explicitly recognized the Eastern Pequot or Connecticut Indian groups in general as political entities. Subsequent legislative hearings in 1974 and 1981 regarding legislation relating to the Indian groups provide no additional evidence regarding the Eastern Pequot (Environment Committee Hearing Minutes, 3/5/1975; Joint Standing Committee on Government Administration and Elections Hearing Minutes, 3/30/1981).

In 1976, and again in 1983, the CIAC held hearings in an effort to try to resolve the dispute in the Eastern Pequot, regarding membership and group representation on the CIAC. On November 8, 1976, CIAC ruled that descendants of Tamer Brushell Sebastian and Marlboro Gardiner, who reached the 1/8<sup>th</sup> blood quantum established by State law, were group members (CIAC, 11/8/1976). A subsequent CIAC hearing revisited the same issue in 1983, as did litigation between the EP and the PEP (CIAC Hearing Minutes, September 28, 1983).

In 1989, the “Legislative Task Force on Indians Affairs, a committee created to investigate and evaluate the status of laws regarding the Indian groups in Connecticut and the nature of the relationship between the State and the Indian groups, presented its report to the General Assembly. The report summarized the legal history of the relationship, the legislation of 1973, the role of the Connecticut Indian Affairs Council, and the recognition by lawmakers that changes should be considered in the laws governing the relationship. It did not provide specific evidence concerning the Eastern Pequot. The Task Force report noted that several principles guided the drafting of the prospective legislation:

- A. That the State of Connecticut recognizes the five indigenous Tribes as separate self-governing entities.
- B. That the Governor shall pursue a trust agreement with each willing indigenous Tribe; such trust agreement shall define the special nature of the State’s relationship with each particular tribe (Legislative Task Force on Indian Affairs, 11).

In 1989, Connecticut passed Public Law 368, An Act Implementing the recommendations of the Legislative Task Force on Indian Affairs. The law redefined the relationship between the State and Indians:

- (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).

A 1976 letter from Governor Ella Grasso to Mathew Butler of the Data and Demographic Division, Office of Revenue Sharing, noted that under the “State and Local Fiscal Assistance Act of 1972” “Indian tribes are eligible as local governments to receive revenue sharing funds.” The letter noted that “State affiliated tribes may be certified for revenue sharing purposes by the Governor of the State in which they are located.” The letter went on to explain the criteria used to certify that the three groups mentioned in the letter met the certification threshold. The certification criteria included having a

constitution and by-laws; the existence of a formal governing structure with officers; determination of membership based on CIAC guidelines; operating a small group businesses; maintenance of group funds; and planning and implementation of economic development programs and projects. The CIAC provided information to the Governor's office for purposes of the certification (Grasso 3/3/1976).

Governor Grasso's 1976 letter noted that the "Schaghticoke, Western Pequot and Golden Hill Paugussett tribes have recognized tribal governing bodies which exercise substantial governmental functions" (Grasso 3/3/1976). At the time of the writing of the letter the Eastern Pequot group did not meet the certification criteria. These criteria do not in themselves demonstrate that political influence as defined in 83.1 exists, since any formal organization might meet them. The letter does not further describe the "governmental functions" exercised by the groups mentioned, nor provide specific evidence to be evaluated.

Three years later, on November 8, 1979, Governor Grasso, in a letter to Fred Williams, Intergovernmental Relations, made the following statements while declaring the "Paucatuck Eastern Pequot Tribe" to be eligible as a governmental unit for revenue sharing. The 1979 letter showed a higher level of organization than was detected in 1976:

... the Paucatuck Eastern Pequot tribe has a recognized tribal governing body which exercises substantial governmental functions. Data provided to my office by the Connecticut Indian Affairs Council indicates that the Paucatuck Eastern Pequot tribe exhibits the following governmental functions: maintenance of a formal governing structure with appropriate executive offices. Determination of tribal membership and assignment of reservation land in accordance with the regulations of the Indian Affairs Council. Operation of small tribal businesses. Maintenance of revenue for internal tribal operations. Planning and implementation of economic development projects. Because of existing statutes, tribal governments relate directly to the state and are not an integral part of local government. Connecticut tribes appoint a representative to serve on the Indian Affairs Council which is the principal state administrative body dealing with Indian matters. The relevant tribal population by county, location of tribal trust land and chief executive officer for the tribe is listed below. I request that this tribe be included as a unit of Connecticut local government for revenue sharing purposes (Grasso to Williams 11/8/1979; PEP Response to Comments 9/4/2001, Ex. 44).<sup>82</sup>

For more than 300 years the Colony and later the State maintained the Lantern Hill reservation for the Eastern Pequot, and provided fiduciary oversight and assistance through the system of overseers and later direct oversight through several State agencies.

<sup>82</sup>See also PEP's analysis of the significance of this letter (Austin, Political Authority 9/4/2001, 31; PEP Response to Comments 9/4/2001).

When analyzed the State relationship does not provide evidence for political authority and influence within the Eastern Pequot group, and the State did not formulate its policies towards the group based on the recognition of the existence of bilateral political relations within the group. The creation of the CIAC in 1973 by the State served as a catalyst for political organization as the different groups within the Eastern Pequot struggled and competed for recognition by CIAC as the true representatives of the Eastern Pequots. In the 1970s and 1980s, the State redefined the relationship with the Eastern Pequot, and in legislation passed in 1989 established government-to-government relations based on recognition of the group as a political entity. However, for the 60 years prior to the formation of CIAC there is insufficient evidence to demonstrate political organization or leadership within the Eastern Pequot.

*Discussion of the Evidence for Political Processes from 1973 until 2002.*

The passage of the legislation in 1973 establishing the CIAC, and resulting subsequent events as various Eastern Pequot groups contended with each other, demonstrate a significant level of political processes within the group which involved the main kinship segments, the Sebastians, Jacksons and Gardners. The events reflected the issues of access to and control of the reservation lands and the internal dispute over the legitimacy of the Sebastians as members, issues evident within the Eastern Pequot community from the 1920's on. The formation of the CIAC and the beginnings of transfer of power over the reservation to the Eastern Pequot triggered this high level of political conflict because it provided an opportunity, not previously existent, for part of the Eastern Pequot 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.

The alignment and organization of the groups within Eastern Pequot in 1973 and the ensuing decade and a half were different than those at the time the petitions were considered. The EP petitioner at the time of the FD comprised the Sebastians, Fagins/Watson and Fagins/Randall family lines. The PEP consisted of the Gardners and Jacksons. However, in the conflicts beginning in 1973, three different groups of Eastern Pequot sought to obtain official approval as representing the Eastern Pequot tribe, none of which completely corresponded to the petitioners as they were organized at the time of the FDs and PFs. These three groups were the Gardners (as the authentic Eastern Pequot, led by Helen LeGault), the Sebastians (as the Eastern Pequot) and a third group, focused on reservation residents, comprising primarily Jacksons but including two Sebastians from the reservation, and Alton Smith, a leading Sebastian who was resident in Hartford. Initially, the Fagins/Watson and Fagins/Randall lines were not involved in these conflicts.

LeGault in 1973 filed a petition with the CIAC signed only by members of the Gardners, gaining appointment as Eastern Pequot representative. Helen LeGault's action on behalf of her own small segment brought counter-reactions first from the Jackson-led group and then the main body of the Sebastians. The Jacksons filed a counter-petition, gaining the

appointment of Alton Smith as alternative Eastern Pequot delegate to LeGault. The Sebastians took a little longer to organize, but started organizational meetings in 1975 if not earlier, filing motions and seeking hearings before the CIAC and initiating litigation against the CIAC soon after (see extended discussion of the CIAC's various actions, and the litigation, which were the main focus of actions, PEP FD, 144-169; EP FD, 160-164). Between these three groups, these events mobilized large portions of the relatively small number of adult individuals then alive. The events were a contest for power that showed political process by addressing issues of importance to the members and communication with various leaders.

Initially the conflict was one of interest groups which, based on the existence of community, were a continuation of social divisions and issues that had existed earlier rather than coming into existence at that time. Evidence for this conclusion is that the Sebastians in particular viewed the initial conflict as one in which they needed to have their own family's interests represented. Thus, the Sebastians and their initial organization presented themselves not as a separate tribe but as representing the interests of part of a tribe (i.e., their family), which was being threatened with exclusion from the reservation and membership by the activities of Helen LeGault's Authentic Eastern Pequots in regard to CIAC representation. Even later, when preparing the EP petition, Sebastians attempted to include the Gardners within their membership, the latter taking action to prevent their members from joining (Garafola 1999; Mary Sebastian 1999).

The petitioners' organizations were initially established in the mid-1970s, but did not take the form they had at the time of the FD until the late 1980's. When the petitioner's organizations were created, the PEP in 1973 and the EP in 1976, the two organizations were in fact organizations of two of the family lines of the Eastern Pequot (Gardner and Sebastian) – neither the Hoxie/Jacksons who were not also Gardner descendants nor either of the two Fagins descendant lines were included in either organization until more than 10 years later.<sup>83</sup> Although the Sebastians established a formal organization in 1976, it had not enrolled most of the Sebastians until the late 1980's or later, and the Fagins/Randalls and Fagins/Watson until the 1990's, although these two lines were involved earlier (EP FD, 132-135). The PEP was limited to Gardners until 1989, when, more or less simultaneously with the death of Helen LeGault, the organization made a decision to add the Jacksons (PEP FD, 171, 173). Between 1973 and that point they had not included the Jacksons in their efforts, and made some efforts to have only the Gardners be included by the CIAC within the Eastern Pequot (PEP FD, 166-167). By the time PEP decided to add the Jacksons, there were few left in the Eastern Pequot, the others having died or lost contact (see community discussion, above).

A major difference between 1973 into the 1980's is that initially there was still a body of adult Jacksons in the Eastern Pequot and they were politically active. Their presence is

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<sup>83</sup> EP submitted a letter of intent in 1978, but didn't submit a documented petition until 1989. PEP submitted its letter of intent in 1989, possibly in reaction to EP's documented petition. It resisted efforts by EP to include Gardner family descendants on EP's membership list (PEP PF, 131). PEP's initial documented petition was submitted in 1994.

one reason why there was not the same separation of communities that appeared at the time of the FDs because they played a “bridge” or connecting role between the Sebastians and the Gardners and had done so since at least the early 1900's. In terms of the politics of this initial post-1973 period, they remained separate, not aligning with either the Sebastians or the Gardners.

The period between the early 1980's and 1989 was one of transition. As described under community, by the early 1980's, there were few Jacksons. The leader of its post-1973 activities, Arlene Jackson, had entered a nursing home in 1982 and was no longer active. She died in 1992. As the community section describes, there had become two essentially separate communities in the early 1980's.

Two political events of the 1980's provide some evidence of the separation into two groups, but also suggest this was a decade of transition politically. The FD describes efforts in 1987 by the PEP chairman Raymond Geer, to engineer a merger between the two groups (PEP FD, 164-5, 167).<sup>84</sup> Several meetings were held between the two sides. Geer's efforts mobilized opinion within the PEP membership, which divided over the issue. LeGault retained sufficient influence to eventually cause PEP's withdrawal from the process. Geer, a Gardner/Edwards, notably had the support of former chairman Richard Williams, son of Atwood Williams, Jr. This effort at merger was preceded by unsuccessful efforts in 1982 by the PEP to evict both Sebastians and Jacksons from the reservation (PEP FD, 161). The failure of the proposed merger perhaps represents the final political break.

The evidence for criterion 83.7(c) from 1973 into the 1980's is the activity of the several groups on the issue of membership and reservation access. To the early 1980's, the political conflict was still within one community. By contrast, the evidence for political processes from the 1980's on, as described in the FD is almost entirely evidence which shows political activity, communication and mobilization within the separate memberships but not contacts or linkages between them (see EP FD, 25-27, 170-177; PEP FD, 27-29, 170-176).

### Summary Evaluation Under Criterion 83.7(c)

#### *Political Influence Until 1873.*

The evaluation of political influence before 1873 is unaffected by this reconsidered FD and is therefore affirmed.

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<sup>84</sup> Helen Legault stepped down as CIAC representative in 1983, and had retired as PEP chair by 1987, but remained active until her death in 1989.

*Political Influence from 1873 to 1913.*

Political influence from 1873 to 1913 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. There was insufficient evidence for the FD that Calvin Williams had involved with the 1873 petition. A better copy of the 1873 petition, as reanalyzed for this reconsidered FD demonstrated that Williams had also signed the June 26, 1873, petition and then made a list of many other Pequots, including individuals who had not signed the petition, to record a broader body of Pequots. This provides additional evidence for Williams’ leadership of the Eastern Pequot.

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 PF 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.<sup>85</sup> 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 Creek PF 1983, 5).

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<sup>85</sup> The PF divided the time periods for criterion 83.7(c) differently than the FD, evaluating the evidence from 1873 to 1920 instead of 1913.

This reconsidered FD concludes that the Eastern Pequot, including the ancestors of the EP and PEP petitioners, met criterion 83.7(c) from 1873 to 1913.

*Political Influence or Authority from 1913 to 1940.*

The EP PF concluded that Tamer Emeline (Sebastian) Swan Williams, the widow of Calvin Williams, was an informal political leader for the EP petitioner's antecedent families during the 1913 to 1940 period. The EP and PEP FDs and this reconsidered final determination do not affirm this conclusion, which was not supported by much direct evidence. The evidence does, however, support a conclusion that from 1913 to 1937 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 Eastern Pequot to interact socially with one another (see criterion 83.7(b)). The few pieces of evidence that might directly indicate the exercise of political influence or authority on her part, such as an endorsement of an application for membership in 1936, are not present in sufficient numbers to show that she did exercise political influence for any period of time.

In its comments in response to the PFs, PEP asserted that Phoebe (Jackson) Spellman was an informal leader between her return to the reservation from Providence in about 1912 and her death in 1922. The PEP cited her opposition to inclusion of Tamer Sebastian as a member of the Eastern Pequot. This reconsidered FD affirms the FDs' conclusion that the claim that Phoebe Sebastian in this or other actions was an informal leader was not supported by direct evidence.

For the period before 1928, there was only oral history evidence of conflict over membership and residency, and the available information did not indicate that the conflict involved more than the immediate individuals identified in the oral histories. The FD conducted an additional analysis of evidence for conflicts in this time period. This analysis provided a clearer, more detailed picture than for the PF, and affirmed the basic conclusions of the PFs that the conflict before 1928 was limited in extent and did not involve the Eastern Pequot membership in general. There is no reason for this reconsidered FD to change this conclusion, hence it is affirmed. Consequently, these conflicts were of limited value as evidence concerning criterion 83.7(c).

This reconsidered final determination concludes that the State's continuous historical relationship with the Eastern Pequot, its maintenance of a reservation and its other actions between 1913 and 1940 do not provide evidence to meet the requirements of the definition of political influence or authority (83.1). An examination of the State's interactions with the Eastern Pequot in this time period does not provide ordinary evidence to meet the definition's requirements.

There was not sufficient evidence that Atwood I. Williams, Sr., although regularly identified by the State as the leader of the Eastern Pequots from 1928 to 1936, and occasionally thereafter until 1954, was leader of the entire Eastern Pequot group. The

FDs concluded that he was the leader of the whole group, based on state actions which specifically referred to him as “chief,” and State dealings with him at times as leader of the Eastern Pequot. The FD stated, “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.” This conclusion was based on the State's identification of him as the chief of the Eastern Pequot as a whole, not on direct evidence of his actually exercising leadership of the entire Eastern Pequot group.

This reconsidered FD concludes there is not evidence that Williams represented the entire Eastern Pequot group or had been elected or appointed by the entire group. The available evidence indicates that he was not. Consequently, there is not evidence that these State actions were based on actual knowledge that he was a political leader.

There is not information in the documentary descriptions to determine that those “electing” or “appointing” Williams included individuals from each of the three major family lines of the Eastern Pequot as they existed at the time. The 1928 account of his “election” provides no information as to who or how many were involved. The 1933 hearing described those people signing the “appointment” paper “as a majority of “the two tribes,”<sup>86</sup> while in 1947 Williams himself referred to the election as unanimous on the part of the “tribe members taking part.”

The available evidence indicates it is unlikely that the entire Eastern Pequot group elected or appointed Williams. This evidence includes his opposition to the Sebastians even being members of the Eastern Pequot. The Sebastians would have been approximately half of the Eastern Pequot group at the time Williams was active, and the available evidence indicated that they neither voted for him nor knew him very well. In addition, it is unclear the extent to which the Jacksons were aligned with him (EP FD, 132). There is some evidence that Williams represented only the Gardner family (PEP FD, 132-133; PEP PF, 111-113; EP PF, 115).

An additional factor making Williams' role uncertain is that both of the contemporary descriptions of his election or appointment refer to him as having become chief of both the Eastern and Western Pequot, although there is little evidence that he took any actions representing the latter. It could not be determined from the available accounts how many voting for or appointing him were not Eastern Pequots.

The State's actions in relation to Williams and official statements about him do not provide evidence for this criterion because they were not based on knowledge that his election or appointment resulted from political processes within the group as a whole (and the available evidence indicates otherwise). Neither the State nor other sources described such a process. The State did take notice of his election or appointment by some portion of the Eastern Pequots, based on some specific knowledge. It established a nominal role for him in approval of reservation residency and membership, but the documentary record demonstrates that the membership and residency application

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<sup>86</sup> The document referred to Williams as selected by the Western (now Mashantucket) and Eastern Pequot as chief of both (see above).

processes established in 1933 by the Superior Court, which called for consultation with Williams as chief, was never used in consultation with him. Therefore this nominally established process provides no evidence that Williams was representing the group to outsiders in a matter of consequence or that the State took any actions under this process to deal with Williams as chief. In addition, the State did not otherwise consult with the Eastern Pequots in this matter of consequence, since the alternative application process established by the court, calling for approval by two reservation residents, was used only once to determine membership or permission to reside on the reservation.

Williams' made several appearances before or contacts with the state legislature on issues concerning the Eastern Pequot reservation. These contacts do not provide substantial evidence for criterion 83.7(c) in the absence of any documentation of the actual appearances or of how he came to appear. There was not evidence whether he was there as a representative of the Eastern Pequots or only as an ordinary citizen.

There is limited information that the opinions Williams expressed to the court, overseers, and the legislature between 1928 and 1939, and again in 1947, reflected issues of importance to most of the Eastern Pequot. The opinions Williams expressed all concerned access to, preservation of, or control of the reservation, including leasing to non-Indians and residency by Western Pequots and the Sebastians. While there is insufficient evidence that he was expressing the opinions of all or part of the Eastern Pequot membership as a result of interactions with them, there is evidence the opinions were shared by at least some. Reservation visiting, residence, and applications for residence were fairly common from 1920 to 1970 on the part of members of all three family lines. By precedent, reservation access was an issue of importance since it concerned control of and access to a present rather than a past resource (unlike claims based on long past losses). However, Williams was not expressing the opinions of the group so much as those of the Gardners. He was not expressing the opinions of the Sebastians (at least insofar as he was denying their rights), nor is there significant evidence that he expressed the opinions of the Jacksons other than those who were his own descendants.<sup>87</sup>

This reconsidered final determination has reviewed the evidence after 1928 concerning conflicts over membership and residence rights to the Eastern Pequot reservation, in the absence of significant evidence from the state relationship. These conflicts centered on the opposition of the Gardner/Edwards and Gardner/Jackson families to the Sebastians. The review includes the evidence from the activities of Atwood Williams, Sr. and Helen LeGault. Conflict over valued goals and issues provides evidence for criterion 83.7(c) where it shows issues of importance to a substantial portion of the group, communication, mobilization of individuals and communication between leaders and followers. While there is substantial evidence of strong opinions concerning reservation residence and rights of the Sebastians, and some evidence of communication over the issues, there is no evidence of mobilization of political effort at any point on the part of those opposed to the Sebastians, such as meetings, group petitions and raising funds, in the pre-1973 period. There was also no evidence of leaders representing the Sebastians in opposition

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<sup>87</sup> Those Jacksons who were also Gardners, through their mother.

to Williams and LeGault and efforts by the Gardner/Edwards and Gardner/Jackson to exclude them, even though there are consistent actions by various Sebastians to move to and/or utilize the reservation from the 1930's on. While opinions existed about the legitimacy of the Sebastians and who had rights to the reservation, there was not evidence that there were actions taken other than those of Atwood Williams, Sr. and, subsequently, Helen Legault. There was little evidence that actions of Williams and LeGault resulted from interaction with the Eastern Pequot membership. Consequently, the conflict does not provide more than limited evidence for criterion 83.7(c).

Strong evidence for community, such as exists in this case between 1913 and 1940 (see criterion 83.7(b)), including the evidence from intermarriage ties, can provide supporting evidence to add to evidence for the existence of significant political processes. The regulations provide that community, where demonstrated at "more than a minimal level" provides evidence for criterion 83.7(c) (83.7(c)(1)(iv)). The rationale for this section is that the existence of a strong community is a circumstance where social relationships exist which facilitate political processes (see Snoqualmie FD). Evidence from community by itself does not demonstrate criterion 83.7(c) except under the conditions defined in 83.7(b)(2), which do not exist here. Past decisions which specifically relied on 83.7(c)(1)(iv) referenced evidence for a strong community as supporting evidence for criterion 83.7(c) where substantial direct evidence of political influence existed. In the present case, where there is little direct evidence for political processes, the evidence for community, although more than minimal, does not provide sufficient evidence in combination with the other evidence to demonstrate that criterion 83.7(c) is met.

The evidence concerning Tamer Emeline Williams or Phoebe Jackson as informal leaders, the activities of Atwood Williams, Sr., and conflicts within the Eastern Pequot do not provide sufficient evidence of political influence or authority within the Eastern Pequot. There is insufficient evidence to demonstrate that criterion 83.7(c) is met between 1913 and 1940.

*Political Influence or Authority from 1940 to 1973.*

In accord with the IBIA decision, this reconsidered final determination has reviewed the State's continuous historical relationship with the Eastern Pequot, including its maintenance of a reservation, and concluded that the relationship does not provide evidence to demonstrate criterion 83.7(c) from 1940 to 1973. In addition, a review of the specific actions taken by the State between 1940 to 1973, including its interactions with Atwood Williams, Sr., and Helen LeGault concludes that these do not provide evidence which meets the definition of political influence in 83.1 and therefore does not provide evidence for criterion 83.7(c).

The evidence in the record showed only a few interactions by Atwood Williams, Sr. with the State from 1940 until his death in 1955 and no evidence of other activities where he might have functioned as a leader for all or part of the Eastern Pequots. With the exception of possible lobbying of state legislators in 1947 about the reservation, there were only two instances of contact with the State, in 1941 and 1949. Both of these

contacts were limited and uncertain in character, and do not provide evidence as a result of internal political processes that Williams represented the group to outsiders on matters of consequence to the Eastern Pequot.

The documentary record demonstrates that the membership and residency application process established in 1933 by the Superior Court, which called for consultation with Williams or two reservation residents, was not used to consult with him between 1940 and his death in 1955. Therefore, it provides no evidence that he was representing the group to outsiders in a matter of consequence. The State also did not otherwise consult with the group in this matter, between 1940 and 1973. The 1933 application process, although restated by the Welfare Commissioner in 1954, was not used at all after 1940 to determine membership or permission to reside on the reservation and was replaced entirely after 1961. Thus, the application process does not provide evidence of the existence of political processes within the Eastern Pequot between 1940 and 1973.

Evidence of political processes is provided by a 1953 trip by 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. This is only a single instance, at one point in time and thus does not provide sufficient evidence for the entire time period.

Helen LeGault complained to State authorities about the presence and activities of the Sebastians on the reservation between 1948 and 1973, and appeared as a witness in 1961 State legislative hearings to seek amendments which would have limited their residence. There is only limited evidence that these actions represented more than her own opinions or that they reflected public opinion among a portion of the Eastern Pequots. In none of the documents concerning these events did LeGault identify herself as a leader nor was she identified as a leader by the state officials or others with whom she interacted. Some documentation and interview evidence indicates she 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 family lines she was related to, the children of the late Atwood I. Williams, Sr., (the Gardner/Jackson subline) as well as among the Gardner/Edwards subline. There is specific evidence of opposition to her by both the Jacksons and the Sebastians, but the evidence for this is limited.

Conflict over valued goals and issues provides evidence for criterion 83.7(c) where it shows issues of importance to a substantial portion of the group, communication, mobilization of individuals and communication between leaders and followers. There is substantial evidence of strong opinions among the Eastern Pequot concerning reservation residence and the rights of the Sebastians, and some evidence of communication over the issues. However, there is no evidence of mobilization of political effort at any point on the part of those opposed to the Sebastians, such as group petitions and raising funds, from 1940 to 1973, notwithstanding Helen LeGault's frequent expressions of opposition. There was also no evidence of leaders representing the Sebastians in opposition to Williams and LeGault, leading efforts to resist the Gardner/Edwards and

Gardner/Jackson efforts to exclude them. Even though there are consistent actions by various Sebastians to move to the reservation from the 1930's on and regular visiting and usage of the reservation lands there was not evidence that this resulted from political processes to mobilize members to resist the opposition to them. The 1953 protest of the proposed "detrribalization" also provides evidence that maintenance of the reservation and status as Indian was an issue of political significance to the membership.

This reconsidered final determination affirms the FDs' conclusion that there was not sufficient evidence to support the EP and PEP proposed findings' conclusion that Roy Sebastian, Sr., Arthur Sebastian, Jr., Catherine Harris, and Atwood Williams, Jr. were informal leaders of various portions of the Eastern Pequots between 1940 and 1973. Neither is there any significant indication that during this period Paul Spellman of the 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.

The FD concluded that evidence for criterion 83.7(c) for at least part of the time period before 1973 was provided by the relatively high level of political activity that began in 1973 and continued until the present in response to the formation of the CIAC. The State relationship after 1973, with the formation of the Connecticut Indian Affairs Council, provided a stimulus and focus for the conflicts and other events occurring subsequent to that year. This reconsidered final determination does not affirm the FDs' conclusion because the post-1973 level of activity could have developed without there being substantial political processes in the preceding decades. It could, alternatively, have begun in 1973 as a result of the stimulus of the State's changed policies, but reflected the existence of a community with significant social divisions which existed before 1973 and continued afterwards. There is insufficient evidence about the preceding decade to reach a conclusion, although there is some evidence that the political issues foremost after 1973 existed in some, much less active, form in the preceding decades. Therefore, the post-1973 period does not provide evidence for criterion 83.7(c) in the preceding decades.

A single social community, in part defined by significant social divisions based on family lines and disputes with considerable historical depth, existed throughout the 1940 to 1973 period at more than a minimal level, though less strongly than for 1913 to 1940 (see criterion 83.7(b)). In the present case, where there is little direct evidence for political processes, the evidence for community does not add substantial supporting evidence for political influence or authority.

There is insufficient evidence to demonstrate that criterion 83.7(c) is met by the Eastern Pequot, comprising the ancestors of the two petitioners, between 1940 and 1973.

*Evidence of Internal Political Processes within each Petitioner, 1973 to 2002.*

This reconsidered FD affirms the conclusions of the FDs that there was substantial evidence concerning community and political influence within each petitioner or its antecedents from 1973 to 2002. This portion of the FDs' evidence and analysis were not at issue for this reconsidered FD, since these conclusions did not rely on state recognition and are also not part of the IBIA's referred grounds that were accepted by the ADS (see discussion of IBIA Item 5). These FD analyses did not rely on state recognition and did not rely on the conflicts between the two organizations except to the extent that the latter provided evidence about political processes internal to each petitioner, but relied on other, specific evidence, which is summarized here.

Both EP and PEP can demonstrate, as separate organizations, substantial political processes within their own membership in the modern period. 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 dealt with the same issues -- control over portions of the reservation and whether the Sebastians are part of the Eastern Pequot. Conflict over these issues has existed as an unbroken continuity from at least as early as the 1920's, a time for which there is strong evidence for the existence of a single community.

Reservation access and residency rights were issues of importance to the membership of both petitioners. These issues did not represent a claim for lands lost or treaties abrogated long before the lifetime of the current membership, which, without further evidence, are not, by precedent, automatically evidence of an important political issue. Here, there was more than sufficient evidence that in the past decades and in the present many members visited the reservation to hunt and for other purposes, and had close relatives who resided there to conclude the reservation and continued access to it are political issues of importance to the membership of both petitioners. This contact was not limited to the relatively few actual reservation residents. Thus the potential loss of the reservation, by State action or exclusion of one petitioner by the other, represent the potential loss of an important resource presently or recently utilized.

In addition, the EP council has exercised control over much of the reservation, regulating residence and land use, from the 1982 to the present. This function was exercised regularly, and was followed by the membership. Section 83.7(c)(2)(i) defines as sufficient evidence to show political processes where a group has a political process which allocates "group resources such as land, residence rights and the like on a consistent basis." The degree of control here was not sufficient to meet the requirements of 83.7(c)(2)(i), because there were not enough examples. However, there were enough to provide ordinary evidence for criterion 83.7(c).

There was evidence of political communication from EP leaders to the EP membership through regular meetings of the membership where the members voted on key issues, rather than such issues simply being voted on by the EP governing council alone. There

was not strong evidence about communication from membership to the leadership except for the several years before the FDs.

For the PEP petitioner, evidence of internal political processes was shown by the group's dealing with the issues of importance to the membership. These were the same issues as in EP to a considerable extent. In addition, the PEP dealt with the issue of whether the two organizations should merge, which created considerable controversy and conflict. 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 within PEP itself. The PEP organization also controlled a portion of the reservation land and allocated it to its members, although on a more limited basis than the EP organization was able to do with its members.

*Evaluation of Whether the Two Petitioners met Criterion 83.7(c) as a Single Group in the 1970's and early 1980's.*<sup>88</sup>

The events beginning in 1973 which led to the formation of the two petitioners' organizations demonstrated a high level of political processes within Eastern Pequot. These events involved all three of the main family lines, the Sebastians, Jacksons and Gardner/Edwards. The events reflected the political issues of access to and control of the reservation lands and the dispute within the Eastern Pequot over the legitimacy of the Sebastians as members, questions which had existed among the Eastern Pequot since at least the 1920's.

Legislation in 1973 CIAC and gave it a substantial role in the State's Indian affairs. The act called for representation of the five groups recognized by the State on the commission. The act, which started the transfer of power over the reservation to the Eastern Pequots, triggered a high level of political conflict among the Eastern Pequots because it provided an opportunity, which did not previously exist, for one of the contending subgroups to be designated by the CIAC as the Eastern Pequot's sole representative. State actions also provided the possibility that 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.

In the conflict which began in 1973, each of the three family subgroups initially sought to obtain official approval as representing the Eastern Pequot tribe or as being the Eastern Pequot tribe. Helen LeGault's initial action in 1973, seeking and gaining appointment as the Eastern Pequot representative, was on behalf of only the Gardners, her own relatively small family line. Her actions brought separate counter-reactions first from the Jacksons and then the Sebastians. The efforts of the different portions of the Eastern Pequots in dealing with the CIAC and the State over from 1973 on mobilized large portions of the relatively small number of Eastern Pequot adults. The events were a contest for power, resting on the pre-existing social context and alignments, and showed political process. These conflicts provided data about political processes and community that showed

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<sup>88</sup> See discussion of IBIA Item 5, which discusses the ADS's decision to reconsider whether state recognition or other evidence demonstrates that a single political entity existed after 1973.

which issues were important and generated widespread interest among the membership.

Initially, in the 1970's, the membership of the EP and PEP organizations consisted of two of the Eastern Pequot family lines--Gardner (PEP) and Sebastian (EP). Only later, in the 1980's, did they take the form they had at the time of the FDs. Neither the Jacksons who were not also Gardner descendants nor either of the two Fagins lines were initially included in either organization. It was not until 1989 that the PEP organization asked the Jacksons to join them, by which time there were only a few Jacksons left. The EP organization after the 1980s added the small Fagins/Randall and Fagins/Watson family lines. The Sebastians initially viewed the post-1973 conflict as one in which they needed to have their own family's interests represented and did not view themselves as representing all of the Eastern Pequots. However, the EP organization did not at any point seek to be the sole representative of the Eastern Pequots, while the PEP sought to be the sole Eastern Pequot group recognized by the State.

Because there was still a small group of adult Jacksons in the Eastern Pequot group in the 1970's, there was not the same separation between the EP family lines and those in PEP in 1973 that there was in 2002. Instead, the Jackson family line still played a connecting role between the two Sebastian and Gardner lines that today are numerically predominant in the two petitioners (Sebastian for EP and Gardner for PEP). The Jacksons had played this role since the early 1900's and their continued presence in the 1970's demonstrates that there was still a single political field within which conflict was played out. This contrasts with the conflict between two almost completely separate groups which developed after the 1970's as the separation process continued.

This reconsidered FD concludes that from 1973 until some point in the early 1980's, a factional situation existed. That is, a single social community still existed. However, the process of social separation between the families that came to constitute the two petitioners was advanced in 1973 and continued in that decade and the succeeding decade (see criterion 83.7(b) discussion).

This reconsidered FD reevaluates the evidence concerning the state relationship after 1973 and concludes that state recognition and the state's actions after 1973 do not provide evidence that the EP and PEP formed a single political entity. While the State recognized only a single group, and at least at some points considered the Eastern Pequot to be a single political community, the State's action was not based on actual knowledge that a single political entity existed. Consequently the state relationship did not provide evidence to demonstrate whether or not a single Eastern Pequot political entity existed from 1973 to the early 1980's.

For the period from 1973 into the 1980's there was substantial evidence for political activities on the part of both EP and PEP, which mobilized members' efforts on issues of importance. This reconsidered FD concludes that from 1973 until some time in the 1980's there was still a single community and the process of separation was not complete. The petitioning organizations, formed in 1973 (PEP) and 1976 (EP), at this point still reflected individual family interests and did not have the alignment of family

lines they did later. The Eastern Pequots, therefore meet criterion 83.7(c) as a single group between 1973 and the early 1980's.

*Evaluation of Whether the Two Petitioners Together met Criterion 83.7(c), Early 1980's to 2002.*

As noted, this reconsidered final determination concludes that state recognition after 1973 does not provide evidence that the EP and PEP formed a single political entity. Absent evidence from that source, the remaining evidence about community and political processes and the conflict between EP and PEP, at the time of the FDs and for some years before, does not provide sufficient evidence to meet the requirements and precedents, as stated in the PFs and FDs, to demonstrate there was a single political system with factions. The EP PF stated, "A factional dispute is effectively an uncontrolled, persistent conflict for power between relatively permanent divisions within a single political system, not a conflict for power between two groups which are not connected" (EP PF, 152). The PF cited as precedent the Samish, Miami and Tunica-Biloxi FDs. The EP FD described the evidence necessary to determine whether there was a single political system with factions, stating "The primary focus of inquiry is a purely descriptive one -- is there a single political system, which implies also a single community, within which a conflict is occurring" (EP FD, 176).

Because the FDs concluded that there was a single political system based primarily on the conflict over a shared resource, without evidence other than state recognition that there was a single community or political body, there is not evidence to demonstrate that a single political system with factions existed. This reconsidered final determination follows precedent in concluding that there at the time of the FDs there were two separate groups which are in conflict, not a factional conflict within a single political system, notwithstanding the recentness of the separation of the two groups and the existence of some residual connections between them.

The FDs' evidence and conclusions that there was substantial evidence to demonstrate community and political influence within each petitioner separately are not at issue, since these conclusions did not rely on state recognition. These conclusions did not rely on the conflicts between the two organizations except to the extent that these provided evidence about political processes within each group. The conclusions relied on other, specific evidence such as political communication and issues of importance to the membership to demonstrate internal political processes (see evaluation above).

This reconsidered final determination concludes that the petitioners do not meet criterion 83.7(c) from 1913 to 1973 as one group or as two separate groups. There was insufficient evidence that there was the exercise of political influence within the group as a whole or in any portion of it in that time period. The two petitioners meet criterion 83.7(c) as one group from 1973 to the early 1980's. They did not exercise political influence or authority as one group after the early 1980's until 2002, the date of the FDs.<sup>89</sup> The two separate groups do not meet criterion 83.7(c) because of the recentness

<sup>89</sup> No evidence was submitted to the IBIA concerning the petitioners after the date of the FDs, and

of the evolution, and division into two separate groups. Neither the EP nor the PEP petitioner separately or as one group meets the requirements of criterion 83.7(c) throughout their history.

#### **Criterion 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 PEP FD found “Each petitioner met the requirements for criterion 83.7(d) separately by submitting a governing document which described its membership eligibility provisions,” and “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” (PEP FD, 29). This reconsidered FD finds that without the conclusion that the two groups comprised a single entity in 2002, the FD’s conclusion regarding criterion 83.7(d) in the Summary Under the Criteria must be modified to address criterion 83.7(d) as it relates to the separate petitioners.

This reconsidered FD concludes that the EP petitioner submitted a copy of its 1996 governing document, which included a description of its membership eligibility. This reconsidered FD concludes that the EP petitioner as it existed at time of the June 24, 2002, FD meets the requirements of criterion 83.7(d).

This reconsidered FD finds that the PEP submitted a copy of its 1993 governing document which described its membership procedures and governing procedures for the PEP group as it existed at the time of the FD in 2002. This reconsidered FD finds that the Paucatuck Eastern Pequot petitioner as it existed at the time of the June 24, 2002, final determination, meets the requirements of criterion 83.7(d).

#### **Criterion 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.**

Concerning the EP petitioner, the proposed findings examined the evidence and concluded, on the basis of evidence acceptable to the Secretary that the Brushell/Sebastian lines (the descendants of Tamar (Brushell) Sebastian through five of her nine surviving children) and Fagins/Watson lines (descendants of Laura (Fagins)

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this reconsidered FD does not evaluate them after that date.

Watson) descend from the historical Eastern Pequot tribe within the meaning of the regulations. The FD affirmed the findings in the PF and confirmed that the Fagins/Randall line descendants (some descendants of Abby (Fagins) Randall) who were on the July 7, 2001, membership list, also descended from the historical tribe. These three women were identified in their own lifetimes as members of the Eastern Pequot tribe as it existed in the 19th century.

The EP submitted a separately certified membership list dated July 7, 2001, containing 1,004 persons, who, on the basis of evidence acceptable to the Secretary, descend from the members of the historical Eastern Pequot tribe.

This reconsidered FD concludes that membership of EP petitioner, as reflected in the 2001 membership list, descended from the historical Eastern Pequot tribe and therefore the EP petitioner meets the requirements of criterion 83.7(e).

The evidence for the PEP proposed finding and final determination demonstrated that the PEP membership descended from Marlboro and Eunice (Wheeler) Gardner (Gardner/Edwards and Gardner/Williams lines) and Rachel (Hoxie) Jackson Orchard (Hoxie/Jackson and Hoxie/Jackson/Spellman lines) who were identified during their own lifetimes as members of the historical Eastern Pequot tribe as it existed in the 19th century.

The PEP's lines of descent from the historical tribe were verified through the same types of records used for prior decisions: Federal censuses from 1850 through 1920; public vital records of births, marriages, and deaths; church records of baptisms, marriages, and burials; as well as through the overseers' accounts and other State records concerning the Lantern Hill reservation. The PEP submitted a July 19, 2001, certified membership list which identified 144 persons as members of the group.

This reconsidered FD concludes that membership of PEP petitioner, as reflected in the 2001 membership list, descended from the historical Eastern Pequot tribe and therefore the PEP petitioner meets the requirements of criterion 83.7(e).

#### **Criterion 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 a predominant portion of neither petitioner's members were enrolled with any federally acknowledged tribe. No new evidence or comments were submitted for the FD or in the requests for reconsideration. The evaluation of criterion 83.7(f) was not affected by the IBIA decision. The proposed findings' conclusions are affirmed.

Therefore, this reconsidered FD finds that the EP and PEP petitioners each meet criterion 83.7(f).

#### **Criterion 83.7(g)**

**Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.**

The proposed findings concluded that neither petitioner had been the subject of legislation terminating a Federal relationship. No new evidence was submitted for the FD or the requests for reconsideration. The evaluation of criteria 83.(g) was not affected by the IBIA decision.

Therefore, this reconsidered FD finds that the EP and PEP petitioners each meet criterion 83.7(g).

### **Summary Conclusions under the Criteria**

#### *Introduction.*

The decision of the IBIA vacated the EP and PEP final determinations as the Historical Eastern Pequot, sending them back for "further work and reconsideration." This reconsidered FD reviews the FDs on the basis of the IBIA decision. The IBIA decision also described grounds outside the Board's jurisdiction and referred these to the AS-IA for review. The ADS reviewed these grounds and reconsidered the FDS concerning criteria 83.7(b) and (c) after 1973 in response to IBIA Item 5 and in response to the Board's decision concerning state recognition as it applied to that time period. The ADS after review declined to reconsider the FDs based on the other described grounds.

*Reconsideration of Criterion 83.7(b).*

This reconsidered FD reviewed the FDs' evaluation under criterion 83.7(b) from colonial times up until 1973 and finds that state recognition was not relied upon as evidence. Consequently, there is no reason to reconsider that portion of the FDs, which is therefore affirmed.

The historical Eastern Pequot, including the families antecedent to both petitioners, meets the requirements of criterion 83.7(b) from the beginning of the 20th century through the early 1980's as a single community. An historical process of conflict within the Eastern Pequot resulted in two groups which had become completely separate after the early 1980's. The two petitioners do not meet the requirements of 83.7(b) because the division is too recent to accord with the Department's policy of discouraging splits within groups that might become Federally acknowledged and because they do not form a single community from the early 1980's to 2002. Therefore, this reconsidered FD concludes that the EP and PEP do not meet the requirements of criterion 83.7(b) to demonstrate existence as a community from historical times until the present, notwithstanding that the historical Eastern Pequot, from which the petitioners derive, and which was a single community, met criterion 83.7(b) from early colonial times until the early 1980's.

*Reconsideration of Criterion 83.7(c).*

The reconsideration of the FDs, reevaluating the state relationship as evidence as the IBIA decision calls for, did not affect the evaluation of criterion 83.7(c) before 1913 because the FDs did not rely on the state relationship as evidence for that period. Consequently, that portion of the FDs, that the historical Eastern Pequot including the families antecedent to the EP and PEP petitioners meets criterion 83.7(c) until 1913 as a single group is affirmed.

This reconsidered final determination concludes that the historical Eastern Pequot do not meet criterion 83.7(c) from 1913 to 1973 because there was insufficient evidence to demonstrate the exercise of political influence or authority. There was insufficient evidence that there was the exercise of political influence within the group as a whole or within in any portion of it during that time period. The two petitioners meet criterion 83.7(c) as one group from 1973 to the early 1980's. They did not exercise political influence or authority as one groups after the early 1980's until 2002, the date of the FDs. They have not maintained political influence or authority over their members as an autonomous entity throughout historical times until the present. Therefore, the petitioners do not meet criterion 83.7(c) and thus not meet the acknowledgment criteria irrespective of the recent division.

*Criteria 83.7(a), (d), (e), (f), and (g).*

The reevaluation of the post-1973 period resulted in the conclusion that the two petitioners formed separate groups after the early 1980's rather than a single group. The

evaluations of criteria 83.7(a), (d), (e), (f), and (g) have been revised to reflect the conclusion that the petitioners are two separate groups. The evaluations of criteria 83.7(a), (d), (e), (f), and (g) were not otherwise affected by the IBIA decision. Both petitioners meet these criteria.

*Conclusion.*

This reconsidered FD concludes that the EP and PEP do not separately meet the requirements of criterion 83.7(b) to demonstrate existence as a community from historical times until the present, notwithstanding that as a single group, the historical Eastern Pequot, from which the petitioners derive, meets criterion 83.7(b) from early colonial times until the early 1980's.

This reconsidered FD concludes that there is insufficient evidence of political influence or authority within the historical Eastern Pequot between 1913 and 1973 to meet the requirements of criterion 83.7(c). Neither petitioner has maintained political influence or authority over their members as an autonomous entity from historical times until the present and therefore do not meet the requirements of criterion 83.7(c), irrespective of the recent division.

The petitioners meet the requirements of criteria 83.7(a), (d), (e), (f), and (g). They do not meet criterion 83.7(b). They do not meet criterion 83.7(c) irrespective of the recent division. The petitioners do not meet the acknowledgment criteria and therefore the ADS declines to acknowledge the two petitioners, either separately or together, as a tribe.

## APPENDIX

### Analysis of the Towns' Six Issues about the June 26, 1873 Petition

1. Handwriting Discrepancies. The Towns questioned the validity of the petition because of the handwriting of the some of the signatures. Some of the handwriting for several names is the same, but that this reflects different family groups and someone writing the name for those who signed with an "x" or were too young to write, rather than evidence of tampering with the historical record. OFA's current review of the 1873 petition shows that the names Rachel M. [or W.] Jackson,<sup>90</sup> Fanny J, Irean J, Phebe J, Lucy A J, WM H J, and Janey M J [*sic*] appear to be in the same handwriting. In particular, the letter "J" appears to be alike in each of the names, and the signer used what looks more like lower case letters instead of capitals for the first letter in some of the names.

The handwriting for "Tamar S and her nine children" is different than the handwriting for Rachel Jackson and her children. In particular, the letters "a," "r," "s," and "n" found in the Jackson names are distinctly different from the same letters found in the "Tamar S . . ." phrase. There is evidence of a reasonable likelihood that two different individuals (probably Rachel Jackson, or one of her older children who could write, and Tamar Sebastian, or someone who knew her but not the names of all of her children) identified the two families. The handwriting for the Jackson family is very similar to the handwriting for the two Randall names on the back of the page, especially the capital "R's." The writing for the "Tamar S . . ." phrase does not appear to match any other writing on the 1873 petition; however, a more legible image may assist in comparing the handwriting of the remaining names that are still very faint or illegible on the current copy.

The two names that follow Tamar S . . ." on the 1873 list are James M. Watson and Sarah J. Watson. Their sister, Mary Eliza Watson, married Tamar's son Calvin Henry Sebastian in 1872. The handwriting for these two names appears to be identical or nearly identical.

The signature for Calvin Williams is in the same handwriting for "Mercy Williams 'her X mark'." [There is a distinctive "W" in both names.] Mercy Williams (1785-1874) was Calvin's mother and so it is logical that he would write her name for her to sign with an "x." Calvin Williams apparently also wrote the name "George W. Hill" who then signed with an "x."

2. Ages of Signers. The Towns stated that "It would appear that the only persons old enough to sign were Calvin Williams, Amanda Williams, E. Cottrell, Rachel M. Jackson,

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<sup>90</sup> The handwriting for the middle initial in Rachel Jackson's name looks more like the pointy shaped "W" seen in WM H J [William H. Jackson] than the rounded "M" in William or Janey M., or the "n" in Jackson, Fanny, and Irean, but could be either an "M" or a "W." Rachel Hoxic's husband was Henry W. Jackson.

Tamer, James M. Watson, Sarah J. Watson, George W. Hill, A.B. Randall, and possibly Mercy Williams, L., and Isaac” (Towns Request, 53). It is correct that these individuals were adults in 1873. [See the table in discussion under criterion 83.7(b) above for all known birth dates.]

This reconsidered determination does not agree that age was a determining factor in who would have signed a petition or been listed on a petition. The Towns do not state what is the age at which one is “old enough to sign” a petition, but imply that only those individuals over 21 were eligible to sign a petition. However, the standard historical records show that many legal actions were taken by individuals as young as 12 (girls) or 14 (boys), such as witnessing documents, testifying in court, choosing a guardian, showing land to processioners, being punished for crimes, signing contracts, acting as executor, bequeathing personal property by a will, and marrying.<sup>91</sup> Therefore, it is quite likely that it was “legal” for minors to sign a petition.

At least two individuals that the Towns say were “old enough” were also likely to be under 21: Sarah J. Watson was born on September 9, 1856, and her brother James M. Watson, who was born in 1853. His birth year was based on his age at the time of the 1860 census (7 years) and his death record which listed 1853 as the year he was born. If this is correct, James M. Watson was probably 20 years old in January 1873. Since the “L. \_\_\_ (X mark)” is illegible, it is not possible at this time to determine the individual’s name or age. The petition stated that “we are members of and belong to the Pequot tribe of North Stonington” who were protesting the sale of their land and requesting Leonard C. Williams be removed as their overseer. It appears that in at least two instances, the signers identified their children as “members,” including children who were too young to sign in their own right. OFA agrees with the Towns that there were minors as well as adults named or referred to on the June 26, 1873, petition. However, we do not agree that listing minors calls into question the “validity and origins” of the record.

3. Signatures vs. “x” Marks. The Towns questioned the validity of the 1873 petition because of the inconsistent use of signatures vs “x” marks. The Towns stated that Eunice Cottrell’s signature was on the 1873 petition, but signed with an “x” mark on the 1874 petition. First, OFA’s review shows that the name that has been interpreted as “E. Cottrell” for Eunice (Fagins) Cottrell is one of the faintest images on the photocopy. Thus, it is not possible from the copy available to say with surety that there was not an “x” on the original. Second, given the age of Eunice (Fagins) Cottrell, who was born in 1801 [she died in 1888], it is quite likely that she was able to sign her name one year, but be unable to sign the following year. OFA does not see that the use or non-use of an “x” mark in this case invalidates the signature of Eunice (Fagins) Cottrell. Again, a more legible image of the June 26, 1873, petition may reveal other information that could affect this analysis.

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<sup>91</sup> See the attached copy of “Ages of Legal Action” from *The Source A Guidebook of American Genealogy*, Edited by Arlene Eakle and Johni Cerny, SLC, Utah 1984. The information on ages of legal action was taken in part from *The Law of Baron and Femme of Parent and Child, Guardian and Ward, Master and Servant, and of the Powers of the Courts of Chancery; with an Essay on the Terms Heir, Heirs, Heirs of the Body*, 3<sup>rd</sup> ed. by Judge Tapping Reeve, 1862; reprint ed. New York: Source Book Press 1970.

4. Appearance of “Brushel” Surname. The Towns stated that the name listed just above “Tamar S,” is “. . . indistinguishable, except for “Brushel.” Tamer’s name is not followed by the name of Brushel, and what is written after it appears to be more of a statement than a signature” (Towns Request, 52), referring to “Tamar S and has nine children” or “Tamar S and Har nin children” [sic] as it appears on the petition. This challenge to the validity of the record rests on two issues: the use of Brushel as a surname and the lack of names for Tamar’s children.

The FD interpreted the name preceding Tamar as “Leonard Brown,” not “\_\_\_ Brushel.” However, if the name preceding Tamer’s is “Brushel,” it probably refers to John, Emily, or Hannah Brushel who were listed as members of the Pequot Tribe on the June 27, 1873, list. [It is not known at this time how Emily and Hannah may have been related to Tamar, John, and Moses Brushel.] The record for the PF and the FD showed that Tamar and John Brushel were the children of Moses Brushel (b. between 1775 and 1794 and d. 1843) who was a member of the Pequot Tribe. Moses Brushel and his children John and Tamar were mentioned in the overseer’s reports in the 1820’s and 1830’s, including a statement that showed Moses received payments from the overseer for the rental of his land between June 22, 1831, and June 19, 1832: “The Moses Brushel field which was let with pasture reserve for Richard Nedson” (cite). The overseers’ reports also showed his final illness and coffin were paid for out of the Pequot tribal funds. Therefore, Moses’ known heirs, Tamar (Brushel) Sebastian and John Brushel (and any others), would be likely candidates as members of the tribe who were protesting the sale of Pequot lands. It is reasonable to assume that the Brushel name could appear on the June 26, 1873, petition.

It is not reasonable to question the validity of the record because “Tamar S and her nine children” appears on the petition instead of “Tamar Brushel” and “Brushel children.” Tamer Brushel married Emmanuel Sebastian in 1848 and was living in nearby Groton, Connecticut where her nine children were born between 1849 and 1867. Tamar’s surname, and that of her children, was “Sebastian” in 1873, not “Brushel.” The other married women on the 1873 petition are also listed by their married names, not their maiden names. Therefore, it is not reasonable to question the validity of the names on the 1873 petition because Tamar and her children were not listed by her maiden name.

5. Some Children Were Named, but “Brushel” Children Were Not. The Towns also questioned the validity of the petition based on the phrase that has been transcribed as “Tamar S and her nine children,” [OFA sees that it could also be “Tamar said has nin cheldren”], by stating that “the Brushell [sic] children were not identified, which was unlike the rest of the petition, where the children of Rachel Jackson, two of Laura Fagins Watson’s children, and two of Abby Fagins Randall’s children were named” (Towns Request, 52).<sup>92</sup>

It is true that all of Rachel’s children were named, and two of Laura (Fagins) Watson’s and at least one of Abby (Fagins) Randall’s children signed. However, not all of the

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<sup>92</sup> Elsewhere the Towns challenge the 1873 petition because Rachel (Hoxie) Jackson’s minor children are listed by name.

Watson and Randall children signed or were listed. Abby (Fagins) Randall had at least two other children living in 1873 and Laura (Fagins) Watson had at least three other children living in 1873. Other adults on the 1873 petition also had children who did not sign or were not named by their parents as members of the Pequot tribe. For example, Calvin Williams had at least two living children and his mother, Mercy Williams, had two living children who were not on the 1873 petition. The June 27, 1873, list of members and the March 31, 1874, petition included more of these individuals and other Pequot Indians. Thus, it appears that the 1873 petition did not include all of the members of the Eastern Pequot tribe, but was a record of those individuals protesting the sale of Pequot land and requesting the removal of Leonard C. Williams as the overseer. The inclusion or exclusion of individuals may have been based on their proximity to the court, or the reservation, on the day the petition was written and filed.

6. Discrepancies with Contemporary Overseer Lists. The Towns stated that the reason the names “Calvin Williams, Tamer Brushel, Mercy Williams and \_\_\_ Brushel” appeared on the petition but not on overseer Leonard C. Williams’ list of Pequot Indians was because they were “not part of the tribal community, but were interlopers” (Towns Request, 55). The evidence in the record does not support this accusation. Calvin Williams appeared on the overseer’s reports throughout the 1880’s and received goods and services from the Pequot fund almost yearly from 1891 until 1905. There is no question that the Eastern Pequot overseers recognized Calvin Williams as a member of the tribe and eligible to receive services. Likewise, Tamer Brushel, who was identified as a Pequot Indian in the overseer’s reports in her childhood, was listed as having received goods or services from the Pequot fund in the overseer’s reports in 1889, 1891-1897, 1899-1902, and 1905. The overseer did not see her as an interloper, but as a member of the tribe who needed assistance in her old age (EP FD, 89).

If Calvin Williams is the same as Calvin Ned or Nedson, as there is now evidence to believe, then he was identified by the overseers from throughout his youth until his death as an Eastern Pequot Indian. It is logical that at least one of his parents and his siblings would also be recognized as members of the tribe. Mercy (maiden name unknown, but possibly Quash) Williams, was the wife of Ammon Williams and mother of Calvin, Mary A. Potter, Harriet Merriman and William Williams on the petition. The question remains as to whether Mercy Williams was also Pequot or from some other tribe, but since we do not have her maiden name or and have not reasonably established that she was also known as Mercy Quash, her tribal associations have not been confirmed this at this time. However, she was listed on both the January 26, 1873, petition January 27, 1873, list of Pequot Indians; therefore, it seems likely that she was an Eastern Pequot Indian. Tamer Brushel, her father, and half-brother were on the overseer accounts in the 1830’s to 1840’s.

There are some family ties or connections between some of individuals on the list, but it is clear that the petition did not include “interlopers.” Calvin Williams, his wife Amanda (Nedson) Williams, and his mother Mercy Williams were on the petition. (In 1890, Calvin would marry Tamar Sebastian, daughter of Tamar (Brushel) Sebastian. Thus, Tamar (Brushel) Sebastian was his *future* mother-in-law.) Leonard Brown was Amanda

(Nedson) Williams' first cousin. Tamar (Brushel) Sebastian was related by marriage to the Watsons on the 1873 petition: her son was married to Mary Eliza Watson, sister of James M. and Sarah J. Watson. The Watsons were the children of Laura (Fagins) Watson who had been listed on the 1859 (and other) overseer accounts as a member of the Pequot tribe.

The overseers accounts between 1857 and 1876 routinely identified a "Calvin Ned or Nedson" as one of the Pequot Indians, with Leonard C. Williams reporting that Calvin Ned or Nedson was in [or on] "West Florada" [*sic*] on the April 1868, 1869, and April 1870 to April 1871 reports.<sup>93</sup> OFA has not been able to determine if this referred to a place or a ship. There are villages in New York and in Massachusetts called Florida, but no Calvin Ned or Nedson or anyone surnamed Nedson appeared in the 1870 census index for either of these states, or in the State of Florida.

The Pequot genealogical database prepared by the OFA for the PF and FD does not identify parents, siblings, children, or a spouse for a Calvin Ned or Nedson, and has only estimated birth and death dates (before 1842 to after 1877), based on his appearances in the overseers' accounts. The name Calvin Ned or Nedson does not appear on the 1870 or 1880 Federal censuses for Connecticut, Florida, or any other state. However, Calvin Williams (1832-1913), who was the son of Ammon Williams and Mercy and who married Amanda (Nedson) Douglas on February 25, 1869, in North Stonington, was listed as one of the "Indians in North Stonington" on the 1870 Federal census. Calvin Williams signed the June 26, 1873, petition, the March 31, 1874, petition, and was listed in the overseer accounts for 1879-1880 and later. The name Calvin Ned or Nedson as the name of a Pequot Indian periodically appears on the overseers' accounts and lists of Pequots from 1857 to 1876. "Calvin Nedson" also appears on the document dated June 27, 1873, which lists of names "belonging to the Pequot tribe Indians of North Stonington." Here the handwriting for the entire document appears to be that of one individual and matches the handwriting for the signature of Calvin Williams on the June 26, 1873, petition. However, the name Calvin Williams does not appear on the June 27th list: the name Calvin Nedson, does. Again, the handwriting for the signature of Calvin Nedson matches the handwriting in the signature for Calvin Williams in the other documents. Calvin Nedson does not appear on any of the overseer accounts after 1876,

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<sup>93</sup> The Overseer list of members of the tribe for 1868 shows among others: "Calvin Ned Thewest Fl" [*sic*], followed by the names of Joseph Fagans, James Kiness, George Hill and Andrew Hill [no places indicated]. The list of Pequots that Leonard C. Williams sent to the North Stonington Town Clerk on July 12, 1869, included the following: Calvin Ned or Nedson (West Florada) [*sic*], Joseph Fagins ~~~~~ [ditto], James Kiness [ditto], George Hill [ditto], Andrew Hill [ditto]. The list of Pequots that was attached to the document showing the assets of the Pequot Tribe of North Stonington in 1870 had the same names as in 1869, showing among others, "Calvin Ned or Nedson (in [*sic*, or on] West Florada)" followed by Joseph Fagins, James Kiness, George Hill, and Andrew Hill, each with dashes and ditto marks after their names, indicating that each one of them was also in, or on, "West Florada." There is no evidence in the record that Calvin Nedson or any other of these Pequot Indians were ever in the State of Florida, or "West Florida" as the panhandle was known. It may be that "The West Florada" was a schooner or other vessel and that these men worked at sea for a time, as did Moses Brushel and Marlboro Gardner in other years. It may be beneficial to see the names of vessels going out of New London [and the crews] to confirm the theory that West Florada" was a ship, not a state. The crew lists from the years 1868 to 1870 may also provide additional identifications for Calvin Ned or Nedson, possible AKA, Calvin Williams.

but Calvin Williams does. The names “Calvin Ned or Nedson” and “Calvin Williams” do not appear on the same document.

When the overseer identified members of the Pequot tribe, he referred to “Calvin Nedson,” but when a document was written or signed by members of the Pequot tribe, the name was signed as “Calvin Williams,” with the one exception noted above. To date, OFA has not found a single document with both names on it. From the sequence of overseers’ reports and petitions, there were either two men named Calvin who were Pequots, who were not in the same place at the same time, or there was one man named Calvin who used two surnames: Nedson and Williams.

As seen throughout the records, various Pequot families were identified by more than one surname. For example, Rachel (Hoxie) Jackson was also known as Rachel Ned or Nedson and Rachel Orchard, Amanda or Miranda (Nedson or Ned) Douglas Williams was referred to as Nedson or Ned, even after her marriages, and Leonard Brown was also known as Leonard Ned or Nedson.<sup>94</sup> Considering the common practice of Pequot Indians being known by more than one name, it is reasonable to assume Calvin Ned or Nedson and Calvin Williams were indeed one in the same. Therefore, Calvin Williams was not an “interloper” as the Towns allege.

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<sup>94</sup> There was no one surnamed Ned or Nedson on the 1870 census for Connecticut.