

UNITED STATES DEPARTMENT OF THE INTERIOR

**BUREAU OF INDIAN AFFAIRS
BRANCH OF ACKNOWLEDGMENT AND RESEARCH**

**In re FEDERAL ACKNOWLEDGMENT :
PETITION OF THE GOLDEN HILL :
PAUGUSSETT TRIBE :**

**BRIEF OF THE STATE OF CONNECTICUT REGARDING THE
PETITION FOR FEDERAL TRIBAL ACKNOWLEDGMENT
OF THE GOLDEN HILL PAUGUSSETT PETITIONER**

STATE OF CONNECTICUT

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TABLE OF CONTENTS

| | | |
|-------------|---|-----------|
| I. | Introduction | 1 |
| | A. Procedural Background | 1 |
| | B. Summary of Argument | 2 |
| II. | Acknowledgment Standards | 5 |
| III. | The Petition Fails to Meet Criterion (a), Identification as an American Indian Entity on a Substantially Continuous Basis Since 1900 | 8 |
| | A. Lack of Evidence of Identification by Federal Authorities (83.7(a)(1)) | 8 |
| | B. Lack of Evidence of Relationship with State Government (83.7(a)(2)) | 8 |
| | 1. Absence of State Standards for Determining Indian Status and the Lack of Relevance of State Recognition | 9 |
| | 2. Under the Regulations, State Recognition Does Not Augment or Supplement Evidence for the Other Mandatory Criteria | 11 |
| | 3. Federal Recognition, Unlike State Recognition, Has Always Required Satisfaction of Certain Basic Standards Premised on the Existence of a Distinct Political Society Capable of Self-Government | 14 |
| | 4. Other Evidence Relied on by the Petitioner of State Relationships Is Insufficient | 17 |
| | C. Lack of Evidence of Dealings with Local Governments (83.7(a)(3)) | 17 |
| | D. Lack of Scholarly and Other Identification (83.7(a)(4), (5) & (6) ... | 18 |
| | E. Inadequacy of Purported Identification Evidence | 19 |
| IV. | The Petition Fails to Meet Criterion (b), Proof of a Distinct Community From Historical Times Until the Present | 22 |
| | A. There Was No Distinct Community as Early as 1763, if Not | |

| | | |
|-------------|---|-----------|
| | Earlier; Tribal Existence Had Been Abandoned | 23 |
| B. | The Evidence Regarding the Purported Central Role of William Sherman Shows That There Was No Continuing Distinct Community | 28 |
| 1. | William Sherman’s Relationship With Henry Pease | 30 |
| 2. | The Nichols Cemetery | 34 |
| C. | The Evidence Regarding the Role of Ethel Sherman Does Not Demonstrate a Distinct Community | 37 |
| V. | The Petition Fails to Meet Criterion (c), Proof of Political Influence or Authority Over Its Members as an Autonomous Entity From Historical Times Until the Present | 40 |
| A. | There Is a Complete Lack of Political Influence or Authority Demonstrated by 1763 | 44 |
| B. | William Sherman Exercises No Political Influence or Authority Within the Meaning of § 83.7(c) | 44 |
| 1. | William Sherman’s Purchase and Subsequent Conveyance of Property Is Not Evidence of Political Leadership | 45 |
| 2. | Petitioner’s Claims of Care for Tribal Members and Contact with a Larger Paugussett Community Are Unsupported | 47 |
| C. | Petitioner Fails to Prove Political Influence and Authority From 1970 to the Present | 48 |
| 1. | No Bilateral Political Relationship With Overall Membership Is Shown on the Basis of the Chief’s Authority | 48 |
| 2. | The Evidence Reveals a Profound Lack of Involvement by Members Other Than Family Members | 51 |
| VI. | The Petitioner Has Not Remedied Various Deficiencies Regarding Criterion (d), Governing Documents | 55 |
| VII. | The Petition Fails to Satisfy Criterion (e), Proof of Descent From a | |

| | |
|---|-----------|
| Historical Tribe | 57 |
| A. The Petitioner Has Offered No Acceptable Proof of Tribal Descent From William Sherman | 59 |
| 1. There Is No Evidence That Rowland Lacey, the Golden Hill Agent, Identified Either William Sherman or His Son as Golden Hill Indians | 60 |
| 2. William Sherman’s Relationships With Henry Pease and Others Does Not Establish Tribal Descent | 60 |
| 3. The Contradictory and Inconsistent Census Data Fails to Prove Descent From a Historic Tribe | 61 |
| B. Descent From a Single Individual Who Did Not Live in Tribal Relations Fails to Meet the Mandatory Requirement of Tribal Descent | 65 |
| C. Tribal Descent Cannot Be Established From the Alleged Turkey Hill Descendents | 66 |
| 1. There Is No Evidence That the Turkey Hill Property Was Either Established for the “Paugussett Nation” or Was Part of an Original 18th Century Reservation as Required by the Petitioner’s Own Membership Requirements | 66 |
| 2. The Expanded Membership Is Not Based on Tribal Relations and Is Therefore Invalid | 67 |
| 3. There Is No Evidence Petitioner Is Descended From the “Myrrick” Family | 69 |
| 4. The Petitioner’s Evidence Relating to Andrew Allen Does Not Establish Descent From Turkey Hill Indians | 71 |
| VII. Conclusion | 76 |

I. INTRODUCTION

The State of Connecticut respectfully submits this brief in response to the submissions of the petitioner Golden Hill Paugussetts (“GHP”) in the tribal acknowledgment proceedings following the Reconsideration Order of May 24, 1999 by the Deputy Assistant Secretary for Indian Affairs in connection with the GHP petition for federal acknowledgment. Pursuant to 25 C.F.R. § 83.10(f)(2), this response should be considered by the Department prior to the issuance of the proposed finding on the petition. Such consideration will be of assistance to the Department in issuing an informed decision. See State letters dated August 1, 2000 & September 1, 2000. (Exs. 1 and 2). Submitted with this brief is an appendix providing a more detailed analysis of the petitioner’s evidence and contentions.

A. Procedural Background

On September 26, 1996, the Assistant Secretary - Indian Affairs, following a thorough investigation by the Branch of Acknowledgment and Research (“BAR”), issued a Final Determination denying the GHP petition. 61 Fed. Reg. 50,501. The Final Determination followed an extensive Proposed Finding, issued under 25 C.F.R. § 83.10(e), which permits expedited review where there is little or no evidence that the petitioner can meet certain mandatory criteria. 60 Fed. Reg. 30,430. In denying the petition, the Assistant Secretary concluded that the petitioner “has not demonstrated that its membership is descended from a historic tribe, or tribes that combined and functioned as a single autonomous political entity.” *GHP* Final Determ., Sum. Crit. 18. In particular, the Assistant Secretary found that the petitioner had not established a reasonable likelihood of the validity of the assertion that the single ancestor through whom the petitioner claimed descent -- William Sherman -- descended from a historical Indian tribe, was a member of a tribe or had lived in tribal relations. *Id.*

Following the issuance of the Final Determination, the petitioner filed a request for reconsideration with the Interior Board of Appeals (“IBIA”).^{1/} On September 8, 1998, the IBIA affirmed the Final Determination, but referred five allegations of legal error to the Secretary of Interior because they did not fall within the IBIA’s jurisdiction under 25 C.F.R. § 83.11.^{2/} However, in a highly unusual measure, rather than limiting his reconsideration to the five issues referred by the IBIA, the Deputy Assistant Secretary - Indian Affairs on May 24, 1999 directed that the petition be given full consideration under the seven mandatory acknowledgment criteria.^{3/}

In response to the Reconsideration Order, the petitioner submitted voluminous documents in an attempt to bridge the gaps in its evidence. The petitioner’s submissions, while substantial in number, continue to fail to satisfy the mandatory acknowledgment criteria.

B. Summary of Argument

The record demonstrates that the petitioner still fails to meet the mandatory acknowledgment criteria. There has been a radical change in the purported composition and membership of the petitioner from 82 members said to be the descendants of William Sherman as

^{1/} Another group calling itself the Golden Hill Paugeesukq also requested reconsideration, claiming that it is the actual governing body of the petitioning group.

^{2/} The five issues were (1) whether the BIA improperly placed the burden of proof on the petitioner; (2) whether the BIA improperly adopted and relied on a “one-ancestor” rule without following rulemaking procedures; (3) whether the BIA improperly declined to hold a formal meeting pursuant to 25 C.F.R. § 83.10(j)(2); (4) whether the BIA improperly considered materials submitted by third parties; and (5) whether the BIA improperly considered the petition without requiring it to be certified by the governing body of the Golden Hill group.

^{3/} The Reconsideration Order was issued by the Deputy Assistant Secretary because the Assistant Secretary Kevin Gover was recused from participation on the GHP petition. His recusal was based on his prior legal representation of the GHP. Indeed, the State was compelled to request ASIA Gover’s recusal from participation on the petitions of the Eastern Pequot, Paucatuck Eastern Pequot and Schaghticoke groups because the resolution of certain issues in those petitions -- particularly, the question of the effect of State recognition of these groups -- would have a direct effect on the GHP petition.

of 1995 to almost triple this number, 240, as of October 1, 1999. Supp. to Doc. Pet., Attachments, Tab 2 (Oct. 1, 1999); *GHP Prop. Find.* TR 49. Originally, petitioner claimed that it was descended from a sole ancestor, William Sherman, alleged to have been “the key link between the historic Golden Hill Indians” and the members of the present group. Reconsid. Order, at 1, 5; *see also GHP Prop. Find. Sum. Crit.* 9, TR 48; *Fin. Determin., Sum. Crit.* 17. The petitioner, having encountered significant difficulties in proving tribal descent from Mr. Sherman, now asserts that it is descended either from Mr. Sherman or from Levi Allen and Delia Myrrick and the progeny of their son, Andrew Allen, who is alleged to have been a Turkey Hill Indian. *Pet. Supp. to Doc. Pet.*, Oct. 1, 1999, 174, 192, 201). The petitioner now claims that it is descended from a supposedly “single tribe” which not only had a “principal community” at Golden Hill (presumably somewhere in the Bridgeport-Trumbull area), but also “other communities” in the Derby, Connecticut area. *Id.* at 177.

There is absolutely no showing whatsoever of any tribal relations, historic or present, between the two lines of descent and the two alleged communities, contrary to well-established requirements. *See, e.g., McLanahan v. State Tax Commission of Arizona*, 411 U. S. 164, 173 (1973); *Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277, at *20 (7th Cir. 2001); *Masayesva v. Zah*, 792 F. Supp. 1178, 1181 (D. Ariz. 1992). There is no evidence that there were any social relationships between the two or that the two have ever constituted a distinct community. *See* 25 C.F.R. § 83.7(b). Nor is there evidence that either group maintained political influence or authority over the other, or, for that matter, that the petitioner as a whole exercised that influence or authority over the members of each. *See id.* § 83.7(c).

In addition, there appears to be no reliable evidence of identification of the Golden Hill group on a substantially continuous basis prior to 1932, and there are also significant deficiencies in evidence for the subsequent period. There appears to be no evidence at all of such identification for the Turkey Hill-Derby group or any other alleged group of the petitioner as existing at any time from 1900 through the present.

Moreover, the petitioner has failed to demonstrate substantially continuous tribal existence for either the group as a whole or the Golden Hill or Turkey Hill components separately. In fact, there appears to be no purported tribal existence shown for the William Sherman family and descendants before 1933, when this group apparently obtained a state reservation (*GHP Prop. Find TR 53*), notwithstanding some sporadic claims that certain individuals were Indians. There are also substantial defects for the period after 1933, as well as before the advent of William Sherman. There is no showing of tribal existence at all, or even continued existence as part of a tribe, for the Turkey Hill Indians after 1871, and substantial gaps and lack of acceptable proof before that time. Finally, no tribal descent is shown for the descendants of William Sherman, Levi Allen, Delia Myrrick, or Andrew Allen, the key ancestors petitioner relies on.

The Seventh Circuit's recent comments regarding the BIA's denial of the *Miami* petition are even more apt as to the merits of this petition. The petitioner here, like the *Miami* petitioner, is not "a tribe in any reasonable sense. It [has] no structure. It [is] a group of people united by nothing more than [an alleged] common descent, with no territory, no significant governance, and only the loosest of social ties." *Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277, at *20 (7th Cir. 2001). Accordingly, the petition must be denied.

II. Acknowledgment Standards

Despite the petitioner's protestations about the appropriateness of the criteria, *see* Supp. Doc. Pet. 4 n. 4,^{4/} the petitioner must satisfy each of the seven mandatory criteria for acknowledgment. The burden of proof is on the petitioner. 25 C.F.R. § 83.6. The acknowledgment regulations are "intended to apply to groups that can establish a **substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.**" 25 C.F.R. § 83.3 (a) (emphasis added). The term "continuous" means "from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption." *Id.*, § 83.1. "History" and "historical" mean "dating from first sustained contact with non-Indians." *Id.*

The standards of proof are high to ensure that a petitioner is in fact tribal in character and can demonstrate historic tribal existence. *See* 59 Fed. Reg. 9282 (1994). To begin with, the documented petition must contain "**detailed, specific** evidence" in support of an acknowledgment request. 25 C.F.R. § 83.6(a) (emphasis added). The petition must also contain "**thorough explanations and supporting documentation** in response to all of the criteria." *Id.*, § 83.6(c) (emphasis added).

A petition may be denied if the available evidence "demonstrates that it does not meet one or more of the criteria," or if there is "insufficient evidence that it meets one or more of the

^{4/} Because petitioner was not yet on active consideration at the time the 1994 regulations were issued, it is governed by them. § 83.3 (g): *see GHP* Final. Determ. TR 6; App C 2 (Sol. Opin. May 21, 1996, p. 5.). The Department has stated the general standards for interpreting evidence in the 1994 regulations "are the same as were used to evaluate petitions under the previous regulations." 59 Fed. Reg. 9280. Although in some circumstances the evidentiary burden is reduced, "the standards of continuity of tribal existence that a petitioner must meet remain unchanged." *Id.* Furthermore, just as the changes would not result in denial of petitioners which would have been acknowledged under the prior regulations, "[n]one of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previous effective acknowledgment regulations." *Id.*

criteria.” *Id.*, § 83.6(d). Although conclusive proof is not required, the available evidence must establish “a reasonable likelihood of the validity of the facts relating to that criterion” for that criterion to be met. *Id.* As the preamble states, “the primary question is usually whether the level of evidence is high enough, **even in the absence of negative evidence**, to demonstrate meeting a criterion.” 59 Fed. Reg. 9280 (1994) (emphasis added). In many cases, “evidence is too fragmentary to reach a conclusion or is absent entirely.” *Id.* In addition, “a criterion is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner.” *Id.*

The standards take into account situations and periods where the evidence is “demonstrably limited or not available.” 25 C.F.R. § 83.6(e). The requirements of community and political authority need not be met at every point in time, and fluctuations in tribal activity in various years shall not “in themselves” be cause for denial of acknowledgment. *Id.* Consideration of these limitations “does not mean, however, that a group can be acknowledged where continuous existence cannot be reasonably demonstrated, nor where an extant historical record does not record its presence.” 59 Fed. Reg. 9281. A petitioner must still establish existence on a substantially continuous basis. 25 C.F.R. §§ 83.3(a), 83.6(e).

Finally, the regulations specify that organizations “**of any character that have been formed in recent times may not be acknowledged.**” *Id.* § 83.3(c).^{5/} (Emphasis added). *See also* 59 Fed. Reg. 9284 (definition of continuity “would not permit recently formed groups in areas with long-standing non-Indian settlement and /or governmental presence to claim historical existence as a tribe”). Even assuming that petitioner’s membership standards purportedly extend

^{5/} These newly formed organizations are distinguished from a group that meets all the mandatory criteria, but only recently formalized its “existing autonomous political process.” 25 C.F.R. § 83.3(c).

to descendants of Indians on the Turkey Hill reservation and others, *see* Reconsid. Order, App. II n 1, the undeniable fact is that the petitioner did not actually form this joint group or accept the alleged Turkey Hill descendants as actual members until recently, in response to the shortcomings identified in the original Final Determination.

It follows from the requirements of substantially continuous community and political authority that even petitioners with common tribal ancestry, “but whose families have not been associated with the tribe or each other for many generations” are ineligible for acknowledgment. 59 Fed. Reg. 9282 (stated in the context of prior Federal acknowledgment, but applicable with even greater force here). The present petition falls in this category because it fails to show any association at all between the alleged historic Turkey Hill and Golden Hill families and their alleged descendants.^{6/}

^{6/} The petitioner’s claim that the obvious deficiency/technical assistance letters are an exclusive list of deficiencies which the Department cannot go beyond (*see* Supp. to Doc. Pet., 5-6, 124), is incorrect on its face. The obvious deficiencies letter expressly states that it “does not constitute a preliminary determination of the Golden Hill Paugussett petition” and does not mean that BAR [Branch of Acknowledgment and Research, BIA] has or will reach positive or negative conclusions on the petition, including “portions of it not discussed in this letter.” Letter of obvious deficiencies, Aug. 23, 1993, second letter of Oct. 19, 1994, at 3.

III. THE PETITION FAILS TO MEET CRITERION (a), IDENTIFICATION AS AN AMERICAN INDIAN ENTITY ON A SUBSTANTIALLY CONTINUOUS BASIS SINCE 1900.

The petitioner has not established that it meets criterion 83.7 (a), which requires proof that it “**has been identified as an American Indian entity on a substantially continuous basis since 1900.**” 25 C.F.R. § 83.7(a) (emphasis added). The regulations provide that identification can be made through several categories of evidence, including identification by federal authorities, relationships with state and local governments, and scholarly identification. *Id.* The petitioner’s evidence in each of these categories is woefully deficient.

A. Lack of Evidence of Identification by Federal Authorities (83.7(a)(1))

There is only one possible identification as an Indian entity by federal authorities under § 83.7(a)(1). That is the 1952 U. S. House of Representatives report that refers to the “Paugussett” only as a “small Algonquian group on a minute fraction” of restricted State land near Bridgeport. Pet. App. IV, 154. The basis of this identification is not indicated.

B. Lack of Evidence of Relationships with State Government (83.7(a)(2))

The evidence of relationships with State government does not support recognition of the petitioner as an Indian tribe under federal standards. The contacts between the State and the Golden Hill group relied on by the petitioner, from colonial times to the present, show that the State never treated the Golden Hill group as a distinct community having political authority or sovereignty. Quite the contrary, most of the evidence of state relationships demonstrates that the Golden Hill group had at best an ambiguous status. Indeed, the evidence reflects a profound lack of State standards or evaluation similar to that required by the federal acknowledgment regulations. Moreover, the fact that the State recently recognized the existence of several State tribes, including the GHP, is not a basis for supporting federal recognition.

1. Absence of State Standards for Determining Indian Status and the Lack of Relevance of State Recognition.

As the BIA has on numerous occasions stated, state recognition of an Indian group is not binding on the federal government because state standards vary widely and may have little relation to federal acknowledgment standards. *GHP* Final Determ., TR, at 97; *Mohegan* Final Determ., TR at 172. This principle is particularly applicable here. Throughout most of the colonial and state periods, Connecticut lacked a specific definition, statutory or otherwise, of “Indian” or “Indian tribe” and had no process for making determinations of such status. Instead, overseers were appointed on a more or less ad hoc basis for Indian groups. *See* State’s IBIA Brief, App. V, 1-3. This lack of standards -- and the lack of relevance to federal standards -- continues through to the State’s present recognition of the GHP.

In 1989, the Connecticut General Assembly enacted Public Act 89-368, codified at Conn. Gen. Stat. § 47-59a. It provides that the State recognizes “indigenous tribes,” including the GHP, and that such groups

are self-governing entities possessing powers and duties over tribal members and reservations. Such powers and duties include the power to: (1) 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.

Conn. Gen. Stat. § 47-59a. The legislation expressly provides that “[n]othing in [it] shall be construed to confer tribal status under federal law on the indigenous tribes named in section 47-59a. . . .” Conn. Gen. Stat. § 47-66h(b) (emphasis added); *see State v. Sebastian*, 243 Conn. 115, 147, 701 A.2d 13 (1997) (no authority for State to determine whether group satisfies federal acknowledgment requirements).

There is nothing in the legislative history of the Public Act that suggests that the legislature conducted the sort of historical, genealogical or anthropological research of any of the recognized groups or their members contemplated by the federal acknowledgment standards. In particular, there is no evidence, either by way of legislative findings or legislative history, that the recognized groups in fact exercised any of the powers enumerated in the legislation regarding membership and tribal government, let alone that they exercised these functions as a distinct community with bilateral political relationships historically and on a continuous basis.

Moreover, even under the recent state legislation these groups were not self-governing in a sense that is relevant to federal acknowledgment standards. For instance, although membership and leadership disputes are to be settled by “tribal usage and practice,” the legislation provides for an arbitration-type procedure, including possible appointment of a third member of the arbitration council by the Governor and a right to appeal to Superior Court. Conn. Gen. Stat. §§ 47-66i, 47-66j. Similarly, the legislation provides that the Connecticut Department of Environmental Protection, with the advice of the Connecticut Indian Affairs Council, shall have control and management of tribal reservation lands and tribal funds. *Id.*, §§ 47-65, 47-66. Plainly, state recognition in this legislation does not contemplate the existence of the elements of distinct community and bilateral political relationships that are the fundamental prerequisites for federal recognition.

This conclusion is supported by the legislative history. Proposals in the bill that became Public Act 89-368 to declare the referenced Indian groups as “sovereign nations retaining limited sovereign powers. . .,” House Bill 7479, § 20(b) (Ex. 3), and to give the recognized groups the power to tax reservation residents, *id.*, were deleted from the final bill that became law. Not only was there no evaluation even approaching the standards necessary for federal recognition was

undertaken,^{7/} it is clear from the limited nature of the powers accorded the State recognized tribes that no determination was made that these groups had any of the attributes necessary for federal recognition.

In sum, the State's recognition of the GHP was not based on historical or genealogical standards or an evaluation of the sort of considerations that would support federal acknowledgment. In fact, the legislature expressly stated that its recognition was not intended to be used as evidence in support of federal recognition, underscoring that the purpose of and basis for State recognition was quite different from that for federal recognition and the concomitant establishment of government-to-government relations.

2. Under the Regulations, State Recognition Does Not Augment or Supplement Evidence for the Other Mandatory Criteria.

Evidence of relationships with state government is considered under the regulations only with regard to criterion (a), identification as an Indian entity. It is not appropriate evidence with regard to any other criteria and cannot be used as a substitute for such evidence or as a basis for giving greater weight to such evidence.^{8/}

For instance, there is no basis to assume that state recognition demonstrates "consistent interactions and significant social relationships" within the group's membership, as required under the regulations for criterion (b). 25 C.F.R. § 83.1 (definition of community). State recognition says nothing about the nature of the relationships among group members and whether any such

^{7/} In fact, there was some legislative uncertainty regarding the Golden Hill group's inclusion in the list of "indigenous tribes." In the legislative proceedings that resulted in the passage of the 1973 legislation that transferred control over Indian affairs from the Welfare Department to the Department of Environmental Protection together with the newly created Indian Affairs Council, the Golden Hill group was not initially included. There were significant questions raised about the Golden Hill group's status, and they were only added to that legislation by amendment from the floor. *See* State IBIA Brief, App. V, at 12-14.

^{8/} The insufficiency of the evidence of state contacts and actions with regard to criterion (e), tribal descent, is discussed in detail in Appendix, § III.B.

relationships are significant enough to be the basis for a distinct community. Similarly, there is no basis for assuming that there have been continuous bilateral political relationships, the hallmark of tribal existence. To the contrary, state recognition demonstrates that the *State* exercises the political functions that constitute the critical characteristics necessary for satisfying criterion (c). *See* Conn. Gen. Stat. §§ 47-65, 47-66, 47-66i, 47-66j. There has been no evidence presented that the purported leaders with whom the State had interacted even represent a larger group, much less that they exercise political authority and influence as to that larger group.

The acknowledgment regulations reduce the burden of proof as to the other criteria when there was prior *federal* recognition for a tribe, 25 C.F.R. § 83.8; 59 Fed. 9282, *not* for state recognition. The rationale for this distinction is obvious: The purpose of the acknowledgment criteria -- demonstrating a basis for establishing government-to-government relations between a tribe and the federal government -- is satisfied in part by evidence of prior acknowledgment by the federal government. In contrast, the same can not be said for state recognition. As demonstrated above, state recognition does not carry with it an evaluation of the factors necessary for federal recognition. Most tellingly, if it was intended that state recognition should have a similar role in replacing or supplementing evidence required for the other criteria, the regulations could and should have expressly provided for such treatment. Instead, the regulations expressly limit the relevance of state relations to criterion (a). Under the basic rules of construction, the regulation's failure to provide for a similar treatment of state recognition as it does for prior federal recognition, and its limitation of the relevance of state recognition to criterion (a), must be taken as demonstrating that state recognition is not to be given any weight as to the other criteria, nor is it to be used as means of making up for deficiencies in the evidence on the other criteria. *See Hohn v. United States*, 524 U.S. 236, 258 (1998).

In the *Eastern Pequot* and *Paucatuck Eastern Pequot* Proposed Findings, the BIA wrongly used state recognition to supplement deficiencies identified in the petitioners' evidence under criteria (b) and (c).^{9/} See *Eastern Pequot* Prop. Finding 63; *State Comments on Eastern Pequot and Paucatuck Eastern Pequot Proposed Findings*, at 15-26 (Aug. 1, 2001). Even under the BIA's own notion of the significance of state recognition, the argument that state recognition can lessen the evidentiary burden of a petitioner cannot apply to this petitioner because of the lack

^{9/} The BIA in the *Eastern Pequot* Proposed Finding relied on *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, 528 F.2d 370 (1st Cir. 1975), as precedent for the use of state recognition as evidence for criteria other than criterion (a). See *Eastern Pequot* Prop. Finding 63. A proper reading of *Passamaquoddy* compels a rejection of this notion. In that case, the federal defendants *stipulated* that the plaintiff was a "tribe of Indians." Stipulation and Agreed Statements of Facts, *Joint Tribal Council of Passamaquoddy Tribe v. Morton*, No. 1960 (D. Maine) (Ex. 4). On the basis of this stipulation, the court held that the plaintiff was a tribe for the purposes of the Nonintercourse Act, 25 U.S.C. § 177. *Passamaquoddy*, 528 F.2d at 376-78. Because of the stipulation, neither the court nor the parties engaged in the kind of detailed analysis contemplated by the acknowledgment regulations. In fact, no finding, express or implied, was made with regard to the plaintiff's status for purposes of federal recognition, and the federal defendants refused to admit that the plaintiff met the tribal requirements of *Montoya v. United States*, 180 U.S. 261 (1901), from which current acknowledgment standards are to a large extent derived. More importantly, nothing in the court's decision or in the stipulation itself reflects that the basis for the stipulation was that state recognition could serve as a supplement to satisfying the requirements for federal recognition. In fact, the distract court record reflects that the federal defendants consistently denied allegations that the plaintiff was federally recognized. See Ex. 5. That the parties in *Passamaquoddy* decided, for whatever reasons, to stipulate to the plaintiff's status under the Nonintercourse Act cannot serve as grounds for concluding in other proceedings, where the parties have not stipulated but rather dispute tribal status that, state recognition is proof of distinct community, political authority or tribal descent under the acknowledgment regulations.

Courts have specifically distinguished *Passamaquoddy* on the basis that tribal status for purposes of the Nonintercourse Act was stipulated and that that it therefore has no precedential value. *E.g.*, *Golden Hill Paugussett Tribe of Indians v. Weicker*, 839 F. Supp. 130, 133 (D. Conn. 1993), *rev'd on other grounds*, 39 F.3d 51 (2d Cir. 1994); *United States v. 43.47 Acres of Land*, 855 F. Supp. 549, 551-52 (D. Conn. 1994); *Miami Tribe of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1166 (N.D. Ind. 1995). Indeed, in deciding not to seek certiorari from the Supreme Court in *Passamaquoddy*, the Department's Office of the Solicitor expressly determined that the stipulation of the plaintiffs as a tribe distinguished the case from others in which a group might seek federal recognition. Letter of David E. Lindgren, Acting Solicitor, dated Jan. 27, 1976 (Ex. 6). In sum, the Department cannot invoke the stipulation in *Passamaquoddy* in aid of the petitioner.

of continuous recognition of the GHP from historic times to the present. Excerpts from BIA Research File (Ex. 127). In any event, as demonstrated here, the acknowledgment regulations, and the judicial precedent on which they are premised, do not permit the use of state recognition in this fashion.^{10/}

As the Supreme Court recognized in *Elk v. Wilkins*, 108 U.S. 94 (1884), there is a fundamental distinction between tribes in relation with the federal government and groups or remnants of tribes in relationships with the states. The latter had generally lost the power of self-government and were placed under the control and protection of state law. *Id.* at 107-08. Under such circumstances, state recognition has little weight in evaluating the principal factors necessary for federal acknowledgment such as distinct community, political influence and authority, and tribal descent. For this reason, the BIA has in past decisions indicated that state recognition has no significant effect on the federal recognition process. *Mohegan* Final Determ., TR at 172; *Miami Nation of Indiana*, Admin. Rec. vol. SR-XI.A, BAR Guidelines, Directive and Manuals (Ex. 7). That conclusion should apply with equal force here.

3. Federal Recognition, Unlike State Recognition, Has Always Required Satisfaction of Certain Basic Standards Premised on the Existence of a Distinct Political Society Capable of Self-Government.

Whether by treaty or otherwise, federal recognition has always incorporated certain basic concepts that remain central to acknowledgment under the regulations, concepts that are not inherent in state recognition. Federal recognition of Indian tribes by treaty in the 18th and 19th centuries was predicated on the existence of a distinct political society capable of

^{10/} Moreover, to follow the line of reasoning on state recognition developed in the *Eastern Pequot* and *Paucatuck Eastern Pequot* Proposed Findings would be highly suspect given the recusal of former Assistant Secretary Gover, who issued those proposed findings, from involvement on the GHP petition. *See* Exs. 128, 129.

self-government. See Felix C. Cohen, Handbook of Federal Indian Law, 39-40 (1942). This basic principle was repeatedly recognized in judicial decisions. *E.g.*, *Elk v. Wilkins*, 112 U.S. 94, 108 (1884) (distinguishing independent tribes from groups under state control that had lost their character as a nation, citing *Fletcher v. Peck*, 10 U.S. 87, 146-47 (1810) (Johnson, J.)); *Kansas Indians*, 72 U.S. 737, 755-56 (1866) (emphasizing continuity of tribal organization governing members and exercising oversight of tribal affairs); *Cherokee Nation v. Georgia*, 30 U.S. 25 (1831) (characterizing tribe as “a distinct political society separated from others, capable of managing its own affairs and governing itself”); *Worcester v. Georgia*, 31 U.S. 515, 559-60 (1832) (referring to tribes as “distinct, independent political communities”). By contrast, where a group did not constitute a distinct community with the capacity of self-governance, federal recognition, by treaty or otherwise, was not accorded; instead, such groups were deemed to be under state control. See *Elk v. Wilkins*, 112 U.S. 94, 108 (1884). In fact, treaties were not ratified for groups that were determined to be nothing more than remnants of tribes. See Report of the Commissioner of Indian Affairs, Senate Executive Document 1, 32d Cong., 1st Sess. (Nov. 27, 1851) (reporting on “two small remnants of bands, called the Wheelappas and Quillequaquas”) (Ex. 8); Cong. Globe, 33d Cong., 1st Sess. 744 (1854) (remarks of Congressman Houston) (Ex. 9); Francis Paul Prucha, *American Indian Treaties*, 248 (1994).

It is clear that, since the earliest periods of our history, federal law has made a strong distinction between federal and state recognition. That federal recognition of Indian tribes in the nineteenth century included the basic concepts of tribal continuity, distinct community, bilateral political relationships and tribal descent is reflected in a mid-nineteenth century treatise by Schoolcraft that was prepared under the direction of the BIA. Henry R. Schoolcraft, *Historical And Statistical Information Respecting the History, Condition and Prospects of the Indian Tribes*

of the United States (1851-1857) (Ex. 10). It addressed issues of social solidarity and in particular with questions of political authority and tribal governance, *id.*, vol.I, at 193-95, and emphasized that recognition through treaties was accomplished *only* where there existed competent political authority. *Id.* at 194, 224.

These principles were carried forward in judicial and administrative decisions into the 20th century and ultimately formed the basis for the acknowledgment regulations. For example, in *Montoya v. United States*, 180 U.S. 261 (1901), the Supreme Court defined an Indian tribe as “united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory.” Similarly, in *United States v. Sandoval*, 231 U.S. 28 (1913), and *United States v. Candelaria*, 271 U.S. 432, 439 (1925), the Supreme Court affirmed that the recognition of Indian tribe must be based on existence of a communal life and exercise of political authority. These principles eventually coalesced in what became known as the “Cohen criteria,” emphasizing the exercise of political authority and social solidarity of the community, Cohen, Handbook of Federal Indian Law, at 271, and were applied by the BIA in pre-regulation acknowledgment decisions. *See, e.g.*, 2 Op. Sol. 1255 (Mar. 20, 1944) (Catawba tribe) (Ex. 11); 1 Op. Sol. 774 (July 29, 1937) (Keetowaw group) (Ex. 12); 1 Op. Sol. 864 (Dec. 13, 1938) (Miami & Peoria Tribes of Okla.) (Ex. 13); 1 Op. Sol. 724-25 (Mar. 15, 1937) (St. Croix Chippewas) (Ex. 14); 1 Op. Sol. 668 (Aug. 31, 1936) (Mississippi Choctaws) (Ex. 15); Cohen, Handbook of Federal Indian Law, at 271.

The present regulations are expressly based on these precedents. The requirements of distinct community, political influence, tribal descent all are drawn directly from the standards originating in the earliest periods of federal relations with Indian tribes. *See, e.g.*, *Mohegan* Final Determ., Sum. Crit. 7. No corresponding history of basic principles exists for state recognition or

state relations generally. Accordingly, state recognition cannot be an appropriate basis for supporting federal recognition in the absence of independent evidence satisfying the acknowledgment criteria.

4. Other Evidence Relied on by the Petitioner of State Relationship Is Insufficient.

No relationships with State government are demonstrated from the documents relied on by the petitioner prior to 1933. The petitioner's reliance on references to the Golden Hill group in the Connecticut statutory revisions of 1902, 1918, and 1930 is insufficient. Criterion 83.7(a)(2) requires more than simply identification of the group in a state document; rather it requires “[r]elationships with State governments based on identification of the group as Indian.” 25 C.F.R. § 83.7(a)(2) (emphasis added).^{11/} Moreover, the Department's official acknowledgment guidelines require that there be some kind of documentation from **each decade** since 1900. *See* Bureau of Indian Affairs (BIA), *The Official Guidelines to the Federal Acknowledgment Regulations* 25 CFR 83, Sept. 1997, 44 (hereafter referred to as *BIA Official Guidelines*); 25 C.F.R. § 83.5(b).^{12/} There is no evidence of an actual relationship with the State by the William Sherman descendants or for that matter, with any Golden Hill group prior to the purported designation of a state reservation in 1933. *See GHP Prop. Find. TR 53-54.*^{13/}

C. Lack of Evidence of Dealings with Local Governments (83.7(a)(3))

^{11/} Petitioner's citation to the 1978 Guidelines omits the reference to “[l]ongstanding relationships between state governments and the group.” BIA, *Guidelines for Preparing a Petition for Federal Acknowledgment as an Indian Tribe*, December 1978, 5.

^{12/} Petitioner's citation to the guidelines do not appear to be to the currently effective ones.

^{13/} *See also* Supp. to Doc. Pet. Oct. 1, 1999, 9-11 (citing only statutory references from 1900 to 1933 and a newspaper article in 1931 about George Sherman (Pet. App. II, 14), which provides no evidence of any state relationship with the group, and for that matter, appears to identify only an alleged Indian individual, not an Indian entity).

There do not appear to be any dealings with local governments “in a relationship based on the group’s Indian identity” under § 83.7(a)(3). The town clerk’s certificate referring to Ethel Sherman’s alleged descendancy and right to property (Pet. App. IV, 157) does not appear to represent a significant relationship with the town.

D. Lack of Scholarly and Other Identification (83.7(a)(4), (5) & (6))

Only three alleged scholarly identifications as an Indian entity under § 83.7(a)(4) are offered. The first is the 1948 Smithsonian Report which refers only to “a similar small group on land of the Paugussetts near Bridgeport.” Pet. App. I, 14. This report cannot be considered scholarly evidence, as it is based only on secondary, non-contemporary sources as to the Golden Hill group and contains demonstrable inaccuracies.^{14/} The Smithsonian *Handbook of North American Indians* (1978), vol. 15, mentions a “Paugussett and Wepawaug” Indian group, but only as part of the *17th century* population. Smithsonian, 169, Table 1. In a portion not cited by petitioner, it refers, with no extended discussion, to the Paugussetts and the Turkey Hill, Coram Hill and Golden Hill reservations, but only during the 18th and 19th centuries, not the 20th. *Id.* at 183-84. Therefore, even if these reports were considered, they do not support the petitioner’s position.

The Wojciechowski text relied on by the petitioner identifies the Golden Hill Paugussetts, but does not contain any supporting information. For example, it indicates that the State Indian Affairs Coordinator in 1974 confirmed the continued existence of the Golden Hill as a Connecticut recognized tribe, “but -alas- did not supply any additional data,” Pet. App. IX, 2, and that the State coordinator stated: “Regrettably we do not have an up-to-date compilation of the

^{14/} For example, it states the group is under the Park and Forest Commission, when in fact administration had been transferred to the State Welfare Department seven years earlier in 1941. Conn. Stat. Supp. 1941, Sec. 692f.

data you request.” *Id.* Clearly, then, the text can provide no support for the petitioner’s claim. Further, Wojciechoski also states that “all now (1992) living Golden Hill tribal members are descendants of William Sherman,” (*id.* 73) thus undercutting petitioner’s recent claim that it is descended either from him or Levi and Delia Myrrick and the “progeny” of their son, Andrew Allen. No sources are cited even for the Sherman ancestry claim.^{15/} Few specifics are provided for other various claims as to the group in the 20th century, and it appears that mostly secondary sources, including newspaper articles, are relied on. Finally, the author refers to various instances of “confusion and inconsistencies” in the 1886 Orcutt book heavily relied on by petitioner. Pet. App. IX, 32. This text, therefore, does nothing to satisfy the petitioner’s burden.

The newspaper articles offered under § 83.7(a)(5) appear to be based on self-identification reported in the article, or provide no sources for the identification. They are therefore of little probative value. Similarly, there also appears to be little, if any, identification as an Indian entity “in relationships with Indian tribes or with national, regional, or state Indian organizations” under § 83.7(a)(6). These articles should therefore be discounted.

E. Inadequacy of Purported Identification Evidence

A number of documents cited for criterion (a) do not qualify on their face because they fail to identify an Indian entity -- a political, self-governing group -- but instead refer simply to alleged descendants, a few residents, individuals or a family on the reservation. *See* Pet. App. II, 14 (1931); Pet. App. II, 22 (1939) (portion referring to Ethel Sherman as a full-blooded Indian descendant of the Golden Hill clan); BN 140 (1944); Pet. App. II, 45 (1951); Pet. App. IV, 199 (1959); Pet. App. IV, 202 (1960); Pet. App. IV, 225 (1971); Pet. App. IV, 269 (1974); BN 143

^{15/} In addition, this text states that the surviving member of the Pann family joined the Schaghticoques before 1860. *Id.* at 73. It does not say that he joined the Golden Hill. In addition, he states that other Golden Hill families eventually assimilated into mainstream society or joined other tribes after 1854. *Id.* These passages undercut the petitioner’s claim.

(1975); Pet. App. II, 241 (1987); Pet. App. II, 243 (1987). Although there are various other State documents which include the Golden Hill under the heading “Indian tribes,” they disclose that for all but one of these years there was only one Golden Hill member living on the reservation, and for the remaining year, only two. Pet. App. IV, 181 (1953-54); Pet. App. IV, 183 (1955-56); Pet. App. IV, 186 (1955-57); Pet. App. IV, 190 (1957-58); and Pet. App. IV, 194 (1958-59); see also Pet. App. IV, 175 (1941-42). They provide no evidence whatsoever that the petitioner was identified as a tribe, or was a self-governing entity.

There are numerous other documents relied on by petitioner which, although they refer to it as tribe or group, provide no specifics whatsoever which would show that it was identified as a political, self-governing entity. They fail to provide any other information to show that the identification as an Indian entity was used in other than a purely nominal sense. *See* Pet. App. IV, 157 (1933); Pet. App. II 21 (1933); Pet. App. II, 22 (1939); BN 149 (1939); BN 150 (1939); BN 134 (1939); Pet. App. IV, 160; Pet. App. IV 171-73 (1939); BN 139 (1939); BN 152 (1939); Pet. App. IV, 177 (1949); Pet. App. II, 49 (1966); Pet. App. IV, 224 (1971); BN 162, 164 (1976); Pet. App. IV, 330 (1977); Pet. App. II, 192 (1980); Pet. App. IV, 396 (1981); Pet. App. II, 197-98 (1981); Pet. App. II, 205 (1982); Pet. App. IV, 428 (1984); Pet. App. IV, 433-34 (1984); Pet. App. IV, 437 (1985); Pet. App. IV, 445 (1986); Pet. App. II, 255 (1988); Pet. App. IV, 470 (1993); BN 043 (1996).

In addition, a number of documents also fail to provide any sources for the assertions or indicate that they are based on anything other than self-identification repeated in newspapers or other materials. Indian identity “based solely on self-identification” is unacceptable evidence. 59 Fed. Reg. 9286; § 83.7 (a) (evidence to be relied on for group’s Indian identity must be “by other than the petitioner itself or its members”). *See* Pet. App. IV, 157 (1933); Pet. App. II, 21 (1933);

Pet. II, 22 (1939); Pet. App. II, 49 (1966); Pet. App. II, 163 (1977); Pet. App. II, 183 (1978); Pet. App. II, 192 (1980); Pet. App. II, 195 (1981); Pet. App. II, 215 (1983); Pet. App. 216 (1983); Pet. App. II, 229 (1985); Pet. App. II 237 (1986); Pet. App. II, 239-40 (1986); Pet. App. IV, 462-63 (1992); Pet. App. II, 297 (1992); Pet. App. II, 298 (1992); Pet. App. II, 284 (1991).

Various other documents relied on by the petitioner actually cast doubt on genuine tribal status or contradict present claims as to tribal ancestry. *See* Pet. App. II, 20 (1933) (referring to a “vanishing tribe”); BN 155 (dated 1973, but appearing to have been issued in 1974^{16/}) (indicating that the State lacked complete information as to the alleged membership of the Golden Hill group when it established the Indian Affairs Council in 1973, and believed that the person living on the reservation was “the last surviving member of the tribe”); BN 158 (1975) (referring to the Shermans as “the principal tribal family,” with no mention of Levi Allen, Delia Myrrick, or Andrew Allen families); BN 164 (1976) (stating that “the [Golden Hill] Tribe dispersed” in the 18th century); Pet. App. II, 183 (1978) (conflicting information as to membership; one article claims 75 members, the other “only two apparent members”).

In summary, the evidence presented is completely insufficient to support the petitioner’s claim for the period from 1900 through 1932, and indeed to the present. For these reasons, the petitioner fails to meet criterion 83.7(a).

^{16/} The document is dated Jan. 4, 1973, but refers to a need to amend Public Act 73-660, which was not passed until later in 1973).

IV. THE PETITION FAILS TO MEET CRITERION (b), PROOF OF A DISTINCT COMMUNITY FROM HISTORICAL TIMES UNTIL THE PRESENT.

Criterion 83.7(b) requires proof that **“a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.”** 25 C.F.R. § 83.7(b) (emphasis added). Community means **“any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers.”** *Id.*, § 83.1 (emphasis added).

This standard “effectively requires a showing that substantial social relationships and/or social interaction are maintained widely within the membership, i. e., that members are more than simply a collection of Indian descendants and that the membership is socially distinct from non-Indians.” 59 Fed. Reg. 9286. Community “must be demonstrated historically as well as presently.” *Id.* at 9287. Furthermore, “[d]emonstration of continuity of a historical community is necessary to meet the intent of the regulations that continuity of tribal existence is the essential requirement for acknowledgment.” *Id.*

Moreover, “[w]ithout evidence of broad interaction among not only close and distant relatives but also **non-related or distantly related** individuals,” a petitioner cannot meet criteria (b). *Muwekma* Prop. Finding, Sum. Crit. 24 (emphasis added). The activities of a relatively small group of closely related individuals will not suffice to demonstrate a distinct community. *Id.* at 24-25.

The petitioner has failed to meet these requirements. Indeed, it has failed to remedy the obvious deficiencies previously indicated by the Department. There continue to be significant gaps in both the 19th and 20th centuries in the linkage between the historic Paugussett tribe and

the modern Sherman/Piper family. *See* Letter of Obvious Deficiencies, Aug. 26, 1993. (emphasis in original). There still is no evidence of a community “beyond the single household of the tribal chief.” *See id.* The petitioner has not demonstrated a cohesiveness of social relationships between tribal members. The pattern that repeatedly emerges is one of action taken by only a few individuals, and not of a tribal community. Moreover, no social relationships or interactions are shown between the Golden Hill and Turkey Hill groups. The Turkey Hill affiliation was only recently alleged, based apparently on petitioner’s inability to prove tribal descent for William Sherman and his descendants.

The most critical of the petitioner’s evidentiary deficiencies are discussed here. For a more detailed analysis of the petitioner’s evidence, see Appendix § I.

A. There Was No Distinct Community at Least as Early as 1763, If Not Earlier; Tribal Existence Had Been Abandoned.

As early as 1763, if not earlier, there were only two documented adult descendants of the Pequonock Indians -- the alleged ancestors of the Golden Hill group -- at Stratford. They were Eunice Shoran and her sister Sarah, living in one wigwam. Reconsid. Order, App. I 2, 14; *GHP* Prop. Find. TR 10; Conn. Ind. Pap. II, 147, 147c, 149d (Pet. App. IV, 14, 17, 20), Memorial of Tom Sherman et al. to General Assembly, Oct. 5, 1763; General Assembly Committee Report, March 10, 1764. Although three persons had signed a memorial to the General Assembly claiming to be Pequonock Indians on October 4, 1763 when they complained of trespass -- Tom Sherman, his wife Eunice Shoran and Sarah Shoran^{17/} -- only Eunice and Sarah actually were found to have been Pequonock descendants. Conn. Ind. Pap. II:147d, Pet. App. IV, 20, General Assembly Committee Report, March 10, 1764. A committee appointed by the General Assembly

^{17/} Ind. Pap. II:147, 147c (1763) (Pet. App. IV, 14, 17), Memorial of Tom Sherman et al. to General Assembly (1763). The petition indicates it was signed Oct. 4, 1763, but is headed Oct. 5, 1763. *See id.*

to investigate that complaint reported in 1764 that “We saw only two persons viz Eunice Shoran and Sary Shoran that were Said to be Descendants from the Pequanoek Indians.” *Id.* The committee was also informed that they both had children, although it did not say that they had observed them. *See id.*

The following year, the Committee reported that there were “Sundry Indians from different Parts of this Colony--claiming to be descendants from the Golden Hill Indians but who had been absent for more than 20 years.” Conn. Indian Papers IP, II:151, General Assembly committee report, Oct. 25, 1765 (Pet. App. IV, 29). However, there were “none [at Golden Hill] except Tom Sherman and his wife, and Sary Shoran & their Children.” Ind. Pap. II, 151 b, (Pet. App. IV 30), General Assembly Committee Report, Oct. 25, 1765. The Committee again stated that “the other Claimers came from other places in this Colony and [were conceded to be] Descendants from the Golding [sic] Hill Indians but that they had removed and lived in other places for more than 20 Years last past.” *Id.*, 151 c, Pet. App. IV, 30. There thus really was only one family -- two sisters and their (possible) children. *See Reconsid. Order App. I, 14-15, citing GHP Prop. Find. TR 10, citing Ind. Pap.II:149d.*

From 1768 until 1775, only Tom and Eunice Sherman and Sarah Chops (evidently Sary Shoran)^{18/} were referred to in overseer records. *GHP Prop. Find. TR 10.*^{19/} A Sara Panheg was

^{18/} The BIA has referred to her as Sarah (Shoran) Chops. Reconsid. Order App. I 2.

^{19/} The Reconsideration Order is incorrect in stating that “On the following page [of the Proposed Finding, TR 12], the report correctly noted that contemporary overseer’s reports from 1770’s also mentioned Eunice’s sister, her husband, and their son, plus some unidentified individual names.” *GHP Prop. Find. Tech. Rept. 12.* The overseer reports do mention a Sarah Chops, but the reference in the Proposed Finding refers to a 1797 document which merely recites the 1763 petition brought by Tom Sherman, and Eunice and Sarah Shoran. *GHP Prop. Find. TR 12, quoting Ind. Pap. IP I, 2nd, 139b.* By 1797, both Sarah and Eunice were said to have been deceased. *GHP Prop. Find. TR 12, quoting Ind. Pap. Vol. I, 2nd, 139c.* A Sarah Wampey, alias Sarah Montaugh of the Oneidas, a claimed Golden Hill descendant who was deceased as of 1793, is also referred to in the documents. *GHP Prop. Find. TR 10 n. 2.* Although the Shoran family was said to have been more properly called the

mentioned in a 1775 report, but there is no indication who she was, and she has no known descendants in the modern Golden Hill group. *Id.* at 10-11. By 1774, Tom Sherman and his wife Eunice were reported to be the “Heads of *all* the famely [sic] that Now lives on the Land.” *GHP Prop. Find. TR 11* (quoting *Ind. Pap. IP II, 156 (Pet. App. IV, 43, (emphasis by BIA).* By 1797, Sarah and Eunice were reported to have been deceased. *GHP Prop. Find. TR 12.* Only Tom and “a few of their [Sarah and Eunice’s] posterity” were reported living at Golden Hill as of that date. *GHP Prop. Find. TR 12.*

Even if it could be established that the present petitioner descended from these individuals -- which for the reasons discussed in § VII below it cannot -- this one family cannot qualify as a distinct community under § 83.7(b). Significant social relations and/or significant social interaction must exist *not “just within immediate families or among close kinsmen, but across kin group lines.”* *Miami Final Determ. Sum. Crit. 5* (emphasis added); *accord Muwekma Prop. Finding, Sum. Crit. 22.* Otherwise, there would be no indication that the social relationships were truly tribal, rather than ordinary internal family ones. No significant social relationships or interaction is shown for the remaining Golden Hill claimants, either with the Golden Hill residents or with each other. In fact, they were expressly reported to have lived in “different Parts of this Colony” rather than together in a distinct settlement. *Ind. Pap. IP, II:151.* Thus there is no evidence of a tribal community, and instead only the close kin group consisting of two sisters and their children, plus Tom Sherman, who had previously been found not to be a Golden Hill descendant.

“Montaugk/Shoran family” (*id.*), there is no indication as to whether or not Sarah Wampey was the same person as Sarah Shoran referred to in the 1763-1765 General Assembly documents, *supra.*

There is no indication that the parents of these children, Eunice and Sarah, had ever lived in tribal relations, or that the “reduction of the membership” to the two adult sisters by 1763 was due to a “catastrophic event,” or “patterned outmarriage and differential fertility,” as distinguished from simple dispersal and break up of the original tribe. *See* Reconsid. Order 8 (discussing possible exceptions to the so-called “one ancestor rule”). On the contrary, dispersal and break up of the original tribe is precisely what the evidence indicates had occurred. As the General Assembly committee report of 1765 stated, in 1659 the Golden Hill land had been set aside for the Pequanock Indians. However, it had been also ordered that if

[t]he Indians should wholly at any time relinquish & desert Golding Hill that then it should remain to Stratford Plantation...We find by the best account we could get that about the Time of these Transactions the Indians were numerous, perhaps Three or four hundred and that *they have been gradually decreasing by Death or removals to other places ever since and now are so gone as that there has been only one Wigwam for many years past* which Wigwam belonged to the Petitioners....There is none except Tom Sherman and his Wife, and Sary Shoran & their Children.

Ind. Pap. II, 151b, General Assembly Committee Report, October 25, 1765, Pet. App. IV, 29-30. (emphasis added). Thus, the evidence indicates that the original Pequanock tribe had broken up by 1763 and all but two adult sisters had left. By 1797, only Tom, a non-Golden Hill descendant, and a few of Sarah and Eunice’s posterity remained. Tribal relations and tribal status had been abandoned.

Termination of tribal existence can occur by tribal action or “cessation of collective action and collective recognition.” Felix S. Cohen, *Handbook of Federal Indian Law* 272 (1942); *see Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277, at *20 (7th Cir. 2001). Tribal abandonment has occurred where a “portion of [a] tribe which chose to stay behind when a tribe moved dissolved relations with [that] tribe.” *Mashpee v. New Seabury*

Corp., 592 F. 2d 575, 587 (1st Cir. 1979) (citing *Delaware Tribal Business Committee v. Weeks*, 430 U. S. 73 (1977)), *cert. denied*, 444 U. S. 866 (1979), 464 U.S. 866 (1983). That small remnants of an earlier tribe remained may in fact be evidence of the termination of tribal existence. Indeed, the Supreme Court has consistently held that small remnants of tribes, such as those in New England, are not tribes under federal law. *E.g.*, *Elk v. Wilkins*, 112 U. S. 94, 108 (1884); *Worcester v. Georgia*, 31 U. S. (6 Pet.) 515, 580 (1832) (McLean, *J.*, concurring). In this instance, the historic tribe had ceased to exist by 1763.

As the Department previously stated as to this petition: “A sole individual or family does not meet the requirements affirmed in United States v. Washington, nor does descent from one individual or family.” Letter of Assistant Secretary--Indian Affairs, October 18, 1995, *GHP* Final Determ. TR App. B2 p. 4. The acknowledgment regulations clearly require that a community consist of more than just two adults. Significant social relationships and/or interaction must be “maintained *widely* within the membership.” 59 Fed. Reg. 9286 (emphasis added). The members must be “more than a collection” of Indian descendants. *Id.*; see *Montoya v. United States*, 180 U. S. 261, 21 S. Ct. 358, 359 (1901); Felix S. Cohen, *Handbook of Federal Indian Law* 270 (1942). For a “community” to exist, there should at least be a number of families who extend beyond immediate families and narrow, small kin groups. Otherwise, there would be no difference between ordinary family relations and truly tribal ones. See *Miami* Final Determ., Sum. Crit. 5.

In sum, the two sisters who signed the 1763 petition, the only adult Pequonnock or Golden Hill descendants living at the Golden Hill site, did not and could not constitute a tribe.

B. The Evidence Regarding the Purported Central Role of William Sherman Shows That There Was No Continuing Distinct Community.

The petitioner relies heavily on the role of William Sherman to demonstrate that it satisfies the mandatory criteria, including in particular criterion § 83.7(b). However, contrary to the petitioner's claims, there is *no evidence* that William Sherman was "Chief of the Paugussetts" (not even Orcutt refers to him as such), that he was involved in establishing a burial area at the Nichols cemetery for the Paugussetts, or that he "reestablish[ed] a land base for the Tribe." Supp. to Doc. Pet. 57. There is not even any reliable evidence of a Golden Hill "tribe" or group at this time, no evidence whatsoever that William Sherman lived in tribal relations, and most fundamentally, as the Department concluded in the previous Final Determination, no reliable evidence that William Sherman was himself a descendant of an Indian tribe.

First, the claim that Nancy Sharpe was the mother of William Sherman is not established by any reliable documentary evidence. Nancy Sharpe was identified in the 1841 petition, along with Ruby Mansfield, as "the sole surviving heirs of the Golden Hill tribe of Indians." Pet. App. vol. IV, 119. *See GHP Final Determ.*, TR 27 (concluding that the documents cited do "not prove that Nancy Sharpe, alias Pease, was the mother of William Sherman, Sr."). The sole source cited for the proposition that Nancy Sharpe was the mother of William Sherman is Orcutt (Pet. App. Vol. VI, 77), which the Department has properly found to have been untrustworthy, contradictory, and unsubstantiated. Supp. to Doc. Pet. 56). The context of William Sherman's association with those claimed by Orcutt to have been Nancy Sharpe's children does "not presuppose the existence of a familial relationship between Sherman and them." *Id.* In fact, Sherman never mentioned "Nancy Peas [Sharpe/]" in his diary. *Id.*; *see also* Reconsid. Order

App. 10) (“[T]here was no direct primary evidence which documented that William Sherman was a Golden Hill descendant.”).

Moreover, there is absolutely no mention in William Sherman’s Diary/Account Book identifying himself as a Golden Hill Indian or any Indian whatsoever. There is no reference to any overseer exercising care and management over William Sherman’s land or superintending his legal affairs. There are no discussions of any tribal meetings he attended, any tribal social gatherings, any tribal political or governmental influence or authority exercised over him or by him, any Indian tribal leaders of any kind, or any other tribal or Indian event with which he was associated. There is no mention of the Paugussett Indians, Turkey Hill or Derby Indians, Golden Hill Paugussetts, Golden Hill Indians, or for that matter, any Indians whatsoever in William Sherman’s writings.

Finally, even if William Sherman had been shown to be a Golden Hill Paugussett descendant, descent of the petitioner “through a single Indian individual who did not live in tribal relations during his or her lifetime does not meet the requirements of criterion 83.7(e) for tribal descent,” *GHP* Final Determ. Sum. Crit. 17; *see also id.* 9, and there is no evidence whatsoever that William Sherman lived in tribal relations. The Department, in the Reconsideration Order, suggested, without analysis, possible exceptions which would permit tribal existence from descent from a single ancestor. These include evidence that the group was decimated by some catastrophic event or that the lack of other ancestors was due to patterned outmarriages *and* a lack of descendants in some of the historical tribe’s family lines. Recons. Determ. 8. Even if those exceptions are valid, in the present petition, they cannot be met. First, in the present case, the lack of other Golden Hill members was not the result of some catastrophic event. Rather, it was due principally to the fact that various members had moved away, as indicated in the General

Assembly documents, in the latter part of the 18th century. It has not been due to lack of descendants in the group's family lines. Second, the possible exceptions still require that the ancestor involved lived in tribal relations. *Id.* at 8. There is no evidence whatsoever that William Sherman ever lived in tribal relations. To the contrary, there is significant evidence that he did not.

The regulations define tribal relations as used in Part 83 as "participation by an individual in a political and social relationship with an Indian tribe." 25 C.F.R. § 83.1. There is no evidence that William Sherman, regardless of any contacts he had with individuals claimed to be Indians, had any relationship with a tribe or that a Golden Hill tribe even existed at that time. Nearly all the persons that William Sherman associated with outside of work were never recorded as Indian. *GHP Prop. Find. TR 42; App. C.* Furthermore, as the Department previously concluded, Mr. Sherman's real estate documents -- executed in his own name -- "showed clearly that William Sherman was not living in a tribe or in tribal lands." *GHP Final Determ. TR 78.* The petitioner's two principal arguments on this claim are discussed below.

1. William Sherman's Relationship With Henry Pease.

The petitioner attempts to show that the purported relationship between William Sherman and a man named Henry Pease establishes that Sherman was a Golden Hill Paugussett living in tribal relations. A review of the evidence reveals that this effort fails.

Henry Pease was listed in the 1880 census with his wife Jeanette in Huntington in a non-Indian status, as were all his children, at a time when the census specifically authorized Indian designations.^{20/} Mr. Sherman's relationship to Henry Pease appears to originate as his paid

^{20/} Ex. 16 (United States Census, 1880, Huntington, Connecticut, p. 36, line 39). He would have been born in 1841, according to this census, which would be in the same general time frame indicated by his age of 5 in the 1850 census. SBN 433. In addition, his wife is listed in the 1880 census as Jeanette A., the same first name which the BIA indicated she had in the 1900

caretaker and guardian. *See* William Sherman Diary/Account Book, p. 95,^{21/} (under heading “A Count William Sherman and Dwight Morris,” including 1857 records for Henry Pease); *GHP* Prop. Find. TR 42-45; *GHP* Final Determ. TR 28. Mr. Sherman was listed in the Overseer of the Poor’s reports -- *not the reports by a Golden Hill overseer* -- as having cared for Henry Pease for pay in the 1850’s. *GHP* Final Determ. TR 29. The entries in Sherman’s Diary/Account Book regarding Henry Pease were not of a social or political character. *See id.* On the contrary, Mr. Sherman was paid to care for Henry Pease and kept his accounts, held his bank book, and paid his boarding bills and net wages. *GHP* Prop. Find. TR 43-44; *GHP* Final Determ. TR 28 & n. 9. Not only does the payment for these services fail to prove that any family relationship existed, *id.*, it actually negates a family relationship. The nature of this contact certainly did not presuppose any family relationship with Levi Pease, in whose household Henry Pease lived, nor did it indicate any political or social relationship. *See also GHP* Final Determ. TR 27.^{22/} The Department has noted that Mr. Sherman’s contacts with Henry Pease represented an “exception to the socialization pattern.” *GHP* Prop. Find. TR 42. There are several entries in 1876 and 1877 for Henry Pease which were arguably of a recreational or social nature,^{23/} but they are not different in kind from

census. Reconsid. Order App. I, 12. Those who can be identified as his children were also listed in a non-Indian status on the 1900 census including his son John H. Pease. Ex. 17 (U.S. Census, 1900, Stratford, Conn., p. 202A, lines 24-26; *see also* line 33). That son, John H., was listed as Indian in the 1910 census, but all of the children of this son were not. Ex. 18 (U. S. Census, 1910, Stratford, Conn., p. 12A, lines 46-50).

^{21/} The page numbers have evidently been added at the bottom afterwards, and do not appear to be part of the original entries.

^{22/} “The context of William Sherman’s association with the persons named by Orcutt as children of Nancy Sharpe, *alias* Pease [citation omitted] did not presuppose the existence of a familial relationship between Sherman and them: ... he ‘traded’ with Levi Peas, in whose household Nancy Peas [Sharpe?] and Charles Sharpe, as well as Henry Pease, lived in 1850.” *GHP* Final Determ., Tech. Rep. 27.

^{23/} There is also a similar entry in the diary copy the State received which indicates the year 1874, but the last digit of the year was written in over a previous number in what may be a different handwriting. *See* Pet. App. XI, 66, upper right hand corner.

entries involving documented non-Indians. *See GHP Prop. Find. App. C.* There is no indication that these activities represented any form of tribal association. Mr. Pease came to Mr. Sherman's house either by himself or with his wife. There is no indication that anyone else was with him, and certainly not any group, whether or not organized or appearing to be Indian.

The petitioner relies heavily on a deed on behalf of Henry Pease for its argument that Henry Pease was a Golden Hill member. Even if this were true, however, it would not support the petitioner's ultimate argument that William Sherman was a Golden Hill member. First, even if Pease was a Golden Hill Indian, this does not show that Mr. Sherman's contacts with him involved tribal relations -- a social *and* political relationship with a tribe -- as opposed to contact only with an individual member, much less that Mr. Sherman himself was a member. Second, although the deed lists Henry Pease as a Golden Hill Indian, it does not indicate the basis of this identification. Third, the deed is not by the Golden Hill overseer, the only official charged by statute with care and management of Indian tribal land. Conn. Gen. Statutes, 1875, Ch. II, § 1, Pet. App. IV, 138. The 1876 Golden Hill legislation, while providing that the selectmen could apply to the court for sale of the land, made it clear that it was the overseer alone who was to sell the property involved. Conn. Public Acts, 1876, Ch. XXXV.^{24/}

The Henry Pease deed is significant, however, because it highlights the sharp contrast between that document and conveyances involving William Sherman during the same time period. The Pease deed was executed by the Selectmen of Trumbull "as trustees for Henry O. Pease," said to be a "member of the Golden Hill Tribe of Indians." SBN 385. Henry Pease neither signed

^{24/} The Act provided that the Superior Court "may upon the application of the selectmen of any town, and upon due notice to said overseer of the time for hearing said application, order said overseer to sell such proportion of the property...." Conn. Public Acts, 1876, Ch. XXXV, Ex. 19.

it nor acknowledged it. The deed also cited the 1876 Act,^{25/} authorizing sale of Golden Hill property when the income was insufficient for the group's support. In comparison, neither Mr. Sherman's own mortgage to Mr. Tomlinson nor his quit claim deed to Mr. Lacey identify Mr. Sherman as a Golden Hill member, nor do they refer to the 1876 legislation. Significantly, both of them are signed by William Sherman on his own behalf, and the conveyance was to Sherman himself and not to a trustee or other person on his behalf. The deeds were received for recording by the Town Clerk. No question as to their execution or legal effect was noted on these documents by the clerk or anyone else. Nor is there evidence that anyone else questioned or challenged them.

It would appear highly unusual and irregular for Mr. Sherman's deeds to have been executed in the way they were if he really was a member of the "Golden Hill tribe," during the same time period and in the same general locality in which the deed for Henry Pease was executed in the way it was. Furthermore, the overseer was presumably familiar with the laws at the time which vested him with "care and management" of Indian tribal land and which also expressly provided: "All conveyances, by any Indian, of any land belonging to, or which has belonged to, the estate of such tribe, shall be void." General Statutes, 1875, Ch. II, §§ 1, 4, Pet. App. IV, 138-39. There is no basis for assuming that the overseers or agents of the Golden Hill group would have accepted both the 1876 mortgage and the 1886 quitclaim deeds executed by Mr. Sherman in his own name if he was in fact a Golden Hill tribal member. Nor would the overseer have made the loan to Mr. Sherman for purpose of the property and have accepted a promissory note from him if Mr. Sherman was a member of the Golden Hill tribe. The only reasonable conclusion is that William Sherman was considered legally competent and not subject to the legal

^{25/} The deed cited "an act of the Legislature approved June 19, 1876," which is the same date of approval of Ch. XXXV of the 1876 Public Acts, *supra*.

disabilities of Indians at that time in the conveyance or purchase of property, and that he was not a member of the Golden Hill group.

2. The Nichols Cemetery

The petitioner's claim that the Nichols cemetery had a separate section reserved for use by the Paugussetts, which became "a new center for social and religious interaction" for all its families, is unsubstantiated. Supp. to Doc. Pet. 64. The additional assertion that William Sherman began working there and became its sexton and responsible for establishing the "Tribal burial area" "by around 1850" is not only unsupported, but also directly refuted by the evidence. First, the petitioner admits that William Sherman gave his residence as New London in the 1850 census. Supp. to Doc. Pet. 63. The Department, moreover, found that he was listed on the ship *Montezuma* in 1850 and on the records of the ship *Clematis* in 1851 and 1853. *GHP Prop. Find.* TR 38, 39.

Second, the petitioner's claims are not corroborated by William Sherman's own Diary/Account Book. His diary makes absolutely no mention whatsoever of segregating "a separate and discreet [sic] section of the Nichols Farm Cemetery...for use of the Paugussett Tribe" or establishing a "Tribal burial area" as the petitioner claimed. Supp. to Doc. Pet. 64. Although his diary does record significant events during this period, such as voting, getting "Money to Pay for house," and keeping accounts with Dwight Morris, Diary/Account Book 10, 81, 95, there are only sporadic references to his cemetery labors, and no reference at all to segregating or establishing a Paugussett burial area.

The petitioner relies on Orcutt for the statement that Mr. Sherman had been Nichols cemetery sexton "for about thirty years" (in a book published in 1884 and 1886), Pet. App. VI 77, but Orcutt fails to indicate a source for this statement. In contrast, there is nothing in Mr.

Sherman's diary that indicates that he was a church or cemetery officer, and there are entries that show him performing occasional cemetery work, including digging graves. None of the persons that his diary indicates that he worked for have been shown to be Indians, and there is nothing whatsoever to suggest that his work was for tribal or even Indian purposes.^{26/} Moreover, even assuming that he may have been a nominal sexton at sometime, the nature of his work as documented in his diary does not indicate that he had any control over burial rights or assignment of lots. *See* Diary/Account Book 2, 49, 64, 86.

Mr. Sherman's diary also does not mention any of the persons claimed to be Indians who were buried during the time he was there, with the possible exception of a reference to attending the "Bradley funeral" on October 12, 1876.^{27/} The other persons the petitioner claimed to have been Indian who were linked to the cemetery at the time Mr. Sherman was in the area (1857

^{26/} Examples of entries for his diary entries are as follows:

"Work for Mrs. M. Hawley in Graveyard 2 hrs." Nov. 14, 1876, Diary/Account Book 2.

"Dug Grave for Ike Curtis' Wife tended funeral." Sept. 9, 1873, Diary/Account Book 64.

"Work in Grave Yard for Miss L. B. Fairchild." Oct. 25, 1876 (?), Diary/Account Book 86.

"Dug Grave for B [rest of entry illegible, but date is not that of anyone claimed to be Indians on SBN 524, 526, and 529]." Oct. 13, 1873, Diary/Account Book 65.

See also Diary/Account Book 49, showing digging of grave April 10, 1867 or possibly 1861 (last digit not completely clear from copy). Either year would have not have been for burial of a person claimed to be Indian. *See* SBN 524, 526, 529. *See* additional entries indicating work in the cemetery, Diary/Account Book 59 and 64. None of these entries indicates any position of control or authority over burial decisions or anything else, and none indicates any establishment of a Paugussett burial area. *E. g.*, "Work to Graveyard ½ day." Sept. 2, 1873, Diary/Account Book 64.

^{27/} Diary Account/Book 86. This could have been for Julia C. Bradley, who died on October 10, 1876, according to SBN 529. She would probably have been the sister of George Bradley, who petitioner claims lived two residences away from Mr. Sherman. *See* 1870 census, Kent, 148, 2d family, listing George Bradley, age 14, and Julia Bradley, age 4, in the same family under Truman Bradley. SBN 528. *See* 1880 census, Trumbull, 4th family, showing George Bradley, age 24, 10 years later. SBN 527. There is absolutely nothing to indicate that Mr. Sherman's attendance at the funeral was due to anything other than the fact that she was a member of a neighbor's family. There are no entries at all for George Bradley in the diary, and no evidence of any contact with him, unlike others referred to in the diary. *See* GHP Prop. Find. TR App. C. Nor does William Sherman's diary indicate that he had anything to do with cemetery arrangements for her.

through 1886) were Pamela H. Kilson and Truman Bradley. SBN 525, 529. Mr. Sherman's diary, however, does not suggest that he had anything whatsoever to do either with their burial or the purchase of plots.^{28/} Similarly, Mr. Sherman could not have had anything to do with the internment of Jeremiah Pann since he was at sea at the time. *See GHP Prop. Find. TR 38, 39.* There is no evidence that Mr. Sherman had any relationship or connection with Julia Bradley, wife of Truman Bradley, or Helen Phillips, Truman Bradley's daughter. *See SBN 529; Supp. to Doc. Pet. 65.* Mr. Sherman's diary does not mention any of these persons or their cemetery arrangements. In fact, they all passed away either while he was at sea, or after he died in 1886.^{29/}

Moreover, the petitioner's own documents show that the cemetery was not exclusively used for Indians or segregated for Golden Hill Paugussetts.^{30/} In fact, the very record relied on

^{28/} Pamela Kilson died on August 7, 1877, according to SBN 529. From August 7 through August 14, 1877, Mr. Sherman was getting coal, except for being home on Sunday. Diary/Account Book 8. The Truman Bradley purchase was dated August 22, 1877. SBN 525. On that date, the record shows only that Mr. Sherman was on the turnpike, evidently doing work, according to the top of the page. Diary/Account Book *id.* During the period from August 18 through 25, 1877, he was either clamming, at home, getting coal, on the turnpike, or digging potatoes. *Id.*

In addition, although the BIA stated that Levi Pease was buried in the same cemetery lot as George Sherman (*see Supp. to Doc. Pet. 59*), no relationship is listed. *GHP Prop. Find. TR 37.* Furthermore, petitioner's own document shows that the lot was sold to "Geo. Sherman" on April 23, 1916. SBN 526. This indicates that this lot was not part of a lot previously allocated to Levi Pease and his family.

What little evidence petitioner has on this subject is insufficient and questionable. The writing on the cemetery receipts "Indians" appears to be in a different handwriting than the other entries, and also different from the name "Geo. Sherman" written in as the purchaser on one of them. SBN 526; see also SBN 525. The same is true for the name "Piper," written in on the lot # 91 receipt. SBN 525. In fact, this name did not become associated with the William Sherman descendants until the 20th century, through a marriage of Ethel Sherman. It is not contemporaneous with the 1876-77 entries listed there.

^{29/} Jeremiah P. Pann died January 1, 1851; Julia I. Bradley, wife of Truman, died Jan. 26, 1892; Helen A. Phillips, daughter of Truman Bradley, died Aug. 22, 1892. SBN 529.

^{30/} There is no evidence that the persons claimed to be Indian were Paugussetts. *See Supp. to Doc. Pet. 64, 71, 72.* In fact, Truman Bradley, Julia Bradley, or the "Bradley Family" were listed on various Schaghticoke overseer reports from 1864 through 1870. Ex. 20. (1864 and 1865, Truman Bradley; 1867, Julia Bradley and "Bradley Family;" 1868, Julia Bradley. In other years the name "Truman" is listed. E. g., 1853, 1870. There are also listings for a

by petitioner (SBN 529) shows that there are far more names of non-Indians than names the petitioner asserts were Indian.^{31/} See SBN 525, 526. Only two of the persons claimed to have been Indians were buried in Nichols cemetery during Mr. Sherman's lifetime after he began his account book in 1857 and after Mr. Sherman can be shown to have lived in the area.^{32/}

For these reasons, the petitioner's claims concerning the Nichols cemetery and William Sherman's alleged connection with it do not demonstrate proof of a distinct community under criterion (b).

C. The Evidence Regarding the Role of Ethel Sherman Does Not Demonstrate a Distinct Community.

Ethel Sherman's letter of 1924 to the BIA does not provide evidence that there was a Golden Hill tribe or that it acted "in a collective fashion." The letter is signed by her as an individual. Although it states that the other family members "le[ft] everything" to her, it appears

Truman Bradley on overseer reports for 1882 and 1884, after the date of August 22, 1877 on the cemetery slip, SBN 525.) Moreover, there are other possible explanations as to why the Bradleys and Pamela Kilson are buried in Nichols Farm. Assuming that George Bradley had moved to Trumbull and lived in Nichols Farm area, it would have been reasonable for him to have had his father, Truman Bradley, buried in the Nichols Farms cemetery. Mr. Sherman's 1886 quit claim deed was for his property in "Nichols Farms." Ex. 28. Although it is not known how close George Bradley actually lived to Mr. Sherman, he resided two dwellings away from him as of 1880. Ex. 21 (U. S. Census 1880, Trumbull, Connecticut, p. 7, lines 5, 11). George Bradley, however, had moved from Trumbull to Bridgeport by 1900. U. S. Census 1900, Bridgeport, Connecticut, sheet 9, line 100. Ex. 22 There is no evidence that he was buried in Nichols Farm. Pamela Kilson also evidently lived in Trumbull at the time of her death. See Ex. 23 (Town of Trumbull certified copy of death entries). In addition, the Kilson family was related to the Bradleys. Julia Bradley, Truman Bradley's widow, who is also buried in Nichols Farm, was a Kilson. Ex. 24 (Town of Kent certified record). It would have also been natural for Truman's widow, Julia, and Helen A. Phillips, his daughter, to have been buried there.

^{31/} There are 20 names not shown to be Indian, as opposed to only five which petitioner claims to be Indian (Julia I. (?) Bradley, Pamela H. Kilson, Julia C. Bradley, Jeremiah P. Pann, and Helen A. Philips).

^{32/} Julia C. Bradley and Pamela H. Kilson. SBN529, 525. Although Truman Bradley is also listed on a receipt, he apparently died afterwards in Stratford, Conn., 1900. See Ex. 25; compare SBN 529.

that this statement reflected passivity and perhaps even indifference, as evidenced by the statement “they are too old to fight.” SBN 541.^{33/} No one joined her in signing the letter, and there is no showing that others even approved it. Nor did she sign it in any alleged leadership or representative capacity. Stated simply, there is no independent evidence that her letter represented collective action. The referenced “old” persons were her aunt and uncle, apparently William Jr., and Caroline. *See GHP Prop. Find. TR 49; id. 41* (noting death of “Harrit” in 1904 and Mary in 1905).^{34/} They would not have constituted a “community” under the regulations. *Miami Final Determ. 1992, Sum. Crit. 5, aff’d Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277 (7th Cir. 2001).

The letter did not refer to an organized group. In fact, it referred to her grandfather, William Sherman, as “the *last* chief of the Golden Hill Indians in Bridgeport,” *id.* (emphasis added), and mentioned only members of her immediate family and near relatives. SBN 541, 542. Even if accurate, this does not establish community under criterion (b). *Miami Final Determ., Sum. Crit. 5.*

There are also some inaccuracies in her letter. She states that “this land was given to my grandfather when the white people took Bridgeport from the Indians.” SBN 543. The documentary evidence, however, shows that the land was not given to her grandfather, William Sherman. Instead, he purchased it in 1875, when Trumbull already existed as an organized

^{33/} This assumes that the statement that “they leave everything to me” is accurate.

^{34/} One of William Sherman’s sons, who had survived childhood, had also passed away before Ethel Sherman wrote the BIA, because she referred to “my uncle that died two years ago.” Because William Sherman Jr. evidently did not pass away until 1934 (BN 526), the deceased uncle she referred to may have been Chester. Thus there were only two persons who might be considered “old” as of the date of her letter. The only older persons specifically referred to in the letter, moreover, were “my aunt and uncle.” Ethel Sherman’s father was George Sherman, one of William’s sons. *GHP Prop. Find. TR 49.* According to her letter, it was her father (George) who was living on the Trumbull property at the time.

municipality. Ex. 26. In addition, she states that the location of the Golden Hill Indians was in Bridgeport, SBN 541, but it is undisputed that the property William Sherman purchased was located in Trumbull, and it is this property which petitioner now claims became the petitioner's "land base." See Supp. to Doc. Pet. 72. Because of these inaccuracies, her accounts should not be given much weight. Similarly, the interview of her relied on by the petitioner was not contemporary, but appears to have been given decades after the events described. See Supp. to Doc. Pet. 89-91. As with her 1924 letter, the interview refers only to close relatives and provides nothing to establish "shared or cooperative labor or other economic activity" among the membership as a whole. See § 83.7(b)(1)(iv); *Muwekma* Prop. Finding Sum. Crit. 24.^{35/}

There is no evidence of a "uniquely Tribal community," as the petitioner claims. Supp. to Doc. Pet. 92. Social relations must extend beyond "nuclear families." BIA Guidelines 47; *Miami* Final Determ. Sum. Crit. 5; *Muwekma* Prop. Finding, Sum. Crit. 25. Nor is there any evidence that members "worked communally to earn money," that they did this "for the benefit of the Tribe," or that they pursued "other group goals." Supp. to Doc. Pet. 89-91.

In summary, the petitioner has failed to prove that a "predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present" as required by mandatory criterion 83.7 (b).

^{35/} Her fishing, hunting, berry-picking, gardening, and work in her brother's restaurant are no different than that undertaken by many non-Indians, and these activities involved only her individual family. There is no indication that this represented any communal activity for the group as a whole, or any other form of group interaction.

V. THE PETITION FAILS TO MEET CRITERION (c), PROOF OF POLITICAL INFLUENCE OR AUTHORITY OVER ITS MEMBERS AS AN AUTONOMOUS ENTITY FROM HISTORICAL TIMES UNTIL THE PRESENT.

For many of the same reasons that the petitioner has failed to satisfy criterion (b), it has fallen short of the mark with regard to proof of continuous political influence or authority under criterion (c). As an initial matter, it should be noted that the petitioner cannot rely on the provision of § 83.7(c)(1)(iv) which provides that a showing as to criterion (b) “at more than a minimal level” may constitute evidence of political influence. Indeed, as demonstrated in Section IV above, the petitioner has failed to satisfy criterion (b) altogether.

Criterion 83.7(c) requires proof that “[t]he petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.” 25 C.F.R. § 83.7(c) (emphasis added). The term “autonomous” means “the exercise of political influence or authority independent of the control of any other Indian governing entity.” *Id.*, § 83.1 (emphasis added). While autonomy is understood “in the context of the history, geography, culture and social organization of the petitioning group,” *id.*, the petitioner must still prove that it actually exercises political authority and influence, both presently *and* historically. The term “autonomous” was carefully chosen. The Department has stated that it means “self-governing.” 56 Fed. Reg. 47320 (1991) (preamble to proposed acknowledgment regulations). The Department further emphasized:

This self-governing character of an Indian tribe is basic to the Federal Government’s acknowledgment that a group maintains a government-to-government relationship with the United States.

Id. (emphasis added).

Notwithstanding the petitioner's efforts to water them down, the regulations specifically state:

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and /or representing the group in dealing with outsiders in matters of consequence.

25 C.F.R. § 83.1 (emphasis added). The intent of the definition, in turn, was that “the self-governance reflected in the autonomous nature of a group is more than simply a process for group decision making...” 56 Fed. Reg. 47321 (1991).^{36/}

While political influence or authority “is to be understood in the context of the history, culture and social organization of the group” (*id.*), it still must be genuine and must exist historically through the present. 25 C.F.R. § 83.7(c). As with the other criteria, it must be shown by specific, documented evidence. *Id.*, § 83.6(a), (c), (d). “[T]he primary question is usually whether the level of evidence is high enough, even in the absence of negative evidence, to demonstrate meeting a criterion, for example, showing that political authority has been exercised.” 59 Fed. Reg. 9280. It is true that criterion (c), like criterion (b), need not be met at “every point in time,” and that fluctuations in tribal activity during various years will not “in themselves” be cause for denial of acknowledgment. 25 C.F.R. § 83.6(e). Nevertheless, “[e]xistence of **community and political influence or authority shall be demonstrated on a substantially continuous basis.**” *Id.* (emphasis added). *See also* 25 C.F.R. § 83.3(a) (Regulations “**intended to apply to groups that can establish a substantially continuous tribal existence and which**

^{36/} As originally proposed, the three factors in the political influence definition, § 83.1, were linked with “and.” This was replaced in the final version with “and/or.” The regulatory purpose as indicated by the preamble to the final regulations is that while all three factors need not be shown, more than one of them should be. 56 Fed. Reg. 9288.

have functioned as autonomous entities throughout history until the present.”) (emphasis added).

There are important characteristics of political influence or authority that the petitioner omits. *See* Supp. to Doc. Pet. 121-22. While coercive powers exercised by recognized tribes need not be shown,

[i]t is essential that more than a trivial degree of political influence be demonstrated. Petitioners should show that the leaders act in some matters of consequence to members or affect their behavior in more than a minimal way.

59 Fed. Reg. 9288. (emphasis added). Although the difficulties of unacknowledged groups in maintaining political influence are taken into account, the fact remains that

[the definition of political influence or authority] maintains the fundamental requirements of the regulations that political influence must not be so diminished as to be of no consequence or of minimal effect.

Id. (emphasis added).

The political dimension to tribal recognition is fundamental. “The concept of a bilateral political relationship is a strong one throughout Indian law.” *Masayesva v. Zah*, 792 F. Supp. 1178, 1188 (D. Ariz. 1992) (quoting F. Cohen, *Handbook of Federal Indian Law* (1982)). As the Department has emphasized:

It must be shown that there is a political connection between the membership and leaders and thus that the members of a tribe maintain a bilateral political relationship with the tribe. This connection must exist broadly among the membership. If a small body of people carries out legal actions or makes agreements affecting the economic interests of a group, the membership may be significantly affected without political process going on or without even the awareness or consent of those affected.

Miami Final Determ. Sum. Crit. 15, *aff’d Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277 (7th Cir. 2001). The petitioner must show that any interest

in petitioner's alleged leaders and their issues and activities "were and still are distributed broadly across the membership." *Id.* at 18-19.

This requirement means that these issues and activities must not simply be pursued by a very narrow core of individuals for whom they might be quite important but also are considered important among the membership as a whole.

* * * *

Secondly, it is equally necessary to provide evidence that the issues addressed by leaders and organizations were of clear significance to members rather than of nominal or minor interest.

Id. at 19. In particular, the evidence under criterion (c) must demonstrate broad interaction extending beyond a group of family members. *Muwekma Prop. Finding, Sum. Crit. 30, 34.* "This requirement insures that a self-appointed leader does not seek acknowledgment without the knowledge of those people whom he or she claims to represent and without their active support." *Id.* at 22.

The petitioner fails to meet these requirements. As with criterion (b), the deficiencies first observed by the Department remain. The petitioner has not provided evidence of real bilateral political relationships, both historically and more recently. *See* Obvious deficiencies letter from Director, Office of Tribal Services to Aurelius H. Piper, Jr., August 26, 1993, at 4-5; Letter of Technical Assistance from Acting Director, Office of Tribal Services, to Aurelius H. Piper, Jr., October 12, 1994, at 2. By 1763, the tribal organization was abandoned. There is no indication of any political leadership or authority from that point on. There was a complete lack of tribal relations between the few living at Golden Hill and other members elsewhere.

Further, there is no evidence whatsoever that William Sherman was a Paugussett leader. The petitioner's assertions regarding his creating a Paugussett burial ground, his alleged Indian leadership and reestablishing a "reservation" are not only unsupported, but also contrary to evidence contained in his diary and the real estate documents themselves.

Moreover, there is a substantial and fatal gap in the petitioner's evidence after William Sherman's death in 1886. The petitioner is unable to offer any meaningful evidence of a continuing bilateral political relationship between the death of Sherman in 1886 and the 1970s, a period of nearly 100 years. As to the period of the 1970s to the present, the evidence demonstrates an utter lack of activity or influence beyond a small group of closely related family members or activists. This simply is not enough.

The petitioner has therefore failed to demonstrate political influence or authority from historical times until the present under mandatory criterion 83.7 (c). The critical failures of the petitioner's showing as to criterion (c) are discussed here. For a detailed discussion of all the petitioner's evidence and contentions, see Appendix § II.

A. There Is a Complete Lack of Political Influence or Authority Demonstrated by 1763.

As demonstrated in detail in Section IV, the petitioner's purported tribal existence ceased by 1763. As the Department concluded in the Reconsideration Order, the Golden Hill "heirs" were reduced to two sisters, Eunice and Sarah Shoran. Rec. Determ. App. I, 14. In 1763, they submitted a petition to the General Assembly. Conn. Ind. Pap. II:147, 147c, Pet. App. IV, 14, 17. The two adult sisters did not constitute a political community, and no bilateral political relationship can be premised on this limited family remnant. Any claim of leadership by one over the other would involve no more than ordinary family relations, not tribal ones. "There was no evidence that their influence extended beyond their own family line." *Steilacoom Prop. Find.*, Sum. Crit. 14.

B. William Sherman Exercised No Political Influence or Authority Within the Meaning of § 83.7(c).

Similarly, there is no evidence of political leadership by William Sherman. There is no reliable evidence that he was “the greatest Paugussett leader” of the second half of the 19th century. *See* Supp. to Doc. Pet. 137. As discussed in section IV, the activities and relationships relied on by the petitioner -- such as William Sherman’s connection with the Nichols cemetery -- are not evidence of a distinct tribal community under criterion (b). For the same reasons, they do not demonstrate political influence or authority under criterion (c). The petitioner nonetheless attempts to point to several of Mr. Sherman’s activities as evidence of political influence, including his purported acquisition of property for a reservation, his alleged care of other tribal members and his alleged connections to a greater Paugussett community. A review of the evidence, however, reveals that the petitioner’s attempts to portray these activities as evidence of political leadership fall short.

1. William Sherman’s Purchase and Subsequent Conveyance of Property Is Not Evidence of Political Leadership.

The evidence does not support the petitioner’s assertion that William Sherman’s purchase of property in 1875 was a “*supremely political act.*” Supp. to Doc. Pet. 144. Rather, it was little more than an ordinary real estate transaction. The property, which was subsequently transferred by quitclaim deed to Lacey B. Rowland, as agent for the Golden Hill group, does not support the assertion that Mr. Sherman did so to “reestablish[] a Tribal reservation.” *Id.* 138. Nothing in his diary or any other evidence supports this; rather, his diary simply indicates that he went to get money to “Pay for house.” Diary/Account Book 81. Significantly, documentary evidence shows that he bought land *in his own name*, and not that of any Indian group. For 11 years following the 1875 deed to Mr. Sherman, he owned the property in his own name outright, not in the name of any group. *See* Exs. 26-28 . The petitioner’s description of the property as Mr. Sherman’s

“personal land” (Supp. to Doc. Pet., 30) confirms that it was not tribal land and that Mr. Sherman was not living in a tribe. *See GHP Final Determ.*, TR 78. As the Department has noted, “[i]f it were Indian land, owned by the State, Sherman could not have owned it, and therefore, could not have quit claimed the property to Lacey without action from the State Assembly.” *Id.* at 77-78. Nonetheless, he mortgaged it to the Golden Hill agent and later quitclaimed it to him. *See Exs. 27-28.* Nothing in that deed required the property to be used for an Indian reservation. Instead, this conveyance was entirely consistent with providing the security for the underlying debt and promissory note referred to in the mortgage. *See id.* There is no evidence that he transferred his interest for the benefit of an existing tribe or to allow the land to be used for an Indian reservation. In fact, it was not designated as a State reservation until 1933 (*GHP Prop. Find. TR 53*), nearly fifty years later, and even this is based on newspaper accounts and not on any court documents that can be located.

There is no evidence that any of the Shermans were allowed to live on the property without paying rent after it had been quitclaimed to Mr. Lacey. Supp. to Doc. Pet. 78, 79. Contrary to the petitioner’s current claim, there is no evidence that the Kilson, Pease, Pann and Bradley families “returned” to Trumbull “because they knew William Sherman was in a position of authority . . . [and that] he was reestablishing a land base for the Tribe in 1875.” Supp. to Doc. Pet. 72. This claim is even refuted by petitioner’s own submissions. Jeremiah Pann had already been buried in the cemetery in 1851, while Mr. Sherman was probably at sea. SBN 529; *GHP Prop. Find. TR 38-39.* Levi Peas and Henry Pease were already living in the area in 1850, as documented on the Federal census that year. *See SBN 433; GHP Final Determ. TR 27 & n. 8; see also id. 28 & nn. 8 & 9* (showing that Mr. Sherman was paid for caring for Henry Pease in 1857). Pamela Kilson died in 1877, nine years before Mr. Sherman quit claimed the property to

Mr. Lacey. SBN 529. Although the Bradley family may have moved to Trumbull from Kent, there is no evidence that they did so because of William Sherman.

In sum, the petitioner's claims that the reservation "quickly became the center of Tribal life," that "Paugussett families lived on all sides of the Reservation,^{37/} forming a vibrant community which shared economic and political activity," and that they also viewed the reservation "as a nearly Holy portion" of their former homeland (Supp. to Doc. Pet. 138) are undocumented and unproven. The same is true for the assertions that they regarded William Sherman "as the leader who had made the Reservation, and the survival of the Tribe, possible," and that Mr. Sherman "continued in the role of a leader of a traditional Paugussett family grouping." Supp. to Doc. Pet. 138. If any of these allegations were true, one would expect them to have been mentioned in Mr. Sherman's diary. They were not.^{38/}

2. Petitioner's Claims of Care for Tribal Members and Contact with a Larger Paugussett Community Are Unsupported.

Although William Sherman may have been a well-regarded nurse in the area, there is absolutely no evidence that he nursed the sick in the Paugussett community and "cared for the members of the Tribe" as now claimed, or that there even was a Paugussett community at this time. Supp. to Doc. Pet. 142, 143. The petitioner names only one person to whom his diary indicated Mr. Sherman provided "docketerin," and that is Henry Pease, for which Mr. Sherman

^{37/} The only person claimed to have been an Indian who lived in the vicinity of the Sherman family was George Bradley, and there is no evidence at all that he was a "Paugussett." By 1900 he had moved away and was designated on the census in a non-Indian category. Ex. 22. Although his residence was the second one from Mr. Sherman's "in the order of visitation" by the 1880 census enumerator, it cannot be ascertained how near it actually was to William Sherman's.

^{38/} Although petitioner complains that "tragically" large portions of the diary which might have provided other evidence have been lost or destroyed, Supp. to Doc. Pet. 142, the fact remains that it appears that pages were deliberately cut from the diary while it was in petitioner's custody. See *GHP* Final Determin., TR 29.

was paid for his services. *GHP* Final Determ., TR 28. There is no evidence of any political influence or authority on Mr. Sherman's part.

Similarly, there is no evidence of a "large Paugussett community" -- or any Paugussett community -- in Kent, Connecticut in 1870, and none is provided. Supp. to Doc. Pet. 144. Even if there were such a community, there is no evidence that Mr. Sherman had any significant contact with that community. Supp. to Doc. Pet. 145. In short, the petitioner has not offered any credible evidence that Mr. Sherman held any dominion or sway over the behavior of any member as a tribal leader of any kind. No claims of such influence are made by Hurd or Orcutt, and none are supported by Mr. Sherman's diary. Similarly, the claims of "widespread knowledge, communication and involvement in political processes by most of the group's members" in the community surrounding the reservation are also completely devoid of proof. Supp. to Doc. Pet., *Id.*

C. Petitioner Also Fails to Prove Political Influence and Authority from 1970 to the Present

The petitioner fails to demonstrate a present bilateral political relationship between it and the overall membership. As in *Miami* and *Muwekma*, there do not appear to be "tribal political processes involving leaders or organizations with a broad following on issues of significance to the overall . . . membership." *Miami* Final Determ., 57 Fed. Reg. 27312 (1992), *aff'd Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277 (7th Cir. 2001); *accord Muwekma* Prop. Finding, Sum. Crit. 39.

1. No Bilateral Political Relationship With the Overall Membership Is Shown on the Basis of Chief Big Eagle's Authority.

Although it is true that no particular form of governance is required, political influence or authority must exist in a meaningful way and not just on paper. Proof of genuine political

influence requires some combination of evidence that the “group is able to mobilize significant numbers of members and significant resources from its members,” that “[m]ost of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance,” that “[t]here is widespread knowledge, communication and involvement in political processes by most of the group’s members.” 25 C.F.R. § 83.7(c)(i), (ii), (iii). The evidence confirms that there is no bilateral political relationship between the petitioner and the general membership, and certainly that no significant political connection exists broadly among the members. *See Miami Final Determ. Sum. Crit.*, 15, 20; *Muwekma*, Prop. Finding, Sum. Crit. 22.

Ironically, the basis for Aurelius Piper Sr.'s (Chief Big Eagle) purported authority actually demonstrates the lack of a bilateral political relationship with the overall membership. *See Muwekma Prop. Finding, Sum. Crit.* 33-35 (evidence of political authority must extend beyond single family). The claim of authority was grounded primarily on seven “power[s] of attorney,” all of which were provided by his immediate family, including children, sister, niece, nephew and mother in 1973, and most of which contain similar language. *See Pet. App.* 16, 17, 18, 19, 22, 24, 27, 38. They appear to grant carte blanche authority, without providing approval by the signer or any other member for the actual issues that could arise.^{39/} Similarly, his authority was also based on a 1974 statement signed by four persons, identified as an alternate council member, “oldest elder chieftess,” a director and council secretary. *Pet. App.* III, 42. One of them, Mary E. Piper, was his wife and a non-Golden Hill descendant. *See Pet. App.* III, 20. Another was his mother.^{40/} She was the one he later said named him “Traditional Chief” in 1959. *Pet. App.* III, 271. Thus, Mr. Piper appears to have been endorsed only by those “most closely related” to him,

^{39/} For example: “By virtue of being blood relations I Donald Douglas Piper, do here by give to Aurelius H. Piper [his father] the right to speak and to handle all matters pertaining to the golden hill Indians....” *Pet. App.* III, 38.

^{40/} Identified as Ethel Sherman Piper Baldwin Peters.

and not by the overall membership. *See Miami* Final Determ. Sum. Crit. 23; *Muwekma* Prop. Finding Sum. Crit. 30-31. This was at a time when one of petitioner's documents states that membership was nearly 100 and another states it was 189. Pet. App. II, 72; Rev. Resid. Anal. Table 3, p. 11.

In 1981, Aurelius Piper Sr. (Chief Big Eagle) stated that "there is no tribal council." Pet. App. III, 147. In 1983, he reaffirmed: "We are still govern[ed] by a traditional hereditary chief as always." Pet. App. III, 171. He further stated that "[t]he people are the council. But as the ch[ie]f has been given the power of attorney, then it is up to the ch[ie]f and the clan mother to work for the best interest of the tribe." *Id.* He maintained that the chief may appoint a member to the CIAC, indicated that he had named Kenneth Piper (Moonface Bear), his son, for this position, and also announced the membership rules. *Id.* In addition, he stated that he had the right to appoint a subchief for the Colchester reservation and again appointed his son, Kenneth Piper. *Id.* The petitioner's latest governing document submitted for its petition bears this out even further. It provides that the "Traditional Chief is the leader of the Tribe, the symbol of its unity and permanence." Pet. App. III, 270, June 30, 1993. It further states that the Traditional Chief shall choose his or her successor. *Id.* It refers to prior traditional chiefs having done so, including Chieftess Rising Star who "named her son, Chief Big Eagle, Traditional Chief in 1959." *Id.* at 271. The Traditional Chief "shall serve the Tribe for all time to come." *Id.* No need for any membership support or approval is indicated. The Traditional Chief can also delegate his powers to a sub-chief, known as the Council Chief. *Id.* at 271. This person has to be a son, daughter, brother, sister, parent or grandchild of the Traditional Chief. *Id.* at 272. The Traditional Chief had appointed "Chief Quiet Hawk" (Aurelius Piper Jr., his son) to this position as Council Chief in 1990. *Id.*

The Traditional Chief purports to have the authority, “at his sole discretion,” to revoke tribal membership for anyone who has committed “one or more gross violations of the customs, rules or laws of the Tribe.” *Id.* at 275. He also claims other powers, including, “without limitation,” the right to determine tribal membership and residency on reservation lands, form tribal councils or other governing bodies, regulate trade and commerce, enter into contracts, negotiate with the Federal, State and local authorities, and issue “Tribal ordinances and rules.” *Id.* at 276. Thus, the petitioner’s own evidence demonstrates no bilateral relationship with tribal members as a whole.

2. The Evidence Reveals a Profound Lack of Involvement by Members Other Than Immediate Family Members.

The evidence demonstrates that there was little, if any, real involvement of purported tribal members other than immediate family members and activists. For example, the petitioner has submitted a document entitled “Golden Hill Tribal Meeting of January 28, 1978. Pet. App. III, 102.^{41/} It purports to be minutes of a tribal meeting at which a tribal constitution was adopted. What is significant is the exceedingly small number of participants. Only seven persons were present. *Id.* All have been identified as those also attending council meetings, which would suggest that no other members attended except those serving as the council, *see, e.g.*, Pet. App. III, 63, 77, 82, 106, 113, and that at least six of them were the children, niece and nephews of Aurelius Piper Sr.^{42/} This was during a period when petitioner claims that its membership was as

^{41/} The year indicated may have been in error, however, because a note at the bottom, under the special meeting for the new council members, states that the next meeting would be held Feb. 4, 1979, not 1978 (evidently referring to a council meeting, not one for general membership).

^{42/} *See* Pet. App. III, 22 and 19 as to Walter Bailey and Julia Piper, identified as nephew and daughter. Kenneth Piper was the son of Aurelius Piper Sr. and Roger Smith, Aaron Smith and Linda Smith have been identified as his son, nephew and niece, respectively. Petitioner’s genealogies, RG 79:018 Department of Environmental Protection Box 3 Golden Hill Paugussett Indians. Ex. 29. These also suggest that it is possible that Millicent Watts, the remaining member present, may also have been a close relative, although the listing of the

high as 187. *See* Rev. Resid. Anal. Table 3, p. 11. There is no evidence that whatever was done at this meeting actually influenced or controlled membership behavior in significant respects or resolved conflicts.

Similarly, most of the directors or council members (or persons participating as such) are either immediate family members or closely related to each other.^{43/} There is no evidence that the directors or council were elected or otherwise approved by the overall membership. Furthermore, one of those accepted to replace another activist was Ella Bailey, allegedly a Cherokee, who was said to be the wife of a Golden Hill member but not shown to have been a Golden Hill descendant herself. Pet. App. III, 48. She was allowed to attend meetings of the directors and tribal council. *Id.*; Pet. App. III, 63.

The only other reference to a subsequent tribal council meeting is a resolution adopted by a self-described “Tribal Council” on March 21, 1992. Pet. App. III, 244. It designated three chiefs, Aurelius Piper Sr., and his sons Aurelius Piper Jr. and Kenneth Piper. *Id.* It was signed by eight council members, including Aurelius Piper Sr. At least six of the remaining seven were his

name is not clear. *See id.* Insofar as these genealogies purport to show William Sherman’s descent from any historic tribe, they are unsubstantiated by any reliable evidence, are conflicting on their face, and are based on improbable and unproven assumptions. *See* State’s IBIA brief, Appendix V, 17-18.

^{43/} *See, e. g.*, Pet. App. III, 20, listing three directors, two of whom were Aurelius Piper Sr.’s sons, and the third was his niece; Pet. App. III, 77, indicating that out of seven council members, one was Aurelius Piper [Sr.] the chief, two were Geronimo Piper and Kenneth Piper, directors, who were his sons, one was Mary E. Piper, secretary, his wife, and two, Roger and Aaron Smith, chairperson and member, were his nephews; Pet. App. III, 103, showing three out of four council members to be either nephews of Aurelius Piper Sr. (Aaron Smith and Linda Smith; *see* genealogies, *supra*, Ex. 29) or his son (Kenneth Piper). The fourth, Millicent Watts, may have been his niece, although her full name in the genealogical records, Ex. 29, is not clear); Pet. App. III, 245, showing Aurelius Piper Sr. as a council member and that six of the remaining seven to be his sons, his sister (Ethel Mabel Smith; *see* genealogical records, Ex. 29; Pet. App. III, 22), or his nephews. It is possible although not conclusively shown that the remaining member, Millicent Watts, was his niece, as indicated previously.

sons, sister and nephews. Although it is entitled “Resolution Golden Hill Paugussett Tribe,” there is no evidence that it was adopted by the general membership itself, or even communicated to it.

Finally, there is evidence of divisions within the leadership and membership between the GHP petitioner and the Golden Hill Paugeesukq group. *See GHP Final Determ.*, Tech Rep. 73. Both groups claim to represent the same entity. *GHP IBIA Order of Jan. 15, 1997*, at 3. Although the purported representative of the Paugeesukq group, Kenneth Piper, is deceased, there is no indication that the group itself no longer exists or that the conflicts regarding authentic leadership and group identity have been resolved. The petitioner therefore fails to demonstrate that it is “united in a community under one leadership or government” as required. *Montoya v. United States*, 180 U.S. 261 91901); *see also* Felix S. Cohen, *Handbook of Federal Indian Law* 270 (1942); *Miami Final Determ.*, Sum. Crit. 1. Political processes for resolving conflicts are required, not simply factional divisions and disunity. *Miami Final Determ.*, Tech. Rep. 51.

The absence of a true bilateral political relationship, political contact between the council and membership, and support, involvement and interest of the membership as a whole in the council’s activities is evident. As in *Miami*, the evidence “does not indicate how sustained the members’ direct or indirect contact was with the organizations and their leaders.” *Miami*, Final Determ. TR 75. “The available information does not indicate that there is a consistent pattern of flow of information and influence, directly or indirectly, between the council and the membership as a whole.” *Id.* at 80; *see Miami Nation of Indians v. United States Dept. of Interior*, 2001 U.S. App. Lexis 13277, at *6 (7th Cir. 2001) (noting the “scant contact between the [tribal] council and the rest of the [membership]”); *Muwekma Prop. Finding Sum. Crit.* 38. Nor has it been established that that there was any such political contact and flow of information and influence that actually occurred.

In conclusion, the petitioner has failed to prove that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present as required by mandatory criterion (c).

VI. THE PETITIONER HAS NOT REMEDIED VARIOUS DEFICIENCIES REGARDING CRITERION (d), GOVERNING DOCUMENTS

Criterion 83.7(d) requires that petitioner provide “[a] copy of the group’s present governing document, including its membership criteria.” Although the petitioner refers to various “governing documents,” it does not identify them by document number, and not all of them can be located. Supp. to Doc. Pet. 174. There appear to be four documents submitted which the petitioner calls governing documents: (1) Rules and Bylaws of 1973, Pet. App. III, 11-15; (2) a statement by Chief Big Eagle (Aurelius H. Piper Sr.) dated March 28, 1973, Pet. App. III, 171-72; (3) “Method of Selecting the Leader of the Golden Hill Paugussett Tribe,” dated June 30, 1993, Pet. App. III, 270-72; and (4) “Rules for Tribal Membership and Government of the Golden Hill Paugussett Tribe,” dated March 15, 1990, Pet. App. III, 273-76.

The Department previously advised the petitioner as follows:

Although the constitution and by-laws of the tribe are included as exhibits to the petition, as required by criterion (d), they are not dated, signed, or certified to show that they have been passed by the group’s governing body. The petition does not adequately explain the background of the constitution and by-laws. For example, it does not indicate when they were adopted and whether they were submitted to the membership for approval.

* * *

[N]either of these documents [“Practice and Usage of the Golden Hill Tribe Concerning Membership” and “Rules for Tribal Membership and Government,” which the agency stated enhanced its understanding of membership criteria] are verified by the signatures of the governing body.

BIA Letter of Obvious Deficiencies, August 26, 1993, at 5. The petitioner has failed to cure these deficiencies.

There is no indication how the 1973 rules and bylaws were adopted. Although they provided that they could be amended or repealed by “two thirds of the corporate members present,”^{44/} they did not say how they were to be originally passed. Pet. App. III, 15. No evidence

^{44/} The corporate members were defined as “authentic descendants of the Golden Hill Tribe.” *Id.*

has been provided that they were approved by the membership or even by any alleged governing body.

The minutes state that a constitution was accepted at a “tribal meeting” on January 28, 1978.^{45/} Pet. App. III, 102. However, the constitution itself has not been submitted as part of petitioner’s latest submission. Moreover, only seven persons attended this meeting, and they all appeared to have been council activists. *Compare* Pet. App. III, 102, with *id.* at 63, 77, 82, 106 and 113. It is unclear whether the petitioner views this constitution as presently in effect in light of the subsequent documents that are arguably of a governing nature and which may have effectively superseded it. Pet. App. III, 171 and 270-76.

The document “re practices and usage of tribe,” dated March 28, 1993, was signed only by “Chief Big Eagle Aurelius H. Piper Chief” with no indication that it was ever approved by any governing body, much less the general membership. *See* Pet. App. III, 171-72. The same is true for the remaining documents concerning the method of leadership selection, June 30, 1993, Pet. App. III, 270-72, and the membership and government rules, March 15, 1990. Pet. App. III, 273-76. Both have been submitted only by Chief Big Eagle, with only his name, “aka Aurelius H. Piper Sr.” at the end. No evidence is offered of the two-thirds membership approval required by the 1973 rules. Pet. App. III, 15.

In summary, petitioner has not corrected the deficiencies of which it was advised by the Department, and has failed to show that the purported governing documents were adopted as a result of any significant governing influence of the membership as a whole.

at 12.

^{45/} The minutes are dated 1978, but other evidence suggests that the correct date was 1979. *See, e. g.,* note at the end of these minutes stating that the next meeting, evidently referring to one for the council, would be February 4, 1979.

VI. THE PETITION FAILS TO SATISFY CRITERION (e), PROOF OF DESCENT FROM A HISTORICAL TRIBE.

The petitioner fails to demonstrate descent from a historical tribe, as required by criterion 83.7(e). The original Final Determination concluded that the petitioner's effort to show descent from a single individual, William Sherman, was a critical defect in the petition. The petitioner's new efforts to remedy this defect, both in terms of the attempt to resuscitate the proof of Sherman's descent from a purported historic tribe and to expand the line of descent to include the Turkey Hill group, fall far short of the mark.

Section 83.7(e) requires proof that “[t]he petitioner’s membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.” 25 C.F.R. § 37(e) (emphasis added). The regulations identify various categories of evidence as acceptable to satisfy this criterion, including descendancy rolls of the Secretary of the Interior, State, Federal or other official records, church, school and other enrollment records, and affidavits of recognition by tribal elders. *Id.*, § 83.7(e)(1). All require evidence based on tribal descent. *Id.* Even though 100 percent of the members need not prove descent, 59 Fed. Reg. 9289, those who fail to do so should be the exception and not the rule. BIA Guidelines, 54. One of the major purposes of the revised regulations is to state clearly and to give primacy to “the most fundamental requirement” -- descent from a historic tribe. 59 Fed. Reg. 9288 (1994).

The petitioner's description of the regulations' preamble omits the key requirement of reliable evidence. *See* Supp. to Doc. Pet. 177. The preamble actually states:

Unfortunately such rolls and/or documents [created when ancestors could be identified clearly as affiliated with the historic tribe] may not exist for some groups or where they do, individuals may not be identified as Indians. In such instances,

the petitioner’s task is more difficult as they must find other reliable evidence to establish the necessary link to the historical tribe.

Weight is given to oral history, but **it should be substantiated by documentary evidence wherever possible.** Past decisions have utilized oral history extensively, **often using it to point the way to critical documents.** Tribal records are also given weight. In fact, all available materials and sources are used and **their importance weighed by taking into account the context in which they were created.**

59 Fed. Reg. 9288-89 (emphasis added). In short, the key requirement is that reliable evidence demonstrate tribal descent based on acceptable evidence. 25 C.F.R. § 83.7(e).

These requirements are further implemented by sound principles of genealogical methodology. First, “links must be made generationally to connect persons to their ancestry.” *GHP* Final Determin., TR 99. Second, “[t]he primacy of original documents over secondary sources” is basic to evaluation of evidence by the Department. *Id.* at 58. These are supported by the standards of the Board for Certification of Genealogists.^{46/} For acceptable proof of descent from a historic Indian tribe, the Board mandates that evidence “prove each statement made and each link between generations” and that the individual be “identified as Indian by reliable primary evidence.”^{47/}

As the Department found in the prior Final Determination, based on standard and accepted genealogical methodology and methods of proof, there is no evidence documenting descent of William Sherman from the Golden Hill Paugussett group or any other Indian group. *GHP* Final Determin., Sum. Crit. 10-17. Although Mr. Sherman was listed as Indian in the 1880 census, the census records taken as a whole were inconsistent and conflicting as to any Indian designation for him and his family. *Id.* at 10-12. Notably, although Connecticut records contain extensive

^{46/} See Exhibits in Support of State IBIA Brief, Ex. 2. The BIA and others have recognized the Board as authoritative. See State’s IBIA Brief, at 16 n. 5.

^{47/} *Id.* p. 2.

documentation for many Indian groups, William Sherman was never listed on an overseer's report as being descended from any tribe. *Id.* at 12, 15, 17. Furthermore, even if William Sherman had been proven to have been a Golden Hill Paugussett, descent of the petitioning group as a whole through a single individual who did not live in tribal relations, does not meet the requirements for tribal descent under criterion (e). *Id.* at 17-18. There is no evidence, furthermore, that William Sherman ever maintained tribal relations with the Turkey Hill Indians of Derby, or any other Indians or Indian group.

The petitioner's belated attempt to prove descent through the Turkey Hill Indians of Derby also fails to meet acknowledgment standards. First, petitioner's failure to demonstrate that the alleged Turkey Hill descendants in fact maintained tribal relations with the petitioner over generations -- which is indispensable for proof of a continuous, bilateral political relationship -- is fatal to accepted tribal membership requirements. Second, there is no reliable evidence that Delia Merrick Allen or her son Andrew Allen, the key ancestors claimed by petitioner, were of Turkey Hill ancestry.

As before, the critical shortcomings of the petitioner's evidence is discussed here, and a more detailed analysis of all the evidence and contentions regarding criterion (e) is provided in the Appendix, § III.

A. The Petitioner Has Offered No Acceptable Proof of Tribal Descent for William Sherman.

The petitioner claims descent from William Sherman. Supp. to Doc. Pet. 174. Thus, the key question is whether Mr. Sherman himself descended from an historic Indian tribe. The Reconsideration Order and the Final Determination both indicated a lack of acceptable evidence

on this essential point. Reconsid. Order App. I 10. The petitioner's most recent assertions fail to overcome this glaring deficiency. *See* Supp. to Doc. Pet. 174.

1. There Is No Evidence That Rowland Lacey, the Golden Hill Agent, Identified Either William Sherman or His Son As Golden Hill Indians.

There is absolutely no evidence that Rowland Lacey, Agent of the Golden Hill Indians, ever determined or acknowledged William Sherman or his son George as Golden Hill Indians. Supp. to Doc. Pet. 179-183. In fact, there were no court overseer reports created for William Sherman identifying him as of Golden Hill or any other Indian tribal descent, or which even treated him as an Indian. *GHP* Final Determ. Sum. Crit. 15, 17. Mr. Lacey, like the previous Golden Hill agent, Russell Tomlinson, accepted a real estate interest conveyed by William Sherman outright, without the intervention of any Indian overseer. *See* Exs. 27-28; *compare*, SBN 385. Nor is there any evidence that William Sherman and his family lived on the property rent-free as claimed, or that they did not perform other in-kind services. *See id.* at 180. The petitioner also has not documented that George Sherman in fact lived on this property after the quitclaim deed.

2. William Sherman's Relationships With Henry Pease and Others Does Not Establish Tribal Descent

The petitioner's new evidence fails to demonstrate tribal descent for William Sherman and his descendants. Although the Proposed Finding stated that Henry Pease may have been William Sherman's nephew, *GHP* Prop. Find. TR 45, the Final Determination indicated there was no evidence that the two were related. *GHP* Final Determ. TR 27-28. Henry Pease was identified as a Golden Hill member in a deed. SBN 385. However, the basis of that identification has not been

shown. As discussed more fully in § IV above, while William Sherman may have had contact with him, the relationship apparently began as one of a paid guardian in handling his financial affairs and in caring for him. *GHP* Prop. Find. TR 42-44; *GHP* Final Determ. TR 28 & n. 9. The context of William Sherman's dealings with Levi Pease with whom he "traded" did not demonstrate the existence of a family relationship with those in the Pease household. *See GHP* Final Determ. TR 27. In fact, Henry Pease's parentage is undocumented. *Id.* The overseer's payment to William Sherman for caring for Henry Pease not only did not prove any family relationship between the two of them, it suggests the opposite. *Id.* at 28. Thus, William Sherman's dealings with or on behalf of Henry Pease actually negate any tribal membership or descent claims for Mr. Sherman.

3. The Contradictory and Inconsistent Census Data Fails to Prove Descent from a Historic Tribe.

The BIA in the Final Determination properly concluded, after a painstaking review of all available census records relating to William Sherman, that the census reports were unreliable secondary evidence and of very little, if any, value. They contained inconsistent ethnic designations for William Sherman and his family, not only in different censuses, but even in the **same** census, including those specifically providing for an Indian designation. *GHP* FD, Sum. Crit., 12, 15, 17; Tech. Rep., 19-20, 72.^{48/}

As the Department has concluded, "[t]he purpose of census records is not genealogical, therefore statements regarding relationship, names, ages, places of birth, etc., cannot be assumed to be without error." *Ramapough*, FD, Tech. Rep., 17, quoting Noel C. Stevenson in Rubincam, Milton, *Genealogical Research: Methods and Sources*, Vol. I (American Society of

^{48/} For further discussion, including reference to 1860 census instructions which required Indian identification, see Appendix § III.C.4.

Genealogists), p. 42 (1980). Census enumerations are based either on observations of the census taker or on self-identification. *GHP* FD, Tech. Rep., 19-20. Thus, the census is only a secondary source for ethnicity. *Id.*, 72; *Ramapough* FD, Tech. Rep., 14. It "does not in itself provide a floor of adequate 'evidence' from which further conclusions may be derived. It is not an axiom on the basis of which further postulates may be stated. . . ." *Id.*, 14. Census ethnic designations which vary from one census to another are weak evidence. See e.g., *GHP* FD, Tech. Rep., 72. The BIA has rejected conflicting and inconsistent census designations of ethnicity, at least without independent evidence of reliability. *See Ramapough, id.*, 14, 87, 110; *United Houma Nation*, PF, Gen. Rep., 32 (census identifications "found to be quite inconsistent and not always reliable;" finding not inconsistent with those of other scholars regarding census ethnic identification).

William Sherman was not listed as an Indian on the 1850 and 1860 census records.^{49/} On the 1870 census, William Sherman's entry is smudged, making it illegible. However, his wife -- a documented *non-Indian*-- was listed as Indian, as were children living in his household, *GHP* Final Determ, 12, while his adult children who had left his household continued to be identified consistently as non-Indian. *Id.*; Tech. Rep, 19.

In the 1880 census, William Sherman was listed as Indian, but his other children, including one of his children still living with him and his adult children who had left his household, were not. Tech. Rep., 19-20. This listing conflicted not only with the earlier census reports, but also conflicted with *all other* official records made during Sherman's lifetime, with the exception of his death records. The birth records of the children who were listed with him in 1870 as Indian specifically identified William Sherman as non-Indian. *GHP* Final Determ, Sum. Crit. 16. Moreover, the 1870 census was the only document that listed any of his children as Indian during

^{49/} *See GHP* Final Determ Tech. Rep, 19-20.

the 19th century, except for the 1876 death record for one of his sons. Tech. Rep., p. 19. These inconsistencies led the BIA properly to conclude that the census was of limited, if any, value, and had to be measured against the other records examined.

The petitioner contends that the BIA unfairly considered the census records to be inconsistent because, it argues, census records did not contain a category of Indian until 1870.^{50/} Although there was no official category of Indian before 1870, the evidence reveals that enumerators did in fact use the Indian designation for at least some persons in the 1860 census, not only in Connecticut but in other parts of the country. Tech. Rep., 64-65; *see also* State's IBIA Brief Ex. 8 (over 44,000 identified as Indian in 1860 census). In fact, there were also specific references to Indians in the 1850 census. *Id.*^{51/}

The law governing the 1850 and 1860 censuses required an enumeration of "all the inhabitants" of the country, "omitting from the enumeration of the inhabitants Indians not taxed." Act of May 23 1850, §1, quoted in C. Wright and W. Hunt, *The History and Growth of the United States Census, Prepared for the Senate Committee on the Census, 56th Cong., 1st Sess.,*

^{50/} Unlike here, the census reports referenced in the Mohegan petition were relied on primarily as further evidence of relations between individuals and to specifically identify ancestors as Mohegan Indians, *not* for racial designation. *Mohegan Prop. Find.*, Gen. Rep. 15. The two major sources of documentation relied on in the Mohegan case were not the census or similar material, but instead the 1901 application of the Mohegans for proceeds of a Court of Claims award, and a manuscript genealogy prepared by a Mohegan who was a lifelong resident of the Mohegan reservation area. *See Mohegan, Proposed Find. Gen. Rep.*, 14. Both of these provided evidence of descent from prior Mohegans to the membership lists submitted for acknowledgment. *Id.* Regarding the censuses themselves, unlike here, the BIA noted that the Mohegan reservation was enumerated separately in the 1870 census, and that the tribal affiliation for Indians enumerated on the special Indian population forms was Mohegan, in the 1900 and 1910 censuses. *Mohegan Prop. Find. Gen. Rep.*, 15; *GHP Final Determ.*, TR 70. Further, the glaring inconsistencies found here beginning in 1870 were not present in the Mohegan case.

^{51/} For example, in the 1850 census Leonard Uncas was described in the column for occupation or profession as "Last of Mohegans." *GHP Final Determ.*, Tech. Rep., p. 65. He was later enumerated as an Indian in the 1860 census. *Id.*

Sen. Doc. 194 (1900) (hereafter cited as Wright and Hunt).^{52/} By necessary implication, all Indians who *were* taxed were to be enumerated. *See* Tech. Rep., p. 64.^{53/}

The instructions for the 1860 census specifically required the designation of Indians who in essence were taxed, stating:

5. *Indians*. -- Indians *not taxed* are not to be enumerated. The families of Indians who have renounced tribal rule, and who under State or Territorial laws exercise the rights of citizens, are to be enumerated. **In all such cases write "Ind." opposite their names, in column 6, under heading "Color."** (boldface emphasis added; italics in original).

Eighth Census -- 1860, Instructions to the Marshals, Department of the Interior, 1860 (Exhibits in Support of State's IBIA Brief, CT Ex. 11, at 14). The Secretary of the Interior, who administered the census at the time, specifically instructed the enumerators as follows:

9. *Color*. -- Under heading 6, entitled "*Color*," in all cases, . . . **if an Indian, write "Ind."** It is very desirable to have these directions carefully observed.

Id., at 15 (boldface emphasis added; italics in original).^{54/}

If William Sherman was either an Indian not taxed or was an Indian under tribal rule, he would not have been listed at all in the 1860 census. If he was an Indian who had "renounced tribal rule" and was living as a citizen of the state, he should have been listed as "Ind." As the

^{52/} Exhibits in Support of State's IBIA Brief, CT Ex. 10, pp. 931-32.

^{53/} The 1850 Census, moreover, also included special Indian statistics prepared by the Commissioner of Indian Affairs. It showed the past and present location of what were called the Indian tribes. *See* Seventh Census of the United States, Exhibits in Support of State's IBIA Brief, Ex. 9, p. xciv. For Connecticut, three Indian groups were shown, the Mohegan and the ones identified as Stonington and Groton, and were described as having "become extinct or so reduced in number as to be lost sight of by the government in their tribal character." *Id.* No Indian groups were listed for the Bridgeport and Trumbull areas, and there was no reference at all to the Golden Hill remnants.

^{54/} The 1860 instructions included the phrase "Indians who have renounced tribal rule." *See* State's IBIA Brief Exhibits, Ct Ex. 11, p. 14, ¶5. The 1870 and 1880 instructions included the words, "Indians out of their tribal relations" and "Indians not in tribal relations," respectively. *See* Wright and Hunt, pp. 158, 168. All three referred to the Indians not taxed.

1860 census records, shows, however, he was listed in that census, but not as an Indian. *GHP Final Determ., Tech. Rep., p. 19.*

Furthermore, the census data never identified any of the Sherman family members as members or descendants of any Indian tribe, whether Paugussett, Golden Hill, or otherwise, as required by the regulations. *GHP FD, Sum. Crit. 15, 17; Tech. Rep., 72, 98; see also id., 19-20.* BIA precedents have not accepted similar census data providing no tribal origin or affiliation. *See Ramapough FD, Sum. Crit., 31* ("The 1870 Federal census provided no tribal identification."); *see also id., Tech. Rep. 98, 117* ("A secondary source reference, such as a population census in the late 1800's, even if it identified a person as an 'Indian,' is not sufficient evidence for demonstrating descent from a historical Indian tribe," which requires primary source evidence for this purpose).

In summary, the petitioner's demand that the BIA accept a single census designation together with an indecipherable one as confirmatory of William Sherman's Indian status, without evaluating the context of the document in light of all the other evidence, is contrary to professional standards, precedent, and logic, and should be rejected. The Assistant Secretary properly found in the Final Determination that the census data did not show tribal descent for the petitioner.

B. Descent from a Single Individual Who Did Not Live in Tribal Relations Fails to Meet the Mandatory Requirement of Tribal Descent.

The Department correctly concluded that descent "of the petitioning group as a whole through a single Indian individual who did not live in tribal relations during his or her lifetime does not meet the requirements of criterion 83.7(e) for tribal descent." *GHP Final Determ. Sum. Crit. 17-18. See also id. at 12.* Petitioner's claim to the contrary is patently wrong. *See Supp. to Doc.*

Pet. 192. The regulations expressly require descent “from a historical Indian tribe” or from historical tribes which became one autonomous “political entity,” not just from individuals who supposedly have some Indian ancestry but did not live in tribal relations. 25 C.F.R. § 83.7(e).

The Reconsideration Order did not abrogate these basic principles. All the examples it gave for descent from an individual involved cases where “an individual and his/her children were documented to have lived in tribal relations” and/or “continued living in tribal relations.” Reconsid. Order at 8 n. 3. As demonstrated in sections IV and V above, there was no evidence that William Sherman had any relationship, political, social or otherwise, with any Indian tribe.

C. Tribal Descent Cannot Be Established From the Alleged Turkey Hill Descendants.

Evidently because of the insurmountable difficulties in proving tribal descent through William Sherman, petitioner has almost tripled its membership through inclusion of alleged Turkey Hill descendants. *See* Supp. to Doc. Pet. 198-203. First, the expanded membership is not even shown to have been descended from the Turkey Hill group. Second, the petitioners’ effort to expand the membership is contrary to the requirement that members exist in tribal relationship and are not just a recent aggregation of persons claiming Indian ancestry.

1. There Is No Evidence That the Turkey Hill Property Was Either Established for the "Paugussett Nation" or Was Part of an Original 18th Century Reservation as Required by the Petitioner’s Own Membership Requirements.

The Reconsideration Order posited that the petitioner’s “governing document” states that descendants from any of four 18th century Fairfield and New Haven County reservations, including Turkey Hill, are eligible for membership. Recon. Determ. App. II 1. The petitioner’s constitution, evidently adopted on January 28, 1979,^{55/} states that membership shall include

^{55/} See Pet. III, 121, 102. It appears that the 1978 date in Pet. App. III, 102, is in error and that

descendants “of the residents of any of the four *original* reservations set aside for the Paugussett Nation....” Pet. Const. Art. III, § 1 (copy obtained separately, not from Pet. App.), Ex. 30 (emphasis added). It does not list the Turkey Hill “reservation” by name. There is no evidence that the land for the Turkey Hill Indians sold in 1871 had been established for the “Paugussett Nation” or was part of an original 18th Century reservation, as opposed to land subsequently purchased as investments for the benefit of this group or for their other use.

2. The Expanded Membership Is Not Based on Tribal Relations and Is Therefore Invalid.

In the Reconsideration Order, the former Deputy Assistant Secretary improperly cast aside the fundamental requirement of tribal relations as a basis for membership. The Reconsideration Order asserted, without support, that “[t]he eligibility standards do not require that such families have maintained tribal relations through time.” Reconsid. Order App. II, at 1 n.1. From this it assumed that “in estimating the potential for membership expansion” petitioner could radically revise its membership. *Id.* These statements are contrary to case law, the regulations, and BIA precedent.

To begin with, maintenance of tribal relations is a prerequisite to recognition of tribal sovereignty. *McClanahan v. State Tax Commission of Arizona*, 411 U. S. 164, 173 (1973); *United States v. Antelope*, 430 U. S. 641, 646 n. 7 (1977). It follows that an Indian tribe cannot be created simply by attempting to put together individual persons of alleged Indian ancestry who historically have not maintained tribal relations. Nor does such a collection of persons qualify as a tribe under 25 C.F.R. § 83.6 (f) (referring to “tribes or groups that have historically combined and functioned as a single autonomous political entity”). The pasting together of the alleged Golden Hill and Turkey Hill groups did not happen historically, but rather has been attempted some

the correct year was 1979.

hundred years after-the-fact and only for the purpose of acknowledgment, having occurred less than two years ago in response to a suggestion by the former Deputy Assistant Secretary in the Reconsideration Order. *See* Reconsid. Order, App. II, 1. This combination of individuals, only recently formed, is ineligible for acknowledgment under § 83.3(c) (“Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations.”).

In a 1988 Solicitor’s Office opinion, expressly relied on by the Court in *Masayeva v. Zah*, 792 F. Supp. 1178, 1181 (D. Ariz. 1992), Assistant Solicitor Keep advised that:

[I]t is because membership in an Indian tribe is a bilateral, political relationship that the courts have deferred to the tribes in determining membership in the absence of Congressional action. The political relationship, therefore, provides an inherent limitation on the power of a tribe to determine its membership.

[W]hile it is true that membership in an Indian tribe is for the tribe to decide, that principle is dependent and subordinate to the more basic principle that membership in an Indian tribe is a bilateral political relationship. . . . [A] *tribe does not have authority under the guise of determining its own membership to include as members persons who are not maintaining some meaningful sort of political relationship with the tribal government.*

Memorandum BIA.IA.0259, March 2, 1988, from Assistant Solicitor, Branch of Tribal Government and Alaska, to: Chief, Division of Tribal Government Services, Subject: Nature and extent of the Secretary's authority to disapprove amendments to the membership provisions of the Constitution of the Citizen Band of Potawatomi Indians, 2, 6. (Ex. 31; see also Ex. 32, 5). These principles have been followed in subsequent Department acknowledgment decisions and actions. *E.g.*, *San Juan Paiute* Final Determination, 54 Fed. Reg. 51502 (1989) (Sum. Crit. 22); *Mohegan* Prop. Find. TR 60; *Mohegan*, Obvious Def. Letter, at 3 (June 26, 1985) (noting that usually

majority of tribal members have maintained tribal relationships with each other over generations) (Ex. 112); *Narragansett* Recom. and Sum. of Evid. for Prop. Find. 17, 47 Fed. Reg. 35347 (1982), Final Determ., 48 Fed. Reg. 6177 (1983); *Snoqualmie* Final Determ. Sum. Crit. 13, (eff. Oct. 6, 1999); *Renape Powatan* Tech. Assist. letter, 10/29/96. 12 (Ex. 113).^{56/} See also *Miami Nation of Indians v. Babbitt*, 112 F. Supp. 742, 756 (N. D. Ind. 2000), *aff'd*, 2001 U.S. App. Lexis 13277 (7th Cir. 2001).

The petitioner is therefore required to show, not just Indian ancestry, but that there were tribal relations with the Turkey Hill group. They have not done so.

3. There Is No Evidence Petitioner is Descended from the “Myrrick” Family.

The petitioner's claims regarding the Turkey Hill descendants depends on demonstrating that the Delia Merrick Allen line of descent is genealogically connected to Susan, Peter and Polly Myrrick. These latter three are alleged to have been identified as Indians in 1814 in the Records of the Congregational Church of Orange (formerly North Milford). SBN 404; Supp. to Doc. Pet. 37.^{57/} This contention is based on the allegation that “Myrrick” and “Freeman” (another name she allegedly used) were “important, documented Derby Paugussett names.” *Id.* at 199. Delia Merrick Allen, however, is in fact descended from a family that came from Watertown,

^{56/} These principles are also supported by a long line of other Department precedents and opinions of the Solicitor's office. See, e. g., Memorandum From Deputy Assistant Secretary--Indian Affairs (Operations) to Eastern Area Director, Oct. 19, 1984; Letter from Acting Area Director, Eastern Area Office to Chief Sachem Narragansett Indian Tribe, Nov. 5, 1984; Letter from Deputy to the Assistant Secretary--Indian Affairs (Tribal Services) to Chief Sachem, Narragansett Indian Tribe, June 9, 1986; Memorandum from Acting Associate Solicitor, Division of Indian Affairs to Assistant Secretary--Indian Affairs, Dec. 15, 1980 (Exs. 33-36).

^{57/} Petitioner claims that for these reasons, Delia Merrick Allen was an Indian. Although petitioner spells Delia's maiden name as "Myrrick" (*id.*) and while the name may occasionally be spelled that way in one or more records, it is usually spelled otherwise, as will be subsequently discussed. Petitioner also claims that Eliza Franklin, whom it claims was the daughter of both Delia “Myrrck” and Levi Allen, was a Turkey Hill Indian.

Connecticut, and there is no evidence she had any relation to the Myrricks referred to in the Orange Congregational Church records.^{58/}

The certificate of death for Delia Merrick Allen, which gives her maiden name as "Merrick," not "Myrrick," states that both she and her parents, Jeremiah and Sylvia Merrick were born in Watertown, Connecticut.^{59/} Furthermore, the records of the Watertown, Connecticut First Ecclesiastical Society and Congregational Church, 1785-1887,^{60/} show that Sylvia Merrick was affiliated with that church from January 1808 through December 28, 1815, a period which began prior to the Myrrick entries in the Orange Church records and which ended after them.^{61/}

^{58/} Petitioner has submitted the "Records of the Congregational Church of Orange, Connecticut (formerly North Milford)," copied by a person from a chapter of the Daughters of the American Revolution (DAR), not the set from the Connecticut State Library microfilm copy. See SBN 395; Compare, Orange, Connecticut Congregational Church (Originally North Milford Parish) Records 1804-1907, typewritten copy, Conn. State Library, 1938, Ex. 38. These are not the true originals, however, because they have apparently been typed from a manuscript copy. The original manuscript has not been located as of this date, and petitioner has not produced it. These records list deaths for "Susannah wife of Peter Myrrick Indian," evidently age 48, on February 25, 1813; "Susan Myrrick, Indian of Peter Myrrick's family out of which many have died," evidently age 4, on April 11, 1814, and "Polly Myrrick Indian," evidently age 19, on May 15, 1814. To begin with, it is not clear whether it was Susannah or Peter who was of Indian descent. Second, the Connecticut State Library copy gives a spelling for some although not all of these surnames as ending with "h," not "k." The State Library entries are as follows: February 25, 1813 "[Age] 48 Susannah, wife of Peter Myrrich, Indian (emphasis added). April 11, 1814 "[Age] 4 Susan Myrrick, Indian of Peter Myrrich's family, out of which many have died" (emphasis added). May 15, 1814 "[Age] 19 Polly Myrrick, Indian." Conn. State Library copy, at 23-24, Ex. 37. In addition, there are prior entries for this surname, all of which are spelled "Myrrich," not "Myrrick," apparently not produced by petitioner. State Library copy, Ex. 37 at 21-22.

^{59/} Certified copy of Town of Ansonia certificate of death of November 23, 1890, for Delia Allen, Ex. 38.

^{60/} Ex. 39, deposited in the Connecticut State Library, Dec. 19, 1932.

^{61/} Sylvia, wife of "Jere: Meric" was admitted as a member of the Watertown Congregational Church in January, 1808, with the entry that she was "Dismissed," entered in an apparently different handwriting, after that name, indicating that the dismissal entry may have been made afterwards. Ex. 39, 197-98. There is also an entry for "Sylvia Mericks Two Children," in March, 1808, which appears to be a baptism record. Ex. 39, 35. Vol. II (which includes baptisms). There is an additional entry for "Sylvia Mericks Child - Betsy," in March, 1811. Ex. 39, 36. Finally, there is an entry "Sylvia Merrick Dismissed by Letter," on Dec. 28, 1815, which is lined through. Ex. 39, 200.

Watertown, Connecticut is on the northwestern border of Waterbury, Connecticut, and the centers of Watertown and Orange would be approximately 20 miles or more apart, separated by the City of Waterbury and various other communities.^{62/} Thus there is no evidence located that the Delia Merrick family, recorded in the Watertown Congregational Church records, was related to the Myrricks recorded in the Orange Congregational Church records.

There is also no record of Delia Merrick's family in Derby prior to March 22, 1819. That was the date Jeremiah and Sylvia Merrick received an interest in real estate in Derby.^{63/} Jeremiah Merrick's family was recorded in the U. S. Census for Derby, Conn. for 1820, 1830, and 1840.^{64/}

Finally, it is significant that petitioner's own genealogical report acknowledges that Delia Merrick was born in Watertown, Connecticut. Petitioner's Genealogical Research Combined Reports One through Six July-November 1999, Sec. II, at 1; certified copy of death certificate for Delia Allen, Ex. 38. It further states that her father Jeremiah Merrick was born in Waterbury, Connecticut, lived in Watertown in 1810 and in Derby between 1820 and 1840, and died there on Jan. 17, 1846. It further states that Delia Merrick's mother Sylvia was born in Watertown about 1781/82 and died in Derby in 1847. Petitioner in its genealogical report makes no claim that Delia Merrick had any family ties to the Myrricks in the Orange Church records.

4. The Petitioner's Evidence Relating to Andrew Allen Does Not Establish Descent from Turkey Hill Indians.

^{62/} See Connecticut Department of Transportation and Department of Economic Community Development, Official State Tourism Map (Ex. 40); *see also* Ex. 114.

^{63/} Ex. 41 (Town of Derby, Connecticut, Register of Deeds Vol. 19 1809-1826, conveyance of March 22, 1819 (Connecticut State Library microfilm copy)).

^{64/} Each census listed "Jeremiah Merrick" and various members of his family. Ex. 42 (U. S. Census, 1820, Derby, Conn., National Archives Microfilm Publications, Microcopy No. 33, Population Schedules of the Fourth Census of the United States, Roll 3, Vol. 3, Derby, p. 8, approximately 5th entry); Ex. 43 (U. S. Census, 1830, Derby, Conn., 20th entry); Ex. 44 (U. S. Census, 1840, Derby, Conn., National Archives Microfilm Publications Microcopy No. 704, Roll 28, Conn., Vol. 4, p. 319 (sheet 3180), 6th entry).

The petitioner relies on an 1871 deed that lists Eliza Franklin as a Turkey Hill Indian. Supp. to Doc. Pet. 198. It claims, however, descent from Andrew Allen. To overcome this evidentiary gap, it then alleges that Andrew Allen was the “full brother” of Eliza Franklin. *Id.* at 198, 201. However, the Superior Court documents on which the 1871 deed was based, which were not provided to the BIA by the petitioner, make it clear that there were *no other Turkey Hill members than those listed in the court records.*^{65/} Neither Andrew Allen nor his mother Delia Merrick Allen was listed as a member of the tribe on the Court decree or on any other evidence submitted.^{66/}

^{65/} The court records state: “[T]he Court finds the allegations in said petition proved and true, and that said petitioners are *the sole survivors* of said tribe entitled to any portion of said land known to said overseer and that they all have an equal interest in the same.” Conn. Judicial Department records, New Haven County Superior Court, May Term 1871, Roswell Moses v. The Tribe of Turkey Hill Indians, Watrous G. Wakely, Overseer. Deposited in Conn. State Library, 1925, Ex. 45 (emphasis added).

^{66/} According to petitioner’s own documents, Andrew Allen was alive at the time of the Court decree and was also of the age of majority. SBN 510-11, death record for Andrew Alling, who petitioner states is the same as Andrew Allen above, Supp. to Doc. Pet. 200. The death record states that he died on May 22, 1887, at age 42. He would therefore have been about 26 at the time of the 1871 court decree, *supra*. This information is verified by a certified copy of his death certificate, obtained by the State from the Town of Ansonia. Ex. 46. In addition, the 1870 census shows that Andrew Allen lived in Derby, Conn., which was in the general area which was the subject of the 1871 Superior Court decree. Ex. 47 (U. S. Census 1870, Derby, Conn., National Archives and Records Administration microcopy No. 593, roll 111, p. 176, line 30). Andrew Allen is listed with an age of 23, which correlates with his age of 4 in the 1850 census, SBN 506-07, and which is only two years off from his age of 42 in his 1887 death record, Ex. 46. He was also in the Derby area in 1880. SBN 508-09 (SBN 509 is an enlarged copy of that census report, clearly showing Andrew Alling, age 33, recorded in the Ansonia (Derby) Connecticut 1880 census). His death record also lists him in a non-Indian category, even though the form provided a classification for Indian. Ex. 46. The same is true for the 1870 and 1880 census record for Andrew Allen, *supra*.

Based in part on petitioner’s own records, Delia Merrick Allen did not die until November 23, 1890. SBN 520-22. Since she was 89 at that time, she also would have been of majority age at the time of the 1871 court decree. *Id.*; see also Ex. 38 (certified copy of death record for Delia Merrick Allen from Town of Ansonia, obtained by State). She was living in Derby at the time of the 1860 census, Ex. 48 (U. S. Census, 1860, Derby, Conn., p. 675, line 19), and in the Borough of Ansonia, which was part of Derby at the time, Conn. State Register and Manual, 1996, at 343, as of the 1870 census. Ex. 49 (U. S. Census, 1870, Ansonia Borough, p. 80, line 17). The 1880 census also shows her living in the Derby area that year. SBN

If Andrew Allen was in fact the full brother of Eliza Franklin, and was himself a Turkey Hill Indian, he would have been included as among the "sole surviving members" of the Turkey Hill group by the Court, or at least one would expect this to have been the case. The same would be true for his mother, Delia. Both were living in the area at the time, and would be expected to have been aware of the court proceedings through Eliza, if she was in fact Andrew's full sister and if both Andrew and Delia were of Turkey Hill descent. The same is true for Andrew's brother Lewis. The exclusion of Andrew, as well as his mother and his brother from the court list of the sole surviving Turkey Hill members is strong negative evidence of any alleged Turkey Hill ancestry for Andrew as well as for the other members of his family who also were not listed as members.

The petitioner next claims that Eliza Franklin, who was listed as a Turkey Hill Indian in the 1871 deed, was the same person as Ellen Allen, who was listed as the 11 year old girl in the Levi Allen household in the 1850 census, along with four year old Andrew Allen, in an apparent attempt to show a direct genealogical connection between Eliza and Andrew. Supp. to Doc. Pet. 200. However, this claim is demonstrably false. First, there is no evidence that Ellen was the full sister of Andrew. As an eleven year old in 1850 she would have been born before the marriage of Levi and Delia Allen in 1843. SBN 505. Delia's name prior to her marriage was Freeman, *id.*, and it is possible that she could have been married previously. Thus it cannot be assumed,

508-09. Furthermore, her death certificate lists her as non-Indian, even though the death record form also provided for an Indian designation. Ex. 38.

Andrew's father Levi had died in 1865. Ex. 50. However, his death certificate listed him as non-Indian. Ex. 50.

The vital records also indicate that Andrew had a brother, Lewis Alling, whose death record stated that his parents were Levi and Delia Alling (Allen). Ex. 51. Lewis died June 5, 1873, at age 29. Both his death certificate as well as that for his son list a non-Indian classification. Exs. 51,52. Lewis Alling was living in Derby as of the 1870 census. Ex. 49 (U.S. Census, 1870, Derby, Conn., at 145, line 19). He also was not listed in the 1871 court decree. *See* Ex. 45.

without further evidence, that both of Ellen's parents were the same as Andrew's. The evidence demonstrating that Eliza and Ellen are not the same person is analyzed in detail in the Appendix, § III.E.1.

The death records for both Eliza Franklin and Andrew Allen (or Alling), moreover, refute the additional claim that Andrew was her full brother, and any implication that he and his descendants shared whatever Indian ancestry that Eliza is alleged to have. Supp. to Doc. Pet. 198. Andrew Allen's certificate of death states that his father was Levi Allen and his mother Delia. Ex. 46. The certified death register, which gives his last name as Alling, is consistent with this, and specifically states his parents were Levi Alling, native of Milford, and Delia Myrick. Ex. 53; *see also* SBN 510-14. However, Eliza Franklin's death record, while identifying her mother as "Delia Allen Phillips," states that Eliza's father was Scott Phillips, born in Ansonia, not Levi Allen. Ex. 54; *see also* SBN 515. Thus on their face, the death records show that Andrew Allen was *not* Eliza Franklin's full brother, and therefore does not necessarily share any of her alleged Indian ancestry. Further analysis of the evidence on this issue is provided in the Appendix, § III.E.2.

Finally, the petitioner cannot demonstrate any Indian ancestry for Andrew Allen's descendants based on the 1840 Derby Indians' petition. That petition sought to have land in New Haven which had been purchased for the benefit of petitioners' group sold and to have the proceeds invested in other land in Derby, Connecticut. Ex. 55 (General Assembly Papers, Native Americans, Conn. State Library). The document stated that it was the petition of Mahetable Moses, Joel Freeman and his wife Nancy, Roswell Moses and Harry Moses. It is true that the petition also was signed by persons identified as Levi Alling and Avis Alling. However, not only is there is no evidence linking these persons to Levy Allen, father of Andrew, but in addition,

there was no evidence in the petition either identifying Levi and Avis Alling as Indians *or* showing their descent from the earlier Turkey Hill Indian generations. Additional analysis of the lack of evidence of descent from Andrew Allen is provided in the Appendix, § III.E.3.

In conclusion, the petitioner fails to satisfy criterion (e).

VII. CONCLUSION

The Department should issue proposed findings denying the GHP petition for acknowledgment.

Respectfully submitted,
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