

United States Department of the Interior
Office of Federal Acknowledgment

In re Federal Acknowledgment
Schaghticoke Indian Tribe Petitioner Group
Petition # 401

July 5, 2022

**JOINT COMMENTS OF THE STATE OF CONNECTICUT, THE
TOWN OF KENT AND THE KENT SCHOOL CORPORATION
REGARDING THE PETITION FOR FEDERAL
ACKNOWLEDGMENT AS AN INDIAN TRIBE OF THE
SCHAGHTICOKE INDIAN TRIBE PETITIONER GROUP**

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Comments on SIT Petition for Acknowledgment

I. Introduction

The State of Connecticut, the Town of Kent, Connecticut, and the Kent School Corporation, (collectively, the Connecticut Parties), submit these joint comments in opposition to the petition for federal acknowledgment submitted by the Schaghticoke Indian Tribe (“SIT”) petitioner group, Petition # 401. As jurisdictional governments and private landowners, the Connecticut Parties have substantial interests that would be directly impacted by acknowledgment of the SIT.

Historically, since about 1737, there has been a group of Indians residing on the west side of the Housatonic River in the Town of Kent that are known today as the Schaghticoke. In 1752, the Colony of Connecticut set aside land for the use of the Schaghticoke. Approximately 400 acres of land remains available as a reservation for the Schaghticoke. A small population of Indians lived on the reservation for most of the 19th and 20th centuries. A small population continue to live on the reservation today.

In the late 1960s, the Schaghticoke coalesced into a group initially called the Schaghticoke Indian Tribe. Thereafter, between approximately 1985 and 1996, irreconcilable differences existed in the membership, leading the Schaghticoke to separate into at least two groups that claim tribal status. One group, initially called the Schaghticoke Tribe of Indians of Kent, CT, Inc. became the Schaghticoke Tribal Nation (“STN”). The second group retained identity as the Schaghticoke Tribe of Indians or the Schaghticoke Indian Tribe and is the current petitioner. A third group consisting of members of the Cogswell family refused to affiliate as members of either the STN or the SIT. *Summary of the Criteria and Evidence: Reconsidered Final Determination Denying Federal Acknowledgment of the Petitioner, Schaghticoke Tribal Nation*, at pp. 59-62 (October 11, 2005)¹, *aff’d*, *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (D. Conn. 2008), *aff’d*, 587 F.3d 132 (2nd Cir. 2009), *cert. den. sub nom Schaghticoke Tribal Nation v. Salazar*, 562 U.S. 947, 131 S. Ct. 127, 178 L. Ed. 2d 243 (2010) (“STN RFD” or “RFD”); *see also Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Schaghticoke Tribal Nation*, at pp. 53-58 (Jan. 29, 2004) (“STN FD” or “FD”).²

The difficulty in addressing the current petition lies in the fact that the SIT does not represent all of those persons who descent from the historic Schaghticoke. In 2005, the Department of the Interior (“Department” or “DOI”) determined that there was one Schaghticoke tribe that consisted of individuals identified on the membership list of the STN, on the membership list of the SIT, and individuals from the Cogswell family who were members of neither group. STN RFD at pp. 60–62.

¹ https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/079_schagh_CT/079_rfd.pdf, accessed April 20, 2022.

² https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/079_schagh_CT/079_fd.pdf, accessed June 9, 2022.

This determination of the existence of multiple factions within the Schaghticoke is consistent with similar determinations made by the Connecticut courts. In 2003, the Connecticut Supreme Court recognized that the Schaghticoke was divided into two factions, the STN and the SIT. *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 831 (2003). In 2012, those factions continued to exist as recognized in *Schaghticoke Indian Tribe, et al v. Michael J. Rost*, 138 Conn. App. 204, 217–8, 50 A.3d 411, 419–20 (2012) (it is the Schaghticoke Indians, not the SIT nor the STN, that have the right to determine who lives on the reservation). And in 2013, a judge of the Connecticut Superior Court concluded that up to three (3) distinct groups claimed to represent the Schaghticoke—two “entirely different” entities “with entirely different members” called the SIT, as well as a separate entity referred to as the STN. *Schaghticoke Indian Tribe, et al v. Hatstat*, 2013 WL 5422844, at *2, 56 Conn. L. Rptr. 789 (Conn. Super. Ct. Sept. 11, 2013) (Pickard, J.) (A-2³).⁴

As will be discussed hereafter, the SIT does not satisfy several of the acknowledgment criteria, including criteria (e) descent from a historical Indian tribe, (b) community and (c) political authority. Moreover, the SIT has been previously found by the Department to be a splinter group of the STN. As such it may not be acknowledged under the standards and criteria in 25 C.F.R. § 83.4.

The Schaghticoke have not been recognized as an Indian tribe under federal law, and they are not entitled to such recognition. The Schaghticoke have not comprised a distinct community that has existed as a community from historical times to the present: and the Schaghticoke have had no form of tribal self-government for most of the 19th century and for much of the 20th century. *Reconsidered Final Determination to Decline to Acknowledge the Schaghticoke Tribal Nation*, 70 Fed. Reg. 60101 (Oct. 14, 2005). Taken in the most favorable light, the Schaghticoke are a group of people united by common descent, with some degree of social ties and with two (2) relatively modern tribal organizations (the SIT and the STN) claiming to be the group’s tribal government.

The SIT under the leadership of Alan Russell (i.e., the current petitioner) fully participated as an interested party in the proceedings involving the STN (petition #79). In those proceedings, the evidence presented in support of acknowledgment failed to demonstrate that the Schaghticoke had been united in one community for significant periods of its history. The evidence also failed to demonstrate that the Schaghticoke had maintained political influence or authority over its members for an even greater period of its history. The current petition does not even attempt to reconcile or fill those significant gaps in the Schaghticoke record. As such, the SIT cannot be federally acknowledged as an Indian tribe.

³ The A- cites refer to the corresponding pages in the Appendix submitted with these Comments.

⁴ The decision refers to testimony by Michael Morningside, who claimed to be Vice Chairman of the SIT. In 2009, the SIT under the chairmanship of Gail Harrison Donovan filed with the State of Connecticut a copy of a membership list submitted to Lee Fleming of the BIA on January 23, 2009 identifying 131 SIT members. See correspondence, Edward W. Gasser to Hon. Jodi Rell, dated March 30, 2009 and enclosures (A-3). In 2012, Michael Morningside filed documentation with the State of Connecticut in which Janette Stoerzinger claimed to be chief or chairman of the Schaghticoke Indian Tribe with Michael Morningside as Vice Chairman and with a membership of 128. See Connecticut Special Papers, Case 32, pp. 785-793 and Case 34, pp. 11-18 (A-6). In a January 16, 2022 email to the Kent First Selectman, Janette Stoerzinger claimed to be a sixth generation descendant of Abigail Bradley (A-23).

II. Background—Acknowledgment Regulations

Indian tribes that are entitled to acknowledgment under federal law are considered “domestic dependent nations” that exercise inherent sovereign authority over their members and territories. *Puerto Rico v. Sánchez Valle*, 579 U.S. 59, 70 (2016) (quotation marks omitted). When a tribal entity no longer exists, however, it can no longer be recognized as an Indian tribe under federal law. As noted in *Miami Nation of Indians of Indiana, Inc. v. United States Department of the Interior*, 255 F.3d 342 (7th Cir., 2001), *cert. den.* 534 U.S. 1129 (2002), if a nation does not exist⁵, it cannot be recognized. The same holds true for Indian tribes.

Probably by 1940 and certainly by 1992, the Miami Nation had ceased to be a tribe in any reasonable sense. It had no structure. It was a group of people united by nothing more than common descent, with no territory, no significant governance, and only the loosest of social ties. ... The federal benefits for the sake of which recognition is sought are extended to tribes, not to individuals, so if there is no tribe, for whatever reason, there is nothing to recognize. ... Recognition in such a case would merely confer windfalls on the members of a nonexistent entity.

Id. at 350–351 (citations omitted).

In *Montoya v. United States*, 180 U.S. 261 (1901), the Supreme Court established the requirements for determining whether a group of Indians constituted a tribe under Federal law. The *Montoya* test requires the group claiming to be an Indian tribe to demonstrate that it is (a) “a body of Indians of the same or similar race,” (b) “united in a community,” (c) “under one leadership or government,” and (d) “inhabiting a particular though sometimes ill-defined territory.” *Montoya* at 266. Although at first blush the *Montoya* standard appears relatively simple and broadly stated, judicial applications of the standard have provided further content to the four requirements. First, to be “united in a community,” a tribe must exist distinct and apart from others. *United States v. Washington*, 641 F.2d 1368, 1373 (9th Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 579, 586 (1st Cir. 1979), *cert. denied*, 444 U.S. 866 (1979). Although a tribe must be “Indians of the same or similar race,” a tribe cannot be based solely on a racial or ethnic basis. *United States v. Antelope*, 430 U.S. 641, 645 (1977). Tribal status must be based on the existence of a political community. *Rice v. Cayetano*, 528 U.S. 495, 518–20 (2000); *Morton v. Mancari*, 417 U.S. 535, 553 (1974). Thus, a tribe is more than just a private, voluntary organization of individuals of Indian descent; it is a distinct community with authority or influence over internal and social relationships among its members. *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

To be “under one leadership or government,” a tribe must have some degree of control or influence over its own internal affairs and the relations between its leaders and members. *Mashpee*, 592 F.2d at 582–83. Political leadership must be meaningful in that it must extend beyond just a core group of involved members to include a predominant portion of the membership of the group. *Id.* at 584. Although a formal government complete with coercive or binding authority is not required, tribal status is dependent on the exercise of a significant degree of influence on significant issues in the lives of members. *Id.* at 584–85. Moreover, sporadic, crisis-

⁵ The court used Czechoslovakia and South Vietnam as two examples of nations that no longer exist.

oriented leadership is insufficient. There must be a sustained continuity of tribal leadership. *Id.* at 583, 585. Without such leadership or at least informal political influence, a tribe does not exist under the *Montoya* standard. *Id.* at 585.

Finally, a tribe must have *continuously* maintained itself as a distinct community with a political organization or structure. *Washington*, 641 F.2d at 1373. The requirement of continuity is essential to tribal status. It reflects the need for a group to maintain its distinct community and the exercise of its authority throughout history to retain its tribal sovereignty. *Id.*; *United Tribe of Shawnee Indians*, 255 F.3d at 548; *see also Montana v. Blackfeet Tribe of Indians*, 471 U. S. 759, 764 (1985).

The acknowledgment standards promulgated and administered by the Bureau of Indian Affairs (“BIA”) are quite similar, if not identical, in pertinent respects to the judicial standards. Federal acknowledgment or recognition of an Indian tribe is the formal political act of acknowledging and confirming the continual existence through history of a tribe as a distinct political community entitled to a government-to-government relationship with the federal government. *See* 25 C.F.R. § 83.2; 59 Fed. Reg. 9280 (Feb. 25, 1994); Cohen’s Handbook of Federal Indian Law § 3.02[3], at 138 (2005). Although historically, Indian tribes have been recognized in many different ways, including by treaty, congressional enactment, executive or administrative action, or, in rare instances, court decision, *see id.* §§ 3.02[5], 3.02[6], since 1978 federal acknowledgment has been delegated to an administrative process within the DOI. *See, e.g.*, 25 C.F.R. Part 83; 59 Fed. Reg. 9280 (Feb. 25, 1994); *see also Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273–4 (9th Cir. 2004).

In 1978, the DOI adopted regulations establishing a process for federal recognition of Indian tribes. 43 Fed. Reg. 39361 (Sept. 5, 1978). The regulations were amended in 1994.⁶ 59 Fed. Reg. 9280 (Feb. 25, 1994). They were further amended in 2015. 80 Fed. Reg. 37862 (July 1, 2015). In promulgating the acknowledgment regulations in 1978, the DOI stated:

The Department must be assured of the tribal character of the petitioner before the group is acknowledged. Although the petitioners must be American Indians, groups of descendants will not be acknowledged solely on a racial basis. *Maintenance of tribal relations—a political relationship— is indispensable.*

43 Fed. Reg. 39361, 39361-62 (Sept. 5, 1978) (emphasis added). Moreover, the acknowledgment regulations are explicitly derived from and are to be interpreted in light of case law concerning tribal status. As the BIA has stated in describing the intent of the acknowledgment regulations:

The Federal government has an obligation to protect and preserve the inherent sovereign rights of all Indian tribes, whether a tribe has been recognized in the past

⁶ The amendments to the regulations provided for a reduced burden of proof for petitioners with evidence of previous federal acknowledgment, 25 C.F.R. § 83.8; independent review of a final determination by the Interior Board of Indian Appeals, including the opportunity for a hearing before an administrative law judge, *id.* § 83.11; and other procedural changes. 59 Fed. Reg. 9280 (1994). The amendments were not intended to “result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations” or “to result in the denial of petitioners which would have been acknowledged under the previous regulations.” *Id.* The substantive criteria remained the same.

or not. The regulations governing the Acknowledgment process (25 CFR 83) state the requirements that unrecognized groups must meet to be acknowledged as having a government-to-government relationship with the United States.

The legal and policy precedents for acknowledgment are codified in the regulations. These precedents also provide the fundamental basis for interpreting the regulations. The acknowledgment criteria are based on and consistent with the past determinations of tribal existence by Congress, the courts, and the Executive Branch. These past determinations have required that to be acknowledged as having tribal status a group must have maintained social solidarity and distinctness and exercised political influence or authority throughout history until the present.

Final Determination That the Miami Nation of Indians of the State of Indiana, Inc. Do Not Exist as an Indian Tribe, at p. I.B.1.5 (June 9, 1992), https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/066_miamin_IN/066_fd.pdf, last accessed July 4, 2022, *aff'd*, *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 112 F. Supp. 2d 742 (N.D. Ind. 2000), *aff'd*, 255 F.3d 342 (7th Cir. 2001). Indeed, in doing so, the BIA specifically referenced the *Montoya* standard. *Id.*

On July 1, 2015, the DOI provided further amendments to the acknowledgement regulations. The revised regulations were intended to “make the process and criteria more transparent, promote consistent implementation, and increase timeliness and efficiency, while maintaining the integrity and substantive rigor of the process.” 80 Fed. Reg. at 37862, 37863. The revised rules were intended to “clarif[y] the criteria by codifying past Departmental practice in implementing the criteria.” *Id.* Only two substantive changes to the criteria were intended. The first change allowed a petitioner to use the petitioner’s own contemporaneous records as evidence under criteria (a) to demonstrate that the petitioner had been identified as an American Indian entity on a substantially continuous basis since 1900. The second change altered the manner in which marriages within the group (Section 83.11(b)(2)(ii)) would be counted for purposes of determining if sufficient evidence existed by reason of group marriage rates to demonstrate community under criteria (b). 80 Fed. Reg. at 37863. Except for these two changes, the 2015 acknowledgment regulations are to be applied and interpreted in light of existing caselaw and prior precedent concerning tribal existence.

The acknowledgment regulations establish seven “mandatory” criteria that a petitioning group must satisfy⁷: (a) identification as an American Indian entity since 1900 (25 C.F.R. § 83.7(a)); (b) continuous existence as a distinct community from 1900 until the present (*id.*, § 83.7(b)); (c) continuous maintenance of political influence or authority over members as an autonomous entity from 1900 until the present (*id.*, § 83.7(c)); (d) a governing document including membership criteria (*id.*, § 83.7(d)); (e) descent from a historical Indian tribe and a current tribal roll or membership list (*id.*, § 83.7(e)); (f) membership composed principally of persons not

⁷ In *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1165 (N.D. Ind. 1995), *aff'd* 255 F.3d 342, 346 (7th Cir. 2001), *cert den.* 534 U.S. 1129 (2002), the court found that the acknowledgment regulations were properly promulgated under Congress’ delegation of authority to the President and Secretary of the Interior to prescribe regulations concerning Indian affairs and relations.

members of an acknowledged tribe (*id.*, § 83.7(f)); and (g) no congressional legislation terminating or forbidding acknowledgment (*id.*, § 83.7(g)).⁸

Some of these seven are not explicit parts of the *Montoya* standard—for example, criterion (d), which requires a governing document, or criterion (g), which requires that Congress has not terminated tribal status—but would nonetheless be relevant to *Montoya*'s inquiry. However, the three core criteria—(b) continuous existence as a distinct community, (c) continuous maintenance of political influence or authority, and (e) descent from a historical Indian tribe—are each substantively the same as the central components of the *Montoya* test. More importantly, if a petitioner does not satisfy *any* of the criteria, it may not be acknowledged as an Indian tribe.

III. Administrative Notice of Prior Proceedings Concerning the Schaghticoke Must Be Taken

The Office of Federal Acknowledgment (“OFA”) is requested to take administrative notice of the evidence, findings and conclusions reached in the STN proceedings, petition #79. The OFA is also requested to take administrative notice of the filings, claims and documentation constituting the administrative record in the SIT’s petition for Federal acknowledgment, Petition #239.

The SIT, as well as the parties submitting these comments, were all “interested parties” in the STN proceedings. In reaching the decision to deny acknowledgment of the STN, the Deputy Assistant Secretary-Indian Affairs indicated that the conclusions drawn about the historical Schaghticoke tribe would be relevant to the analysis of the then-pending SIT petition.

[t]he SIT argues that the STN FD failed to consider the SIT’s petition and its claim that it is the legitimate present-day continuation and rightful descendant of the historical Schaghticoke tribe The STN PF and STN FD evaluated all of the arguments SIT presented as an interested party. This included the claim to be the rightful successor. To the extent the STN FD and the RFD draw conclusions about the historical Schaghticoke tribe that might be in common with the SIT petition, the acknowledgment process provides for comment, technical assistance and reconsideration and permits the SIT to participate in the process as it did. These procedures provide the SIT with all the due process required, since this RFD concludes that the 33 individuals, most of whom are members of the SIT, are not part of the STN petitioner, and the RFD concludes that the STN does not meet all seven mandatory criteria.

STN RFD at page 62.

In October 2002, the SIT had submitted its petition for acknowledgment as an Indian tribe (petition # 272) under the 1994 acknowledgment regulations. In a formal technical assistance (“TA”) letter dated September 14, 2006, the OFA advised the SIT:

[T]o the extent your group shares a history with the STN, the findings on STN including the STN Reconsidered Final Determination (RFD) findings may also

⁸ The regulations provide a detailed, nonexclusive description of how each of the criteria can be satisfied.

apply to the SIT petitioner for the pre 1996/1997 time period. This TA letter understands that the current SIT petitioner includes individuals who do not appear to have been a part of the overall Schaghticoke community discussed in the STN RFD. Nevertheless, we advise the SIT to review carefully the STN RFD for the specific time periods when the evidence for community and political authority are missing. Also, please refer to the Department's letter summarizing the March 23, 2003, informal TA meeting with the SIT in which you were advised, "Since there was only one body of Schaghticoke, the conclusions in the STN proposed finding (PF) for the time before 1997 would also apply to the SIT petition."

BIA to Russell, Sept. 14, 2006 (A-24). Similarly, in a letter dated August 22, 2013, the OFA advised the SIT that

[t]he OFA will use the existing record for the STN petition in evaluating the SIT petition as an Indian tribe. It is not necessary for the SIT to obtain and resubmit all of the evidence used by the STN petitioner. ... However, SIT should provide evidence for the periods in its history not covered by the STN findings and any additional evidence not previously submitted for those periods in which the STN findings concluded that the evidence was insufficient.

BIA to Russell, Aug. 22, 2013 (A-32).

Ultimately, consideration of the SIT's petition was suspended or terminated pursuant to 25 C.F.R. § 83.7(a) for its failure to submit a *complete* documented petition prior to July 31, 2015. BIA to Petitioner, July 31, 2015 (A-35). The SIT was thereafter invited to submit a new documented petition under the 2015 acknowledgment regulations. BIA to Russell, June 9, 2016 (A-36). Notwithstanding the SIT's filing of the current documented petition, the rationale for taking administrative notice of the evidence, findings, and acknowledgment decision(s) in the STN proceedings remains unchanged.

As the Department has previously stated, "[g]iven the relationship between the SIT and the STN, materials from the record of the STN decision would normally be reviewed, to the extent relevant, during active consideration of the SIT petition." STN RFD, fn 42, at p. 64.

IV. The Doctrine of Collateral Estoppel Applies to the SIT Petition

The doctrine of collateral estoppel should be applied to this petition. That doctrine, in the interests of finality and consistency, precludes reconsideration and redetermination of the factual findings and determinations made in the STN proceedings.

Collateral estoppel is usually applied in a judicial context when a court is asked to consider issues that have been previously decided by an administrative agency or in a prior judicial proceeding. The courts have "long favored application of the common-law doctrines of collateral estoppel (as to issues) and *res judicata* (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991); *see also* 87 Fed. Reg. 24908, 24914 & n.81 (April 27, 2022) (discussing the application of collateral estoppel to Department denials of previous petitions, and citing cases including *Solimino*). Collateral estoppel applies when "the agency is acting in a judicial capacity and resolves

disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966). In that situation, collateral estoppel is properly applied to enforce repose. *Id.*, at 422. See *Chisholm v. Defense Logistics Agency*, 656 F.2d 42, 47 (3rd Cir. 1981) (an administrative agency is permitted to secure the same benefits from the doctrine of collateral estoppel as the courts).

Collateral estoppel applies (1) to issues of fact properly before and necessarily resolved by the agency, (2) which the parties have had an adequate opportunity to litigate, (3) where the agency is acting in an adjudicative capacity and (4) where there is finality to the proceedings and a decision rendered. *Utah Constr. & Mining Co.*, 384 U.S. at 422; *United States of America v. 43.47 Acres of Land*, 896 F. Supp. 2d. 151, 158-162 (D. Conn. 2012), *aff'd by summary order, sub nom Schaghticoke Tribal Nation et al. v. Kent School Corp.* (2nd Cir. 2014); *Metromedia Co. v. Fugazy*, 983 F.2d 350, 365-66 (2d Cir. 1992); *Delamater v. Schweicker*, 721 F.2d 50, 53-54 (2d Cir. 1983).

The first two of these requirements and the fourth requirement were plainly met in the STN proceedings. The factual issues concerning the seven acknowledgment criteria were all addressed by the STN proceedings. In particular, the continuing existence of a distinct Schaghticoke community, criterion (b), and the continuing existence of Schaghticoke political leadership, criterion (c), were clearly before the BIA and were obviously necessary to the determination of the STN’s acknowledgment petition as well as to the claims raised by the SIT. The SIT, as an interested party, had a full and fair opportunity to participate in the proceedings, to present evidence, to address the issues of community and political authority and to appeal from any findings and conclusions that the SIT deemed adverse to its interests. Indeed, the SIT appealed from the interim STN Final Determination to the Interior Board of Indian Appeals (“IBIA”). A final decision was rendered with the issuance of the STN RFD, and the SIT had an independent right to bring an administrative appeal from that decision.

In subsequent judicial proceedings to which the SIT was a party, the District Court for the District of Connecticut expressly found that the BIA had acted in an adjudicative capacity when reaching its decision on the STN petition. As such, the court concluded that the findings and conclusions reached in the proceedings were binding on the parties and could not be relitigated in separate judicial proceedings in which the status of the Schaghticoke as an Indian tribe was at issue. The court found that in the STN acknowledgment proceedings, a petition was filed, evidence and argument were submitted, opportunity to respond to other parties’ evidence and argument was provided, and a final decision was made applying established regulatory criteria to the specific facts of the petition. The District Court concluded that the proceedings were adjudicative and that findings and conclusions reached were subject to collateral estoppel. *43.47 Acres of Land*, 896 F. Supp. 2d. at 161-62.

Similarly, the BIA’s Final Determination on the petition for acknowledgment filed by the Golden Hill Paugussett Indian Tribe was expressly found to be an “adjudicative” decision sufficient to support the application of the collateral estoppel doctrine. Judge Arterton stated:

[T]he Court must next consider whether the BIA’s Final Determination constituted an “adjudicative” determination, by applying the Section 83(2) factors. The procedures set out by the BIA regulations provide for notice, presentation of evidence and arguments (including the opportunity to revise and supplement), as

well as the opportunity to respond to the evidence and arguments of other interested parties and the proposed finding of the BIA, the clear application of seven mandatory criteria for federal tribal acknowledgment (which the BIA's Final Determination reflects), and rules of finality, including procedures for internal reconsideration and review, as well as judicial review under the APA. Thus, the Court concludes that the BIA's Final Determination was an "adjudicative" one sufficient for application of the collateral estoppel doctrine.

Golden Hill Paugussett Tribe of Indians v. Rell, 463 F. Supp. 2d 192, 200 (D. Conn. 2006); *see also* 87 Fed. Reg. 24908, 24914 & n.81 (Apr. 27, 2022) (discussing the application of collateral estoppel to Department denials of previous petitions, and citing *Golden Hill Paugussett Tribe of Indians* with approval).

The SIT's documented petition almost completely ignores the prior administrative proceedings involving the BIA's review of the Schaghticoke historical record, including the BIA's findings and conclusions respecting that record. Claiming that it is a separate entity from the STN and that its acknowledgment petition has never been evaluated (*see* SIT Petition, part II, p. 21), the SIT apparently seeks to have the common historical record re-examined, re-evaluated and reconsidered without regard to the findings and conclusions reached by the BIA in the STN proceedings. The SIT does not explicitly point to any *new* evidence that might fill the missing gaps in the Schaghticoke historical record. Instead, the SIT appears to simply recycle the claims and evidence that were previously considered by the BIA in the STN proceeding and asks the OFA to reach different conclusions. This approach is completely inappropriate given the extensive review, analysis, and adjudicative nature of the prior proceedings.

The application of the collateral estoppel doctrine is particularly appropriate in this situation, where the Department's determinations in the STN proceedings establish conclusively that the SIT cannot demonstrate continuous tribal existence, including before 1900.

V. Summary of Comments

The documented petition of the SIT for federal acknowledgment fails to adequately describe or interpret the SIT's documentary evidence or demonstrate how that evidence is specifically related to the mandatory criteria. It fails to follow the OFA guideline that a petition must explain how each evidentiary document applies to the criteria. The petition also fails to adhere to the TA letter of 2006 (petition #239) which advised the SIT that it must submit new evidence and analysis for the periods that the STN was found not to meet the criteria, and to address the criteria in the context of its specific membership. Instead, the SIT has essentially presented the same or similar evidence previously submitted by the STN, without explaining its relevance or addressing how its current membership specifically fits into the context of the broader historical tribe identified in the STN findings.

The SIT cannot meet the new category of evidence for criteria 83.11(b) and (c) of having state set-aside land. Although the State of Connecticut has established and maintained a Reservation for the Schaghticoke Indians, the SIT cannot demonstrate "active use" of the reserved land at all times since 1900 for its portion of the broader Schaghticoke community. Neither can the SIT directly relate "active use" of the lands to the leadership, governance, or political processes

of the Schaghticoke entity as a whole. These are the fundamental requirements of the regulations for meeting the state reserved lands category of evidence, and the Schaghticoke Reservation has not been an active political base for either SIT or STN.

The SIT cannot meet criteria 83.11(b), community, and 83.11(c), political influence or authority, during the years in which the STN did not meet these criteria. This is because the SIT has not presented sufficient new evidence or arguments or addressed these criteria in the context of its current membership.

Likewise, the SIT cannot meet the community and political influence or authority criteria during the years in which the STN met these criteria. This is because as a minority faction it cannot claim to represent the community or political system of the broader historical Schaghticoke during those periods. It does not represent, either then or now, all the family lines and sublines found to be a part of that historical community. Some of its recent members have had little or no connections to the historical tribe.

The SIT cannot meet these criteria since 1997 because, as the DOI has noted, an acknowledgeable tribal community cannot have two political systems. Furthermore, the SIT does not now represent the majority of the broader Schaghticoke community.

The SIT cannot meet criterion 83.11(a), identity as an American Indian entity, because it has not submitted significant new evidence or arguments for this criterion prior to 1997. Moreover, as a minority faction, the SIT does not and cannot at any time represent the totality of the Schaghticoke tribal community or political system identified in the historical record since 1900. It has recently had members whose ancestors were either not a part of that entity or who did not maintain tribal relations with it. At the same time, its current membership does not include descendants of key individuals, family lines, and sublines who were a part of the Schaghticoke entity identified historically.

The SIT does not represent the single entity that constitutes the Schaghticoke Indians. Rather, the SIT seeks to be acknowledged as separate entity claiming the same history, for the most part, as well as the same rights to lands set aside for the historical tribe by the State of Connecticut. Because the primary purpose of federal acknowledgment is to recognize a government-to-government relationship with previously unacknowledged tribal groups, a single entity acknowledged by the DOI can only have one governing body, one governing document, and one membership list.

The more extensive evaluation of the SIT evidence that follows demonstrates the extent to which the SIT utilizes the same documentation that the OFA previously found to be insufficient for the STN petitioner to meet the mandatory criteria. It also provides an analysis of new documentation presented by the SIT that demonstrates that this evidence also is inadequate in meeting the mandatory criteria.

Part of this analysis is based on compiled spreadsheets that compare the documents in the SIT petition with documents reviewed and noted in the STN proceedings (A-37 to A-42). This comparative document analysis demonstrates that the SIT documentation was the same or similar

to that in the STN record. The analysis also has focused on how the BAR and the OFA interpreted the STN documentation regarding its relevance to the mandatory acknowledgment criteria. The overall conclusion drawn from the analysis is that the SIT is substantially relying on evidence previously submitted by the STN rather than providing new evidence and analysis as previously advised by the OFA. The analysis also demonstrates that a substantial portion of the evidence presented by the SIT was previously found insufficient for the STN to meet the mandatory criteria for most of the period since 1900.

In effect, the SIT petition is claiming that “they” (the Schaghticoke historical tribe which the DOI found was represented by the STN petitioner up to 1996) are “us” and that it can therefore use “their” (the STN’s) same evidence, even though “they” were substantially found to not have sufficient evidence to meet the mandatory criteria of the Federal acknowledgment regulations. The SIT clearly do not meet the criteria for acknowledgment.

VI. History of the Schaghticoke Petitions

A. Early Litigation

The Schaghticoke have a long and unsuccessful history of trying to establish existence as an Indian tribe.

In the 1950s, under the leadership of a non-Schaghticoke, Elewaththum Swimming Eel Bearce, members of the Schaghticoke community brought a land claim against the United States in Docket #112 before the Indian Claims Commission. The United States denied the tribal existence of the group, asserting in its Answer to the Complaint that “[t]he so called Kent Tribe of Schaghticoke Indians was not at any time material to the plaintiff’s claim, and is not now a tribe, band or other identified group of Indians within the meaning of the Indian Claims Commission Act as to entitle it to have this action instituted or maintained on its behalf.” *Kent Tribe of Schaghticoke Indians v. United States of America*, Before the Indian Claims Commission, Docket 112, Answer of the United States, Par. 5 (CT-V004-D0043, p. 2) (A-44).⁹ The case was ultimately dismissed.

In 1975, the Schaghticoke instituted land claims litigation in the matter of *Schaghticoke Tribe of Indians, et al v. Kent School Corporation, Inc., et al.*, Docket H-75-125, in the United States District Court for the District of Connecticut. The claim was brought pursuant to the Indian Non-Intercourse Act, under which the Schaghticoke Tribe of Indians alleged and was required to prove existence as an Indian tribe. The Schaghticoke were unable to establish any substantive evidence of tribal leadership prior to 1949 (*See* Plaintiffs’ Response to Defendants’ Interrogatories, Interrog. #1, CT-V004-D0051 (A-46); *see also Summary under the Criteria and Evidence for Proposed Finding Schaghticoke Tribal Nation* (Dec 05, 2002¹⁰) at pp. 150–51 (hereafter “STN PF”). This suit was ultimately dismissed in 1993 for failure to prosecute.

⁹ These comments refer to documents in the administrative record of the STN petitioner #79 by reference to the designations contained in the FAIR database.

¹⁰ https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/079_schagh_CT/079_pf.pdf, last accessed June 9, 2022.

B. History of the Federal Acknowledgment Petition of the STN

Meanwhile, in 1984 the United States obtained through condemnation a parcel of property adjacent to the reservation for the Appalachian Trail. *United States v. 267.17 Acres of Land*, Civil No. H-84-889. In 1985, the United States filed a companion condemnation action for another parcel adjacent to both the reservation and the parcel that was condemned in 1984. *United States v. 43.47 Acres of Land*, 855 F. Supp. 549, 552 (D. Conn. 1994). In accordance with the requirements for bringing a condemnation action, the United States named several defendants who might have an interest in the property. One of those defendants was the Schaghticoke Tribe of Indians who, by virtue of their then-pending 1975 land claim action, might have an interest in the property being condemned. During the course of the condemnation proceeding, the then-owner of the property (the Preston Mountain Club) and the United States reached an agreement as to the value of the parcel, and funds were placed in escrow in the Registry of the U.S. District Court. As a defense to the condemnation action, the Schaghticoke re-asserted their land claims pursuant to the Non-Intercourse Act, 25 U.S.C. § 177. To properly assert such a defense, the court ruled that the Schaghticoke must first be determined by the BIA to constitute an Indian Tribe. *Id.* at 551.

During the period between the 1975 land claim action filed by the Schaghticoke and the 1985 condemnation action filed by the United States, the Schaghticoke initiated the federal acknowledgment process as the SIT by filing, on December 14, 1981, a Letter of Intent, pursuant to 25 C.F.R. § 83.4. This was designated as Petition #79. The Schaghticoke then asked the district court to stay the condemnation proceedings to allow them more time to complete the administrative process. The court granted the request and as the STN, the Schaghticoke filed their documented petition on December 7, 1994—13 years after initiating the process. Over the next several years, while the condemnation action remained stayed, the Schaghticoke worked to complete their petition. The BAR (which in 2003 was redesignated as the OFA) provided technical assistance. The STN submitted additional documentation and in April 1997 requested that their petition be placed on the “Ready, Waiting for Active Consideration” list pursuant to 25 C.F.R. § 83.10(d).

In the interim, after having changed its name to the STN in 1991, that group became a substituted defendant in the 1985 Appalachian Trail condemnation case. The STN also brought two additional land claim lawsuits under the Non-Intercourse Act: *Schaghticoke Tribal Nation v. Kent School Corp.*, No. 3:98-cv-01113 (D. Conn.), and *Schaghticoke Tribal Nation v. United States*, No. 3:00-cv-00820 (D. Conn.). These land claim suits named as defendants the property owners of the affected parcels including the Town of Kent, Kent School Corporation, Connecticut Light and Power Company (“CL&P”), the United States, Preston Mountain Club, and Loretta Bonos. The State of Connecticut intervened. In 2001, the SIT also intervened as a party plaintiff and filed its own land claims complaint against the defendants as an intervening plaintiff.

In March 1999, the Court stayed the proceedings in the three pending lawsuits in order to allow the BIA to determine if the STN would meet the mandatory criteria for federal acknowledgment, a threshold issue in each case. After the Department, the STN, and the land claim defendants agreed to accept a process by which the BIA would expedite and enhance its review of the STN’s petition, the Court issued a scheduling order on May 8, 2001. This order provided for the BIA to develop a pilot database system. It also established timelines for the

submission of materials and comments, and for the BIA's issuance of a Proposed Finding ("STN PF" or "PF") and FD; deadlines that were later extended by the Court.

The BIA began active consideration of the STN petition on June 5, 2002.

1. The Department's Proposed Finding (2002) and Final Determination (2004) on the STN Petition

Under the Court-mandated review process, the interested parties that submitted comments on the STN petition included the State of Connecticut, the CL&P, the Kent School Corporation, and the Town of Kent. Other interested municipal commenters included the City of Danbury; the Towns of Bethel, New Fairfield, Newtown, and Ridgefield; and the Housatonic Valley Council of Elected Officials (the Housatonic Coalition).

On April 7, 2001, the SIT submitted a letter of intent to the BIA to petition for federal acknowledgment, Petition # 239. The SIT claimed that it, and not the STN, was the rightful original petitioner representing Schaghticoke tribal members. The SIT became both a party to the pending Schaghticoke litigation before the U.S. District Court and an interested party in the pending STN petition.

On May 11, 2001, the SIT submitted a minimal letter-style petition to the BIA. On October 11, 2002, it submitted a partially documented petition and requested that it be considered at the same time as the STN petition. The Department declined this request on October 25, 2002, stating that simultaneous consideration was not feasible given the Court-mandated timeline for the STN petition (see more on the administrative history of the SIT petition below). The BIA had by then been actively evaluating the STN petition for four months.

On December 11, 2002, the Department published the STN PF, signed by the Assistant Secretary for Indian Affairs ("AS-IA"), declining to grant Federal acknowledgment to the STN. BAR's analysis found that the petitioner did not meet two of the seven mandatory criteria. In this review, the STN failed to demonstrate sufficient evidence for criterion 83.7(b), community, from 1940 to 1967 and from 1996 to the time of the PF. The STN was found to have even less acceptable evidence for criterion 83.7(c), political influence or authority, where its documentation was insufficient for the periods 1800–875, 1885–1967, and from 1996 to the time of the PF. STN-PF at 21 and 30–31.

The STN PF triggered a comment period during which the STN and the parties in the pending litigation were active in submitting additional materials. During this period, the BIA provided informal technical assistance regarding the petition to the STN, the SIT, the State of Connecticut, and the Cogswell family, a non-petitioning interested party consisting of other Schaghticoke descendants. In the meantime, on July 28, 2003, the administrative function for the Federal Acknowledgment process was moved out of the BIA and placed in a new OFA within the Office of the AS-IA.

On February 5, 2004, the Department's Principal Deputy AS-IA issued a FD on the STN petition that reversed the conclusions of the previous negative Proposed Finding. This decision held that the petitioner met the standard for criteria 83.7(b) and 83.7(c) for all of the previously defined insufficient periods based primarily on its continued relationship with, and recognition as

a distinct body by, the State of Connecticut. It also found that the STN had stronger evidence for criterion 83.7(b), community, based on a new and different calculation of endogamy rates, meaning the rate of marriages between individuals within the tribal entity.

2. Aftermath of the STN Final Determination: the IBIA Decision and the Reconsidered Final Determination (2005)

The STN FD did not become final because five parties submitted timely requests for reconsideration with the IBIA. In the order of their requests, these appellants consisted of: (1) the “Cogswell Group” of Schaghticoke descendants; (2) the Town of Cornwall; (3) the State of Connecticut, the Towns of Kent, Bethel, New Fairfield, Newtown, Ridgefield, Greenwich, Sherman, Westport, Wilton, and Weston, the Cities of Danbury and Stamford, the Kent School Corporation, the CL&P, and the Housatonic Valley Council of Elected Officials; (4) the Preston Mountain Club, Inc. (“PMC”), a local landowner; and (5) the SIT.

After reviewing the requests of the five appellants, the IBIA, on May 12, 2005, found adequate grounds to vacate the STN FD and remand it to the Secretary of the Interior for reconsideration. The IBIA decision addressed a number of issues within the context of the related FD on the Historical Eastern Pequot (“HEP”) petitioner of Connecticut, which also had been vacated and remanded to the AS-IA a week earlier on May 12, 2005. The IBIA linked the two decisions because of their reliance on recognition by the State of Connecticut as additional evidence for criteria 83.7(b) and 83.7(c). In the STN decision, the IBIA followed its HEP decision, which held that the State’s recognition of a tribal entity as a distinct political body was not “reliable or probative evidence for demonstrating the actual existence of community or political influence or authority within that group.” *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*, 41 IBIA 30, 34 (May 12, 2005).

Acting for the Secretary, the Department not only had to reconsider the STN evidence absent the unprecedented weight the FD had given to state recognition, but also to address other issues raised by the IBIA appellants. For example, it re-analyzed the endogamy and residency rates and found that in combination with other documentation the endogamy rate provided sufficient evidence for criterion 83.7(b) for some periods. However, the re-analysis also concluded that the endogamy and residency rates were not high enough to permit them to count as carryover evidence for criterion 83.7(c). *Id.* at 35. After the Department completed its overall reevaluation, the Associate Deputy Secretary of the Interior published a Reconsidered Final Determination (“RFD”) on October 14, 2005, which declined to acknowledge the STN as an Indian tribe under Federal law. 70 Fed. Reg. 60101.

The RFD concluded that the STN failed to meet criterion 83.7(b) for the periods 1920 to 1967, absent the previous weight given state recognition. This also was the conclusion for the period 1997 to the time of the RFD, due to a split in membership that caused the STN to no longer represent the entire Schaghticoke community. The decision found that the STN did not meet criterion 83.7(c) for the period 1885–1892 based on new evidence presented to the IBIA. The RFD also found that the STN did not meet this criterion for the period 1892 to 1967, absent the weight previously given State recognition, and for the period after 1996 due to the membership split. STN RFD at 5, 45–46, 57–58.

The STN RFD became final and effective on the date it was published in the Federal Register (Oct. 14, 2005). This decision exhausted the administrative process for Federal acknowledgment for the STN.

3. The STN's Status Subsequent to the RFD

On January 12, 2006, the STN filed suit in the U.S. District Court for the District of Connecticut (*STN v. Kempthorne*), claiming that the RFD was:

arbitrary and capricious under the Administrative Procedure Act (APA), the result of improper political influence in violation of STN's due process rights, and the product of an ultra vires decision in violation of the Appointments Clause of the United States Constitution and of the Vacancies Reform Act.

Ruling on Cross-Motions for Summary Judgment, *Schaghticoke Tribal Nation v. Norton*. No. 3:06cv81, at 1 (D. Conn. Aug. 26, 2008), ECF No. 206.

The State of Connecticut, the Kent School Corporation, the CL&P, and the Town of Kent were subsequently granted intervenor status in this case on June 14, 2006. The STN filed a motion for summary judgment, after which the Department, the BIA ("Federal Respondents"), and the Connecticut intervenors filed cross motions for summary judgment. On August 26, 2008, the court held that the STN failed to meet the burden of demonstrating its claims. *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (D. Conn. 2008). The court sustained the Department's decision, finding the RFD's conclusions to be "thorough, rational and well reasoned" and "reasonable based on the evidence." *Id.* at 400. Accordingly, the Court denied the STN's motion for summary judgment, granted in part the cross motions for summary judgment of the federal respondents and Connecticut intervenors, and dismissed the case.

The STN appealed the District Court's ruling to the U.S. Court of Appeals for the Second Circuit. "On appeal," STN "abandoned" its "claim that the Reconsidered Final Determination was arbitrary or capricious." *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.3d 132, 134 (2d Cir. 2009) (Per Curiam). STN requested the Court to review whether STN's due process right to a fair hearing was violated by undue political influence, and whether the RFD was issued by an unauthorized official. The Court of Appeals rejected both claims and affirmed the dismissal of the STN's claims in an opinion issued on October 19, 2009 (and amended on November 4, 2009). *See id.*

On May 24, 2010, the STN petitioned the U.S. Supreme Court for a writ of certiorari and the Court denied the petition on October 4, 2010. 562 U.S. 947 (2010). STN then petitioned for rehearing of that denial, which the Court denied on November 29, 2010. 562 U.S. 1089 (2010). As a result, the STN exhausted all judicial remedies available to it for a reversal of the RFD. Subsequently, the STN and the SIT were ultimately unsuccessful in the land claims litigation.

C. History of the Federal Acknowledgment Petition of the SIT

A fully documented acknowledgment petition for the SIT has been long in coming. As noted above, the SIT submitted a letter of intent to the BIA on April 7, 2001, a letter-style petition on May 11, 2001, and a partially documented petition on October 11, 2002. On October 25, 2002,

the Department denied the SIT's request to be considered simultaneously with the STN petition. The Department explained that it was not feasible to review both petitions at the same time given the timeline mandated for the STN review by the U.S. District Court.

The SIT was a party in the pending STN land claim litigation before the District Court, and it was an interested party in the BIA's review process of the STN petition.

The SIT submitted comments on the STN petition, which were considered in the STN PF. The BIA also reviewed the membership lists and other documents submitted by the SIT as part of its evaluation of the STN. The BIA was fully cognizant of the political opposition and membership withdrawal that resulted in the SIT becoming a separate entity and acknowledgment petitioner, and it described these events in detail in the STN PF. Those were factors that caused the BIA to determine that the STN did not meet criteria 83.7(b) and 83.7(c) for the period 1996 to the time of the STN PF. This was because the STN no longer represented the entirety of the Schaghticoke community and its political leadership. STN PF at 21 and 30–31.

The BIA conducted an informal TA meeting with SIT representatives in 2003. In later summarizing this meeting, BIA officials indicated they had advised that “[s]ince there was only one body of Schaghticoke, the conclusions in the STN proposed finding (PF) for the time period before 1997 would also apply for the SIT petition.” Lee Fleming to Alan Russell, TA Letter (Sept. 14, 2006) (citing April 30, 2006 TA Letter) (A-25).

The SIT's evidence was also evaluated for the STN FD. This decision noted that “internal conflicts exist for 1996 to the present” and that the STN membership “does not include a substantial portion of the present community.” The SIT was one of the parties that requested the IBIA to reconsider the STN FD. The SIT did not challenge the fact that the STN should be acknowledged. Rather, it argued that the SIT was the “true representative” of the Schaghticoke Tribe. The SIT alleged eight grounds for reconsideration. The IBIA held that four of them were within its jurisdiction, but denied them on the merits, and found that the other four were outside of its jurisdiction. Nevertheless, it passed all of them to the Secretary of the Interior as part of its remand. Primarily, the SIT claimed that it had new evidence that would refute the STN FD.

The SIT submitted further documentation to the Department on September 12, 2005. This was about a month before the Department published the RFD reversing the positive STN FD. The Department sent the SIT a TA letter on September 14, 2006, that indicated that there were critical deficiencies and significant omissions in the evidence it had submitted. This TA letter indicated that the Department would consider the evidence already submitted by the STN in considering the SIT's petition.

The Department also considered the SIT evidence in the development of the STN RFD. This decision reaffirmed the STN PF by concluding that the political opposition and membership withdrawal of the SIT members prevented the STN from meeting the community and political influence or authority criteria for the period after 1996.

The SIT did not intervene in the STN's 2006 suit to have the U.S. District Court invalidate the RFD (*STN v. Kempthorne*).

On January 16, 2013, the Department indicated in a letter to the SIT leadership that the SIT had still not adequately responded to the major deficiencies noted in the 2006 TA letter.

As indicated above, the Department revised the acknowledgment regulations (25 C.F.R. Part 83) on July 1, 2015. 80 Fed. Reg. 37836. Ultimately, consideration of the SIT's petition was suspended or terminated pursuant to 25 C.F.R. § 83.7(a) for its failure to submit a *complete* documented petition prior to July 31, 2015. BIA to Petitioner, July 31, 2015 (A-35). The SIT was thereafter invited to submit a new documented petition under the 2015 acknowledgment regulations. BIA to Russell, June 9, 2016 (A-36).

In March 2019, the SIT submitted what it described as a "concise written narrative" to the Department. More accurately, this was a mere chronology of significant documents, which did not adequately interpret their relevance in terms of meeting the mandatory acknowledgment criteria. However, this narrative clearly indicated that the SIT intended to use much of the same evidence that was included in the STN's documented petition.

The SIT submitted further material to the Department on December 23, 2019, which it claimed completed its fully documented petition. By letter dated January 10, 2020, the OFA again rejected the submission as incomplete. A review of the December 2019 narrative reveals that it is substantively almost identical to the March 2019 submission.

On December 30, 2020, the SIT submitted another Petition for Federal Acknowledgment in two parts. This documentation appears to have been published for public access on the OFA website. On July 1, 2021, additional documentation in support of the petition was submitted by the SIT. This documentation has not been identified and has *not* been published for public access on the OFA website. On February 1, 2022, the Assistant Secretary for Indian Affairs "deemed these two submissions together to be SIT's official documented petition." In a Federal Register notice published on March 23, 2022, OFA announced that it had accepted the SIT petition for review and that interested parties should submit comments by July 5, 2022. 87 Fed. Reg. 16480 (Mar. 23, 2022).

VII. Inadequate Opportunity to Comment

As an initial matter, the Connecticut Parties object that, by failing to publish or provide the parties with the SIT's membership list, governing document, and other relevant material submitted by the SIT in support of its petition, the OFA has failed to provide the parties and the public with an adequate opportunity to comment on the petition, in violation of the acknowledgment regulations, the Freedom of Information Act, and due process. 25 C.F.R. § 83.22(c)(1) requires OFA to make public all "portions of the documented petition, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law." OFA has failed to publish any of the SIT's supporting evidence and documentation, including its membership list, membership history, and governing document and has ignored or denied requests for portions of that information filed on behalf of the Town of Kent and Kent School Corporation under the Freedom of Information Act ("FOIA") for the benefit of the Connecticut Parties.

In the comments to the 2015 regulations, the Assistant Secretary stated that 25 C.F.R. § 83.22(c)(1) was intended to promote transparency and that *all* portions of the documented petition not exempt from disclosure by Federal law would be provided to the public either by publication, or, if that was impracticable, by other means. 80 Fed. Reg. at 37884. There is no transparency when required disclosures are not made to the prejudice of the parties desiring to provide meaningful comment.

Kent School previously requested under the FOIA the membership lists included in the petitions for acknowledgment submitted by the SIT in March 2019 and December 2019 (each of which petitions OFA rejected as incomplete). The Department produced the lists with the names of the members redacted, stating that the information is personal information that is exempted from disclosure under FOIA Exemption 6. Kent School appealed (A-66), but the appeal was summarily denied on March 28, 2022. (A-76). On March 25, 2022, the Town of Kent requested under the FOIA the membership list included in the SIT's current petition, past membership information, and the governing document. FOIA Request DOI-ASIA-2022-002832 (A-77). The Department's failure to respond to this request within the statutory time limit constitutes a denial of the request.

The Department is wrong to withhold the names of SIT members on privacy grounds. The individuals who agreed to be listed waived any privacy expectation because they are listed in a request for action (inclusion in an acknowledged tribe) that would accord great benefits to them and for which their burden of proof requires their identification. The names of the members of the SIT petitioner group are not exempt from disclosure under FOIA Exemption 6, as they are not information the disclosure of which would constitute "a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Under controlling precedent, the presumption in favor of disclosure under FOIA is as strong under Exemption 6 as anywhere in the Act, and exemption from disclosure is only allowed where the privacy interests affected outweigh the public interest in disclosure.¹¹ The strong public interest in evaluating the OFA's administration of, and compliance with, the tribal acknowledgment process and criteria—for which this information is essential—outweighs the privacy interest of these individuals. In addition, numerous previous membership lists of the SIT are publicly available, and thus the privacy interest of current members that appear on previous lists is minimal at best. The individuals whose names are withheld clearly consented to being included and, given that their descent is critical to the end decision, can have no expectation of privacy in this respect. Finally, the Connecticut Parties are willing to agree to confidentiality terms to ensure protection of privacy.

As the OFA acknowledges, the relevant public interest that must be weighed against the privacy interest that would be affected by disclosure is the extent to which the information sought would shed light on an agency's performance of its statutory duties. The agency's duties include evaluation of the descent of a petitioner's members from a historical Indian tribe. The acknowledgment regulations at 25 C.F.R. Part 83 require petitioners to demonstrate that "[t]he petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity)." 25 C.F.R. § 83.11(e). This requirement of Indian descent is fundamental to the federal

¹¹ See *Nat'l Ass'n of Retired Fed. Emps. v. Favish*, 541 U.S. 157, 172 (2004) ("The term 'unwarranted' requires us to balance the . . . privacy interest against the public interest in disclosure."); *Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) ("under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act").

acknowledgment of an Indian tribe, and indeed, is essential to the definition of a tribe under Supreme Court precedent. In turn, the federal acknowledgment of an Indian tribe, with all of its attendant sovereign rights and powers as a domestic dependent nation, is one of the most solemn and momentous exercises of the federal government's plenary authority over Indian affairs. The public interest in verifying the appropriate administration of this aspect of the federal tribal acknowledgment process is therefore of great magnitude.

Whether a petitioner meets the descent criterion cannot be determined without personal information of the petitioner's members sufficient to conduct the genealogical research and analysis necessary to determine the descent of those members from a historical tribe or tribes—at a minimum, this requires the names of a petitioner's members. This is precisely why the OFA requires the submission of membership lists, 25 C.F.R. 83.21(a)(4), and the same applies to the public's need for that information to determine if the agency is properly evaluating the descent criterion. Without the identity of a petitioner's members, members of the public cannot verify the OFA's determinations under the descent criterion, or make fully informed comments during the public comment periods provided in the acknowledgment process. The public interest in the requested information is therefore substantial, and cannot be satisfied by alternative means.

By contrast, the privacy interests affected are minimal at best, and can be fully protected from inappropriate disclosure through agreements among the parties. Under controlling precedent, the relevant privacy interest in lists of names and addresses is the likely consequences that would result from the disclosure of potentially sensitive information that goes beyond the mere names and addresses of the individuals on the list.¹² In this case, the relevant information is membership in the SIT petitioner group. There is, however, no reason to believe that disclosure of this information would result in adverse consequences to the individuals identified on this basis.¹³ In addition, the disclosure of these names, especially without addresses, is unlikely to result in unwanted contact by third parties.¹⁴

Moreover, the privacy interest of individuals in their status as current members of the SIT is minimal when such individuals are identified on past membership lists that are publicly available.¹⁵ The SIT transmits membership lists to the State of Connecticut on an annual basis,

¹² *Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 876-77 (D.C. Cir. 1989) ("*NARFE*") ("Every list of names and addresses sought under FOIA is delimited by one or more defining characteristics, as reflected in the FOIA request itself; no one would request simply all 'names and addresses' in an agency's files, because without more, those data would not be informative. The extent of any invasion of privacy that release of the list might occasion thus depends upon the nature of the defining characteristics, i.e., whether it is significant that an individual possesses them. A non-embarrassing characteristic may or may not be otherwise significant, in a manner relevant to the individual's privacy interests, depending upon whether many parties in addition to the party making the initial FOIA request would be interested in obtaining a list of and contacting those who have that characteristic. ... We are thus left with circuit precedent establishing only that the disclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a de minimis threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue.").

¹³ See *Washington Post Co. v. USDA*, 943 F. Supp. 31, 34 n.3 (D. D.C. 1996) ("None of the information at issue in this case is stigmatizing, embarrassing[,] or dangerous[.]").

¹⁴ Cf. *NARFE*, 879 F.2d at 878 ("In this case, there is little reason to doubt that the barrage of solicitations predicted will in fact arrive— in the mail, over the telephone, and at the front door of the listed annuitants.").

¹⁵ See *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 35 (D.C. Cir. 2002) ("Here, the private property owners are similarly concerned that disclosure will result in unwanted contact from strangers. Insofar as the pygmy owl is

and those lists are in the public domain.¹⁶ There is no indication in those transmittals that the SIT anticipates or has experienced any adverse consequences from their release.¹⁷ The relevant individual privacy interests are therefore minimal at best.

The balance of interests is thus between a powerful public interest in the information necessary to verify the agency's compliance with a duty of immense importance, against a privacy interest that is minimal at best. The public interest in the personal information necessary to understand how the acknowledgment regulations are applied therefore outweighs the individual privacy interests in that information.¹⁸ Thus, to the extent that such personal information is essential to an analysis of whether the Department is complying with the acknowledgment regulations—at a minimum, the names of the current members—the release of such information is not “clearly unwarranted” under 5 U.S.C. § 552(b)(6), and may not be withheld from release under the FOIA. The remedy for withholding the names of members is clear—the Department can deny the SIT's petition without producing its members' names, but the Department cannot acknowledge the SIT without such disclosure and the meaningful opportunity for other parties to comment on the membership and descent criteria.

VIII. The SIT is a Splinter Group and Must be Denied

The SIT is ineligible for consideration for federal acknowledgment as an Indian tribe on the grounds that the SIT is a splinter group of a previously denied petitioner, the STN (Petitioner #79), and therefore is not subject to further consideration under the federal acknowledgment regulations in 25 C.F.R. Part 83.

The Department's findings in the STN proceedings establish that the SIT is a splinter group that separated from the STN in the 1990s, and is therefore ineligible for federal acknowledgment under the Department's regulations.

An immediate determination of ineligibility as a splinter group during Phase I review is consistent with Departmental precedent, including the Department's immediate rejection of the STN's attempt to re-petition in 2016, and the rejection of the HEP petitioner group's request to be reaffirmed as a previously federally acknowledged tribe, also in 2016. In both cases, the Department determined that the petitioner groups were ineligible under 25 C.F.R. 83.4 without

concerned, however, the property owners already have divulged information about the sightings to the State agency with the understanding that the information, although confidential, might be subject to release under disclosure laws.”).

¹⁶ Whether the membership lists submitted by the SIT to the OFA match those submitted to the State is unknown.

¹⁷ The SIT requests that the OFA not disclose the names of its members, *supra* n.1. but provides no basis for this request. Nondisclosure would aid the SIT petitioner—regardless of privacy interests or lack thereof—in that it would prevent third parties from offering an independent analysis in opposition to the petition.

¹⁸ See *Gilman v. DHS*, 32 F. Supp. 3d 1, 17–18 (D. D.C. 2014) (discussing D.C. Circuit precedent; “[t]he sum of these cases establish that where the requester has articulated a legitimate public interest in the information, courts have ordered disclosure of names and addresses, even if such information is associated with financial information, views held by the landowner, or would risk unwanted contact.”).

further procedures.¹⁹ The SIT petitioner group should be similarly determined ineligible without further review of its petition.

In addition to these strong legal grounds, there are compelling policy and practical reasons for ending the review of the SIT petition as part of the Phase I review. Acting on the splinter group issue during Phase I review for an ineligible petitioner reduces the burden on all parties and promotes timeliness, efficiency, and fairness. This was a primary impetus for the 2015 revisions to the acknowledgment regulations.²⁰ Given the Department's finite resources, it is unfair as well to the eligible petitioners whose petitions are pending before the Department.²¹ A determination of ineligibility at this time would promote timeliness, efficiency, and fairness.

A. The Splinter Group Test

The regulations governing the acknowledgment of Indian tribes state that acknowledgment will not be provided to:

A splinter group, political faction, community, or entity of any character that separates from the main body of a ... previous petitioner unless the entity can clearly demonstrate it has functioned from 1900 until the present as a politically autonomous community.

25 C.F.R. § 83.4(b).²² This prohibition codifies the Department's longstanding policy and precedent discouraging splits or divisions within groups that may become federally acknowledged.²³

As explained in the Department's Reconsidered Final Determination for the Eastern Pequot and Paucatuck Eastern Pequot petitioner groups:

It is the general policy of the Department not to encourage splits and divisions within federally acknowledged tribes. ... A reasonable extrapolation of this policy and of the intent of the regulations to acknowledge historical tribal units, is that the Department does not and should not encourage splits and divisions within groups which may become federally acknowledged. ...

¹⁹ Letter from R. Lee Fleming, Director of the Office of Federal Acknowledgment, to Katherine Sebastian Dring (June 2, 2016) (HEP); Letter from R. Lee Fleming, Director of the Office of Federal Acknowledgment, to Gregory A. Smith (Apr. 25, 2016) (STN).

²⁰ See 80 Fed. Reg. at 37862-64 (citing the goal of improving "timeliness and efficiency" throughout).

²¹ See *id.* at 37875 ("The Department has petitions pending that have never been reviewed. Allowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review, and would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and OFA in particular.").

²² A separate subsection, § 83.4(d), precludes repetition by previously denied petitioners, including splinter groups of the denied petitioner. As recognized by the 2005 RFD denying acknowledgment to the STN, the counterpart of this provision under the regulations at the time (§ 83.10(p) of the 1994 regulations) does not apply to the SIT, which separated from the STN before the STN was denied acknowledgment. RFD at 64.

²³ See Final Rule, *Federal Acknowledgment of American Indian Tribes*, 80 Fed. Reg. 37862, 37874 (July 1, 2015) ("The final rule does not change the way the Department has handled 'splinter groups.'").

The Secretary does not have the authority to acknowledge part of a tribe. Thus, an otherwise acknowledgeable group that divides now would not be acknowledgeable as two or more tribes because neither would constitute the complete community or political entity within which political influence was exercised.²⁴

Guidance issued in 2008 formalized the Department's position that "[t]he Department does not acknowledge parts of an Indian tribe."²⁵ In the preamble to the 2015 regulations, the Department specifically endorsed the 2008 guidance, emphasizing that "[t]he final rule does not change the way the Department has handled 'splinter groups.'"²⁶

To date, the Department's precedents have not directly applied the prohibition to splinter groups of previous petitioners. This is because the Department's general practice has been to consider related petitioner groups at the same time.²⁷ All these groups that were considered together were ultimately denied acknowledgment.²⁸ In the case of the SIT and STN as discussed previously, however, it was not possible to consider them at the same time because the Department was under a court-ordered timeline to reach a final decision respecting the STN, but the SIT had not yet submitted a fully documented petition and was therefore not ready for review during the active consideration of the STN petition.

The record in the STN proceedings, however, closely examined the relationship between the STN and the SIT, and provides ample basis for a determination on the splinter group issue. The Department's findings in the STN proceedings clearly establish that the SIT meets the definition of a splinter group in the governing regulations. Those findings include the PF in 2002, the FD in 2004, and the RFD in 2005.²⁹ Accordingly, the Department has no choice other than to deny the SIT petition.

²⁴ See *Eastern Pequot and Paucatuck Eastern Pequot Reconsidered Final Determination* (2005) at 78–80.

²⁵ Notice, *Office of Federal Acknowledgment; Guidance and Direction Regarding Internal Procedures*, 73 Fed. Reg. 30146, 30147 (May 23, 2008).

²⁶ 80 Fed. Reg. at 37874.

²⁷ See, e.g., *Lower Muskogee Creeks/Creeks East of the Mississippi* (1981); *United Lumbee Nation/Kaweah Indian Nation* (1985); *Southeastern Cherokee Confederacy/Northwest Cherokee Wolf Band/Red Clay Intertribal Indian Band* (1985); *Eastern Pequot/Paucatuck Eastern Pequot* (2005); *Nipmuc Nation/Chaubunagungamaug Nipmuck Indians* (2008); *Juaneno Band of Mission Indians/Juaneno Band of Mission Indians-Acjachemen Nation* (2011). The one exception is nevertheless consistent with the policy to discourage splits within groups that may be acknowledged because it involved two distinct historical tribes, each with evidence of previous Federal acknowledgment, that only briefly merged for several years during the acknowledgment process (perhaps in an effort to make a stronger case for acknowledgment) before each was separately acknowledged. See *Huron Pottawatomis, Inc.* (1996) and *Match-E-B-Nash-She-Wish Band of Pottawatomis Indians of Michigan* (1999).

²⁸ The *Juaneno Band of Mission Indians-Acjachemen Nation* is still under reconsideration.

²⁹ The Department determined that the STN failed to meet the criteria for acknowledgment in the PF and RFD, and this determination was upheld upon judicial review. *Schaghticoke Tribal Nation v. Kempthorne*, 587 F. Supp. 2d 389 (D. Conn. 2008), *aff'd*, 587 F.3d 132 (2nd Cir. 2009), *cert. denied*, 562 U.S. 947 (2010), *reh'g denied*, 562 U.S. 1089 (2010). The IBIA vacated and remanded the FD based on the improper use of implicit state recognition as probative evidence of community and political influence or authority, *In re Federal Acknowledgment of the Schaghticoke Tribal Nation*. 41 IBIA 30 (May 12, 2005), but the RFD expressly reaffirmed the analysis and conclusions in the FD except as specifically described.

B. The SIT Is a Splinter Group of the STN

There is no dispute that the SIT separated from the STN in the 1996/1997 time period.³⁰ Instead, the SIT argues that it is the “main body” of the petitioner group and the STN is the splinter group. As explained in the Department’s 2006 TA letter identifying deficiencies in the petition submitted by the SIT in 2002 and 2005:

The STN RFD concluded that there was a single Schaghticoke group until about 1997, the point at which certain central members of the community refused to reenroll. The SIT petition does not substantially challenge this conclusion, but argues that STN is the “splinter” from the whole group rather than the SIT being such. The STN PF, FD, and RFD evaluated the history of conflicts within the Schaghticoke community both before and after 1997 in considerable detail. The RFD concluded that the STN petitioner was not the complete group, but it was not relevant or necessary to evaluate which petitioner was the “splinter.”³¹

A determination of the splinter group issue was not necessary to reach a final determination with respect to the STN because the STN failed of its own accord even with respect to periods before its split with the SIT, including failing to satisfy criterion (b) for 1940 to 1967 and criterion (c) for the periods of 1801 to 1875 and 1885 to 1967. A determination of the splinter group issue is necessary and appropriate now for the SIT petition, however, as a result of the previous determination regarding the STN. The existing record clearly establishes that the SIT separated from the main body of the STN and not vice versa.

C. The SIT Membership Derived Principally from the STN

First, the PF included an analysis of the SIT’s membership list submitted in 2002, which OFA reviewed “to determine whether any of the SIT were also on the current or previous STN membership lists or were otherwise involved with the STN petitioner.”³² The PF concludes that

about 50 names on the SIT membership list [which listed 73 names in total] have been on STN membership lists and/or involved with the STN petitioner, either in the recent past, or at present. This represents about 16 percent of the STN’s membership as of August 2001 (50 of 317). However, it represents about 25 percent of the STN membership prior to the post-1996 influx of new members.³³

Thus, a substantial majority of SIT members were formerly part of the STN, but together had comprised only a fraction of the STN membership.³⁴ This pattern is only consistent with the SIT separating from the main body of the STN, not vice versa.

³⁰ This time frame precludes any finding that the SIT “functioned from 1900 until the present as a politically autonomous community.” 25 C.F.R. § 83.4(b).

³¹ Letter from R. Lee Fleming, Director of the Office of Federal Acknowledgment, to Alan Russell (Sept. 14, 2006) at 2 (A-25).

³² PF at 212 (Appendix I, Analysis of the Schaghticoke Indian Tribe (Petitioner #239) Membership List).

³³ PF at 213.

³⁴ The membership numbers of both groups have fluctuated significantly since the two groups separated. The final STN membership list considered in the RFD consisted of 273 members. The membership list submitted by the SIT in

In addition, this conclusion is consistent with the Department's determination, recently affirmed by the Ninth Circuit, that the Ukiah Valley Pomo Indians group was ineligible to organize as an Indian tribe under the Indian Reorganization Act of 1934 because it is a "splinter group" of the Pinoleville Pomo Nation ("Nation"), a federally-recognized tribe, and the Department "does not interpret the Indian Reorganization Act as permitting splinter groups or factions of a tribe to set up independent tribal government."³⁵ Although that decision did not apply the acknowledgment regulations, the Department relied on evidence that the majority of the group was listed as members of the Nation to support its factual finding that the group was "only a subset" of the Indians for which the Pinoleville Rancheria was set aside.³⁶

D. The SIT Engaged in the Political Act of Splintering from the STN

Second, the political leadership existing before the 1996/1997 split remained with the STN. The PF describes the political events leading up to the separation of the SIT from the main body of the STN in the 1996/1997 time period. The modern history of the STN had been characterized by pronounced internal conflict between political factions, including a period in the early 1980s of rival tribal councils, each denying the legitimacy of the other, but by 1985 these divisions had resulted in the election of a single unified council, which effectively replaced the council headed by Alan Russell with one led by Irving Harris and Richard Velky as vice chairman.³⁷ Velky was subsequently elected chief of the STN in 1987,³⁸ a leadership role he continued through the separation of the SIT in 1996/1997, and continues to hold to the present.³⁹

By 1993, however, "[t]he older divisions surfaced again ... with a petition for the recall of the Velky-led council."⁴⁰ The unsuccessful petition "was a unification of many of Richard Velky's opponents," including former STN Council Chairman Alan Russell,⁴¹ who later emerged as the leader of the SIT, a position he continues to hold to the present.

Ultimately, however, the separation of the SIT from the STN was precipitated by a reenrollment process begun by the STN leadership to address deficiencies identified in a Technical Assistance letter in 1995.⁴² The PF found that a number of tribal documents referring to this reenrollment process stated there were "questions" regarding the eligibility of certain individuals, and although there was not enough detail to fully understand these references, they appeared to focus especially on the leaders of the political opposition to the Velky-led tribal council, including Alan Russell.⁴³

March 2019 listed 40 adult members, and the December 2019 list includes 47 members. The memberships at the time of separation, however, are the most relevant to the splinter group issue.

³⁵ See *Allen v. United States*, No. 17-17463, 797 Fed. Appx. 302, 304 (9th Cir., Dec. 31, 2019) (unpublished opinion).

³⁶ *Id.* at 304-07.

³⁷ PF at 169-170.

³⁸ PF at 170.

³⁹ See, e.g., Op-ed, Chief Richard Velky, *Same old tribes play Bridgeport and state the same old tune*, The Middletown Press (Aug. 23, 2019), <https://www.middletownpress.com/opinion/article/Chief-Richard-Velky-Same-old-tribes-play-14371396.php>.

⁴⁰ PF at 173.

⁴¹ PF at 173.

⁴² PF at 173-76.

⁴³ PF at 174.

The PF further found that:

Some of those most in opposition to the Velky-led council evidently refused to submit the paperwork, or at least not all of it, indicating that they wished to be enrolled but refused to go through the re-enrollment process that had been established. These individuals apparently included Alan Russell [and others].⁴⁴

Subsequently, a revised constitution incorporating new membership criteria was adopted at an October 5, 1997 special membership meeting by a vote of 57 to 21, out of an attendance of 112, over the strong objections of major opponents of the Velky council.⁴⁵ The meeting also continued the existing council and officers in office, as “there were no requests by others than those on the council to hold office and therefore the existing council continued in office.”⁴⁶

Political opposition to the new constitution continued, culminating less than three weeks later in an October 24, 1997 petition to the Department, titled “Gathering of the Tribe,” in which the 18 signatories, including Alan Russell, declared that the SIT was not the same entity as the STN, and that the STN had no authority over the SIT.⁴⁷ The new group, under the leadership of Alan Russell, subsequently petitioned for acknowledgment by letter dated April 7, 2001, which stated that the STN’s original 1981 letter of intent was in fact theirs,⁴⁸ and later submitted an initial documented petition on October 11, 2002.⁴⁹

The record therefore shows that the SIT separated from the STN in response to governance actions initiated by the STN’s political leadership and ultimately approved by the STN membership as a whole, and that the STN political leadership remained in office throughout this period. The documented sequence of events is only consistent with the separation of the SIT from the main body of the STN.

E. The Actions of the SIT to the Present-day Confirm It Is a Splinter Group of the STN

Finally, the political and membership patterns described above continue to the present day, confirming that the SIT is a splinter group of the STN. With respect to membership, despite the OFA’s failure to provide the current membership list, it has nonetheless been possible to identify the likely current members of the SIT. In March 2019, and again in December 2019, the SIT submitted membership lists to the Department. In response to FOIA requests, the Department subsequently produced those lists in redacted form. The redacted lists nevertheless reveal that the membership of the SIT included only 40 (March 2019 list) or 47 members (December 2019 list). The SIT claims 44 members in its current petition. In 2010, however, the SIT submitted a membership list that was received by both the Department and the Connecticut Department of

⁴⁴ PF at 174.

⁴⁵ PF at 175–76.

⁴⁶ PF at 176.

⁴⁷ PF at 176. *See also* SIT Petition for Acknowledgment (received by OFA, Mar. 26, 2019) (unpaginated) at § 2.4, “Era of Federal Recognition Efforts” (listing “October 24, 1997 ‘The Gathering of the Tribe’ joint statement that STN is not the same as SIT and that STN has no authority over them.”). A review of the December 2019 narrative reveals that it is substantively almost identical to the March 2019 submission.

⁴⁸ PF at 5.

⁴⁹ PF at 5.

Environmental Protection's Indian Affairs Coordinator. The unredacted 2010 list reveals the names of 200 adult members, which has allowed the Connecticut Parties to conduct genealogical research on the SIT's 2010 membership.⁵⁰ A summary of that research is set forth at pages 92 through 97 of the Appendix.

The research confirms that the overwhelming majority of the 2010 members do not descend from the historical Schaghticoke tribe.⁵¹ Verifiable descent from the historical tribe identifies 24 likely members. An additional 14 likely members can be identified based on other evidence, including current or prior participation in the SIT, resignation of membership in the STN, and familial relations to other likely members. The resulting total of 38 likely adult members compares closely to the total of 44 members the SIT currently claims, as well as the 40 or 47 members on the 2019 membership lists. Of the 38 identified likely current members, 14 can be documented as resigning their membership in the STN, and an additional 6 can be identified as former or likely former members of the STN, based on familial relationships or identification in other documents in the STN proceedings. Thus, it is likely that at least 45% of the SIT's current members, and at least 43–50% of the SIT's 2019 members (at least 20 out of 40 or 47) are former members of the STN.

This proportion is consistent with the fact that almost a generation has passed since the split between the STN and SIT around 1997. It should be noted that out of the remaining 17 identified likely current SIT members, at least 13 were minors when the STN and the SIT separated around 1997. Thus, as many as 33 likely current SIT members (75%, or 70–83% of the SIT's 2019 membership of 40 or 47) are individuals that were likely either enrolled members of the STN or children that simply had not been enrolled yet at the time of the split. In light of the intervening generation since the 1997 split, this proportion is remarkable, given that the number of former members who are deceased will, of course, naturally increase over time until there are no surviving former members.

The conclusions of this research can easily be verified by the Department by comparing the current SIT membership list to the membership lists previously submitted by the STN.⁵²

Similarly, the SIT continues to act in a manner that is politically independent of the STN, and to set itself in opposition to the STN. As in previous petitions, the SIT's current petition unequivocally states that “[f]rom the time of SIT's original assignment of its own Petition #239, the Tribe has opposed and challenged STN's legitimacy as the Schaghticoke Tribe.”⁵³ Consistent

⁵⁰ The SIT's current and March 2019 and December 2019 submissions do not reference the 2010 list or otherwise explain the difference in membership numbers from 2010. It is likely, however, that the current and 2019 membership lists include only 40–47 adult members because, as described below, the overwhelming majority of the 2010 members cannot document descent from the historical Schaghticoke Tribe.

⁵¹ As noted above, this likely explains why the current and 2019 membership lists include only 40 to 47 adult members. Even so, it is only possible to document the requisite descent for 24 of the likely current members. We note that it is therefore unlikely that the current membership of the SIT can satisfy the descent criterion.

⁵² The expense and difficulty of this research was necessary only because these lists are not publicly available. The Department refuses to produce these membership lists under the Freedom of Information Act, a position the Connecticut Parties dispute.

⁵³ SIT, 2022 Petition for Acknowledgment, § III.i, p. 21 (original pagination), Part 2, p. 16 (repaginated into two parts). See also SIT, Petition for Federal Acknowledgment, § 2.5 (unpaginated: “Contact and Recent Procedural History with

with this stated position. the SIT's current and past petitions cite and rely on the following documents, among others, as supporting acknowledgment:

- October 24, 1997, "The Gathering of the Tribe" joint statement that "STN is not the same as SIT and that STN has no authority over them";
- December 21, 2000, letter to the State of Connecticut stating that Richard Velky has no authority;
- June 21, 2000, letter to the Department stating that Richard Velky does not represent the tribe;
- June 4, 2000, article in the Sunday Republican covering conflict between the STN and the SIT;
- May 4, 2001, motion to intervene in *STN v. Kent School Co.*;
- February 15, 2004, article in the New York Times discussing conflict between the STN and the SIT;
- May 25, 2004, exclusion letter to Richard Velky regarding his request to use a pavilion on the reservation;
- November 10, 2005, special council meeting minutes regarding letters to state authorities about Velky having no authority and that STN cannot hunt on the reservation;
- July 10, 2010, statement by Gail Harrison Donovan that the SIT is separate from the STN and the SIT has spoken out as being opposed to the STN petition; and
- February 7, 2013, letter to the Connecticut Department of Energy and Environmental Protection stating that the STN does not have influence on the reservation and that they are a non-recognized faction.⁵⁴

The SIT's current and past petitions thus unequivocally establish that the SIT's political separation from the STN continues to the present day, confirming that it continues to be a splinter group of the previously-denied STN and cannot be accorded status as an acknowledged tribe.

F. The SIT Petition Relies on the Same Evidence as the STN Petition, Further Confirming the SIT Is a Splinter Group of the STN

A comparison of the SIT and STN petitions demonstrates that the SIT relies on the same historical evidence as the STN, thus confirming that it is a splinter group of the STN and that, just as STN received a negative determination, so should the SIT. A comparison of the SIT evidence for criteria (b) (community) and (c) (political influence or authority) is summarized in the table

the Federal Government and the Office of Federal Acknowledgment") (received by the OFA on March 26, 2019). A review of the December 2019 narrative reveals that it is substantively almost identical to the March 2019 submission.⁵⁴*Id.* at 36-39 (original pagination; Part II at 31-34 repaginated).

below. This table provides examples of how the evidence presented by the SIT to document its petition is substantially the same as that previously presented by the STN.⁵⁵ This sampling considers the evidence presented by both petitioners for community and political influence or authority for the period from 1900 to 1967. The period from 1900–1967 was selected for this sample because the STN RFD found that the STN did not provide sufficient evidence to meet criterion (b) for the period from 1920 to 1967 or criterion (c) for the period from 1892 to 1967. The descriptions of evidence for the STN are derived from the STN PF. The descriptions of evidence for the SIT are taken from its petition materials submitted to OFA on December 23, 2019.⁵⁶

Schaghticoke Tribal Nation (STN)	Schaghticoke Indian Tribe (SIT)
<i>Criterion (b), Community</i>	<i>Criterion (b), Community</i>
Description of Family Lines, 1900–1920, lists three primary families, “Kilson, Cogswell, and Harris,” who resided primarily on the Schaghticoke Reservation (pp. 119–22).	Description of Family Lines, 1900–1920, lists five primary families, “Russells, Harrises, Kilsons, Bradleys, and Cogswells.” (p. 4). However, the STN PF indicates that the Russell family is an extension of the Harris line, and the Bradley family an extension of the Kilson line (pp. 113, 121). The SIT does not claim any additional family lines distinct to its own membership for the period 1900–1967.
Describes the field visits and observations made by the ethnographer Frank Speck in 1903–1904 (p.123).	Describes the field visits and observations made by the ethnographer Frank Speck in 1903–1904 (pp. 42–43, 51, 70).
Describes the “Rattlesnake Hunting Club” and denies the STN claim that it was a significant tribal social and political institution between 1900–1920 (p. 125).	Describes the “Schaghticoke Rattlesnake Club” and claims that it was a significant tribal social institution (pp. 40–50, 54).
Description of tribal Schaghticoke Reservation residents 1920–1930: only a few, mostly Kilsons and Frank Cogswell (p. 126).	Description of tribal Schaghticoke Reservation residents, 1920–1930: reference to a 1926 report of the Connecticut State Park and Forest Commission that listed only three residents on the Reservation (p. 53).
Description of tribal Schaghticoke Reservation residents in 1934: almost entirely Kilsons (p. 126).	Description of tribal Schaghticoke Reservation residents in 1934: describes Charles William Kilson’s burial in the Schaghticoke cemetery, and the residence of Bertha Kilson Riley on the Reservation in 1934 (p. 56).

⁵⁵ In addition to the evidence described in the table, the STN (but not the SIT) also presented additional evidence of social interaction, residential enclaves, shared work experiences, female cultural leaders, and other topics.

⁵⁶ The original pagination of the 2022 petition is identical to the 2019 petition, except that page 92 in the 2019 petition is replaced by pages 92–93 of the 2022 petition (original pagination); each is then followed by the Bibliography. The 2022 petition posted by OFA, however, is in two parts: Part I consists of pages 1–5; Part II is repaginated starting at 1 and thus, compared to the 2019 petition, is off by 5 pages through page 92, and thereafter the Bibliography is off by 4 pages.

Description of tribal Schaghticoke Reservation residents in 1956: all Kilsons except for Nellie Russell; no Cogswells (p. 127).	Description of a Schaghticoke Indian Reservation Fund report that listed residents on the Reservation in 1954 (without referencing specific names) (p. 60).
Description of tribal Schaghticoke Reservation residents in 1966: only Earl Kilson and his non-Indian spouse (p. 127).	Description of Schaghticoke Indian Reservation Fund report that listed residents on the Reservation in 1962 (without referencing specific names) (p. 85).
Description of organized tribal social gatherings: powwows of 1939–1941 (p. 134).	Description of organized tribal social gatherings: powwows of 1939-1941 (pp. 58–60, 80–81).
Schaghticoke Tribal Nation (STN)	Schaghticoke Indian Tribe (SIT)
<i>Criterion (c), Political Influence or Authority</i>	<i>Criterion (c), Political Influence or Authority</i>
Description of political leadership from 1900 to 1920: James Henry Harris and George Cogswell (pp. 124–25).	Description of political leadership from 1900 to 1920: James Henry Harris and George Cogswell (pp. 4–5, 23, 40–49, 58, 69–78).
Describes the “Rattlesnake Hunting Club” and denies the STN claim that it was a significant tribal political institution between 1900-1920 (pp. 125-26).	Description of the Schaghticoke Rattlesnake Club as a tribal political institution (pp. 68–78).
Description of the leadership role of Frank Cogswell, 1923-1953 (pp. 126–28, 136, 138–39).	Description of the leadership role of Frank Cogswell, 1923–1953 (pp. 58–61, 78, 80–83).
Description of the leadership role of William Cogswell, 1933-1942 (pp. 128, 137-38, 148).	Description of the leadership role of William Cogswell, 1933-1942 (pp. 78, 81).
Description of the organizational and leadership role of Franklin “Swimming Eel” Bearce, a non-Indian, 1934-1966 (pp. 136-44, 146-148, 150).	Description of the organizational and leadership role of Franklin “Swimming Eel” Bearce, a non-Indian, 1934-1966 (pp. 55, 57-58, 61, 78-80, 82-83, 84-85).
Description of the filing of a tribal claim with the Indian Claims Commission (pp. 138-46).	Description of the filing of tribal claim with the Indian Claims Commission (pp. 55, 57, 60, 83-84).
Description of the Meeting of a Tribal Claims Committee, 1949 (pp. 138-39).	Description of the Meeting of a Tribal Claims Committee, 1949 (p. 83).
Description of the leadership role of Theodore Cogswell, Sr., after 1953 (pp. 136, 138-39, 143-46, 148, 150-51).	Description of the leadership role of Theodore Cogswell, Sr., after 1953 (pp. 61, 84-85).
Description of the leadership role of Howard Harris, 1954-1967 (pp. 125-26, 138, 143, 146-48, 151).	Description of the leadership role of Howard Harris, 1954-1967 (pp. 55, 77-78, 83-84).
Description of the 1954 Tribal Council meeting (p. 143).	Description of the 1954 Tribal Council meeting (p. 84).
Description of the filing of a land claim against the State of Connecticut, 1963 (pp. 145-46).	Description of the filing of a land claim against the State of Connecticut, 1963 (p. 85).

Note: The evidence described above was not found to be sufficient to meet criterion (c) for the period. 1900 to 1967

Note: The SIT has not claimed any political leaders or activities for the period 1900 to 1967 that were not previously described by the STN petitioner.

The Department's own findings confirm that the SIT is a splinter group of the STN, and as such is ineligible for acknowledgment under 25 C.F.R. § 83.4(b). By relying on the same evidence, the SIT has failed to distinguish itself as anything other than a splinter group or to refute the previous findings to that effect. As discussed above, the regulations in 25 C.F.R. Part 83 require that the SIT petition be rejected on this basis alone.

IX. General Introductory Comments on the Documented Petition

A. Failure to Follow OFA Guidelines

The SIT documented petition fails to adequately describe or interpret the SIT's documentary evidence or demonstrate how that evidence is specifically related to the mandatory criteria set forth in 25 C.F.R. § 83.11. Moreover, the petition does not follow the Department of the Interior's most relevant and fundamental guideline to petitioners. OFA, which evaluates petitions, has, for the benefit of petitioners, issued an outline for developing a "Concise Written Narrative." That guidance indicates that a documented petition must contain a narrative "thoroughly explaining how *each document* is applied to the criteria" (emphasis added).⁵⁷

Furthermore, the petition ignores the guidance provided in the OFA's 2006 TA letter evaluating the SIT's initial petition. That document pointed out that the "petition materials were not organized or oriented to an overarching narrative that addressed the mandatory criteria" and that the SIT had "not explained how . . . documents address any of the mandatory criteria."⁵⁸ Rather than following this guidance, much of the SIT petition is presented as a glorified index, especially for the alleged evidence for criteria 83.11(b), community, and 83.11(c), political influence or authority, for the period since 1950. A substantial part of the narrative merely lists supporting documents with minimal description. Thus, the SIT is seeking to improperly shift to the OFA's expert evaluators the burden of ascribing the relevance of the SIT's documentation to the mandatory criteria. On this basis, the SIT petition should fail, as the Department has clearly articulated that the burden of proving evidentiary relevance rests with a petitioner.⁵⁹

For example, the SIT's evidence for criterion § 83.11(b), community, is presented in 28 pages. SIT Petition, Part IV, pp. 34–62. For the period up to 1950 (SIT Petition, Part IV, pp. 34–55) some description is provided for most of the individual documents, although they are only rarely tied to the categories of evidence set forth in the acknowledgment regulations. For the period of 1950 to 2013, many of the documents are merely listed without a description of their content or relevance. The petition fails to present evidence for the decade between 1987 and 1997,

⁵⁷ U.S. Department of the Interior, Office of Federal Acknowledgment, "Documented Petition Description with an Outline for Concise Written Narrative" (Draft), p. 1, <https://www.bia.gov/sites/bia.gov/files/assets/asia/ofa/admindocs/DocPetDescWithSugOutlineForConcWritNarr.pdf>.

⁵⁸ R. Lee Fleming, Director, Office of Federal Acknowledgment, to Alan Russell, Sept. 14, 2006, p. 2 (A-25).

⁵⁹ See, for example, U.S. Department of the Interior, Bureau of Indian Affairs, "Changes in the Internal Processing of Federal Acknowledgment Petitions," *Federal Register*, Vol. 65, No. 29, February 11, 2000, p. 7052.

as well as for the seven-year period between 2014–2021. This means that evidence of community is not provided for approximately 14 percent of the acknowledgment evaluation period for this criterion, which begins in 1900. The 70-plus years since 1950, which is substantially more than half of the evaluation period, is covered in just seven pages of the SIT documented petition.

Another fatal deficiency of the petition is that while claiming that the SIT, rather than the STN, represents the historical Schaghticoke tribe, the SIT has, for the most part, presented evidence for the period from 1900 to 1996 that was previously submitted by the STN petitioner and is in the OFA record for that case. The 2006 TA letter noted that documents submitted by the SIT were “the same or similar to ones already in the [STN] record.”⁶⁰ In response, the OFA advised that:

Since the STN RFD [Reconsidered Final Determination] concluded that criteria 83.7(b) and (c) were not met for certain time periods before 1996, the SIT needs to provide *additional evidence and analysis* that addresses those time periods when the historical Schaghticoke did not meet these criteria [emphasis added].⁶¹

As our analysis of the SIT evidence demonstrates, the SIT has not submitted sufficient new evidence or analysis to meet criterion 83.11(b), community, from 1920 to 1967 and from 1997 to the present or criterion 83.11(c), political influence or authority, from 1900 to 1967 and from 1997 to the present, the periods for which the STN failed to meet these criteria.

The 2006 TA letter noted further that the membership of the SIT represented “only a fraction of the population that was the ‘Schaghticoke Tribe’ prior to 1996,” and that it included a significant number of individuals “who were not documented to be part of the group that was being identified from 1900 to about 1996.”⁶² In addition, the letter pointed out that perhaps one-third of the SIT membership consisted of “individuals who may have had Schaghticoke ancestors, but who the STN RFD found were not in tribal relations after the mid-1800s.”⁶³ The OFA advised that since the SIT membership did not “represent the whole body of the Schaghticoke prior to 1997. . . you will need to address how the individuals, who were not part of group as existed prior to 1996, were part of the community.”⁶⁴ Regarding criterion (c), political influence or authority, the TA letter counseled the SIT that it should be mindful that the criterion was demonstrated by documenting a “bilateral political relationship between leaders and followers” and that it must “address criterion (c) in the context of your specific members.”⁶⁵

The SIT has not followed this guidance. As a result, the SIT’s petition has failed to meet acknowledgment criterion 83.11(b) and (c) for any period. And even if the SIT had followed the OFA’s professional advice, its claim should fail because it is premised on the flawed premise that, as a minority faction which has in recent times included individuals that have little or no significant

⁶⁰ Fleming to Russell, Sept. 14, 2006, p. 4 (A-27).

⁶¹ *Id.*, p. 3 (A-26).

⁶² *Id.*, p. 4 (A-27).

⁶³ *Id.*

⁶⁴ *Id.*, p. 5 (A-28).

⁶⁵ *Id.*, p. 6 (A-29).

antecedent relationships with the historical Schaghticoke tribe, the SIT can retroactively claim to represent the broader community and political system since 1900.

In effect, the SIT petition simply strings together hundreds of largely inadequately described documents rather than asserting its own interpretation of the relevance of the documentation to the mandatory criteria. To the extent that the SIT subsequently submits—whether in response to comments or otherwise—what is in effect a significantly revised narrative, the OFA must allow commenting parties adequate notice and opportunity to comment before the OFA makes any positive or negative Phase I determination.

B. The DOI's Past Statements Clearly Signal that the SIT Cannot Be Acknowledged

Although the STN RFD extended to the SIT the courtesy of delaying a determination of which Schaghticoke petitioner is the splinter group of the historical tribe until such time as a documented SIT petition was placed under active consideration,⁶⁶ the Department has communicated clearly that the SIT cannot be acknowledged.

The STN PF concluded that there was a “single political system” for the Schaghticoke tribal entity that was represented by the STN. After the SIT members and others withdrew their enrollment in the STN in the 1990s, BAR⁶⁷ found in the PF that the STN no longer met criterion (b) and (c) because “[t]he absence of these individuals from the current STN membership list means that the current petitioner, as defined by its most recent enrollment, is substantially less than the entire community.”⁶⁸ In other words, the BIA found that there was only one historical Schaghticoke entity, which cannot now have two political systems.

The STN PF notes further that:

The present-day community, as defined by the 2001 STN membership list . . . differs substantially from the community described for the period from 1967 to approximately 1996 for two reasons. One reason is that important segments of the group as it existed prior to 1996 have resigned membership in the petitioner or do not appear on the current membership list because they declined, for internal political reasons, to participate in the enrollment process which led to the current STN list. That process began in 1995 and continued through 2001. These

⁶⁶ STN Reconsidered Final Determination (2005), pp. 63–64.

⁶⁷ The STN's evidence was evaluated by BAR experts (a team including an anthropologist, a genealogist, and a historian) and detailed in the STN PF, signed in 2002 by the Department's Assistant Secretary-Indian Affairs. During the interim in which the STN submitted new evidence in response to a negative PF, the BAR function was moved to the OFA within the Office of the AS-IA. The same component team of experts in that office evaluated evidence for the positive STN FD of 2004, which was signed by the Principal Deputy AS-IA, and the negative STN RFD of 2005. Since the STN RFD was in response to findings of the IBIA regarding the claims of all parties, it was signed by the Associate Deputy Secretary of the Interior (“ADS”).

⁶⁸ STN Proposed Finding (2002), p. 20.

individuals, approximately 60 in number, were a significant part of the social and political relations within the group between 1967 to 1996.⁶⁹

Essentially, those who withdrew membership from the STN are the faction now represented by the SIT. The BAR held in the STN PF that that the petitioner could not meet criteria (c) for the period since 1996 because “there continues to be a single political system [that it found to be represented by the STN].”⁷⁰ Applying this finding to the SIT’s situation indicates that the SIT cannot meet criterion 83.11(a–c) because the absence of the larger STN membership means that the SIT is *even more* “substantially less than the entire [Schaghticoke] community.”

As a precedent for its determination, the STN PF referenced the Eastern Pequot Final Determination (“EP FD”) of 2002, which concluded that the Department lacked the authority to acknowledge petitioners that were parts of the same unrecognized historical tribe. The STN PF notes that the Eastern Pequot determination stated in part that:

Although the regulations call for the presentation of petitions from groups seeking acknowledgment as a tribe, and for the Department to evaluate those petitions, the fundamental purpose of the regulations is to acknowledge the existence of tribes. The Secretary does not have the authority to acknowledge a portion of a tribe, where that portion does not substantially encompass the body of the tribe. The Secretary does have the authority to recognize a single tribe in the circumstance where the tribe is represented by more than one petitioner.⁷¹

Although not cited in the STN PF, the EP FD further explains that:

The function of a petition is to get an Indian group’s case before the Department. The intent of the regulations is not to acknowledge a portion or faction of an unacknowledged tribe, apart from the remainder of the tribe, simply because the original petitioner excluded the remainder of the tribe. In the case of unrecognized groups the regulations do not authorize acknowledgment of only part of a group that qualifies as a continuously existing political entity. Substantially all of the acknowledgeable group must be acknowledged in order for there to be a complete political unit.⁷²

The IBIA subsequently found that the EP FD wrongfully gave undue credit to the petitioner for its relationship with and recognition by the State of Connecticut.⁷³ However, the statements in the EP FD quoted above on the purpose and intent of the regulations and the Secretary of the Interior’s authority were accurate and remain valid.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id., Eastern Pequot Final Determination (2002) pp. 13-15.

⁷² Eastern Pequot Final Determination (2002), p. 38.

⁷³ Eastern Pequot Reconsidered Final Determination (2005), pp. 14-15.

The EP and PEP petitioners did reluctantly combine following the positive FD,⁷⁴ but a Reconsidered Final Determination (“RFD”) in 2005 determined that they had not existed as a single political entity after 1973.⁷⁵ It also found that absent the undue credit previously given to the State relationship, the petitioners had too many holes in their evidence to meet the mandatory criteria.⁷⁶

Regarding the issue of acknowledging portions of a historical tribe, the EP RFD stated that:

This reconsidered FD . . . affirms the general principle described in the FDs that the regulations permit acknowledgment of a single entity composed of more than one petitioner when the Department is reviewing two or more fully documented petitions, in accord with the basic intent of the regulations and the Secretary's authority that the regulations provide for acknowledgment of tribes rather than petitioners per se.⁷⁷

The EP RFD further clarifies this principle by citing several precedents:

It is well settled that the U.S. can recognize more than one successor to a historical tribe. This precedent is well-established among federally acknowledged tribes, both those that have not gone through the acknowledgment process (the Eastern Band of Cherokee and Cherokee Nation of Oklahoma, for example) and those which have (Poarch Creek, Huron Potawatomi, Jena Choctaw and Snoqualmie).

The Poarch Creek Band, which was acknowledged under these regulations, derived from the historical Muscogee (Creek) Nation and the Jena Band derived from the Mississippi Choctaw. The Snoqualmie Tribe, also acknowledged under these regulations, is one band derived from the historical Snoqualmie tribe; most of the other Snoqualmie merged with other tribes to form the Tulalip Tribes. The date at which division took place in regard to tribes acknowledged through the 25 CFR Part 83 process has varied. In these cases a specific historical date was not determined when the petitioning group became separate from the historical tribe. The Poarch Creek separated from the Creek Nation in the early part of the 19th century, Jena Choctaw from the Mississippi Choctaw in the latter 19th century, and the Snoqualmie Tribe from the rest of the Snoqualmie no later than the 1920's. Thus the precedent from these cases does not deal with a division as recent as this reconsidered FD concludes the two petitioners [EP and PEP] became completely separate.⁷⁸

Regarding the issue of political splintering, the EP RFD states:

⁷⁴ Id., p. 2.

⁷⁵ Id., p. 138.

⁷⁶ Id., p. 142.

⁷⁷ Eastern Pequot Reconsidered Final Determination (2005), p. 38.

⁷⁸ Id. pp. 78-79.

It is the general policy of the Department not to encourage splits and divisions within federally acknowledged tribes. Section 83.7(f) reflects this policy. A reasonable extrapolation of this policy and of the intent of the regulations to acknowledge historical tribal units, is that the Department does not and should not encourage splits and divisions within groups which may become federally acknowledged. In instances where the evidence is ambiguous, or in cases where an apparent split appears to be the result of fluctuation in activity levels or the existence of factionalism, and yet a single community continues to exist, the Department will acknowledge the entire tribal unit.⁷⁹

Specifically regarding how this policy applied to the Eastern Pequot petitioners, the RFD concludes:

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

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

The Eastern Pequot separation is a recent one, within the lifetimes of most of the adult membership of the two petitioners. The two petitioners do not separately meet the requirements of 83.7(b) because of the recentness of the evolution and division into separate groups

This reconsidered FD concludes that there is insufficient evidence of political influence or authority within the historical Eastern Pequot between 1913 and 1973 to meet the requirements of criterion 83.7(c). Neither petitioner has maintained political influence or authority over their members as an autonomous entity from historical times until the present division. Thus the petitioners do not meet criterion 83.7(c) irrespective of the recent division.⁸⁰

The STN RFD affirms these findings, concluding that:

The STN does not meet criterion 83.7(b) and 83.7(c) after 1996 because, as defined by its membership list, it does not constitute the entire community and political

⁷⁹ Id.. p. 79.

⁸⁰ Id.

system and because the Secretary has no authority to acknowledge only part of a community. The criteria define community to mean the whole community.⁸¹

The 2006 TA letter to the SIT interprets this language in the STN RFD as meaning that:

There was a single Schaghticoke group until about 1997 [represented by the STN that was found to meet the criteria for community and political influence for some periods prior to 1997], the point at which certain members of the community [now represented in large part by the SIT] refused to reenroll.⁸²

In effect, the TA letter signaled that the SIT could not meet criteria (a–c) for the period since 1996 because “the SIT membership as defined by its 2005 certified membership does not represent the whole body of the Schaghticoke who were an active part of the group prior to 1997.”⁸³ Logic holds that, likewise, the SIT petitioner cannot meet these criteria prior to 1997 because it does not represent the “whole body of the Schaghticoke” community and political system that was identified in the STN findings as being a distinct American Indian entity since 1900.

These findings and interpretations of the Department are critical for two reasons. First, they strongly corroborate the argument that the SIT is a splinter group of the STN and therefore ineligible to be federally acknowledged as a distinct tribal entity. Second, if the Department found that there was only a single Schaghticoke political system represented by the leadership of the STN in the evaluation period up to 1997, the SIT, as a minority faction, cannot legitimately claim the identity, community, and political leadership or influence of the broader Schaghticoke membership either now or anytime in the past.

C. Failure to Specifically Tie the Documents Presented to the Categories of Evidence Specified in 25 CFR §83.11(b)

The Part 83 regulations specify that a petitioner can meet criterion 83.11(b) (community) at a given point by demonstrating “some combination of two or more” of eleven categories of evidence specified in the regulations [§ 83.11(b)(1)(i–xi)]. They further indicate that a petitioner can also meet this criterion by evincing any one of five additional higher categories of evidence [§ 83.11(b)(2)(i–v)]. For the period 1950 to the present, the SIT petition presents a list of documents, often without description. In no instance does it indicate how a document specifically relates to or evinces one of the sixteen possible categories of evidence for that criterion.

The SIT petition makes no direct claim to meeting any of five higher categories of evidence for criterion 83.11(b), which include having residential clustering, intra-tribal marriage rates, distinct cultural patterns, or distinct community social institutions that involve at least 50 percent of the tribal membership, or having met any of the higher categories of evidence for criterion 83.11(c), political influence or authority.

⁸¹ STN Reconsidered Final Determination (2005), p. 62.

⁸² Fleming to Russell, Sept. 14, 2006, p. 2 (A-25).

⁸³ *Id.* p. 5 (A-28).

One of the eleven of the first class of categories of evidence in § 83.11(b)(1) is having “[l]and set aside by a State for the petitioner, or collective ancestors of the petitioner, that was *actively used by the community* for that time period.” 25 C.F.R. § 83.11(b)(ix) (emphasis added).

As previously discussed, the SIT claims generally to meet this category of evidence for criteria 83.11(b) and 83.11(c) at Part II, page 7 of its petition. However, the SIT makes no further reference to this category, either in the section in which it provides evidence for criterion 83.11(b), for criteria 83.11(c) or elsewhere. The fundamental requirement of meeting this category is not proving that a State has set-aside land for a tribal entity. Rather, the critical importance is to demonstrate that the reserved lands have been “actively used by the [tribal] community.”

With respect to the issue of community, criteria 83.11(b), the SIT’s documentation does not evince “active use” of the Schaghticoke Reservation in Kent by a tribal community broader than the relatively few members who have resided there over the years. Looking again at the period between 1950 and 2013, the petition notes that there were lists of residents compiled in the early 1950s (SIT Petition, Part IV, p. 55), but it provides no listing of residents or analysis of any residential patterns thereafter. Likewise, the documents listed do not appear to evince any social or cultural gatherings, any ritual or sacred activities, or any shared or cooperative labor on the Reservation that involved the greater tribal community for this 63-year period.

The SIT presents much of the same evidence for criterion 83.11(b) that was presented by the STN. The STN PF thoroughly reviewed the issue of activity on the Schaghticoke Reservation counting as evidence of community for the period from 1950 to 2002 (the date of the PF). It found that there were never more than ten members residing on the Reservation between 1950–1959. By 1966, there was only one member resident, and by 1971 the Reservation was temporarily unoccupied.⁸⁴ The SIT petition claims that only two residences remained on the reserved land after the Connecticut Welfare Department in 1960-61 incinerated the other homes that were badly in need of repair. SIT Petition, Part IV, p. 56.

The STN PF found that prominent families in the broader Schaghticoke community were not well acquainted with residents of the Reservation, and that powwows or community social gatherings no longer took place after the 1940s. Additionally, it found that for most of the period after 1950 there was no regular pattern of off-Reservation members working to maintain the Reservation, including the cemetery. Rather, this work was accomplished by a few individuals or families.⁸⁵

For the period since 1900, the STN RFD found that the petitioner did not meet the community criteria for the years 1920 to 1967 and 1997 to 2004.⁸⁶ This meant that the STN failed to meet criterion (b) for more than half of the years since 1900. After 1900, the STN only met the criterion for community from 1900 to 1920 and from 1967 to 1996.⁸⁷ Although some evidence was presented of political meetings and work parties on the Reservation during this latter period, what really allowed the petitioner to meet the community criterion was strong evidence of social

⁸⁴ STN Proposed Finding (2002), p. 127.

⁸⁵ *Id.*, pp. 130–31, 135–36.

⁸⁶ STN Reconsidered Final Determination (2005), pp. 45, 62.

⁸⁷ *Id.*, pp. 41, 45.

communication and social ties within the broader community that influenced patterns of intense political conflict.⁸⁸

The SIT petition documentation indicates that it cannot meet criterion 83.11(b) during any of the STN gap years noted above, because it has not presented sufficient new evidence or arguments or addressed the criterion in the context of its current membership. The OFA advised the SIT in the 2006 TA letter that such a showing would be necessary for its success. The SIT cannot meet the community criteria during the years in which the STN met it because, as a minority faction, it cannot claim to represent the broader historical Schaghticoke tribe during those periods. The SIT does not represent all of family lines and sublines, and some of its recent members have had little or no connections to the historical tribe. As the Department's findings have repeatedly pointed out, the SIT is unable to meet criterion (b) in the period since 1996, because a tribal community can only be acknowledged if it has one political system, and the Schaghticoke entity currently has two (the majority STN and the minority SIT).

D. Failure to Specifically Tie the Documents Presented to the Categories of Evidence Specified in 25 C.F.R. § 83.11(c)

Similarly, the Part 83 regulations specify that a petitioner can meet criterion 83.11(c), political influence or authority, at a given point by demonstrating "some combination of two or more" of thirteen categories of evidence specified in the regulations [§ 83.11(c)(1)(i–xiii)]. The regulations indicate further that a petitioner can meet this criterion by evincing any one of five additional higher categories of evidence [§ 83.11(c)(2)(i)(A–D) and (ii)]. For the period 1950 to the present, the SIT petition again presents a list of documents for this criterion, often without description. Many, if not most, of the documents replicate the STN evidence. Yet again, the petition fails to indicate how a listed document specifically relates to or evinces one of the possible categories of evidence of political influence or authority.

The SIT's evidence for criterion 83.11(c), political influence or authority, is presented in 25 pages. SIT Petition, Part IV, pp. 62–87.⁸⁹ For the period up to 1950 (SIT Petition, Part IV, pp. 34–55) some description is provided for most of the individual documents, although these are only rarely tied to the categories of evidence set forth in the acknowledgment regulations. A list of documents for the period 1950 to 2017 is presented in just nine pages. SIT Petition, Part IV, pp. 78–87. Many of the documents are listed without a description of their content. For the period after 2015, for example, the petition merely cites the minutes of council meetings (usually consisting of one page) without any indication of their relevance. No evidence is cited for the period 2017 to 2022.

The SIT petition makes no direct claim to meeting any of five higher categories of evidence for criterion 83.11(c), which include having leaders or internal mechanisms that allocate entity resources on a consistent basis, settle disputes on a regular basis, exert strong influence on the behavior of individual members, or organize or influence economic subsistence activities, or having met any of the higher categories of evidence for criterion 83.11(b), community.

⁸⁸ See STN Final Determination (2004), p. 48. The STN RFD affirmed the FD in this regard (p. 45).

⁸⁹ Part II and subsequent sections of the SIT petition have been repaginated by overwriting the original page numbers. These comments refer to the repaginated page numbers.

Having “[l]and set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used for that time period” is also one of the categories of evidence specified in §83.11(c)(1) for demonstrating “political influence or authority.” This category (83.11(c)(1)(vii)) omits the phrase “by the community” contained in category § 83.11(b)(1)(ix). Yet, in the broader context of the regulations, it is understood that the “active use” of the State set-aside lands must be directly related to the leadership, governance, or political processes of the tribal entity as a whole.

Again, as previously discussed, the SIT claims generally to meet this category of evidence for political authority (criteria 83.11(c)) at Part II, page 7 of its petition. However, it makes no reference to the “active use” of the State reservation in the section that describes its specific documentation for demonstrating tribal political influence or authority.

Much of the SIT’s evidence for criterion 83.11(c) is identical to that previously submitted by the STN petitioner. In the STN PF, the BAR found “[t]here is almost no specific evidence of Schaghticoke political activity from 1900 to 1949,” and “[t]here are no named Schaghticoke leaders with whom the state dealt between 1900 and 1967.”⁹⁰ In addition, the finding concluded “[t]here is either no direct evidence to show political influence, or only a small amount, between 1900 and 1967.”⁹¹ The STN FD essentially affirmed these findings regarding direct evidence of political influence or authority, although it revised evaluation of some of the evidence based on further submissions by the STN and gave credit to the leadership of Franklin Bearce for some portions of this period.⁹² Having State set-aside land cannot alone count as evidence of tribal political influence or authority if there was little political activity involving the greater entity emanating from that reserved land, and there were very few direct contacts between supposed tribal leaders and State officials.

The Schaghticoke Reservation has not been a political base for either the SIT or the STN. As noted above, the “active use” of the State set-aside lands must be directly related to the governance and political processes of a tribal entity as a whole, in this case the broader Schaghticoke descendants, and not just to a minority of that entity, some of whom have resided in the very limited housing on the Schaghticoke Reservation. What is clear from the SIT’s evidence for criterion 83.11(c) for the modern period is that the alleged leader Allan Russell is most often acting in his own self-interest as a Reservation resident and not as a representative of the greater entity, or perhaps even the SIT minority. Some of the decisions made under his leadership have been aimed at excluding other Schaghticoke leaders and descendants from the reservation land set aside by the State. For example, see the 2004 letter that excluded STN leader Richard Velky from developing a pavilion on the Reservation (Document C-111, May 25, 2004, cited in SIT Petition, Part IV, p. 83).

For the period since 1900, the STN RFD found that the petitioner did not meet the political influence or authority criterion for the years 1900 to 1967 and 1997 to 2004.⁹³ This meant that STN failed to meet criterion (c) for 74 of the then 104 years since 1900. The STN was found to meet criterion (c) between 1967 and 1996 because, as noted in the STN PF, political involvement

⁹⁰ STN Proposed Finding (2002), pp. 26-27.

⁹¹ *Id.*, p. 28.

⁹² STN Final Determination (2004), pp. 120-124.

⁹³ STN Reconsidered Final Determination (2005), p. 57.

during that period included “much or most of the Schaghticoke membership at the time.”⁹⁴ During this period, Schaghticoke political leaders regularly dealt with issues involving the Reservation, including establishing more residences and maintaining and protecting the cemetery.⁹⁵ Reservation issues also were the main source of tribal conflicts.⁹⁶ Although it does not appear that tribal meetings were held on the Reservation, a few of the elected leaders resided there during this era.⁹⁷

Our analysis of the SIT petition documentation indicates that in common with the community criteria it cannot meet the political influence test during any of the STN gap years. This is because the SIT has not presented sufficient new evidence or arguments as the OFA previously advised it to do. The SIT cannot meet criterion 83.11(c) for the few years in which the STN satisfied criteria (c) because, as a minority faction, the SIT cannot claim to represent the whole of the singular political system of the historical Schaghticoke tribe during those periods. The SIT does not represent all the family lines found to have engaged in political activity from 1967 to 1996, and some of its recent members have had little or no relationship, political or otherwise, with the tribal leaders of that era. Moreover, as the STN RFD, the EP RFD, and previous Departmental precedents have established, the SIT cannot meet criterion (c) for the period after 1996 because a tribal community can only be acknowledged if it has one political system, and the Schaghticoke entity currently has at least two (the majority STN and the minority SIT).

E. Acknowledgment Precedents Maintain that Two Political Systems Cannot Exist Within the Same Tribal Entity

The STN PF concluded that there was a “single political system” for the Schaghticoke Indians that was represented by the STN. After the SIT members and others (e.g., Cogswell family, Irving Harris) withdrew their enrollment in the STN in the 1990s, the OFA found that the STN no longer met criterion (c) because “[t]he absence of these individuals from the current STN membership list means that the current petitioner, as defined by its most recent enrollment, is substantially less than the entire community.”⁹⁸

This finding is critical for two reasons. First, it strongly corroborates the argument that the SIT is a splinter group of the STN and therefore ineligible to for acknowledgment. Second, if the OFA found that there was a single Schaghticoke political system represented by the leadership of the STN in the evaluation period up to 2002, the SIT cannot now claim political influence or authority over the broader Schaghticoke community, either now or in the past. In other words, the OFA found that there was only one historical Schaghticoke entity, which cannot now have two political systems. As the PF further noted, citing the EP FD: “The Secretary [of the Interior] does not have the authority to acknowledge *a portion of a tribe*, where that portion does not substantially encompass the body of the tribe” (emphasis added).⁹⁹ Clearly, the SIT is a minority faction of the greater Schaghticoke tribal entity.

⁹⁴ STN Proposed Finding (2002), p. 29. The RFD affirmed the findings of the PF and FD for this period (p. 57).

⁹⁵ STN Proposed Finding (2002), pp. 152–53.

⁹⁶ *Id.*, p. 162.

⁹⁷ *Id.*, p. 160.

⁹⁸ STN Proposed Finding (2002), p. 20.

⁹⁹ *Id.*

The more extensive evaluation of the SIT evidence that follows demonstrates the extent to which the SIT utilizes the same documentation that the OFA previously found to be insufficient for the STN petitioner to meet the mandatory criteria for Federal acknowledgment. It also provides an analysis of new documentation presented by the SIT that demonstrates that this evidence also is insufficient to meet the critical community and political influence or authority criteria.

F. The Existence of a State Reservation Set Aside for the Schaghticoke Indians is not Itself Probative of “Community” or “Political Authority” under the Acknowledgment Regulations

In its 2002 petition for federal acknowledgment, the SIT asserted that its petition “incorporates the materials already in the Schaghticoke database, and much of that history belongs to the Schaghticoke Indian Tribe.” Burns to Fleming, Oct. 11, 2002, SIT Petition #239. That petition narrative asserted that the Schaghticoke Tribal Nation was “merely a splinter group, which broke away from the Tribe,” that the documentation filed by the STN “contains much of the documentation that pertains to the history of the Schaghticoke Indian Tribe” and that the Schaghticoke Tribal Nation had “usurped” the Schaghticoke history. That petition narrative further asserted that the documentation filed by the STN “contains much of the documentation that pertains to the history of the Schaghticoke Indian Tribe” and that the Schaghticoke Tribal Nation had “usurped” the Schaghticoke history. SIT 2002 Petition Narrative, pp. 2–3. The SIT requested the BAR to consider all of the documents and information contained in the Schaghticoke database, as well as the additional information submitted by the SIT covering the period subsequent to 1980. *Id.*, p. 3.

In its current petition, the SIT makes similar claims. It states that it “has always disputed STN’s reliance in its family history but relies in part on the evidentiary findings of the BIA.” SIT Petition, Part I, p. 5. It refers to correspondence dated 04.30.03 from the Office of Federal Acknowledgment identifying the Schaghticoke as a single body prior to 1997. SIT Petition, Part II, pp. 15, 20. It acknowledges the OFA’s conclusion that the “SIT members known to have been involved in the STN in the recent past are not currently members of the STN” and its claim as “the legitimate present-day continuation of the historical Schaghticoke Tribe.” SIT Petition, Part II, p. 16.

In rejecting the STN’s petition for federal acknowledgment, the BIA found that the STN had not existed as a distinct community or exercised political authority or influence from historical times to the present and that the STN did not exist as an Indian tribe. See 70 Fed. Reg. at 60103. The STN RFD concluded that insufficient evidence existed to satisfy criterion (b) (community) from 1920 to 1967 and after 1996. STN RFD, at 37-38, 44-45. It further concluded that insufficient evidence existed to satisfy criterion (c) (political authority) from 1801 to 1875, 1885 to 1967, and after 1996, a total of about 165 years. *Id.* at 57–58, 61–62; 70 Fed. Reg. at 60103.

Upon rejection of its petition, the Schaghticoke Tribal Nation appealed to the District Court by petition for review pursuant to the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.* The court found that the STN RFD properly re-examined the State’s relationship with the Schaghticoke in accordance with the instructions of the IBIA. The Court found that the conclusion that the state relationship with the Schaghticoke failed to demonstrate the actual existence of a political community throughout most of the Schaghticoke’s history was a “thorough, rational and well

reasoned evaluation of the evidence.” *Schaghticoke*, 587 F. Supp. 2d at 413-414. Moreover, the Court concluded that the STN RFD was “reasonable based on the evidence” in its conclusion that after 1996, the STN failed to satisfy criteria (b) community and (c) political authority based on the fact that a substantial portion of the Schaghticoke refused to be enrolled as members of the STN. *Id.* at 418. The court sustained the decision of the Department and entered judgment for the respondents. *Id.* at 389. That decision was affirmed on appeal. *Schaghticoke Tribal Nation v. Kempthorne*, 587 F.3d 132 (2d Cir.2009).

In its current petition, the SIT seeks to breathe new life into the Schaghticoke political community by relying on the existence of a state reservation. The SIT states that the Schaghticoke reservation is “a central component” of its petition. It claims that “since the Tribe has had a reservation and political status with Connecticut throughout its history,” it now satisfies criteria (b) community and criteria (c) political authority for each year since 1900 under the new, 2015 acknowledgment regulations. SIT Petition, Part II, p. 7.

25 C.F.R. §83.11(b) states that in order for a petitioner to be acknowledged, it must comprise a “distinct community” and it must demonstrate “that it existed as a community from 1900 until the present. Distinct community means an entity *with consistent interactions and significant social relationships within its membership* and whose members are differentiated from and distinct from nonmembers.” (Emphasis added). 25 C.F.R. § 83.11(b)(1) goes on to provide that:

the petitioner may demonstrate that it meets this criteria at a given point in time by some combination of two or more of the of the following forms of evidence or by other evidence *to show that a significant and meaningful portion of the petitioner’s members constituted a distinct community.*” (Emphasis added).

One of those forms of enumerated evidence is “[I]and set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period.” 25 C.F.R. § 83.11(b)(1)(ix).

25 C.F.R § 83.11(c) states that in order for a petitioner to be acknowledged, the petitioner must also demonstrate that:

[t]he petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process or other mechanism *as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members and/or representing the entity in dealing with outsiders in matters of consequence.* (Emphasis added.)

25 C.F.R. §83.11(c)(1) goes on to provide that “[t]he petitioner may demonstrate that it meets this criteria by some combination of two or more of the of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity.” One of those forms of enumerated evidence is “[I]and set aside by a State for the petitioner,

or collective ancestors of the petitioner, that was actively used by the community for that time period.” 25 C.F.R. § 83.11(c)(1)(vii).

In the explanatory comments to the 2015 acknowledgment regulations, the Department stated that the new rule did not substantively change the Part 83 criteria except in two instances: one involving evidence of Indian identity under criteria (a); and one involving how marriages are considered as support for criteria (b) community. 80 Fed. Reg. at 37863.

With regard to the existence of a state reservation, contrary to the claim of the SIT, the Department rejected the notion that the continuous holding of a state reservation would automatically satisfy criteria (b) “community” or criteria (c) “political authority.” 80 Fed. Reg. at 37869. Instead, the final rule anticipated that “tribes with State reservations will most likely have additional evidence of political influence/authority, as well as community.” *Id.*

The Department has decided that State reservations ... may generate evidence of community and political influence/authority, but are not determinative for these two criteria. ... There may be a multitude of circumstances in which a State establishes a reservation. Nevertheless, a State reservation may generate documents or evidence used to satisfy the categories of evidence identified in criteria (b) community or (c) political authority.

80 Fed. Reg. at 37870.

More recently, the Department has stated that the inclusion of the new provision involving state reservations under criteria (b) (community) and (c) (political authority)

does not reflect a substantive change in the criteria. Rather, “this change is simply meant to be explicit about the value and relevance of certain evidence.” The list of evidence under criterion (c)(1) where the new provision is located, is not exhaustive; rather the items listed are only examples of what the Department will accept, and has accepted in the past. The Department also emphasized that even if the existence of such lands “may generate evidence of community and political influence/authority”, *such lands “are not determinative for these two criteria.”* That is, such evidence acts as one of many factors relevant to a positive determination.

Proposed Rule, Federal Acknowledgment of American Indian Tribes, 87 Fed. Reg. 24908, at 24913 (April 27, 2022) (emphasis added).

The SIT has made no effort to explain how the existence of the state reservation demonstrates the existence of “consistent interactions and significant social relationships within its membership” under criteria (b) community. Nor has it made any effort to explain how the existence of the state reservation demonstrates that the SIT used “a council, leadership, internal process or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members and/or representing the entity in dealing with outsiders in matters of consequence” under criteria (c) political authority. Stated differently, the SIT fails to demonstrate that the reservation was *actively used* for and by the SIT community and has failed to demonstrate that the reservation was

actively used as a base for SIT political activity for all periods since 1900. In the *Final Determination in Regard to Federal Acknowledgment of the Eastern Pequot Indians of Connecticut as a Portion of the Historical Eastern Pequot Tribe* (June 24, 2002) (HEP FD) and in the *Final Determination for Federal Acknowledgment of the Schaghticoke Tribal Nation* (Jan. 29, 2004), the Department relied upon the State reservations as evidence of community and political authority even though probative evidence of community and political authority was insufficient to establish same. In other words, the Department used the state reservations as “implicit” recognition by the State of Connecticut of the existence of tribal communities and of political authority within those communities.

The IBIA Appeals rejected this approach, vacated the decisions and remanded back to the Assistant Secretary. In *In re Federal Acknowledgment of the Historical Eastern Pequot Tribe*, 41 IBIA 1 (2005), and in *In re Federal Acknowledgment of Schaghticoke Tribal Nation*, 41 IBIA 30 (2005), the IBIA ruled that there existed no “implicit” recognition of these groups as political entities by the State simply because the State maintained state reservations. The IBIA determined that the “implicit” recognition of the Eastern Pequot and of the Schaghticoke through the maintenance of the State reservations “is not reliable or probative evidence for demonstrating the actual existence of community or political authority within the group.” *Eastern Pequot*, 41 IBIA at 16–21; *Schaghticoke*, 41 IBIA at 34. Rather,

the evidentiary relevance and probative value of such a relationship depends on the specific nature of the relationship, the specific underlying interaction between a state and a petitioner, and how that relationship and interaction reflect in some way one or more of the elements in the definition of “community” or “political influence or authority” contained in Section 83.1.

Eastern Pequot. 41 IBIA at 16. In other words, what is essential to demonstrate is not the mere existence of a state reservation but what the petitioner and the State *actually did* with respect to it that demonstrates “community” and “political authority”.

The *Reconsidered Final Determination Denying Federal Acknowledgment of the Petitioner, Schaghticoke Tribal Nation* (STN RFD) reexamined the relationship between the State of Connecticut and the Schaghticoke from the colonial period to the present. Reserving most of its discussion on the nature of the relationship between the State and the Schaghticoke to the issue of criterion (c), “political authority”, the STN RFD nevertheless determined that the state relationship with the Schaghticoke was insufficient to provide evidence of criterion (b), “community” for the periods of 1920-1940 and from 1940-1967. STN RFD, at pp. 37, 45.

In addressing the issue of political authority, the STN RFD noted that

[t]he State did not implicitly or explicitly predicate its legislation and policies regarding the Schaghticoke and other Connecticut Indians on the basis of the recognition of a government-to-government relationship with the Indians, or on the basis of any recognition of the existence of bilateral political relations within the group. ... The state relationship had a foundation in the more than 200 year history of the maintenance of the Schaghticoke reservation near Kent by the Colony and later by the State. However, in reviewing the specific state relationship with the

Schaghticoke, consistent with the IBIA ruling, the evidence of the actual interactions between the different representatives of the State and the Schaghticoke does not provide evidence of political authority and influence in the group.

STN RFD, at 48. The STN RFD stated:

this RFD concludes that the maintenance of the reservation by the State was not predicated on a government-to-government relationship with the group or the existence within the group of bilateral political relations that provides evidence for political influence or authority.

STN RFD, at 50. Further, the STN RFD concluded

The analysis of the contours of the state relationship shows that it does not provide evidence for political influence or authority within the Schaghticoke, and the State did not formulate its policies towards the Schaghticoke based on the recognition of the existence of bilateral political relations within the Schaghticoke. In the absence of state recognition, STN does not meet criteria 83.7(c) for the years 1820–1840, 1870–1875, and 1892–1967. This RFD finds that without carryover from marriage rates pursuant to criterion 83.7(b), STN does not meet criterion 83.7(c) for the period 1801–1820 and 1840–1870. Reanalysis of the 1892 petition based on new evidence shows that STN does not meet criterion 83.7(c) for the years 1885–1892. STN does not meet criterion 83.7(c) for the period 1967–1996 without reliance on state recognition. Taken as a whole, STN does not meet criterion 83.7(c).

STN RFD, at 58.

Against this very extensive backdrop concerning the regulatory need to provide independent evidence of community and political influence and authority when relying upon the existence of a State reservation and against the very extensive backdrop concerning the absence of such evidence in the historical record concerning the Schaghticoke, the SIT nevertheless relies on the existence of the Schaghticoke reservation “as a central component” of its petition. SIT Petition, Part II, p. 7. It claims that “since the Tribe has had a reservation and political status with Connecticut throughout the 1900s,” and/or for “the last 116 years” and/or “from 1900 to 2018” (SIT Petition, Part II, p. 7). It satisfies criteria (b) community and criteria (c) political authority for each year since 1900. The SIT’s assertion is unsupported by evidence relating to the specific nature of the SIT relationship with the State of Connecticut, the specific underlying interactions between the State and the SIT, and how that relationship and interaction reflects one or more of the elements in the definition of “community” and “political influence or authority.” In fact, its claims are directly contrary to the findings in the STN PD and in the STN RFD.

For example, the SIT claims it has had a “political status” with Connecticut throughout the 1900s and until as late as 2018. The STN RFD, however, determined that the “State did not implicitly or explicitly predicate its legislation and policies regarding the Schaghticoke ... on the basis of the recognition of a government-to-government relationship with the Indians, or on the basis of any recognition of the existence of bilateral political relations within the group.” STN RFD, at 48. Moreover, the STN PF determined that

there are substantial periods of time, from the early 1800s until 1876 and from 1885 until the late 1960s, when the State did not deal with or identify formal or informal leaders of the Schaghticoke, and did not consult with members concerning issues which concerned the entire group. In the 1930s, the State declared affirmatively that there were no leaders recognized by the group.

STN PF at p. 10.

The SIT neither identifies nor discusses any evidence supporting its assertion of having a “political status” with the State of Connecticut. Its claim is unsubstantiated without any specific new evidence that overcomes the deficiencies found in the STN record. Moreover, that record demonstrates that it is not enough to rely on the mere existence of a state reservation to fill missing gaps in the evidence of community and political authority necessary to satisfy criteria (b) and (c).

The SIT’s claim that the Schaghticoke reservation has been set aside for it is also without merit. Section 47-63 of the Connecticut General Statutes assigns the Schaghticoke reservation to the Schaghticoke Indians. In 2003, the Connecticut Supreme Court recognized that the Schaghticoke was divided into two factions, the STN and the SIT. *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 831 (2003). In 2012, those factions continued to exist as recognized in *Schaghticoke Indian Tribe, et al v. Michael J. Rost*, 138 Conn. App. 204, 217–18, 50 A.3d 411, 419–20 (2012) (it is the Schaghticoke Indians, not the SIT nor the STN, that have the right to determine who lives on the reservation). And in 2013, a judge of the Superior Court concluded that up to three (3) distinct groups claimed to represent the Schaghticoke - two “entirely different” entities “with entirely different members” called the Schaghticoke Indian Tribe as well as the Schaghticoke Tribal Nation. *Schaghticoke Indian Tribe v. Hatstat*, 2013 WL 5422844, at *2, 56 Conn. L. Rptr. 789 (Conn. Super. Ct. Sept. 11, 2013) (Pickard, J.) (A-2). Simply put, the reservation was set aside for the Schaghticoke Indians, not the SIT. The SIT has offered no evidence to demonstrate its alternative assertion.

An additional factor to be considered in evaluating the SIT’s claims under 25 C.F.R. § 83.11(b)(1)(ix) and 25 C.F.R. §83.11(c)(1)(vii) is to determine what “community” might have been “actively using” the reservation during the period between 1900 and the present and whether such “active use” constituted a base for political influence and authority.

The actual membership of the petitioner has not been disclosed in connection with this petition nor in response to Freedom of Information requests. As such, the last SIT membership list available to the commentators is the membership list that was formally certified to the BAR on October 5, 2002, filed in connection with the STN 2002 petition for acknowledgment. STN Record. BR-V006-D004. That list contained 73 names. Almost immediately, however, thirteen individuals on the SIT 2002 membership list (listed as #1–2, 15, 28, 31–33, 45, 67–71) resigned and joined the STN. See Austin, *Schaghticoke Tribal Nation’s Analysis of the Schaghticoke Indian Tribe’s Membership List (Dated September 28, 2003)*, Appendix A, pp. 10–18 (STN Record, SN-V072-D0022) (A-111). See also STN FD at pp. 141–42. This reduced the claimed SIT membership to 60 members at that time. The membership has apparently been further reduced to forty-four (44) members for purposes of the current petition.

Twenty-three (23) names on the SIT 2002 membership list were associated with the so-called Attuck clan (Jenkins, Trueheart, etc.) (nos. 46–66 and 71–73). Fourteen (14) of those twenty-three (23) names were listed as “pending.” See Table 2, STN Record BR-V006-D0005, pp. 6–9. All of these individuals were stated to be descendants of Jabez Cogswell through his daughter Ellen Cogswell Seeley. See STN RFD at pp. 66–67. As of the late 1990s, these individuals had not been involved with the historic Schaghticoke Indians. Instead, they were members of the Schaghticoke Indian Tribe of Kent Connecticut, Cultural Preservation Project, Incorporated. STN Record, AC-V008-D0005. Although claiming to be of Schaghticoke descent, these individuals were not descendants of anyone living on the reservation in 1910 and thus not eligible for membership in the STN. STN Record, AC-V008-D0005, p. 1. Moreover, no evidence was offered to demonstrate that these individuals or their ancestors had maintained tribal relations with the larger historic Schaghticoke at any time in the 20th century. STN PF, at pp. 6, 212-213; STN RFD, at pp. 66-67. See STN PF, p. 113, n.148 concerning Jabez Cogswell and his daughter Ellen in which it is noted that there was no information on the family line after 1891 when one of Ellen’s daughters and a grandchild died. See also STN PF at p. 122.

Four (4) names on the SIT 2002 membership list were associated with the so-called Musqui Wonkqussis clan (Offutt, Stewart) (nos. 24-27). These individuals claimed descent from Warrups Chickens, an off reservation Indian; and although these individuals were distant relatives of the Cogswells, they did not have a “clear past history” with the historic Schaghticoke tribe. STN Record, AC-V009-D0034; STN PF, pp. 6, 212. Apparently because they were not descended from anyone living on the reservation in 1910, they were not eligible for membership in the STN. STN Record, AC-V008-D0005, p. 1.

Finally, seven (7) additional names on the SIT list associated with the Peshani Heron clan (McDonald, Porter) (nos. 34–36, 39, 41–43) had no record of involvement in the historic Schaghticoke community.

In essence, a total of at least thirty-four (34) of the sixty (60) remaining individuals identified on the 2002 SIT membership list had not lived in tribal relations with the historic Schaghticoke subsequent to 1910, and perhaps earlier. In the analysis by Steven Austin (STN Record SN-V072-D0022) cited in the STN FD at pp. 141–43, Austin found that a total of 42 individuals on the SIT 2002 membership list would not qualify for membership in the STN because descent from an ancestor on the 1910 census was either not shown or because the family had not maintained tribal relations. STN FD at p. 141. In other words, those individuals had not been part of the historic Schaghticoke community with “consistent interactions and significant social relationships” within the larger group.

Since the SIT’s current membership list has not been made available, it is unclear what “community” the petitioner actually represents. Is it the same Schaghticoke “community” that was found to exist in the STN proceedings for the period prior to 1920? Is it the same Schaghticoke “community” that was found to exist in the STN proceedings for the period from 1967 to 1996? Given that a substantial portion of the SIT membership may be individuals who had not participated in tribal relations of the historic Schaghticoke throughout the 20th century, it is not likely to be the same “community.”

For example, the SIT has neither discussed nor provided any specific evidence to demonstrate how its membership participated in the tribal community and political affairs, nor to distinguish its membership from that of the historic Schaghticoke community identified in the STN record. *See Austin* at pp. 11–12. The mere fact that there was a state reservation set aside for the Schaghticoke Indians does nothing to demonstrate that the SIT satisfies either the (b) community or (c) political authority criteria.

The Austin report identified only eighteen (18) individuals on the 2002 SIT membership list and eight (8) individuals *not* on the SIT membership list who had been members of the historic Schaghticoke community and active in its affairs. Austin, Appendix B, p. 19 (STN Record SN-V072-D0022). These twenty-six (26) individuals were included in a larger list of forty-two (42) unenrolled individuals that would likely qualify for membership in the STN. Austin, Table 4, p. 14 (STN Record SN-V072-D0022).

The STN FD concluded that “there is one Schaghticoke tribe” consisting of all of the members (273) identified on the STN’s certified membership list *and* the forty-two (42) “unenrolled tribal community members” found to descend from the historic Schaghticoke tribe. STN FD, pp. 142–43. The SIT took an appeal to the IBIA from this conclusion, arguing, in part, that the STN did not have a bilateral political relationship with the members of the SIT and that it was improper to include the “unenrolled members” as part of the STN without their consent. *See STN RFD* at p. 3. The IBIA vacated the STN FD and the issue of whether the unrolled individuals could be included as members of the STN without their consent was remanded for reconsideration. 41 IBIA 30, at 39–41). On reconsideration, the STN RFD determined that 33 of the 42 unenrolled individuals had affirmatively refused to be members of the STN. At least eighteen (18) of those individuals were members of the SIT. Some were members of the Cogswell family. Because these individuals refused to be members of the STN, the STN was found not to meet criterion 83.7(b) and 83.7(c) after 1996 because the STN did not constitute the entire community and political system. “The criteria define the community to mean the whole community.” STN RFD at p. 62.

If the criteria define the community “to mean the whole community” and if the STN failed to meet criterion 83.7(b) “community” and 83.7(c) “political authority” after 1996 because the STN did not represent the entire community and political system, the corollary also holds true. Just as the STN failed to represent the entire community and political system after 1996, so too does the SIT fail to represent the entire community and political system. The existence of the Schaghticoke reservation is not evidence that the SIT represents the entire community and political system. As summarized by the IBIA with respect to the Eastern Pequot:

The existence of an Eastern Pequot reservation may have been conducive to community and political processes within the group, but the FD itself acknowledges that it could not be used as direct evidence that such community or political processes actually existed. And its probative value as indirect evidence would seem to depend upon a more specific showing that the State’s action in maintaining the reservation reflected one or more components of the definitions of community or political influence or authority for the group.

Eastern Pequot, 41 IBIA at 20.

For all of the above reasons, the SIT's claim that the existence of the State reservation causes it to automatically satisfy criterion (b) community and criterion (c) political authority must be rejected.

G. The Presumed Validity of the 1900-start Date is Rebutted by the Department's STN Findings.

In the 2015 Part 83 rulemaking, the Department changed the start date for analysis from 1789 or the time of first sustained contact to 1900. Supreme Court precedent establishes that tribal existence must be continuous since historical times,¹⁰⁰ but the Department asserted that 1900 is an adequate proxy for continuous existence for all of a groups history since first sustained contact because prior acknowledgment determinations had never encountered a group that could establish its existence as a tribe after 1900, but not before.¹⁰¹ In this case, however, the Department itself previously found that the STN was the successor to the historic Schaghticoke tribe, and that the STN could not establish continuous tribal existence for substantial portions of its history prior to 1900.¹⁰² Moreover, as previously described, the record establishes that the SIT split off from the STN after 1996. The Department's own findings therefore rebut the presumption that the 1900-start date is an adequate proxy for the continuous existence of the SIT as a tribe since historical times. The Department cannot simply assume, contrary to its own findings, that the SIT existed as a tribe before 1900. Under Supreme Court precedent, the SIT cannot be acknowledged.

X. Mandatory Criteria for Acknowledgment

A. The SIT Cannot Prove Indian Entity Identification.

The STN PF found that "From 1900 onwards, the Schaghticoke petitioner [the STN] and its antecedents have been regularly identified as an American Indian entity."¹⁰³ The RFD affirmed that the "STN petitioner" met criterion (a) without further analysis of the evidence.¹⁰⁴

In documenting its claim for meeting criterion 83.11(a), the SIT appears to have presented essentially the same or similar documentation previously submitted by the STN (compare, for example SIT Petition, Part IV, pp. 18–34 with the STN PF, pp. 11–14). In its 2006 TA letter to the SIT, the OFA noted that the petitioner had not submitted "any new evidence" addressing criterion (a) that was not already in the record. The OFA reminded the petitioner that "the STN RFD found there was one community of Schaghticoke Indians, those who were enrolled in STN and others

¹⁰⁰ See *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 764 (1985) (tribal sovereignty is retained from before formation of the United States); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) (tribes are "separate sovereigns pre-existing the Constitution"); *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978) (a tribe is "a community of people who have continued as a body politic *without interruption since time immemorial* and retain powers of inherent authority") (emphasis added).

¹⁰¹ 80 Fed. Reg. at 37863 ("based on its experience in nearly 40 years of implementing the regulations, every group that has proven its existence from 1900 forward has successfully proven its existence prior to that time as well, making 1900 to the present a reliable proxy for all of history but at less expense").

¹⁰² See STN RFD at p. 58 (concluding that STN failed to meet criterion (c) from 1801-1875 and from 1885-1967).

¹⁰³ *Id.*, p. 11.

¹⁰⁴ STN Reconsidered Final Determination (2005), p. 5.

who refused to enroll in STN, some of whom are enrolled in SIT.”¹⁰⁵ The TA letter notes further that:

The SIT group also claims the STN petitioner represents its history and includes in its membership some of the individuals who were identified as a part of the group that existed before 1997. Thus, the evidence in the STN administrative record also applies to the SIT petitioner.¹⁰⁶

The OFA also points out precisely why this claim was problematic for the SIT:

However, [the SIT’s membership] is only a fraction of the population that was identified as the Schaghticoke Tribe prior to 1996, and the SIT membership includes about 25 people . . . who were not documented to be a part of the group that was identified from 1900 to 1996. Thus, perhaps about one-third of the SIT membership (25 of 73) descends from individuals who may have had Schaghticoke ancestors, but who the STN RFD found were not in tribal relations after the mid-1880s. This could be a problem for the SIT petitioner in demonstrating criterion 83.7(a), as well as 83.7 (b) and (c) since the Indian entity or community did not include those individuals. Any additional research should address these issues.¹⁰⁷

Fifteen years later, the SIT’s documented petition of 2021 has not included significant new evidence or arguments for the identity criterion. Neither does the SIT explain how it can claim the identity of an American Indian entity which has been affirmed to be under one political system until 1997 (as represented by the STN, a petitioner whose total membership was found to descend from the historical Schaghticoke tribe, in accordance with criterion (e)).

The SIT cannot meet criterion 83.11(a) because it does not and cannot at any time represent the totality of the Schaghticoke tribal community or political system identified in the historical record since 1900. It has at various times since 1997 included members whose ancestors were either not a part of that entity or who did not maintain tribal relations with it. At the same time, its current and recent membership does not include descendants of key individuals, family lines, and sublines who were a part of the Schaghticoke entity identified historically.

The SIT cannot meet criterion 83.11(a) since 1996 because, as the 2006 TA letter pointed out, it represents only “a fraction of the population” of the Schaghticoke tribal entity identified in modern records. Its evidence for this period includes identifications of the broader Schaghticoke entity, such as with Lucianne Lavin’s 2013 publication *Connecticut’s Indigenous Peoples* (see Document C-42 cited in SIT Petition, Part IV, p. 340), which as a political faction the SIT cannot legitimately claim. In other words, it cannot claim such documents as evincing identity of “us” when as a minority it does not represent the “us” that is the broader Schaghticoke entity being identified. By the same token, it cannot claim the numerous citations to the activities of its leader Alan Russell as identifications of the larger tribal entity during this period (see, for example, SIT Petition, Part IV, pp. 31–34), when neither he nor any other SIT members represent or reflect the

¹⁰⁵ Fleming to Russell, Sept. 14, 2006, p. 4 (A-27).

¹⁰⁶ Id.

¹⁰⁷ Id.

broader Schaghticoke community. These findings support the conclusion the SIT is a “splinter group” formed in recent times that has not “functioned from 1900 until the present as a politically autonomous community” and, thus, is ineligible to be federally acknowledged (*see* § 83.4(b)).

B. The SIT Cannot Prove Social Community.

The Department’s previous findings and technical assistance advice have clearly signaled that neither the SIT nor the STN petitioners can be acknowledged. In the STN, HEP, and other cases, the Department has communicated that the Secretary of the Interior cannot acknowledge part of a tribe, especially if factions have separated in recent times after the acknowledgment process has begun, and that an acknowledgeable tribal community can only have one political system. Neither the SIT nor the STN now represent the single entity that is the current membership of the broader historical Schaghticoke tribe.

The SIT cannot meet criteria 83.11(b), community, during the years in which the STN did not meet these criteria. This is because the SIT has not presented sufficient new evidence or arguments or addressed these criteria in the context of its current membership. Likewise, the SIT cannot meet the community and political influence or authority criteria during the years in which the STN met those criteria. This is because as a minority faction the SIT cannot claim to represent the community or political system of the broader historical Schaghticoke tribe during those periods. The SIT does not represent, either then or now, all the family lines and sublines found to be a part of that entity historically. Moreover, some of the SIT’s recent members have had little or no connections to the historical tribe. The SIT cannot meet the criteria since 1997 because, as the Department has noted, an acknowledgeable tribal community cannot have two political systems. Furthermore, the SIT does not now represent the majority of the broader Schaghticoke community.

The SIT cannot meet criterion 83.11(b), community, because it has not submitted significant new evidence or arguments for this criterion prior to 1997. Moreover, as a minority faction, the SIT does not and cannot at any time represent the totality of the Schaghticoke tribal community or political system identified in the historical record since 1900. It has recently had members whose ancestors were either not a part of that entity or who did not maintain tribal relations with it. At the same time, the SIT’s current membership does not include descendants of key individuals, family lines, and sublines who were a part of the Schaghticoke entity identified historically.

Neither the SIT nor the STN now represents the single entity that is the current membership of the broader historical Schaghticoke tribe. Rather, they have sought to be acknowledged as separate entities claiming the same history, for the most part, as well as the same rights to lands set aside for the historical tribe by the State of Connecticut. Because the primary purpose of acknowledgment is to recognize a government-to-government relationship with previously unacknowledged tribal groups, a single entity acknowledged by the Department can only have one governing body, one governing document, and one membership list.

The more extensive evaluation of the SIT evidence that follows demonstrates the extent to which the SIT utilizes the same documentation that the OFA previously found to be insufficient for the STN petitioner to meet the mandatory criteria for Federal acknowledgment. It also provides

an analysis of new documentation presented by the SIT that demonstrates that this evidence also is inadequate in meeting the mandatory criteria.

Part of this analysis is based on compiled spreadsheets that compare the documents in the SIT petition with documents reviewed and noted in the Department's findings. The comparative document analysis demonstrates that the SIT documentation is the same or similar to that in the STN record. The analysis also focuses on how the BAR and the OFA interpreted the STN documentation regarding its relevance to the mandatory acknowledgment criteria. The overall conclusion drawn from the analysis is that the SIT petitioner is substantially relying on evidence previously submitted by the STN rather than providing new evidence and analysis as previously advised by the OFA. The analysis also demonstrates that a substantial portion of the evidence presented by the SIT was previously found insufficient for the STN to meet the mandatory criteria for most of the period since 1900.

In effect, the SIT petition is claiming that "they" (the Schaghticoke historical tribe which the DOI found was represented by the STN petitioner up to 1996) are "us" and that it can therefore use "their" (the STN's) same evidence, even though "they" were substantially found to not have sufficient evidence to meet the mandatory criteria of the Federal acknowledgment regulations. This is plainly insufficient.

1. Community, 1900–1940

The STN PF determined that the STN met criterion (b) for the period between 1900 and 1940. This determination was based primarily on identification of the reservation residents and the overall family lines. The BIA found that the reservation residents encompassed the three main family lines (Cogswell, Kilson, and Harris), and that members of these resident families maintained significant family ties and social interactions with those members residing nearby.¹⁰⁸ The analysis of reservation residency was based on census records, reports of the Connecticut State Park and Forest Commission, and the observations of outside visitors such as ethnologist Frank Speck and historian Edward Dyer. The family lines were identified from the genealogical data presented by the STN. Most importantly, however, the social contacts between family lines and sublines were documented by the petitioner's interview evidence.¹⁰⁹

The STN FD affirmed the PF regarding meeting the community criterion from 1900 to 1940. The petitioner had presented additional evidence for this period, which included more analysis of residential and marriage patterns, as well as further documents evincing the connections between reservation and non-reservation members.¹¹⁰

The STN RFD affirmed that the petitioner met the community criterion up to 1920. However, it reexamined the weight that was given to the State relationship in the PF and FD for criterion (b) for the period 1920 to 1940. In light of the IBIA determination that undue credit had been given to the evidence of a state relationship in the previous findings, the RFD concluded that

¹⁰⁸ STN Proposed Finding (2002), pp. 17–18.

¹⁰⁹ *Id.*, pp. 122–24, 126–32.

¹¹⁰ STN Final Determination (2004), pp. 40–41.

without that evidence, the STN did not meet the criterion for that 20-year period. This was because it concluded that there was insufficient evidence of social interaction across family lines.¹¹¹

The SIT petition has placed much emphasis on the activities of the Schaghticoke Rattlesnake Club demonstrating community during the first decades of the 20th century. The OFA's TA letter of 2006 noted that the petitioner had submitted evidence regarding the Club and the tribal members who were a part of it that was "the same or similar to [that] already in the record."¹¹² The letter advised generally that the SIT needed to submit new evidence and analysis for the mandatory criteria in every time period to demonstrate how it was distinct from the STN.¹¹³

Despite this admonition, the SIT petition essentially presents no new evidence or arguments for the Rattlesnake Club that was not previously presented by the STN petitioner other than that contained in Lucianne Lavin's 2013 publication entitled *Connecticut's Indigenous Peoples* (see SIT Petition, Part IV, p. 35). That work only references the Club on one page and does not describe it as either a community activity of the broader tribal membership or as a body that demonstrated tribal political influence or authority over that membership. Rather, Lavin describes it as:

a survival strategy that helped the local indigenous economy (Indian women kept what was left of the food the whites brought for them to cook, and the Indians sold the visitors 'souvenir' baskets) and enhanced political ties with important white men, especially newspaper men and politicians who made up most of the club's membership.¹¹⁴

The STN PF did not really address the nature of the Club, because it was not emphasized by the STN until its response to the PF. In August 2003, however, Lucianne Lavin, now the primary author of the SIT petition, together with STN member Paulette Crone-Morange submitted a report claiming that the Rattlesnake Club evinced evidence of community and tribal activity. After evaluating this new evidence, the STN FD, which was generally favorable to the STN petitioner, rejected the Club as a tribal community and political institution.¹¹⁵ Despite this previous rejection of the STN's evidence for the standing of the Club as a tribal community and political institution, Lavin now claims the opposite conclusion, but does not present significant new evidence or address the contrary interpretation in her published work. SIT Petition, Part IV, pp. 35–40.

The SIT has not presented the kinds of evidence that permitted the STN to meet criterion (c) for the period 1900 to 1920, primarily because it has presented data with minimal description and no broad analysis. While it describes the family lines in Part I of the petition, it presents some information but no real analysis of how these families interacted and maintained social relations during this period. While its documentation includes some census data and many descriptions of the Reservation by outsiders, it does not identify all the member residents of the Reservation and

¹¹¹ STN Reconsidered Final Determination (2005), pp. 42–45.

¹¹² Fleming to Russell, Sept. 14, 2006, p. 4.

¹¹³ Id., p. 3.

¹¹⁴ Lavin, *Connecticut's Indigenous Peoples*, p. 345.

¹¹⁵ Id., p. 102

nearby communities or document their social relationships or informal social activities. One of the strengths of the STN evidence for this period was the use of oral history interviews to document the social contacts between family lines and sublines. The SIT has not utilized any of this kind of evidence, perhaps because there are no longer any knowledgeable informants, or because those still living are politically aligned with the STN.

The 2006 TA letter noted that the SIT's membership was only a fraction of the historical tribal entity identified prior to 1996 in the STN findings, and that it included a significant number of individuals who were not documented to be part of that tribal entity between 1900 and 1996. The OFA advised that the SIT needed to "address these issues and provide evidence of how individuals on its membership list who were not identified in the STN FD and RFD as part of the Schaghticoke community prior to 1996 were in fact part of it."¹¹⁶ It counseled further that the petitioner needed to provide evidence of where the ancestors of its current membership maintained a community, and, in essence, address the evidence for community in the context of its specific membership.¹¹⁷

Rather than follow this advice, the SIT has essentially submitted evidence that was previously presented by the STN for every period between 1900 and 1996, much of which was found not to meet the community criterion. On the other hand, the SIT has not presented some of the best evidence that permitted the STN to meet the criterion for some periods. More crucially, the SIT has not provided analysis of the documentation or indicated how the evidence relates to the mandatory criteria, as did the STN petition materials. The SIT has merely asserted that it can use much of the same evidence because the historical tribe documented in the STN petition was "us" and not "them" (the STN). This was done without addressing how all the SIT's current or recent members related to, or were distinct from, that tribal entity. Instead, the SIT's petition proceeds from the preposterous notion that as a minority faction of the broader Schaghticoke community at present it can retroactively claim the identity, community, and governance of the historical tribe since 1900.

The STN PF concluded that there was a "single political system" for the Schaghticoke tribal community that was represented by the STN petitioner up to 1996.¹¹⁸ In light of the Department's findings, the SIT cannot claim to represent the broader historical Schaghticoke community in the early 20th century or at any time thereafter. This is primarily because the SIT has not demonstrated continuity with all the family lines and sublines documented as being part of that earlier community. Moreover, some of its recent membership appears to have not been in tribal relations with that community between 1900 and 1996.

2. Community, 1940–1967

The STN PF concluded that the STN did not meet the community criterion from 1940 to 1967. The STN petitioner could not significantly demonstrate that social relations, such as visitations, extended broadly across family lines. There was only limited evidence of social gatherings. For example, there were no tribal powwows after 1941. Descriptions of the first

¹¹⁶ Fleming to Russell, Sept. 14, 2006, p. 3 (A-26).

¹¹⁷ *Id.*

¹¹⁸ STN Proposed Finding (2002), p. 20.

meetings of the tribal political organization that formed in 1967 evinced that the participants were not well acquainted with each other. While there was evidence of work parties to maintain the common grounds and cemetery on the reservation prior to the 1950s, there was no regular pattern of off-Reservation members working on the reservation after that time.¹¹⁹

The SIT petition presents almost no relevant evidence, and certainly no new evidence, of social relations across family lines, social gatherings involving the broader community, or reservation work parties between 1940 and 1967. SIT Petition, Part IV, pp. 55–56. It provides no analysis of the residential pattern of tribal members. Neither does it offer documentation that describes social relations between families, or social gatherings or work parties involving both on- and off-Reservation members. Most importantly, the petition does not address community in the context of the SIT's current and recent memberships, as the SIT was advised to do in the 2006 TA letter. In other words, there is no demonstration or explanation of how those individuals or their ancestors were a part of the broader Schaghticoke community.

The SIT has not submitted the evidence necessary to prove that it meets criterion 83.11(b) from 1920–1967, when the STN did not. This evidentiary gap of 47 years for the community criterion, alone and by itself, is a deficiency fatal to the SIT's effort to gain Federal acknowledgment.

3. Community, 1967–1996

The STN RFD affirmed that the STN met criterion (b) from 1967 to 1996, one of only two periods in the 20th century when the STN was found to meet the community criterion.¹²⁰ The STN PF finds that:

The primary body of evidence for community between 1967 and 1996 is found in the data describing the intense patterns of political conflict, which is a type of evidence described in criterion 83.7(c). This information demonstrates frequent mobilization of most of the membership, most often along the lines of the major families or subdivisions of them. Evidence used for criterion 83.7(c) can be used as well for criterion 83.7(b), where that evidence describes circumstances that indicate that social communication is occurring and that social ties exist which influence the patterns of political conflict.¹²¹

The STN FD affirms this finding.¹²²

The strength of the STN petition for this period was the development of a tribal organization under Irving Harris between 1967 and 1973. This group succeeded in mobilizing tribal members across family lines around issues such as the development and protection of the Reservation and changing the nature of the State's relationship with the tribe. However, this organization and its issues also created political conflicts that engaged substantial portions of the

¹¹⁹ Id., pp. 18, 129–32, 135–36.

¹²⁰ STN Reconsidered Final Determination (2005), p. 45.

¹²¹ STN Proposed Finding (2002), p. 20.

¹²² STN Final Determination (2004), p. 61.

community. Interviews conducted by the STN provided much of the critical evidence for community during this period.¹²³

The SIT evidence for community between 1967–1996 does not describe the 1967 tribal organization or reference Irving Harris by name. *See* SIT Petition, Part IV, pp. 56–57. For the 1980s, however, it does offer documentation that describes the activities of two of its recent leaders, Allen Russell and Gail Russell Harrison when they served on the broader tribal council (SIT Petition, Part IV, p. 58). The petition references some issues, such as surveying the Reservation in 1970 (SIT Petition, Part IV, p. 57) and conflicts, such as disputes over the tribal constitution of 1984 (SIT Petition, Part IV, p. 58). However, it presents no description or analysis of the social dynamic of these issues and conflicts. In other words, how they mobilized involvement or generated disputes that extended across family lines. It fails, in fact, to offer any analysis of social interaction, which is the fundamental requirement for demonstrating community. The SIT has clearly ignored the advice of the OFA, as indicated in the 2006 TA letter, to specifically address community in the context of its own membership. This required the SIT to demonstrate how its present and recent membership, many of whom were not documented in the STN evidence as having been in tribal relations with the Schaghticoke entity, were a part of that broader community in all time periods since 1900.

The SIT petition—unlike the STN petition—does not meet the community criterion from 1967 to 1996. The evidence the SIT presents is not new. It neither establishes community in the broader sense or explains how the SIT is distinct, or even the same, as the community documented by the STN. The petition presents no evidence from oral history interviews, which was a strength of the STN petition for this period, and provides no evidence at all for community for the years 1988 through 1996 (approximately one-third of the period between 1967 and 1996).

4. Community, 1997–present

The STN RFD affirms that the STN did not meet criterion (b) for the period from 1997 to 2004 “because, as defined by its membership list, it does not constitute the entire community and political system and because the Secretary has no authority to acknowledge only part of a community. The criteria define the community to mean the whole community.”¹²⁴

The STN PF concluded that there was a “single political system” for the Schaghticoke tribal entity that was represented by the STN up to 1996. After the SIT members and others withdrew their enrollment in the STN in the 1990s, the BIA found that the STN no longer met criteria (b) and (c) because “[t]he absence of these individuals from the current STN membership list means that the current petitioner, as defined by its most recent enrollment, is *substantially less than the entire community*” (emphasis added).¹²⁵ In other words, the BIA found that there was and is only one Schaghticoke community which cannot now have two political systems.

The STN PF notes further that:

¹²³ STN Proposed Finding (2002), pp. 151–74.

¹²⁴ STN Reconsidered Final Determination (2005), p. 62.

¹²⁵ STN Proposed Finding (2002), p. 20.

The present-day community, as defined by the 2001 STN membership list . . . differs substantially from the community described for the period from 1967 to approximately 1996 for two reasons. One reason is that important segments of the group as it existed prior to 1996 have resigned membership in the petitioner or do not appear on the current membership list because they declined, for internal political reasons, to participate in the enrollment process which led to the current STN list. That process began in 1995 and continued through 2001. These individuals, approximately 60 in number, were a significant part of the social and political relations within the group between 1967 to 1996.¹²⁶

Essentially, those who withdrew membership from the STN are the faction now represented by the SIT.

Applying the Department's STN determinations to the SIT's status means that the SIT, regardless of the evidence it presents, cannot meet criterion 83.11(c) after 1996 or for any other period since 1900. This is because, as a minority faction, in the absence of the larger STN membership across time, the SIT is "substantially less than the entire [Schaghticoke] community" to an even greater degree than was the STN.

The SIT's evidence for community since 1996 is not presented in the context of family lines and sublines, such as defining where members resided and their social interactions. It focuses primarily on political activities and issues without any indication of the extent to which actions mobilized members or generated disputes across family lines. SIT Petition, Part IV, pp. 58–62. It includes some minimal documentation of social gatherings, such as a potluck in 1984 and a powwow in that year that drew 86 people (Documents C-60 and C-62 in Part IV, p. 60), but it provides no analysis of who the participants were. The petition presents no evidence for community after 2013. SIT Petition, Part IV, p. 62.

As a result of all these deficiencies, the SIT documented petition lacks the critical substance to meet the community criterion.

C. The SIT Cannot Prove Political Influence or Authority.

The regulations specify that a petitioner can meet criterion 83.11(c), political influence or authority, at a given point by demonstrating "some combination of two or more" categories of evidence specified in the regulations (§ 83.11(c)(1)(i–xiii)). The regulations indicate further that a petitioner can meet this criterion by evincing any one of five additional higher categories of evidence (§ 83.11(c)(2)(i)(A–D) and (ii)).

The OFA's suggested outline for developing a "Concise Written Narrative" indicates that a documented petition must contain a narrative "thoroughly explaining how *each document* is applied to the criteria" (emphasis added).¹²⁷ In its TA letter of 2006, the OFA advised the SIT regarding its initial documented petition that the "materials were not organized or oriented to an overarching narrative that addressed the mandatory criteria" and that the SIT had "not explained

¹²⁶ *Id.*

¹²⁷ OFA, "Documented Petition Description with an Outline for Concise Written Narrative" (Draft), p. 1.

how . . . documents address any of the mandatory criteria.”¹²⁸ It noted that documents submitted by the SIT were “the same or similar to ones already in the [STN] record.”¹²⁹ The OFA counseled further that the SIT needed to submit additional evidence and analysis beyond what the STN had submitted.¹³⁰ It also indicated that the SIT should “address criterion (c) in the context of your specific members.”¹³¹ In other words, to demonstrate how its current and recent members were part of the political system of the broader Schaghticoke community identified in the STN findings.

Rather than following this advice, the SIT petitioner has, fifteen years later, submitted a documented petition that largely replicates the STN evidence. It lists hundreds of documents, often with minimal description and without an analysis of their direct relevance to the mandatory criteria. The petition does not demonstrate, or simply ignores, adherence to the mandate of interpreting its evidence of political influence or authority since 1900 in the context of its distinct membership.

The SIT does make a general claim, without analysis, for meeting the state reservation category of evidence set forth in §83.11(c)(1)(vii). As discussed previously, the SIT cannot rely on this category because evidence has not been presented that the Reservation has been in “active use” and directly related to the governance and political processes of a tribal entity as a whole. Therefore, the SIT cannot meet this category of evidence for criterion 83.11(c) or for criterion 83.7(b).

1. Political Influence or Authority, 1900–1936

The STN RFD reached the conclusion that the Schaghticoke did not meet criteria 83.7(c) (political authority) for the periods from 1801 to 1875, from 1885 to 1967 and after 1997. STN RFD, p. 58. Stated differently, the STN RFD concluded that the Schaghticoke had not existed as a political community for most of its history subsequent to 1801.

If the Schaghticoke had not existed as a political community prior to 1900, the question arises as to how this nonexistent political community would suddenly spring to life at the beginning of the historical period in 1900. Criterion §83.11(c) requires that the SIT establish that it has:

maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process or other mechanisms as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and /or representing the entity in dealing with outsiders in matters of consequence.

The SIT petition fails to articulate any substantial evidence that Schaghticoke mechanisms existed by which purported Schaghticoke leaders were influencing or controlling the behavior of members at the start of the evaluation period in 1900.

¹²⁸ Fleming to Russell, Sept. 14, 2006, p. 2 (A-25).

¹²⁹ Id., p. 4.

¹³⁰ Id., pp. 3–4.

¹³¹ Id., p. 6.

The SIT petition claims that the Schaghticoke Rattlesnake Club was a tribal political entity. SIT Petition, Part IV, pp. 62–73. It also claims that James Henry Harris and George Cogswell, through their involvement with the Club, were the primary leaders of the tribal entity during the first quarter of the 20th century. The Club’s primary purpose was to sponsor a snake hunt on the Schaghticoke Reservation. As described in the STN PF, the “Club was made up almost entirely of non-Indians—most of whom came to the reservation once a year from New York City and other areas.”¹³² The hunts were a one-time seasonal event. However, they were not held every year. By the SIT’s own admission, the Club was defunct by 1919. SIT Petition, Part IV, p. 72.

The OFA’s TA letter of 2006 noted that the SIT petitioner had submitted evidence regarding the Club and the tribal members who were part of it was “the same or similar to [that] already in the record.”¹³³ The letter advised generally that the SIT needed to submit new evidence and analysis for the mandatory criteria in every time period to demonstrate how it was distinct from the STN.¹³⁴

Despite this admonition, the SIT petition essentially presents no new evidence or arguments for the Rattlesnake Club and its organizers that was not previously presented by the STN petitioner. As discussed previously, the SIT cannot rely on the Rattlesnake Club to meet political influence and authority and y more that it can for social community.

The BAR thoroughly reviewed the STN’s evidence for criterion (c) during the first quarter of the past century and determined that neither the activities of the Club nor its organizers evinced tribal political influence or authority. In the STN PF, the BAR concluded there was “no significant contemporary evidence that describes [James H. Harris, who died in 1909] as a leader of the reservation Schaghticoke or the Schaghticoke in general.” It noted that he was not described as such either by the anthropologist Frank Speck, who had significant contact with the Schaghticoke, or by State officials who oversaw the Reservation. As is also the case with the SIT’s evidence, the STN PF noted further that Harris was sometimes identified as a “chief,” but that designation did not make him a leader.¹³⁵ The STN PF similarly concluded that there was “little evidence to demonstrate that [George Cogswell, who died in 1923] was a leader of the Schaghticoke.”¹³⁶

In response to its negative PF, the STN submitted additional information to claim that Harris and Cogswell were “informal leaders” and “culture keepers.”¹³⁷ The SIT petition describes their roles similarly. SIT Petition, Part IV, pp. 62–72. In the STN RFD, the OFA held that although these men

were well known, none of the contemporary descriptions of their activities describes roles as leaders of the Schaghticoke. The references to them by the title of “chief,” often in newspaper accounts, do not provide substantial evidence that they exercised political influence or carried out activities which meet the definition

¹³² STN Proposed Finding (2002), p. 126.

¹³³ Fleming to Russell, Sept. 14, 2006, p. 4 (A-27).

¹³⁴ *Id.*, p. 3.

¹³⁵ STN PF, p. 125.

¹³⁶ *Id.*, p. 126.

¹³⁷ STN Reconsidered Final Determination (2005), p. 55.

of political influence or authority in the regulations. Interview references to them as leaders provide little substantial detail.¹³⁸

The STN FD had concluded earlier that there was “not good evidence here for the political leadership of James Harris and George Cogswell and the others cited, based on their expertise as ‘culture keepers.’”¹³⁹

Regarding the Schaghticoke Rattlesnake Club, the positive STN FD of 2004 found its hunts were not a “community activity,” and that there was no evidence that other Schaghticoke were involved, including off-reservation tribal members.¹⁴⁰ The STN RFD affirmed this finding.¹⁴¹

The SIT petition does not identify any tribal leaders between 1923 and 1933. In the latter year, it maintains that the Tribe reorganized and elected William Cogswell, Sr., as “Sachem” and Earl Kilson and Howard Harris as “Sagamores.” SIT Petition, Part IV, p. 73. The Tribal Claims Committee allegedly formed at that time was chaired by Franklin “Swimming Eel” Bearce, an outsider who was not a Schaghticoke descendant. Bearce’s activities are described in greater detail below. There is no contemporary evidence of such a tribal election. Rather it is based on a 1955 letter that Bearce sent to non-Reservation members. Every description in the SIT petition that lists William Cogswell, Sr., Earl Kilson, and Howard Harris as tribal leaders prior to 1953 is cited to this letter. *See* SIT Petition, Part IV, pp. 73, 75, and 76.

The STN PF found that there was little evidence that William Cogswell had been a leader. Two reports from the 1930s indicated that the Schaghticoke tribal entity had no leadership. A 1934 report of the Office of Indian Affairs, predecessor of the BIA, stated that the tribe had in recent years lacked a chief or sachem. A Connecticut Park and Forest Commission document stated in 1936 that there were no leaders “recognized by the tribe.”¹⁴² In an interview the STN submitted in response to the negative PF, Irving Harris, who the SIT indirectly claims to be one of its leaders, denied the existence of tribal political processes in the period between the death of James H. Harris in 1909 and the emergence of the Franklin Bearce era in the mid-1930s. According to his account, the residents on the Reservation worked as individual families and not as a tribal entity: “there was actually no Schaghticoke government . . . There was no chief, there was no Council, there was nobody.”¹⁴³

The STN FD concluded that there was “little direct evidence to demonstrate political influence within the Schaghticoke between 1892 and 1936.”¹⁴⁴ The STN RFD found that there was “insufficient evidence for political activity for the period 1885 to 1936.”¹⁴⁵ The SIT’s documented petition, which is primarily a regurgitation of the STN’s documentation, does not fill this evidentiary gap.

¹³⁸ *Id.*, p. 54.

¹³⁹ STN Final Determination (2004), p. 102

¹⁴⁰ *Id.*, pp. 98–99.

¹⁴¹ STN Reconsidered Final Determination (2005), p. 57.

¹⁴² *Id.*, p. 57.

¹⁴³ STN Final Determination (2004), p. 95.

¹⁴⁴ *Id.*, p. 120.

¹⁴⁵ STN Reconsidered Final Determination (2005), p. 57.

In an effort to satisfy § 83.11(c)(1)(vii), the SIT claims evidence of political influence or authority because Connecticut set aside and maintained land for the benefit of the Schaghticoke. Meeting this category of evidence requires “active use” of the State set-aside lands. And since the requirement is to evince political influence or authority, that “active use” must be directly related to the leadership, governance, or political processes of the broader tribal entity.

As noted above, the STN RFD found that the tribal entity had not demonstrated political influence or authority from 1885 to 1936. The STN PF had previously found that there was “no named Schaghticoke leaders with whom the state dealt between 1900 and 1967.”¹⁴⁶ In regard to the entity’s relationship with the State, the STN PFD concluded: “The activities of the State relationship show that it did not provide evidence of political influence or authority with the Schaghticoke, and the State did not formulate its policies based on recognition of the existence of a bilateral political relationship with the Schaghticoke.”¹⁴⁷

Having State set-aside land cannot evince tribal political influence or authority if (1) there was no political activity involving the greater entity emanating from that reserved land; (2) there was no direct contacts between tribal leaders and State officials; and (3) the State did not recognize a bilateral political relationship. The SIT has not submitted any additional evidence or analysis that would countervail the Department’s conclusions in the STN determinations regarding the nature of the State relationship with the Schaghticoke.

2. Political Influence or Authority, 1937–1967

The SIT claims that Frank Cogswell, the brother of William Cogswell, Sr., was the entity’s leader between 1939 and his death in 1953. SIT Petition, Part IV, pp. 75, 78. Although the petition suggests that Franklin Bearce was merely an advisor to the tribe that had the connections, time, and economic resources to assist it (SIT Petition, Part IV, p. 74), the Schaghticoke allowed this outsider to play an outsized role in its activities over a period of approximately thirty years. It permitted him initially to claim that he was a Schaghticoke,¹⁴⁸ to hold the title of Tribal Chairman (SIT Petition, Part IV, p. 73), and even to have ceremonial roles, such as lighting the Council fire, leading the peace pipe ceremony, and dancing the rattlesnake dance at the 1939 “Indian Day” celebration on the Schaghticoke Reservation. SIT Petition, Part IV, p. 75. This latter role begs the question of why, if the Schaghticoke entity had such a vibrant culture and tradition associated with rattlesnakes, did it not have a member perform this dance?

Although the STN petition claimed that Bearce filed suits before the Court of Claims in 1936 and the Indian Claims Commission in 1949 on behalf of the Schaghticoke, the OFA could not find a record of this litigation.¹⁴⁹

The SIT petition presents no documentation to evince political influence or authority between 1941 and 1946. SIT Petition, Part IV, p. 77. The petition alleges that in 1947 an

¹⁴⁶ STN Proposed Finding (2002), pp. 26–27.

¹⁴⁷ STN Reconsidered Final Determination (2005), p. 58.

¹⁴⁸ STN Final Determination (2004), p. 107.

¹⁴⁹ *Id.*

unsuccessful claim was filed with the Indian Claims Commission for the unlawful loss of tribal lands. and that in 1949 the "Legal Tribal Council" met to revise the claim, as well as to address the issue of lack of housing on the Reservation. SIT Petition, Part IV, p. 78. The "Schaghticoke Indian and Legal Claims Committee" that refiled the claim in 1949 had five members, coordinated, and likely headed, by Franklin Bearce. SIT Petition, Part IV, p. 78.

After the ICC rejected the Schaghticoke claim in 1951, a meeting was held on the Reservation in 1954 to elect new officers and add members to the Legal Claims Committee. Howard Harris was elected "Chief," Theodore Cogswell "Rear Sagamore," and Jean Renault "Treasurer." Earl Kilson, Sr., had resigned from the Committee, which was headed by Bearce, and Julia Parmalee, Lenore Thorpe, and Howard Harris were elected to the Committee. There they joined the existing members, Bearce, William Russell, Theodore Cogswell, and Henaretta Peckham, who served as its secretary. SIT Petition, Part IV, p. 78. Bearce notarized the minutes of this meeting and sent them to the ICC. He also petitioned Congress for a review hearing of the Schaghticoke claims.

A 1979 source in the SIT petition claims that the tribe complained to an unspecified "department" in 1955 that the CL&P had moved the tribal burial grounds on the Schaghticoke Reservation. SIT Petition, Part IV, p. 79.

In 1958, the ICC dismissed the Schaghticoke claim. SIT Petition, Part IV, p. 79. The evidence presented by the SIT petitioner for criterion 83.11(c) between 1954 and 1963 does not identify a tribal leader, a Council or Committee, or specific political processes. Moreover, the petition only glancingly identifies issues, such as housing and land transfers on the Reservation. SIT Petition, Part IV, pp. 79–80.

The petition again identifies a Tribal Committee in 1963 that filed a claim in U.S. District Court, although it does not describe the nature of the complaint. The Committee's writ to the Court, filed by Franklin Bearce as Committee chairman listed Theodore Cogswell, Sr., as "sachim" [sic] Herbert Johnson and Theodore Cogswell, Jr.¹⁵⁰, as "sagamores," and Henaretta Peckham as "squaw sagamore" (apparently with no compunction about using this White man's derogatory term for native women) and secretary. In addition to Bearce, the Committee members were listed as Theodore Cogswell (apparently the senior Theodore), Julia Parmalee, Lenoria Thorpe [identified as Lenore in the 1955 documentation], and Henaretta Peckham. SIT Petition, Part IV, p. 80.

The SIT petition presents no further documentation to evince political influence or authority between 1963 and 1970. SIT Petition, Part IV, p. 80.

¹⁵⁰ In a joint interview with Theodore Cogswell, Jr. and his brother Truman Cogswell, the brothers indicated that they had been named as sagamores by their father. They further indicated that their father, Theodore Cogswell, Sr., had been named sachem by Franklin Bearce for purposes of the ICC land claims litigation. The Cogswell brothers were unable to identify any political role or duties that they carried as sagamores of the Schaghticoke. STN Record CT-V004-D0033, at pp. 91–106.

The BAR thoroughly reviewed all the STN evidence for alleged Schaghticoke political leadership and processes during this era. Regarding the Claims Councils and the role of Howard Harris, the STN PF concludes:

[They] came about through the efforts of Franklin Bearce, a non-Schaghticoke. Bearce at times titled himself as Chief of the Schaghticoke, although the council in 1954 designated Howard Harris as chief. There is good evidence that Bearce in these efforts consulted regularly with various Schaghticoke individuals, including especially Harris, as well as others. There is not good evidence that those holding office in this time period, Howard Harris, as chief and Theodore Cogswell, as “Sagamore,” as well as several others, had a following or significant duties for any extended period of time.¹⁵¹

The PF further states that:

(1) Some Schaghticoke from a different family line, have specifically denied that [Howard Harris] was chief at all, even after 1954, and stated that different individuals, with the title of Sagamore, were chief from the 1930’s until 1967. These latter statements by members of the Cogswell family provided conflicting evidence as to whether those individuals named as “sagamores” were considered as leaders of all of the Schaghticoke or just of the Cogswell line;¹⁵²

(2) Other than the Bearce contacts, and the visiting to the reservation, there is only limited evidence that Howard Harris did anything besides hold the title of “chief”;¹⁵³

(3) There is nothing in the documentary record to show a relationship by the state with Howard Harris;¹⁵⁴ and

(4) In an interview, his daughter was not able to provide any significant discussion of what Howard Harris [who lived in Bridgeport] did as chief or what goals he was promoting.¹⁵⁵

Regarding the members of the Tribal Claims Committees, the STN PF stated “There is nothing to describe what activities these named individuals might have undertaken in these offices outside of the described Bearce-created council itself. [An]interview indicates in fact that little was done within these roles.”¹⁵⁶

¹⁵¹ STN Proposed Finding (2002), p. 27.

¹⁵² Id., p. 28.

¹⁵³ Id., p. 147.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id., p. 148.

In response to its negative PF, the STN submitted additional information regarding the leadership role of Frank Cogswell prior to 1953. After considering this new documentation, the STN FD concludes:

The evidence does not substantiate that he had a significant role as a leader separate from the office he held in the organization established by Bearce and the activities of that organization. The evidence suggests otherwise. It largely concerns ceremonial titles and activities, which alone is not evidence of leadership.¹⁵⁷

Despite the earlier association with Bearce, and although he lived until 1953, there is little indication that Frank Cogswell was substantially involved in the Schaghticoke council or claims committee formed in 1949 or earlier in 1943.¹⁵⁸

The STN also submitted further documentation about Howard Harris, which prompted the OFA to concede in the STN FD that he was identified as a “sagamore” in 1936. However, the Department continued to hold that his overall activities failed to evince political influence or authority.¹⁵⁹

Despite the further documentation and arguments the STN submitted in response to the PF and FD, as well as in its appeal to the IBIA, the STN RFD concluded that the Schaghticoke petitioner did not meet criterion (c) for the period from 1885 to 1967.¹⁶⁰

The revised 2015 acknowledgment regulations at § 83.10(a)(2) state that “the Department will require the existence of community and political influence or authority on a *substantially continuous basis*.” (Emphasis added). Although this section of the regulations also indicates that “demonstration does not require meeting these criteria at every point in time,” lacking significant evidence of political influence authority for the equivalent of three generations is a gap that does not meet any definition of substantial continuity. The STN failed to substantiate its claim for internal governance for most of the years since 1900. As a splinter group of that previously denied petitioner, the SIT, using much of the same evidence, has not filled that glaring evidentiary gap.

3. Political Influence or Authority, 1967–1996

The STN PF finds that:

From 1967 until approximately 1996, there is substantial evidence of political involvement of much or most of the Schaghticoke membership at the time. There was a continuing series of conflicts, which, although they also included conflicts between the several strong personalities, showed consistently broad involvement of members of the group. The evidence is largely drawn from petitions, voting lists, and attendance lists, meeting minutes, and other written descriptions of meetings. There is also some additional evidence from interviews concerning these conflicts,

¹⁵⁷ STN Final Determination (2004), p. 107.

¹⁵⁸ Id., p. 110.

¹⁵⁹ Id., p. 113.

¹⁶⁰ STN Reconsidered Final Determination (2005), p. 57.

as well as some “personal documents and accounts,” such as letters, which provide descriptions of the conflicts and the events within them. The political pattern is that the several family line groups and sublines have formed a framework for political conflict, as the units which have mobilized for and against certain issues, and in support of or against specific leaders. These political mobilizations occurred multiple times over a significant period.

These conflicts provide evidence over a period of more than 30 years of involvement in political processes by most of the group’s members. Section 83.7(c)(1) of the regulations describes several forms of evidence to demonstrate the criterion is met. The patterns of these conflicts and the events within them indicate that knowledge of issues and events was being communicated within the membership, in order for these events and actions to have taken place. This type of evidence is described in 83.7(c)(1)(iii). These internal conflicts show controversy over valued group goals (e.g., whether to develop the reservation, and how), over properties (the reservation), over processes (constitution, fairness of elections), and/or decisions. This is the form of evidence described in 83.7(c)(1)(v). These events showed that most of the membership considered the issues acted upon to be of importance, the form of evidence described in 83.7(c)(1)(ii).¹⁶¹

The PF’s evaluation of the STN evidence for criterion (c) between 1967 and 1996 covered 24 pages.¹⁶² The SIT petition, in the section specific to criterion 83.11(c), presents evidence for this period in just two pages. SIT Petition, Part IV, pp. 80–81. The petitioner presents approximately 27 documents in this section as evidence for this time span, with only minimal descriptions. It offers no analysis of the kinds of documents that helped the STN meet criterion (c) for these years (i.e., petitions, voting lists, attendance lists, meeting minutes, and other written descriptions of meetings). The petition does not utilize oral histories of its own making. Furthermore, it provides no evidence for the years 1967–1969, 1986–1988, and 1990–1995. These gaps total more almost half of the period in which the STN was found to meet the criterion.

The SIT documented petition presents much of the same evidence in the Key Milestones section (SIT Petition, Part II, pp. 12–13), which ends abruptly at 1981, in the section for criterion 83.11(a) (SIT Petition, Part IV, pp. 29–31), and in the section for criterion 83.11(b). SIT Petition, Part IV, pp. 57–59. This approach clearly shows that the SIT could not distinguish what would beneficially serve as discrete evidence for tribal identity, community, or political influence or authority, so it proceeded to repeat the lists of documents it had gathered in the hope that the OFA research team could discern the distinctions and relevance regarding the mandatory criteria.

The SIT petition does not describe the Schaghticoke governing body or all its leaders and factions during this era. For example, it references Irving Harris only in relation to his heading the Connecticut Indian Affairs Council and does not identify Richard Velky. It is Velky who was elected Chief in 1987 and who has served in that capacity as the principal STN leader for most of the years since that time. Moreover, the SIT petition does not identify by name the recent SIT leaders who served at various times on the STN governing body during that period, including Alan

¹⁶¹ STN Proposed Finding (2002), p. 29.

¹⁶² *Id.*, pp. 151-175.

Russell, Gail Russell Harrison, and Russell Kilson. Furthermore, it fails to describe any elections, the composition of the councils, or the political processes in place.

The SIT petition alludes to some of the tribal political issues but neglects to include many of significant importance. For example, it references the matters of defining membership, contested leadership, the effort to create the Connecticut Indian Affairs Council, land claims, economic development of the Reservation, and the pursuit of Federal acknowledgment. However, the SIT petition fails to describe or analyze the issues related to Reservation residency and housing, surveying the Reservation, defining membership eligibility, crafting governing documents, challenging Necia Hopkins and the New England Schaghticoke Association, the separate councils between 1982 and 1985, the chairmanship of Alan Russell, the political role of Trudie Lamb Richmond, the Appalachian Trail condemnation suit, and other matters. More importantly, the petition does not describe the tribal conflicts that led to discord, which eventually caused the SIT as a minority political faction to break away from what the STN PF described as the “single Schaghticoke political system” that existed and met criterion (c) from 1967 to 1996.¹⁶³

The STN PF concludes that there was a “single political system” for the Schaghticoke tribal entity that was represented by the STN petitioner up to 1996.¹⁶⁴ The STN FD affirmed the conclusion that the evidence of political processes was sufficient for the petitioner to meet criterion (c) from 1967 to 1996, after reviewing additional evidence and analysis of the conflicts that took place between 1967 and 1974.¹⁶⁵ The STN RFD upheld these previous findings without reviewing further evidence.¹⁶⁶

Although in the PF the BAR found that those who withdrew membership in the STN around 1997 “were a significant part of the social and political relations within the group between 1967 to 1996,”¹⁶⁷ as a minority faction both then and now the SIT cannot retroactively claim leadership and governance for the broader Schaghticoke entity during those 29 years. Moreover, it certainly cannot substantiate such a claim based on the minimal evidence presented in its documented petition.

4. Political Influence or Authority, 1997–present

The SIT presents its evidence for criterion 83.11(c) since 1996 in six pages. SIT Petition, Part IV, pp. 81–87. There is very little description of the documents after 2014, since, for the most part, there is merely a listing of Tribal Council minutes without referencing their relevance to the criterion. No documentation is presented for the period since 2017.

This section of the petition is plausibly descriptive of political issues and processes. For example, it references digging on the Reservation in 1997 (SIT Petition, Part IV, p. 81); the impact of the Kent sewer treatment plant on allegedly historical Schaghticoke lands in 1999 (SIT Petition, Part IV, p. 82); challenging STN leader Richard Velky in 1999 (SIT Petition, Part IV, p. 81); and intervention in that same year in suits filed by the STN. SIT Petition, Part IV, p. 82. It also

¹⁶³ *Id.*, p. 30.

¹⁶⁴ *Id.*, p. 20.

¹⁶⁵ STN Final Determination (2004), p. 124.

¹⁶⁶ STN Reconsidered Final Determination, p. 57.

¹⁶⁷ *Id.*, p. 20.

indicates: petitioning for Federal acknowledgment in 2001 (SIT Petition, Part IV, p. 82); issues of Reservation residency in 2003 (SIT Petition, Part IV, p. 83); the establishment in 2004 of tribal marshals to protect the Reservation (SIT Petition, Part IV, p. 83); land maintenance issues in that same year (SIT Petition, Part IV, p. 83); Reservation development in 2005 (SIT Petition, Part IV, p. 83); economic development in 2007 (SIT Petition, Part IV, p. 84); the removal of Council members in 2007 (SIT Petition, Part IV, p. 84); and legal actions to protect land rights in that same year. SIT Petition, Part IV, p. 84. In addition, it describes opposition to Jannette Stoerzinger in 2012 (SIT Petition, Part IV, p. 85); legal representation and the eviction of June Hatstat from the Reservation in 2013 (SIT Petition, Part IV, p. 85); and opposition in 2004 to Richard Velky's plan to develop a pavilion on the Reservation (SIT Petition, Part IV, p. 83).

Without a detailed analysis of the actual documents, and knowing that in some cases, as described below, the petitioner has misrepresented the documentation, these examples (if accurately supported) could all be plausibly credible evidence of tribal political influence and authority if the SIT was the sole petitioner claiming to represent a historical tribal entity.

A few examples from this section suffice to indicate how the SIT petitioner tends to misrepresent the documents it cites as evidence. In various parts of its petition, the SIT references Lucianne Lavin's 2013 book entitled *Connecticut's Indigenous Peoples*. Here it claims that this work notes the "SIT's actions and exchanges of political authority throughout the book." SIT Petition, Part IV, p. 85. However, this publication, which focuses primarily on archaeological evidence documenting the location, culture, and lifeways of the State's native peoples prior to the 20th century, makes no specific mention of the SIT. Rather, it references the main body of the historical Schaghticoke tribe,¹⁶⁸ which the Department has held to have been represented by the STN petitioner up to 1996. The Lavin book makes no reference to Schaghticoke leadership or governance in the period since 1996.

In another example of misrepresentation, the SIT petition cites a 2004 article in the *Hartford Courant* as evincing SIT political influence or authority. It claims that the article indicated that: (1) the Connecticut Attorney General recognized "the Schaghticoke as a Tribe"; and (2) the Tribe was "planning for a casino with the State and on behalf of its members." SIT Petition, Part IV, p. 83. However, the piece, entitled "Tribes Await Federal Rulings" deals almost exclusively with the pending Federal acknowledgment petitions of the Golden Hill Paugussetts in Connecticut, and the Nipmuc Nation and the Webster-Dudley Band of Chaubunagungamaug Nipmucks in Massachusetts, which claimed historical lands and had members in Connecticut. Reporter Rick Green focused on how favorable OFA findings regarding these petitioners might impact further Indian casino development in Connecticut. His article referenced then Connecticut Attorney General Richard Blumenthal but gave no indication of his recognition of the Schaghticoke. The only casino plan it described was the proposal of the Golden Hill Paugussett to develop a gaming facility in Bridgeport. This was to be developed not "with the State," but rather with the backing of private investors. The article did not reference either the SIT or the STN

¹⁶⁸ Lavin, *Connecticut's Indigenous People*. See, for example, pp. 180, 256, 278, 290, 292, 325, 334–35, 337–38, 340–341, 346, 351–54, 358, 360, 393.

directly or evince anything about Schaghticoke political influence or authority. Instead, it merely mentioned that the BIA was dealing with “various Schaghticoke factions.”¹⁶⁹

Among the documents from 2015, the SIT petition lists the Connecticut General Statutes, 47–59(a) as evidence of political influence or authority. SIT Petition, Part IV, p. 86. This legislation recognized as “Indians” members of the Schaghticoke and other indigenous tribes and also recognized the Reservation in Kent as the lands “assigned to the Schaghticoke tribe.” The statute did not specifically reference the SIT and, thus, does not evince its political influence or authority. This is because the SIT does not represent the majority of Schaghticoke members and the State has not recognized the SIT as having sole jurisdiction over the Schaghticoke Reservation.

The SIT cannot meet criterion 83.11(c) for the period 1996 to the present, or for any period since 1900.

As noted above, the STN PF states that the STN did not meet criterion (c) for the period since 1996 because it no longer represented the broader Schaghticoke community:

The present-day community, as defined by the 2001 STN membership list . . . differs substantially from the community described for the period from 1967 to approximately 1996 for two reasons. One reason is that important segments of the group as it existed prior to 1996 have resigned membership in the petitioner or do not appear on the current membership list because they declined, for internal political reasons, to participate in the enrollment process which led to the current STN list. That process began in 1995 and continued through 2001. These individuals, approximately 60 in number, were a significant part of the social and political relations within the group between 1967 to 1996.¹⁷⁰

Essentially, most of those who withdrew membership from the STN now are the faction represented by the SIT.

The STN PF concludes that the STN could not meet criterion (c) for the period since 1996 because:

There continues to be a single political system which includes these individuals, though they are no longer enrolled in the STN. The absence of these individuals from the current STN membership list means that the current petitioner, as defined by its most recent enrollment, is substantially less than the entire community.¹⁷¹

Applying this finding to the SIT’s situation means that it cannot meet criteria 83.11(a), (b), and (c). The SIT’s separation from the larger Schaghticoke community and tribal political system means that it is even less of the entire Schaghticoke community than was the STN.

¹⁶⁹ Rick Green, Tribes Await Federal Rulings, Hartford Courant (June 14, 2004), <https://www.courant.com/news/connecticut/hc-xpm-2004-06-14-0406140341-story.html>.

¹⁷⁰ STN Proposed Finding (2002), p. 20.

¹⁷¹ *Id.*

Neither the SIT nor the STN now represent the single entity that is the current descendants of the broader historical Schaghticoke tribe. Rather, these petitioners have sought to be acknowledged as separate entities claiming the same history for the most part, as well as the same rights to the lands set aside for the historical tribe by the State of Connecticut. The split between them has taken place not in the historical past, but rather within the lifetimes of most of the adult membership of both groups.

Because the purpose of Federal acknowledgment is to recognize a government-to-government relationship with previously unacknowledged tribal groups, a single entity acknowledged by the DOI can only have one governing body, one governing document, and one membership list. As our comparative analysis of the SIT and STN evidence has demonstrated, there are too many substantial gaps in the evidence for criteria 83.11(b) and (c) for the SIT to be federally acknowledged.

D. Comparative Analysis Evidence Common to the STN and SIT Petitions Confirms that the SIT Cannot Satisfy the Community and Political Authority Criteria.

In asserting its existence as a distinct political community, the SIT relies on much of the same evidence and many of the same theories as were considered and found insufficient to establish “community” and “political authority” in the STN proceedings. The following analysis compares the evidence and claims cited in support of the SIT petition with documents reviewed and noted in the STN findings. The comparative analysis demonstrates that in many instances the SIT documentation is the same or similar to that in the STN record. The analysis also has focused on how the BAR and the OFA interpreted the STN documentation regarding its relevance to the mandatory acknowledgment criteria. The overall conclusion drawn from the analysis is that the SIT petitioner is relying substantially on evidence submitted by the STN rather than providing new evidence and analysis to fill the gaps in the historical record, as had been suggested through Technical Assistance by the OFA as necessary when Petition #239 was before it. The analysis also demonstrates that a substantial portion of the evidence presented by the SIT was previously found insufficient for the STN to meet the mandatory criteria for most of the period since 1900.

As previously noted, the STN RFD concluded that the STN embodied the historical Schaghticoke tribe until 1996 when the SIT membership and others affirmatively refused to be enrolled in the STN. By claiming the STN evidence of the historical tribe as evidence for its own roots as a continuously existing Indian tribe, the SIT is making the claim that its membership alone constitutes the modern embodiment of the historical tribe.

1. The Schaghticoke Rattlesnake Club

Much of the SIT’s evidence demonstrating community and political authority for the first 25 years of the 20th century relies on the activities of the Schaghticoke Rattlesnake Club. According to the SIT, the Club “was an active tribal institution that demonstrated that the Schaghticoke were a distinct tribal community whose members worked together to ensure its continuance within what remained of the traditional Schaghticoke homeland—the Reservation.” SIT Petition, Part IV, p. 63. The SIT argues that tribal leadership formed the Club toward the end of the 19th century “as a political survival strategy for protecting their land base and sustaining

their tribal community.” SIT Petition, Part II, p. 7. Within the Club, the tribe’s leaders “cultivated friendships of socially prestigious and political powerful white men . . . for use as allies and intermediaries with the government.” SIT Petition, Part II, p. 7.

The Club was made up of Schaghticoke members and influential men from the ruling white establishment, “including newspapermen, politicians, physicians, and a judge.” SIT Petition, Part IV, p. 64. Many of the cited newspaper articles were written by these men, and they provided sympathetic publicity for the tribe. Moreover, the SIT argues that “the entire Schaghticoke community worked together” to make the Club’s hunt a success. SIT Petition, Part IV, p. 64. The Club’s activities allegedly allowed for tribal members to pass down traditional snake lore and provided an economic avenue for members who could sell baskets to visiting whites. The BAR and the OFA were skeptical of nearly all these claims as supporting evidence to meet what was then criteria 83.7(b) and 83.7(c) for the STN.

The SIT has offered two separate rationales for its claim that the Reservation was imperiled and needed protection. First, the SIT argues that the State of Connecticut intended to sell the existing reservation and disperse the Schaghticoke. SIT Petition, Part II, p. 8. The SIT later claims that the State was “hoping to detribalize the state’s Indian reservations by turning them into state parks.” SIT Petition, Part IV, p. 35. These are two very different goals attributed to the State. However, the SIT provided no primary source evidence for either, aside from a few lines from an undated poem written by the Schaghticoke’s former overseer, Fred Lane.

The BAR and the OFA were skeptical of nearly all these claims as supporting evidence to meet criterion 83.7(b) or criterion 83.7(c) for the STN. In the STN FD, the OFA questioned the origin story of the Rattlesnake Club as related by the STN and the SIT and found it wanting. It discovered little evidence in the record to support the STN’s assertion that tribal leaders had prevented the Reservation from being sold or even that these elders “played an important role from 1890–1920.”¹⁷² Moreover, the OFA stated that “[t]here is no evidence to show that the Schaghticoke as a whole were involved in creation of the Rattlesnake Club. The one account of its initial organization suggests it was created by George Cogswell and various local non-Indians.”¹⁷³

The SIT petition cites scores of newspaper articles about the Rattlesnake Club and its activities. The petitioner, the BAR, and the OFA all agree that it was nearly entirely made up of non-Indians, that tribal members James Harris and George Cogswell were regular participants, and that the Club spent much of its time on annual rattlesnake “hunts” on the Schaghticoke Reservation. The SIT interprets many of the articles as demonstrating the existence of a distinct tribal community. For example, in June 1913, the *Sunday Herald* published an announcement of the annual Club hunt. The announcement included notice of a storytelling session by George Cogswell that the petitioner identified as a tribal tradition. Others included rattlesnake lore and basketmaking. SIT Petition, Part IV, p. 45. The petitioner described an April 1909 *New Milford Gazette* article as demonstrating that selling baskets at the hunt was an aspect of the tribal economy. SIT Petition, Part IV, p. 42. The SIT and the STN have both argued that these shared cultural practices and economic activity demonstrated that they met the criteria for community.

¹⁷² STN Final Determination (2004), p. 93.

¹⁷³ *Id.*, p. 97.

The BAR and the OFA rejected these claims from the STN. The BAR described the Club as “a group which met annually on the reservation to hunt rattlesnakes and hold drinking parties.”¹⁷⁴ It questioned whether the Club’s activities, including the preparations for the hunt and the hunt itself, were a community effort or just the efforts of Harris and Cogswell as individuals. It found no evidence of off-reservation members being involved with the Club and almost no indication of engagement by reservation families aside from Harris, his immediate family, and Cogswell. For example, after Harris’ death in 1909, Cogswell was elected “scout.” Yet the OFA found that there was no evidence of Schaghticoke involvement in the election.¹⁷⁵ Similarly, the evidence of basketmaking was insufficient to demonstrate that it was a community effort. “The selling of baskets by a family member of one of the two Schaghticoke involved in the hunts would not necessarily make it a community effort.”¹⁷⁶ As described by the BAR and the OFA, the Club was not a tribal entity.

The BAR and the OFA were similarly skeptical of the STN’s assertion of meaningful cultural maintenance and transmission of traditions. Both the STN and the SIT have argued that there was cultural transmission of tribal knowledge and spiritual beliefs passed down between generations, particularly of rattlesnake lore. The STN identified several individuals as “culture keepers,” including James H. Harris, George Cogswell, Bertha Kilson, and Charles Kilson. In the STN FD, the OFA accepted that there was some evidence of retention of cultural knowledge at the end of the 19th century; however, the evidence for this continuing into the 20th century was poor. The existing evidence indicated that the transmission of tradition was merely communicated within family lines. Moreover, the knowledge of rattlesnake hunting did not appear to be exclusive to culture keepers or even to the Schaghticoke. The STN PF and FD concluded that “there was little evidence showing that traditions and stories were passed down in the 20th century, except within family lines” and that the individuals involved did not meet the definition of “culture keepers.”¹⁷⁷ There was “a limited degree of evidence of transmission of cultural ideas that was shared on a reasonably wide basis with the group.”¹⁷⁸ But neither the STN PF, FD, or RFD cited this evidence as meeting the requirements for criterion 83.7(b).

While the STN was found to satisfy the criteria for community from 1900 to 1920, that finding was not based on the claims concerning the Rattlesnake Club. Rather, community for this limited period was based upon “the reservation community, which encompassed the three main family lines, and the extant kinship ties with others living nearby” as well as an analysis of residential and intermarriage patterns.¹⁷⁹ None of the Department’s determinations cited the existence or activities of the Schaghticoke Rattlesnake Club as evincing community as defined in the acknowledgment regulations.

For political authority in the first two decades of the 20th century, both the STN and SIT petitions focused on two men, George Cogswell and James Henry Harris. Like the STN, the SIT cites scores of newspaper articles about the Rattlesnake Club and its activities and consistently interprets any identification of either Cogswell or Harris as a demonstration of their leadership of

¹⁷⁴ STN Proposed Finding (2002), p. 126.

¹⁷⁵ STN Final Determination (2004), p. 126.

¹⁷⁶ *Id.*, p. 99.

¹⁷⁷ STN Proposed Finding (2002), p. 149; STN Final Determination (2004), pp. 100-101.

¹⁷⁸ STN Final Determination (2004), p. 102.

¹⁷⁹ STN Proposed Finding (2002), p. 18.

the Schaghticoke Tribe. For example, in July 1903, the *New Milford Gazette* published an article on James Harris and his activities as a local preacher. The SIT asserts that the article indicates that Harris was a leader in the Schaghticoke community. SIT Petition, Part IV, p. 65. The SIT describes another article, published in May 1907, as demonstrating that Cogswell and Harris acted as tribal leaders through their “intermediary performance” for Club members. SIT Petition, Part IV, p. 66. The SIT also asserts that these two men, among others, also acted as culture keepers by passing down knowledge of rattlesnake lore to the next generation.

In their thorough evaluation of the STN’s claims, the BAR and the OFA reviewed the available evidence and rejected the alleged demonstration of tribal leadership through the Rattlesnake Club. As noted above, the STN PF described the Club as “a group which met annually on the reservation to hunt rattlesnakes and hold drinking parties.”¹⁸⁰ The BAR questioned whether the involvement of a few tribal members in the Club’s activities, including the preparations for the hunt and the hunt itself, was a community effort or just the endeavors of Harris and Cogswell as individuals. It found no evidence of off-reservation members being involved with the Club and almost no indication of engagement by reservation families aside from Harris, his immediate family, and Cogswell. In the STN FD, the OFA found no evidence of internal tribal leadership within the Schaghticoke Rattlesnake Club, and no evidence that Cogswell and Harris were acting “to establish tribal interests.”¹⁸¹ There was, for example, no evidence of Schaghticoke involvement in the 1909 election of George Cogswell as “Scout” following the death of Harris.¹⁸² Similarly, the evidence of basketmaking was found to be insufficient to demonstrate that it was a community effort. “The selling of baskets by a family member of one of the two Schaghticoke involved in the hunts would not necessarily make it a community effort.”¹⁸³ As described by the BAR and the OFA, the Club was not a tribal entity, and there was no substantial evidence that its few Schaghticoke participants demonstrated political leadership within the tribe.

The BAR and the OFA were similarly skeptical of the STN’s assertion of meaningful cultural maintenance and transmission of traditions. The STN and the SIT both have argued that there was cultural transmission of tribal knowledge and spiritual beliefs passed down between generations, particularly of rattlesnake lore. The STN identified several individuals as “culture keepers,” including James H. Harris, George Cogswell, Bertha Kilson and Charles Kilson. In the STN FD, the OFA accepted that there was some evidence of retention of cultural knowledge at the end of the 19th century. However, the evidence for this continuing into the 20th century was poor. The existing evidence indicated that transmission of tradition was communicated only within family lines. Moreover, the knowledge of rattlesnake hunting did not appear to be exclusive to culture keepers or even to the Schaghticoke. Both the PF and the FD concluded that “there was little evidence showing that traditions and stories were passed down in the 20th century, except within family lines” and that the individuals involved did not meet the definition of “culture keepers.”¹⁸⁴ There was “a limited degree of evidence of transmission of cultural ideas that was

¹⁸⁰ STN Proposed Finding (2002), p. 126.

¹⁸¹ STN Final Determination (2004), p. 98.

¹⁸² *Id.*, p. 97.

¹⁸³ *Id.*, p. 99.

¹⁸⁴ *Id.*, pp. 100-101; STN Proposed Finding (2002), p. 149.

shared on a reasonably wide basis with the group.”¹⁸⁵ However, neither the PF, the FD, nor the RFD found this evidence sufficient to meet the requirements for criterion 83.7(c).

The BAR and the OFA arrived at similar conclusions regarding the evidentiary value of the Schaghticoke Rattlesnake Club and of the STN’s arguments in favor of Cogswell and Harris as tribal leaders across three evaluations of the petition. In the STN PF, the BAR found that “[t]here was almost no specific evidence of Schaghticoke political activity from 1900–1949.”¹⁸⁶ The evidence was clearly insufficient to support the petitioner’s argument that Harris and Cogswell were leaders within the Schaghticoke Tribe. The STN did not meet the requirements of criterion 83.7(c) from 1900–1940. The STN FD reevaluated the PF’s findings and was unequivocal in its rejection of the Rattlesnake Club as a tribal entity and of Harris and Cogswell as leaders of the Schaghticoke.¹⁸⁷ The STN RFD reexamined the evidence. As with the PF and the FD, the RFD rejected the evidence of Harris and Cogswell as tribal leaders, of the Rattlesnake Club as a tribal entity, and of the political leadership of Cogswell. Harris, and others based on their expertise as culture keepers.¹⁸⁸ The RFD reaffirmed the PF’s conclusion that the STN did not meet criterion (c) for more than five decades (from 1885 to 1936).

Because the SIT relies on the same evidence and the same arguments relied upon by the STN, it also has failed to fill the evidentiary gap in political authority for the first 36 years of the 20th century.

2. The State’s Guardianship Role

The SIT cites documents produced by the overseer system and its successors as providing evidence of a distinct tribal community as well as evidence for a political relationship with the State of Connecticut.

Before 1926, the Litchfield County Superior Court was responsible for appointing and monitoring overseers. Subsequently the appointments were under the auspices of the Litchfield County Court of Common Pleas. The overseers produced periodic reports to the Courts on the reservation and the tribal members residing there.

For example, in 1900, the overseer delivered a report to the Superior Court and observed that “elderly and ill tribal members were supported by the tribe’s ‘Indian Fund.’” SIT Petition, Part IV, pp. 34–35. Another example, in 1904, Martin Lane, the overseer and agent, delivered a report on the conveyance of the tribe’s lands to the New Milford Power Company. The petitioner interprets this report as evidence of the State of Connecticut “dealing with the Tribe as a political entity.” SIT Petition, Part IV, p. 65. And in 1921, overseer Jabez Swift wrote to the Governor and allegedly demonstrated the political relationship of the Schaghticoke with the State. SIT Petition, Part IV, p. 72.

¹⁸⁵ STN Final Determination (2004), p. 102.

¹⁸⁶ STN Proposed Finding (2002), p. 26.

¹⁸⁷ STN Final Determination (2004), pp. 97–103.

¹⁸⁸ STN Reconsidered Final Determination (2005), pp. 54–57.

The legislature also periodically approved appropriations for the Schaghticoke Tribe. The SIT alleges that these appropriations were for the support of the Tribe but does not specify whether they were directed at the reservation and its residents or for the entire tribal entity. The SIT claimed that the reports and appropriations demonstrated that the State recognized the Schaghticoke as an Indian community for which it had a trust responsibility.

In 1926, the State of Connecticut altered its guardianship role for the Indians in Connecticut “by transferring responsibility for the Schaghticoke to the State Park and Forest Commission and abolishing the overseer system overseen by the County Courts.”¹⁸⁹ The Commission produced regular reports on the status of the Reservation and the tribe, nearly all of which the SIT has neglected to cite. The duties of the State Park and Forest Commission included oversight of the Reservation, managing funds appropriated by the legislature, and managing a fund for the tribe. The SIT cites the annual Schaghticoke Indian Reservation Fund reports, though it did not provide any explanation of their interpretative value to its petition (SIT Petition, Part IV, p. 74) other than to claim that the actions of the Commission and the legislature demonstrated that the State recognized the SIT as an American Indian entity and “was executing its trust responsibility” to the Schaghticoke.¹⁹⁰ SIT Petition, Part IV, p. 49.

In 1941, the Connecticut legislature transferred the authority over the Schaghticoke to the Commissioner of Welfare. This arrangement continued until 1973, when the State ended its role as it existed and created the Connecticut Indian Affairs Council. The State continued to maintain the Indian Fund to support tribal members residing on the Reservation until 1973. The SIT petitioner cites several annual reports of the Indian Fund as evidence of this continuing relationship.

On the issue of community, the STN RFD reexamined the relationship between the State and the Schaghticoke and concluded “the state relationship did not provide evidence of social interaction or cohesion among the Schaghticoke.”¹⁹¹ It concluded that there was insufficient evidence of community for the period 1920–1940.¹⁹²

On the issue of political authority, the STN PF found that there was insufficient evidence for community or political authority or influence for the period of 1940–1967.¹⁹³ The STN RFD reexamined the relationship between the State and the Schaghticoke. It decided that the overseer system through 1926, the transfer of jurisdiction in 1926, and the maintenance of Schaghticoke resources did not provide evidence of a bilateral political relationship or the exercise of political authority or influence within the group.¹⁹⁴ Furthermore, the STN RFD concluded that the State “did not implicitly or explicitly predicate its legislation and policies regarding the Schaghticoke and other Connecticut Indians on the basis of the recognition of a government-to-government relationship with the Indians, or on the basis of any recognition of the existence of bilateral political relations within the group.”¹⁹⁵ It decided that the State’s guardianship role did not provide evidence

¹⁸⁹ *Id.*, p. 49.

¹⁹⁰ The petition does not define the origin or basis of the supposed trust responsibility owed to the Schaghticoke.

¹⁹¹ *Id.*, p. 45.

¹⁹² *Id.*, pp. 44–45.

¹⁹³ STN Proposed Finding (2002), p. 28.

¹⁹⁴ STN Reconsidered Final Determination (2005), p. 50.

¹⁹⁵ *Id.*, p. 48.

to demonstrate criterion 83.7(c) and that overall there was insufficient evidence of tribal political influence or authority for the period 1892–1967.¹⁹⁶

3. Tribal Leadership in the 1920s and 1930s

After the dissolution of the Schaghticoke Rattlesnake Club in 1919, the SIT petitioner offers very little evidence of tribal leadership until 1933. It claims that before 1933, “Schaghticoke leadership appeared to be more informal with (1) culture keepers preserving and passing down tribal history and traditions, and (2) lineage heads coordinating and leading tribal economic and socio-political activities.” SIT Petition, Part IV, p. 74. However, it cites few documents to evince this leadership. George Cogswell died in March 1923, and the petitioner cites a newspaper article that allegedly referred to his leadership of the Rattlesnake Club and his unique knowledge of the Reservation. The petitioner continues to argue that this “confirm[s] his role as a Schaghticoke leader.” SIT Petition, Part IV, p. 72.

Nearly all the remaining evidence falls between 1926 and 1928. The SIT argues that a June 1926 newspaper article about a reunion of the Rattlesnake Club shows that Howard Harris and Frank Cogswell provided “early evidence of leadership” by coordinating the event and keeping a “register” of the reunion attendees. SIT Petition, Part IV, pp. 72–73. The SIT also cites two exchanges of letters between George Cogswell and the Commissioner of Indian Affairs about the Reservation in 1925 and 1926. However, the SIT offers no details of the contents of the exchanges and does not provide any explanation of how these letters demonstrate political authority or influence. SIT Petition, Part IV, p. 73.¹⁹⁷

The SIT claims that sometime around 1933 the tribe “reorganized” and held elections for newly formalized leadership positions. In a 1955 letter to tribal members, Franklin Bearce wrote that William Cogswell was elected Sachem, and Earl Kilson and Howard Harris were chosen to be Sagamores and “the Eel Medicine man.” SIT Petition, Part IV, p. 73. Bearce was the Eel, as he was referred to as Swimming Eel in many pieces of correspondence and in oral recollections. The reasons behind the “reorganization” and election remain unclear. The SIT claims that they did this to strengthen their position in “negotiating with federal officials” over a Federal land lawsuit. SIT Petition, Part IV, p. 74. However, the SIT cites no documents contemporary with the election that might evince this. In the STN FD, the OFA explored the matter thoroughly and suggested that the organization “might have been established in response to the perception that the State was planning to sell the reservation.”¹⁹⁸ The OFA could find no specific evidence of such a plan.

In 1934 and 1936, two reports denied that the Schaghticoke had leaders. In 1934, Gladys Tantaquidgeon, an anthropologist and Mohegan tribal member working for what was then the Office of Indian Affairs (later the BIA), wrote that the Schaghticoke “have not had a chief or

¹⁹⁶ Id., pp. 50, 58.

¹⁹⁷ The SIT petition claims that George Cogswell wrote two letters to the Commissioner of Indian Affairs— one in January 1925 and another in February 1926. However, George Cogswell died in 1923. The OFA reviewed a 1925 letter and found that it had been sent by a relative, Julia (Cogswell) Batie and that it discussed the possible loss of the Reservation. It seems likely that this was the 1925 letter to which the SIT is referring. No further information is provided on the 1926 exchange.

¹⁹⁸ STN Final Determination (2004), p. 108.

headman in recent years.”¹⁹⁹ The SIT petitioner omits this evidence. In the STN FD, the OFA dismissed this evidence as unreliable due to the lack of details regarding Tantaquidgeon’s field research and her documented inaccuracies in describing the leaders within other New England tribes. In 1936, the minutes of a meeting by the State Forest and Park Commission, the entity that had oversight over the reservations in Connecticut, noted that the Schaghticoke had no leaders “recognized by the tribe.”²⁰⁰ The SIT petitioner objects to the Commission’s conclusion as incorrect, argues that the Commission failed to include tribal members who lived off the reservation, and reiterates its assertions that the members elected in 1933 were the tribe’s leaders. SIT Petition, Part IV, p. 75. The BAR and the OFA, however, accepted the Commission’s notes as evidence in all their evaluations of the STN.

The BAR and the OFA were skeptical of the STN’s claims of tribal political processes in the 1920s and 1930s. The STN PF found that there was no significant evidence to support the claim that George Cogswell was a leader and argued that there was no support for the assertion that Howard Harris was a leader before 1949 at the earliest. The evidence also did not support the claim of William Cogswell as a tribal leader. Nor did the PF find that the others identified in the STN petition qualified as tribal leaders or as “culture keepers” during this period. Rather, the BAR observed that “there is almost no specific evidence of Schaghticoke political activity from 1900–1949.”²⁰¹

Not surprisingly, the PF found that the evidence was not sufficient to meet criterion 83.7(c) between 1920 and 1940.²⁰² The STN FD reviewed additional evidence, particularly from oral interviews, and found that the combination of a well-defined community and continuous State recognition was sufficient to meet the regulatory requirements. However, the OFA acknowledged that there was “little direct evidence to demonstrate political influence within the Schaghticoke between 1892 and 1936.”²⁰³ The STN RFD reexamined the evidence, particularly that of the relationship between the State and the tribe and concluded that the State relationship was insufficient to meet the requirements. It reversed the FD’s decision and found that the STN had failed to provide sufficient evidence to meet criterion 83.7(c).²⁰⁴

4. Social Gatherings

From 1939 to 1941, there were three inter-tribal gatherings (or powwows) on the Schaghticoke Reservation. The SIT alleges that these gatherings provide evidence of community and tribal leadership through due to the assumed decision by the Schaghticoke to allow the use of the Reservation for the events and by the participation of the Schaghticoke.

In support of their claim that the powwows demonstrate that the tribe was “a discrete Indian community” that was recognized as such by other tribes and pan-Indian organizations, the SIT cites a 1939 *Newtown Bee* article as evidence that “the presence and participation of the numerous tribal peoples showed that local and nonlocal Indian tribes acknowledged the Schaghticoke as an

¹⁹⁹ STN Proposed Finding (2002), p. 128.

²⁰⁰ STN Final Determination (2004), p. 121.

²⁰¹ STN Proposed Finding (2002), p. 26.

²⁰² *Id.*, p. 31.

²⁰³ STN Final Determination (2004), p. 120.

²⁰⁴ STN Reconsidered Final Determination (2005), p. 58.

Indian community.” SIT Petition, Part IV, p. 54. Another article about the 1940 gathering observes that the event was sponsored by the American Indian Association and the Eastern Federated League of Indians, of which the Schaghticoke Tribe was an affiliate for this designation. Although the petitioner does not explain how one becomes an affiliate or what the requirements are, the SIT argues that the tribe’s “acceptance” by these two organizations demonstrated that other tribes identified the Schaghticoke as an Indian community. SIT Petition, Part IV, p. 54.

The analysis of the powwows as evidence of community in the STN proceedings reveal several flaws in the SIT’s argument that these social gatherings are evidence for community. While there was evidence of substantial Schaghticoke attendance at the gatherings, there was no direct evidence of Schaghticoke involvement in organizing them.²⁰⁵ The OFA concluded that the 1940 gathering was “a function of pan-Indian organizations.”²⁰⁶ The STN PF observed that at least one newspaper account stated that the 1941 powwow was sponsored by the Town of Kent “under the direction of the ‘Schaghticoke Reservation Council, Chief Grey Fox (Mohican) Chairman.’”²⁰⁷ However, there was no evidence that Chief Grey Fox was Schaghticoke or was working under tribal direction. Of the 1939 gathering, the OFA noted that there was some indication of Schaghticoke “sponsorship” from one of the announcements, but that the balance of the evidence indicated that the primary organizers were pan-Indian entities such as the Federated Eastern Indians League and the Council for American Indian Affairs.²⁰⁸

Although the STN did not claim that tribal business took place during the 1939–41 powwows, the OFA attempted to discern whether meetings of the Schaghticoke community occurred. Some of the oral interviews indicated that “informal gatherings” may have happened in the 1940s, but there was no evidence about participation, content, or support from Schaghticoke members. These “informal meetings” may have been referring to activities of the tribal council led by Franklin Bearce, a non-Schaghticoke organizer, during this era and they may have been separate from the powwows. The OFA was unable to demonstrate any connection between any Schaghticoke political or community meetings and the 1939–1941 intertribal powwows.²⁰⁹

Last, the SIT itself does not attempt to interpret these articles in such a way as to meet the criterion for 83.11(b). It repeatedly argues that these events demonstrate that external entities such as pan-Indian organizations, other Indian tribes, and local residents identified the Schaghticoke as an Indian community. This argument is better suited for criterion 83.11(a), identity of an American Indian entity. Furthermore, the SIT appears to assume that merely inserting the word “community” into its claim is sufficient to meet the evidentiary requirements of the acknowledgment regulations. Simply put, the articles cited by the SIT fail to demonstrate any nexus of social relationships, shared activity, marriages or cultural patterns needed to meet the standard for criterion 83.11(b). Symbolic identification of the group as Indian without evidence of cultural patterns specific to the Schaghticoke occurring within these gatherings is not sufficient evidence of community within the meaning of the regulations.

²⁰⁵ While the BAR and the OFA found sufficient evidence of substantial Schaghticoke attendance in these gatherings, the SIT does not cite several of the documents that evince this participation—the oral history interviews.

²⁰⁶ STN Final Determination (2004), p. 109.

²⁰⁷ STN Proposed Finding (2002), p. 134.

²⁰⁸ STN Final Determination (2004), pp. 109–110.

²⁰⁹ STN Proposed Finding (2002), pp. 134–35.

As to evidence of political authority under 83.11(c), the SIT cites an August 1939 article as providing “significant information on Schaghticoke leadership.” SIT Petition, Part IV, p. 75. However, the article only identified two men by name—Gray Owl and Franklin Bearce. Neither of these men were Schaghticoke and their roles as described in the article were ceremonial. The SIT claims that other 1939 articles demonstrate that Frank and William Cogswell possessed political authority through their ceremonial duties and “intermediary leadership role” in meeting a special train of outsiders. SIT Petition, Part IV, p. 76. The SIT uses another article about the 1940 gathering to argue that the event “implies Schaghticoke political authority, as Schaghticoke leadership would have needed to give permission to the pan-Indian organizations that sponsored the event to do so.” SIT Petition, Part IV, p. 77. Remarkably, the SIT argues that the title of an article, “Kent Indians Hold Three-Day Dance,” suggests that “the reporter witnessed active Schaghticoke participation in the management of the event.” SIT Petition, Part IV, p. 77. No explanation is provided on how the title evinces such a baseless conclusion.

The BAR and the OFA’s analysis of the STN petition reveal several flaws in the SIT’s argument regarding these gatherings as providing evidence for criterion 83.11(c). Although there was abundant evidence of substantial Schaghticoke attendance at the gatherings, there was no direct evidence of Schaghticoke involvement in planning, organizing, or managing the events. The OFA concluded in the STN FD that the 1940 gathering was “a function of pan-Indian organizations.”²¹⁰ The STN PF observed that at least one newspaper account stated that the 1941 powwow was sponsored by the Town of Kent “under the direction of the ‘Schaghticoke Reservation Council, Chief Grey Fox (Mohican) Chairman.’”²¹¹ However, there was no evidence that Chief Grey Fox was Schaghticoke or was working under tribal direction. Of the 1939 gathering, the OFA noted that there was some indication of Schaghticoke “sponsorship” from one of the announcements, but that the balance of the evidence indicated that the primary organizers were pan-Indian entities such as the Federated Eastern Indians League and the Council for American Indian Affairs.²¹²

The OFA did not seriously consider the STN’s assertions that the pow wows constituted evidence of tribal leadership both because use of the Reservation would require tribal permission or because the pow wows required “coordination and decision-making ... for the success of such a large-scale event.”²¹³ None of the three evaluations of the STN evidence cited the 1939–1941 powwows as evidence of political authority or influence.

Like the STN, the SIT has not provided any evidence of how the purported tribal decisions respecting the powwows were made nor who made them; and while the OFA suggested that the membership of Frank and William Cogswell on a sponsoring pan-Indian organization may have been a factor, this supposition was not sufficient evidence of political authority. The SIT has not submitted new or additional evidence to alter the prior analysis that the powwows did not provide sufficient evidence for political authority.

²¹⁰ STN Final Determination (2004), p. 109.

²¹¹ STN Proposed Finding (2002), p. 134.

²¹² STN Final Determination (2004), pp. 109–110.

²¹³ STN Final Determination (2004), p. 109.

5. Franklin Bearce and Leadership in the 1940s and 1950s

For political authority in the 1940s and 1950s, the SIT petitioner relies on claims of tribal leadership primarily by four men—Franklin Bearce, William Cogswell, Frank Cogswell, and Howard Harris—to demonstrate political authority or influence in the 1940s and 1950s. The BAR and the OFA explored the political activities and associations of these men thoroughly in their evaluations of the STN’s petition.

Franklin Bearce’s history with the Schaghticoke dates to the early 1930s when he first appeared on the scene. The SIT cites a 1934 letter from a resident of New York to the State of Connecticut. In this correspondence, the writer claimed one-quarter Schaghticoke blood and asked to be recognized as a member of the tribe. SIT Petition, Part IV, p. 74. The SIT does not identify the author or the result of his inquiry. Moreover, it is unclear as to how the letter demonstrates political authority or influence. Nonetheless, the BAR discovered evidence of this exchange and identified the letter’s author as Franklin Bearce. However, the BAR’s evidence indicated that Bearce did not specify the tribe, but instead asked for tribal rights. No definite outcome of the exchange was recorded. Bearce was not of Schaghticoke descent, and the BAR determined that this was known within the tribe.²¹⁴

Nonetheless, Bearce appears to become involved in the 1930s as he spearheaded the members of the tribe in an effort to file a lawsuit against the United States over undefined losses of land. In a letter sent to members of the tribe in 1955, he asserted that the tribe “reorganized” in 1933 and held elections for formal offices. This was a shift from the allegedly previously “informal” leadership preferred by the Schaghticoke. The letter claimed that Bearce (or Swimming Eel as he was sometimes called) was first elected as Medicine Man in 1933 and later as Tribal Chairman of the Claims Committee when their claims were filed. William Cogswell, Earl Kilson and Howard Harris were also allegedly elected to positions at the same time in 1933. SIT Petition, Part IV, pp. 78–79. The SIT provides no contemporaneous evidence of the election, community involvement, or of tribal governance in the early 1930s. The SIT cites several newspaper articles describing the powwows of 1939-1941 and argues that Bearce and others demonstrated tribal leadership through these events. SIT Petition, Part IV, pp. 53, 75–77. However, the SIT’s own descriptions of the articles show that Bearce only had a ceremonial role at best.

The SIT cites to the minutes of two tribal meetings held at the Schaghticoke Reservation as evidence of political authority and influence within the tribe. These were significant meetings since they documented a council with named officers and participants (the petition, however, did not provide the specific names of the officers). According to the minutes of the July 1949 meeting, the participants were concerned about the lack of housing on the Reservation and voted to “accept and file” Schaghticoke claims against the U.S. Government. The tribe subsequently submitted its petition to the Indian Claims Commission. SIT Petition, Part IV, p. 78. In 1954, the council held another meeting where it discussed the status of their land claims and held elections. SIT Petition, Part IV, p. 78.

In the STN PF, the BAR accepted the foregoing minutes as evidence of political processes, but questioned the STN’s claim that it was sufficient to evince the importance of the claims issue

²¹⁴ STN Proposed Finding (2002), pp. 136–37.

to the membership.²¹⁵ In the STN FD, the OFA had access to new evidence, and found that the Bearce council had indeed been “working closely with internal political figures and that their activities were of significance to the membership.”²¹⁶ The SIT petitioner cites virtually none of this evidence, which includes the existence of a council and officers in 1943, exchanges of correspondence between Bearce and State officials concerning housing, oral interviews, and consultations between Bearce and Schaghticoke tribal members.²¹⁷

The SIT also has identified William and Frank Cogswell as tribal leaders. The SIT asserted that William was “elected” as sachem in the meeting identified by Bearce in the early 1930s but provides no information on the duties of the position or its importance within the tribe. SIT Petition, Part IV, pp. 78–79. The OFA observed that William was one of the first Schaghticoke to become involved with Franklin Bearce, possibly through his membership in the pan-Indian Federated Eastern Indian League.²¹⁸ The SIT claims that William demonstrated leadership by his presence in the 1939–1941 powwows and notes when he is mentioned in the many cited newspaper articles. SIT Petition, Part IV, pp. 76–77. Despite these claims, William’s role appeared to be almost entirely ceremonial, and none of the articles describe any demonstration of internal leadership. The STN PF and the FD concluded that there was little evidence that William Cogswell had been a leader, although it was possible that he was involved in Bearce’s efforts from the mid-1930s on. The direct evidence for this, however, was lacking.²¹⁹ William Cogswell died in 1942.

His brother, Frank Cogswell, is first identified as a tribal leader in 1926. The SIT asserted that he participated in the 1926 reunion of the Schaghticoke Rattlesnake Club by keeping a register of reunion attendees. SIT Petition, Part IV, p. 49. As previously discussed, the BAR and the OFA dismissed the Club as a non-Indian entity of nearly all white men with no strong evidence of Schaghticoke tribal involvement. Frank was described as a chief in newspaper articles on the pan-Indian powwows in 1939 and 1940, and like his brother, his role appeared to be ceremonial. He did reside on the Reservation from about 1925 until his death in 1953.²²⁰ The STN PF and FD determined that Frank Cogswell was identified as a leader late in his life, from the 1930s until his death, but that “the evidence does not substantiate that he had a significant role as a leader separate from the office he held” and that his activities were ceremonial in nature, “which alone is not evidence of leadership.”²²¹

Like Frank Cogswell, the SIT petitioner identified Howard Harris as a leader as of 1926. It argues that Harris coordinated the Rattlesnake Club reunion and attempted to resuscitate the organization but was unable to do so. SIT Petition, Part IV, pp. 72–73. He was chosen as Sagamore in the 1930s reorganization related by Bearce in 1955, but he disappears from the SIT’s record until 1954. SIT Petition, Part IV, p. 73. In that year, Howard was elected as chief after Frank Cogswell’s death. SIT Petition, Part IV, p. 78.²²²

²¹⁵ *Id.*, p. 27.

²¹⁶ STN Final Determination (2004), p. 123.

²¹⁷ *Id.*, pp. 108–111, 114–15.

²¹⁸ *Id.*, p. 105.

²¹⁹ STN Proposed Finding (2002), pp. 148–150; STN Final Determination (2004), p. 105.

²²⁰ STN Final Determination (2004), p. 105.

²²¹ *Id.*, pp. 105–07.

²²² The SIT cites to page 113 of the Cogswell Family interview (CT-V004-D0032) as verification that Howard Harris was elected as chief in 1954. But that interview also evidences that prior to 1954 Franklin Bearce was considered the

In the STN PF, the BAR found that there was insufficient evidence of Harris' activities as leader or that he had a substantial number of followers either before or after his 1954 election.²²³ The STN FD reviewed new evidence, including oral interviews, and concluded that Harris had been involved in Bearce's council in the 1940s and had been in contact with Bearce for years. The OFA also reevaluated the oral interviews, particularly of Irving Harris and Catherine Velky, and found that they had downplayed the activities of the Bearce-led council and of Harris's role. Although the FD did not assert that Howard Harris was a significant force in Schaghticoke politics, he was involved during these years and contributed to the FD's conclusion that the STN met the requirements of 83.7(c) between 1936 and 1967.²²⁴ In its reexamination of the evidence, however, the STN RFD reversed the FD's conclusion regarding 83.7(c) for this period, but it did not reevaluate the FD's findings on the exercise of political authority or influence by the Bearce-led council.²²⁵

6. ICC Claims

In 1951, the Schaghticoke Council filed a claim with the newly created Indian Claims Commission concerning loss of lands in Connecticut and in the region. This claim had been discussed and voted on at a Council meeting in July 1949, and the SIT petitioner cites the July meeting, the claim, and its eventual dismissal as evidence for both community and political authority to meet criterion 83.11(b) and 83.11(c). The SIT argues that the July meeting demonstrated that tribal leaders were listening to community concerns and "actively seeking solutions." SIT Petition, Part IV, p. 78. The petitioner also argues that the claim and its eventual dismissal demonstrated "community and political authority" by the Schaghticoke Tribe. SIT Petition, Part IV, pp. 78-79. However, it is unclear as to how the claim itself and its dismissal demonstrates either community or political authority.

The SIT fails to explain how the how the Bearce-led ICC claim constitutes evidence for community under 83.11(b). Nothing is offered to demonstrate that the claim resulted from "the interactions or social relationship within the membership of the Schaghticoke in general or the SIT in particular." It seems certain that the ICC land claim was generated from outside of the tribe with Franklin Bearce's involvement. The evidence does not support the claim that the broader Schaghticoke community was involved.

In the STN proceedings, the BAR reviewed the documentation on the filing of the claim, the political machinations behind it, and the allegations of community support for it. It found that Franklin Bearce had led and coordinated the effort to file the claim. Bearce took the lead on finding legal representation, communicating with tribal members about the status of the claim, developing membership lists for the ICC, and advocating for Schaghticoke members to attend an ICC hearing.²²⁶

chief or "chairman", that the 1954 meeting was organized by Franklin Bearce and that the Truman and Theodore Cogswell did not know several of the families represented at that meeting, including Howard Harris. STN Record CT-V004-D0032, at pp. 112-16.

²²³ STN Proposed Finding (2002), pp. 146-49.

²²⁴ STN Final Determination (2004), pp. 112-13, 124.

²²⁵ STN Reconsidered Final Determination (2005), p. 57.

²²⁶ STN Proposed Finding (2002), pp. 138-45.

The STN PF found that the STN did not provide sufficient evidence under criterion 83.7(b) to meet the community requirement for the period between 1940 to 1967. The BIA did not even cite the ICC material in its summary evaluation for community in the decision.²²⁷ Thereafter, neither the STN FD nor the STN RFD discussed the ICC claims in the evaluation of the STN's evidence for 83.7(b) (community).

On the issue of political authority, the STN PF found that while there was "some evidence to indicate that the Bearce council dealt with issues of significance ... it has not been shown that the claims issue ... was an issue of importance to the membership in general and thus evidence for criterion 83.7 (c)."²²⁸ This negative finding was reviewed and revised to a positive finding in the STN FD in light of additional evidence. The STN FD concluded that the ICC claim was part of a "continuity of concern with the issue of protecting the reservation" and that the involvement of the three family lines provided evidence of community involvement.²²⁹ On further review following remand by the IBIA, however, the STN RFD concluded that the evidence was insufficient to establish political authority for the period from 1937 to 1967.²³⁰

7. Shift in State Governance in 1973

In 1973, the State of Connecticut passed legislation establishing the Connecticut Indian Affairs Council ("CIAC") and transferring responsibility for the State reservations and their communities from the Welfare Commissioner to the Department of Environment Protection ("DEP") commissioner. The legislation also redefined "Indian" in the State's statutes as someone with 1/8 Indian blood from one of five resident tribes in Connecticut, one of which was the Schaghticoke. The SIT argues that this legislation resulted from a tribal movement originating in the late 1960s. SIT Petition, Part IV, p. 80. The SIT petition includes a few vague lines identifying the Schaghticoke as at the vanguard in an effort against the Welfare Department in the 1960s and that this effort "became a statewide movement for the tribes to have more autonomy." SIT Petition, Part IV, p. 79. Presumably, the SIT is arguing that this effort was due to Schaghticoke leadership and political activity that resulted in the 1973 legislation, although the petition provides no description or explanation to substantiate this passing reference. Remarkably, the SIT fails to provide evidence of council activities, communications with the State and allies, or any evidence of support within the broader Schaghticoke community for the legislation.

Although there is no disagreement that the 1973 legislation recognized the Schaghticoke as a tribal entity, it does not follow that this recognition provides evidence of a community as defined within the Federal acknowledgment regulations. Indeed, the statutes expressly provide that "[n]othing in this chapter shall be construed to confer tribal status under federal law on the indigenous tribes named" in the state statutes. Conn. Gen. Stat. § 47-66h(b). As with several of its claims under the category of meeting community, the SIT seems to be providing evidence for criterion 83.11(a) instead. In fact, the SIT also has presented virtually the same evidence for criterion 83.11(a) as well as for criterion 83.11(c). The SIT simply ignores the distinctions between identity, community, and political influence or authority as defined in the acknowledgment

²²⁷ Id., pp. 17, 19.

²²⁸ Id., p. 27.

²²⁹ STN Final Determination (2004), p. 122.

²³⁰ STN Reconsidered Final Determination (2005), p. 57.

regulations. Furthermore, the State legislation does not include any information on specific cultural patterns of the Schaghticoke, but rather redefines the State's relationship with all five of its recognized Indian tribes.

The SIT's claims regarding this legislation include no evidence of Schaghticoke leadership. The petitioner fails to provide evidence of Schaghticoke activism, intertribal coordination, internal discussions of council activities, communications with the State and allies, or of support within the Schaghticoke community. While there is no disagreement that the 1973 legislation recognized the Schaghticoke as a tribal entity, it does not follow that that action in itself provides evidence of community or of political authority.

The STN RFD concluded that prior to 1973 the State of Connecticut did not implicitly or explicitly predicate its policies regarding the Schaghticoke on the basis of any recognition of the existence of bilateral political relations within the group. The RFD then concluded that while the legislation passed in 1973 and more particularly in 1989 did establish a relationship with the Schaghticoke, that legislation did not provide any evidence concerning the exercise of political influence or authority within the group.²³¹

E. The SIT Petition Does Not Satisfy Criterion 83.11(d) for a Governing Document, Which Has Been Improperly Withheld.

The public has not been provided an adequate opportunity to comment on governance, descent and tribal membership because the Department has refused to provide a copy of the SIT governing document as well as the current and past membership lists of the SIT. Nonetheless, available evidence indicates significant deficiencies with the SIT petition under these criteria.

The most recent and only SIT governing document available to the Connecticut Parties is the SIT's 2002 constitution submitted in connection with Petition #239 and the 2019 petitions. The only certified membership list available to the Connecticut Parties is the October 5, 2002 SIT tribal roll submitted in connection with Petition #239 and made a part of the STN administrative record. *See* STN Record BR-V006-D0003, BR-V006-D0004 and BR-V006-D0005. The Parties, however, do have available SIT membership lists subsequently filed by the SIT with the State of Connecticut in 2009 and 2010.

Curiously, the 2002 SIT constitution and tribal roll introduced the notion of clans to the Schaghticoke that did not have any documented historical or cultural antecedents among the Schaghticoke. Their genealogist, Mark Choquet, identified Gail Russell Harrison as a Blue Heron Clan²³² member of the Schaghticoke Indian Tribe. SIT states that this clan "identification" (by Choquet) was acknowledging the tribe as an Indian community.²³³ It lists the clans as: *Tommuck (5)*, *Musqui Wonkquassis (4)*, *Peshani Heron (23)*, *Attuck (23)*, and *Mooi Muckquashim (18)*.²³⁴ The *Musqui Wonkquassis* and *Attuck* (total 27) were listed as "pending." Only some of the *Peshani*

²³¹ STN Reconsidered Final Determination (2005), p. 48.

²³² From Gail Russell Harrison's listing on the 2002 SIT membership list, it appears that the Blue Herron Clan and the Peshani Heron Clan are one and the same.

²³³ Letter from Schaghticoke Indian Tribe Genealogist to Member Gail Harrison, December 12, 2001, SIT Petition (2019), Doc. F-36, pp. 64, 163.

²³⁴ STN Record, BR-V006-D005.

Heron (18) and all *Mooi Muckquashim* (18) and *Tommuck* (5) are Schaghticoke descendants who had 20th century membership in the STN prior to 1997. The petition does not explain, however, how these clans were identified, how individuals were determined to be a part of them, and how they related to tribal governance or activity. Moreover, the clan construct has never been an organizational device for the Schaghticoke Tribe. As a result, the concept of clans within the SIT should be dismissed as not relevant under any of the criteria.

The SIT asserts that it has a seven-member Tribal Council organized under its 2002 Constitution. SIT Petition, Part I, p. 4. It further asserts that its membership is derived from Gideon Mauwee, the first leader of the Schaghticoke recorded by non-members. SIT Petition, Part I, p. 4. The SIT does not address how descent from this single individual constitutes descent from a historic Indian tribe, presumably because it is an insufficient basis for tribal acknowledgment. See *Phase I—Negative Proposed Finding Femandeno Tataviam Band of Mission Indians* (May 20, 2022) at pp. 17–18, at [Phase I Proposed Finding - FTB \(bia.gov\)](#). The SIT also fails to document how the eight (8) family clans identified in its constitution are descended from Gideon Mauwee.

Moreover, although eight (8) family clans are identified in the 2002 constitution and although each clan is entitled under that constitution to two (2) representatives on the SIT Tribal Council, it appears that there are only seven (7) members on that council. SIT Petition, p. 4. Alan Russell is described as Chairman of the Council; Steven Birch is identified as Co-Chairman, an office not established by the constitution. The other Council members are Vice Chairman Gail Donovan—a/k/a Gail Russell Harrison Donovan²³⁵, Deborah Richards, Jeffrey Kilson, Jason Lamb and Eric MacDonald. SIT Petition, Part I, p. 4. The petition fails to articulate why all of the clans identified in the constitution are not represented on the Tribal Council.

Another peculiarity of the 2002 SIT constitution is that Article III, Membership states that “[a]ny person who can document their direct descent from one or more of the Tribe’s recognized clans is entitled to enroll as a member of the Tribe.” This allows persons who have had no modern connection and those whose ancestors had no recent connection to the historical Schaghticoke tribe to be enrolled as tribal members based on descent only.

Another concern is that although the petition states that the SIT is organized under its 2002 constitution (SIT Petition, Part I, p. 4), the SIT refers to two (2) undisclosed recent documents purporting to constitute the SIT’s governing documents. The petition states: “As an independent group of people, the Schaghticoke offers membership to all of its people that descend from that distinct group of people.” SIT Petition, Part IV, p. 87, par. 4, pp. 87–88, par 6. The phrases “its people” and “distinct group of people” are not defined.

All these deficiencies demonstrate that the SIT has failed to satisfy criterion 83.11(d) for a sufficient governing document. Even if the SIT is relying on other evidence for its governing document, OFA cannot make a finding in favor of SIT under this criterion without making the submitted evidence available to the Connecticut Parties for review.

²³⁵ Although describing Gail Donovan as Vice Chairman of the SIT at page 4 of the petition, Gail Donovan is not listed as an officer or member of the tribal council at page 3 of the petition, paragraphs C and E.

F. The SIT Petition Does Not Meet Criterion 83.7(e) to Show a Current Membership List and Descent from a Historical Tribe, or from Historical Indian Tribes Which Combined and Functioned as a Single Autonomous Entity, and the SIT List Has Been Improperly Withheld.

As noted, the only certified membership list available to these interested parties is the October 6, 2002. SIT tribal roll submitted by the SIT in connection with the STN petition and made a part of its administrative record (*See* STN Record BR-V006-D0003, BR-V006-D0004 and BR-V006-D0005) (A-89). The Parties, however, do have available two SIT membership lists subsequently filed by the SIT with the State of Connecticut. The membership roll dated January 23, 2009 (A-5) listed 131 members. The membership roll dated February 15, 2010 (A-100) listed 200 members. This compares to the current membership roll of 44 members listed on the petition's undisclosed membership list.

It is readily apparent that the SIT membership has undergone drastic changes since 2002, including the exclusion of previously enrolled members and re-enrolling others. The SIT's inability to govern its membership, that is, to limit membership to individuals who have Schaghticoke ancestry and close ties to the historic tribal community indicates the SIT has not adhered to the membership criteria necessary to show descent from a historical tribe. These actions impact negatively on the SIT's ability to meet the mandatory criteria 83.11 (b), (c) as well as (e).

As noted above, the 2002 SIT membership list introduced a new, perhaps short-lived clan notion without any historical or cultural reference identification.²³⁶ Given the absent explanation of determining the existence of clans, statements such as this are dubious and unacceptable as evidence.

The membership split of the SIT from the STN has been previously discussed, but a brief comment is warranted concerning what was perhaps the very first membership list of the SIT—the document entitled “The Gathering of the Tribe,” dated October 24, 1997. Following a very contentious meeting held on October 5, 1997, at which a vote was taken on the new constitution of the STN and at which several Schaghticoke individuals were prevented from voting, Alan Russell and others submitted the document entitled “The Gathering of the Tribe”, dated October 24, 1997, to the BAR. STN Record AC-V006-D006. The Gathering of the Tribe was signed by twelve individuals associated with the Schaghticoke community who asserted to be members of the Schaghticoke Tribe and who announced in the document that the STN from Monroe CT “have [sic] ‘NO’ authority or jurisdiction over us”. The Gathering of the Tribe was the first indication of the formation of the splintered SIT group. The signatures on this declaration included Ronald Harrison's spouse, Amy Harrison, a non-Schaghticoke, Edward Harrison's spouse, Maria Harrison, a non-Schaghticoke, Russell Kilson's girlfriend, June Hatstat, a non-Schaghticoke who also dubbed herself “Princess Chikara,” Alan Russell's wife, Karen Russell, a non-Schaghticoke, Edward W. Harrison, a year and a half year old minor child, and Jason Lamb, who on December 12, 1997, forwarded a notarized letter to the BAR stating his “name was placed on the document without my authorization and I disavow any and all statements contained in the documents.” STN Record SN-V052-D0146. The SIT petition, however, repeatedly claims another letter of this same

²³⁶ Letter from Schaghticoke Indian Tribe Genealogist to Member Gail Harrison, December 12, 2001 SIT Petition, Part II, p. 82

date offering an entirely different description.²³⁷ Thus, this membership list, and history of how it came into being, confirms that the SIT is a splinter group of the STN.

1. Background of Known Genealogical and Community Problems Reflecting the Fluctuating SIT Membership Rolls in 2002, 2009, 2010, 2012, and 2019 and 2020.

Criterion 83.11(e) requires the SIT to establish that its “membership consists of individuals who descend from a historical Indian Tribe (or from historical Indian tribes that combined and functioned as a single autonomous entity).” To satisfy this criterion, the petition states: “The narrative cover pages and narrative report of Dr. Lucianne Lavin contains the full history of Schaghticoke. A representative sample of this history attached is D-1(b).”²³⁸ SIT Petition, Part IV, p. 87, par. 5. As discussed in this section, there are several deficiencies with the Lavin narrative report.

Not only does the petition narrative fail to describe who the membership consists of or how that current membership derives from the historic tribal membership, but a copy of attachment D-1(b) is neither identified nor provided as part of the petition materials available to the public. SIT Petition, Part IV, p. 87, par. 5.

In the 2019 petition documents, the SIT’s response to criterion 83.11(e) was:

*Current Membership List: Please see yellow hanging file folders for current list of members and associated membership and genealogy documents. As the Tribe has refined and clarified its membership processes, members who have chosen not [to] participate or responded and complied with basic registration process requirements are no longer in contact with the Tribe by choice, no longer living, or otherwise. As we therefore have no current records for those persons, they are no longer tracked or included within the jurisdiction of the tribal government’s membership. (Emphasis added).*²³⁹

This statement that the Tribal Council does not track or include information concerning former members violates Article III, Section 13 of the SIT’s 2002 constitution.

Part I of the petition identifies the council as Chief Alan Russell, Co-chair Steven Birch, and council members Jason Lamb (born in 1989 and new to the SIT), Jeffery Kilson, Eric McDonald [sic], and Deborah Richards. Later, in the introduction, Gail Donovan is mentioned as Vice-chair. Nothing is offered vouching for the authorization of this new council or the authority to submit the 2020 petition.

The introduction to the report also begins with an erroneous genealogy of Reservation residents. The narrative fails to note that: Maryett Kilson (born 1851) and Peter Jessen had no

²³⁷ SIT Petition (2019), L-132A, pp. 24, 114, 115, 158, 163, 241, 249. “Letter from Jason Lamb stating that Alan Russell and his family are Schaghticoke and that the letter that was attributed to him stating the contrary was not signed by him.”

²³⁸ SIT Petition (2020), p. 87.

²³⁹ Id., p. 178.

children; Maryett's daughter Bertha (born 1879) was illegitimate; not Maryett Kilson but Bertha was the mother to Earl S. Kilson (born 1898), Ethel M Riley (born 1904), Julia Riley (born 1813) and Katherine Riley (b.1917), and Russell Kilson (born 1932) was Earl Kilson's son.

The report also incorrectly states that Jabez Cogswell lived on the Reservation; but according to the 1850 to 1900 Federal censuses Jabez and his family lived in New Milford, and not on the Reservation. His son George Cogswell, claimed as a leader by both the STN and the SIT, lived with him in New Milford before he married Sarah Bradley and then moved on to the Schaghticoke Reservation by 1870, where he lived until his death in 1923.

For the line of Chief Alan Russell (born 1946), the introduction listed Elsie V. Harris (b.1879) marrying her own grandson Alan Russell instead of his biological grandfather, Albert Bishop (b.1871). This error has been repeated several times. Elsie V. Harris married Allen J Russell (a non-Indian, born 1869) in 1905 following the death of her first husband Albert Bishop in 1899 and her second husband Erwin Dwy in 1900 and divorcing a third husband Walter William King (b.1874) around 1902. SIT leader Alan Russell's (born 1946) father, William S. (Bishop/Dwy/Russell),²⁴⁰ was born in 1897 and is on the 1900 census. William was illegitimate and his original 1897 birth record is in the Kent Town Hall. Later, on March 19, 1942, a birth affidavit for William S. Russell was also filed in the Kent Town Hall but with incorrect information on Williams' birthdate (1899 instead of 1897) and the name of his father (Allen Russell).

The introduction of the report ends with the statement that: "SIT has always disputed STN's reliance on its family history but relies in part on the evidentiary findings of the BIA." This statement is contrary to the SIT's own reliance on those same family histories and only confirms that the SIT is a part of the STN. For its family histories, the SIT is relying on the family histories of the members of the STN, all of whom were determined to be descended from the historic Schaghticoke tribe. The SIT is required to show, however, the descent of its members from a historical Indian tribe by demonstrating that its members and not the members of some other tribe that failed to obtain federal acknowledgement trace back through time to that historical tribe. These kinds of fundamental errors in the SIT's petition and research methodology confirm that the group has not met its burden to demonstrate that it meets the acknowledgment criteria.

2. The 2002 Membership List

Issues concerning the 2002 membership list have been previously discussed. As discussed in this section, the many deficiencies and questions associated with the 2002 membership list confirm that the SIT cannot rely upon it to meet criterion 83.11(e).

Almost immediately after the SIT submitted that list, thirteen individuals (listed as #1-2, 15, 28, 31-33, 45, 67-71) resigned and joined the STN. See Austin, *Schaghticoke Tribal Nation's Analysis of the Schaghticoke Indian Tribe's Membership List* (Sept. 28, 2003), Appendix A, pp. 10-18 (STN Record, SN-V072-D0022) (A-111). See also STN FD at pp. 141-42. Twenty-three

²⁴⁰ Due to Elsie V. Harris' succession of husbands, it appears from various records that her subsequent husbands (except Walter King) following the decease of Albert Bishop adopted his son William and, however briefly, gave him their surnames. Allen J Russell (b.1869) was Elsie's final husband, and likely the most important stepfather to William S., and so maintained the Russell surname for life.

(23) names on the list were associated with the so-called Attuck clan (Jenkins, Trueheart, etc.) (nos. 46–66 and 71–73). Fourteen (14) of those twenty-three (23) names were listed as “pending.” See Table 2, STN Record BR-V006-D0005, pp. 6–9. All of these individuals were stated to be descendants of Jabez Cogswell through his daughter Ellen Cogswell Seeley. See STN RFD, at pp. 66–67. As of the late 1990s, these individuals had not been members of the Schaghticoke Indian Tribe of Kent Connecticut, Cultural Preservation Project, Incorporated. STN Record, AC-V008-D0005. Although claiming to be of Schaghticoke descent, these individuals were not descendants of anyone who had lived in tribal relations with the Schaghticoke in the 20th century. STN PF, at pp. 6, 212–13; STN RFD, at pp. 66–67. See STN PF, p. 113, n.148, concerning Jabez Cogswell and his daughter Ellen. See also STN PF at 122.

In petition #239, the SIT also provided a membership list dated September 5, 2005, which was not separately certified, in the “supplemental” materials that were certified by the SIT governing body as a part of its documented petition. One of the petitioner’s reports prepared by Mark Choquet also referred to a December 19, 2003, membership list; however, this list was not in the materials submitted in September 2005.

The SIT included genealogical descent charts for each of the “clans” representing the SIT’s family lines, which list generations prior to the SIT’s known ancestors by a “clan” name. For example, the section on the “Descendants of Tommuck Clan, Schaghticoke Indian Tribe” lists Generation No. 1 as “Tommuck Clan, Schaghticoke Indian Tribe,” Generation No. 2 as “Child of Tommuck Clan, Schaghticoke Indian.” and Generation No. 3 as “Schaghticoke Indian.” Generation #3 children were identified as Mary Ett, Emma J., Charles William, Frederick, and Lucy Kilson. It is unclear why the SIT’s chart did not include the names of the parents (Eliza Ann Kelly and Alexander Value Kilson), both of whom were members of the Schaghticoke tribe and resided on the Schaghticoke reservation until their deaths in 1899 and 1907, respectively. See the STN PF, FD, and RFD for additional, documented evidence concerning the grandparents and great-grandparents of these five Kilson children. By omitting the already documented parents and inserting unsubstantiated, generic “Schaghticoke Indian” or “clan” designations, the SIT report omitted the direct evidence that connected the Kilson siblings to members of the well-documented Schaghticoke tribe as it existed in the 1800’s. The undocumented “clan lineages” referenced in the report did not provide any new evidence for Petitioner #239’s claims for descent from the historical tribe.

Petition #239 includes birth records and other vital records for most individuals on the membership list; however, there are about 15 individuals who did not have birth or other records that named parents. Some of the “short form” birth records issued by hospitals have the child’s name and birth date, but not the parents’ names, and some of the individuals on the membership list do not have residential addresses; in particular, the individuals identified on the October 6, 2002, list as “pending” were missing the required birth dates and addresses and documentation connecting them to individuals who were identified as part of the Schaghticoke tribe.²⁴¹

²⁴¹ OFA TA Letter, Sept. 14, 2006, pp. 5-6 (A-28).

The inability to document its membership descent from a historical tribe and to otherwise solve its membership problems is perhaps the reason that the SIT's 2002 petition #239 languished and was ultimately "terminated" in 2015.

3. Methodology for Creation of a SIT Genealogy Database

The available evidence highlights the SIT's erratic membership rolls, as well as its poor documentation of Indian lineage. Based on the 1900 and 1910 Schaghticoke Indian Reservation censuses, we have created an online Family Tree in www.ancestry.com entitled "**Brick FT**" that includes the individuals and families listed there. Other Reservation censuses of 1850, 1860, 1870, 1880, 1920, 1930, and 1940 have also been entered in this tree for continuity. From these sources, families have been traced through time with a particular focus on vital records and identification of a "community." The tree also includes data from the DOI's findings pertaining to the STN.

Access to the **Brick FT** database can be provided to authorized persons upon request. That link is not provided in this comment submission because it is a public document and the database includes personal information. Presumably OFA has an existing account that will allow it to access this important information, but please contact any of the counsel submitting these comments if assistance is needed.

This genealogy file is an accessible electronic database for individuals and collateral families associated with both the SIT and STN genealogies. In addition, there are listed several non-Schaghticoke claimants, i.e., the Bruce family, which is unattached but can be found through Tree Search in **Brick FT**. Attaching records to each family member and document family lines is an effective procedure for visual clarity and validation. Also useful are Schaghticoke genealogies compiled by the State of Connecticut to track descendants regarding residency on the Kent Reservation, and to determine future need for State services. These combined resources establish the initial framework for evidence of recognized Schaghticoke Indian ancestry. In the final analysis, the preponderance of evidence must demonstrate Schaghticoke Indian ancestry for the least 80 percent of the SIT members if the petitioner is to begin to meet criterion 83.11(e), descent from an historical tribe, in the OFA's Phase I review. Eighty percent descendancy is the current minimum standard for meeting criterion (e); two petitioners, Samish and Pamunkey, were acknowledged with that rate among its memberships.

During the period that the STN was under review, the BAR began its evaluation by first examining the petitioner's genealogy, membership criteria, and official rolls. The BAR genealogist examined consistencies and discrepancies in the individuals in the group through time, checked the authenticity and reliability of records used, and confirmed whether the modern individuals were authentic Indian descendants of a historical tribe. In its findings, the OFA ultimately concluded that 100 percent of the allowable STN members were Schaghticoke descendants. The OFA recognized that the STN had listed names of members who refused to submit their required documentation for voting membership in 1997. The STN recognized these individuals and did not strike them from the roll but suspended their voting privileges according to its constitution. The OFA noted that the SIT members were a small segment of the Schaghticoke descendants who had been listed on previous STN rolls, and that still others on the 2002 SIT membership list lacked community connections in the 20th century. *See, e.g.,* Jenkins, Trueheart, Offutt, Stewart families, STN PF (2002), pp. 6, 212-13; STN RFD (2005), pp. 66-67, 113, n.148.

Pointedly, Article II of the SIT constitution does not reflect positively on its evidence for community. Nowhere in this document is there a requirement for evidence of maintaining relations with the Schaghticoke community. The lack of any regard for 20th century community is reflected in the review of the SIT membership rolls below.

A 2010 membership roll for SIT was submitted to the Connecticut Department of Environmental Protection, which oversees the Schaghticoke Reservation in Kent. This roll (A-100) contained the names of 200 adults and children. Our analysis of this roll has determined that the 2010 membership consisted of: (a) people who were formerly associated with the STN petitioner (31.5%); (b) people who had Schaghticoke ancestry but were not part of the Schaghticoke tribal community (3%); and (c) people that had no identifiable Schaghticoke or Indian ancestry (53.5%). This roll's inconsistency has weighty repercussions for meeting criteria (b) and (c). This is because the membership did not reflect the historical Schaghticoke community, and the SIT leadership obviously allowed non-Schaghticoke families on to its rolls without verifying the interlopers' documented genealogy.

In order to establish descent from a historical Indian tribe, the SIT must demonstrate Schaghticoke ancestry for its members. Apparently, the SIT adjusted its tribal rolls for purposes of its documented petition, having pared down the roll numbers to 44 adults. The SIT makes no attempt in the publicly released petition documents to trace its current membership to the historic Schaghticoke, to relate that membership to the historic Schaghticoke community, or to explain how and why its membership changed so dramatically between 2002 and 2020. Nor does the SIT make any effort to reconcile the findings in the STN RFD that a substantial number of members identified on its 2002 membership list had no recent connection to the Schaghticoke community.

A simple percentage analysis of the verifiable Schaghticoke individuals present on the 2010 roll shows that the valid membership according to the SIT constitution was well below the 80 percent threshold required by the acknowledgment regulations. By not explaining how its membership became so inflated by 2010 and has now significantly decreased to the present 44 adult members, the SIT cannot satisfy criteria (b), (c), and (c). The expansion of the SIT membership roll to 200 individuals in 2010 is summarized in the following table:

Names identified genealogically on SIT 2010	Known problems	Not able to identify
Anderson--2 >2 lines possible	*MacDonald--8	Albright-Coupland--1
Andrews--2	*Hatstat/ Mosher (non-Indian)--1	Allen--2
Beaty--7	*Bruce--14	Aquayo--2
Birch--4	Bruce-Berry--1	Bartolini--1
Carter--1	Bruce-Turner--1	Buxton--3
Cornish--1	Bruce-White--1	Buxton-Rost--2
Craig--2	Langece-Bruce--1	Coffey--4
Craig-Moorhead--1		Corbet--1
Eades--3	(OFA found no Schaghticoke ancestry in 2002 STN pf for Chief Suwarrow/Harold Bruce	Cumps--1
Harrison--4	~~~~~	Davis--2
Harrison-Donovan--1	27	Deering--1
Johnson--4 +3+1?		Deshaun Jackson--1
Kilson--4		Edmond--1
Mayo--2		Fitler?--1

Overend--2 Pennywell--7 (Olivia d. 2014) Ritchie--9 Ritchie-Looney--1 Russell-- 2 Richards--4 <i>Offut--1</i> <i>Stewart--2</i> <i>White--3 (JDK Kilson or Bruce?)</i> ----- 63+6		Flavell--1 Francis 3 Hendricks--3 Innis--2 Labrecque--1 Porter--3 Schaum-- 1 Thomas--1 Turner--1 Tynsdale-- 2 Ready--1 Vines--2 Watson--1 Williams--7 <i>One Family Grouping</i> Coddington--3 Coddington-Wilson--1 Coddington-Kellerman--1 Coddington-Stoerzinger--1 Stoerzinger--2 Stoerzinger- Coletti--1 Coletti--3 Coddington-Hicks--1 Hicks--17 Coddington-Broughton--1 Broughton-Goforth--1 Goforth--1 Goforth-Lemus--1 Broughton--12 Broughton- Mercado--1 Mercado--2 Mercado-Clark--1 Clark--1
71	27	102

The present SIT petition narrative makes no reference to the much larger roll the group submitted to the State in 2010. Those individuals listed in the “Not able to identify” column in the table above have no traceable Schaghticoke genealogy evidence in *Ancestry.com*. The 2019 and 2020 SIT rolls no longer reflect these members, and the SIT does nothing to explain why they were members in 2010 and why they are not members today. In summary, the SIT membership rolls are widely varying in composition and number of members and the petitioner has failed to establish that it has the requisite number of members with validated Schaghticoke descent to meet the acknowledgment criteria. If additional evidence is available that would address this deficiency, OFA cannot issue a determination in favor of SIT on the descent issue without making the evidence available to the Connecticut Parties for review and comment.

4. Tracing Schaghticoke Outliers

Since Steve Austin's analysis of the SIT membership roll in 2002,²⁴² *Ancestry.com* technology has made the following analysis of non-Reservation Schaghticoke descendants possible.

Trueheart and Jenkins Families

The Trueheart and Jenkins families (who descend from Ellen Cogswell Seeley) were listed among the SIT membership. In the SIT roll analysis in the STN PF, the BAR questioned the same nine members from these families, who were still identified on the 2010 SIT roll. Both families trace back to Ellen Cogswell (born 1846) who was George Cogswell's sister. George (born 1840) was a Reservation resident until his death in 1923. Jabez Cogswell (born 1808) was their father. Jabez's sister Ann Cogswell Jenkins (born 1825), was an aunt to Ellen and George. Ellen Cogswell married Elias Seeley whose sister Clarinda Seeley married William H. Cogswell (born 1834), son of Nathan Cogswell (born 1807), who was Jabez Cogswell's brother. The Cogswells are all direct descendants from Schaghticoke members Peter Mauwee and Elizabeth Warrups through Jeremiah Cogswell/Coxel/Cocksure (born 1797). See **Brick FT**.

An interesting picture forms when the intra-marriage connections and their off-Reservation residencies are traced through history. Following the Civil War, most of these men and women were recovering from the loss of family. They were among the many soldiers in the Connecticut 29th Colored troops and retained their connections to their wartime comrades. Some were veterans, others were widows and orphans who appeared to cluster in extended families in the Torrington area. The Seeley and Jenkins families displayed no documented relationship with extended family members of the Schaghticoke in Kent. However, the State of Connecticut genealogies in the 1930s did track their descendants, as well as the Moody family discussed below. The OFA has already identified these lines as lacking Schaghticoke tribal community in the 20th century, but the SIT has not incorporated these earlier findings. Although the Trueheart and Jenkins family members have been on the SIT rolls and have Schaghticoke ancestry, they have not been documented to be part of the historical community and were not members of the STN.

Offutt/Stewart Families

This family does descend from the Schaghticoke Cogswell, Chickens, Warrups/Mauwee families of the 18th century. See **BrickFT**. Mary Ann Philips (born 1823), who married William Riley Cogswell (born 1820) was found on Schaghticoke overseers reports, censuses, and petitions in the 19th century. Mary Ann (Phillips) Cogswell was also listed with her children by Overseer, Martin B. Lane on the 1902 Schaghticoke tribal census ordered by the Litchfield Court of Common Pleas, (LLCP, Vol. 3, p. 124.) Their daughter Nancy Mary Cogswell (born 1853) married Bland Moody and their family lived in the New Haven area. Nancy Mary's daughter Mary Elizabeth Moody (born 1882) married a Cogswell cousin, Chester Burton Cogswell (born 1880); Nancy's son James William Moody (born 1888) was father to Nancy Elizabeth Moody (born 1921), who married Welles Offutt; another daughter Alice Marie Moody (born 1915) married Horace Stewart. The New Haven family has no evidence of 20th century tribal community involvement. however.

²⁴² Steve Austin, Analysis of the SIT Membership, 2003 (A-101).

They were never enumerated on Federal censuses of the Schaghticoke prior to the 1902 Litchfield Court-ordered census of the tribe. The members of the Offutt/Stewart family are on the rolls of the SIT and are Schaghticoke descendants. However, they have had no documented relationship with the historical Schaghticoke tribe since the early 20th century and were never members of the STN.

5. Families with No Identified Indian Ancestry

The Bruce Family

The Bruce family is likely associated with Harold Bruce (born 1907) *a.k.a.* Chief Arion Suwarrow from the Schaghticoke's Docket 112 claim years. He, along with Franklin Bearce, *a.k.a.* Chief Swimming Eel, were members in the Federated Eastern Indian League (circa 1945) and the American Indian Federation organizations. Harold Bruce (1907–1996) was found to have no Indian ancestry by the State of Connecticut when he sued to live on the Schaghticoke Reservation.²⁴³ The State has records relating to Harold Bruce's bid. The Bruce ancestors were traced to the Dutchess County, NY and the Kent-Sherman, CT areas prior to 1900. Harold's maternal grandfather was Aaron Swarrow/Suwarrow (born 1814 in Poughkeepsie, NY, died in 1895 in Sherman, CT). The family is consistently identified as "black" through time on census and vital records.²⁴⁴ Additional research places Bruce's paternal grandparents' birthplaces as Virginia and Washington, D.C. This line can be followed in **Brick FT**. We have been unable to find more current records online that document any legitimate connection to any Schaghticoke individual. Yet, when the 2010 SIT roll was authorized by the SIT Council,²⁴⁵ Joya and George Bruce had been "re-enrolled" by Gail Harrison, chair for the SIT 2009 membership roll.

Swimming Eel (Franklin Bearce²⁴⁶) was instrumental in getting William S. Russell onto the Reservation to live in 1951. In addition to Bruce's and Bearce's questionable genealogy, the State dealt with other claims from Princess Necia (Shanks) Hopkins²⁴⁷ and Chief John Farrar,²⁴⁸ who were also not accepted by the STN leaders. Interestingly, the ancestors of Hopkins, Farrer, and Harold were all from the same NY-CT area, and some did intermarry. John Farrar also connects to the Heddy/Heady-Benson-Heacock families of New Milford, CT. These families were known as black, mulatto, and Schaghticoke Indian and for being on close family terms with the Cogswells, Johnsons, Phillips, and Pennywells. This New Milford enclave of families appeared to want to be modern and self-reliant—and not to be considered "reservation Indians." A pictorial history of New Milford captures their images, and several seem to have Indian features. Many of the images are entered into the **Brick FT**. The SIT included many copies of these in its 2020

²⁴³ STN Proposed Finding (2002), Appendix I, pp. 146, 212–13 ("There was no evidence in the record of any further involvement with the Schaghticoke by Bruce.").

²⁴⁴ There is another Suwarrow contemporary of Aaron's living in Poughkeepsie, Francis Suwarrow (born about 1810) on Pico Island, Azores, Portugal, although Francis was identified as being white.

²⁴⁵ Tribal Council Chair Mary MacDonald, and council members Ian Porter and Janette Stoerzinger had questionable Schaghticoke ancestry.

²⁴⁶ Franklyn (Franklin) Bearce's genealogy shows that, while resident in New Milford and other areas of Schaghticoke clustering, his ancestors were all of European descent. No reliable genealogical source accepts the Bearce family lore of descent from tribes in the area.

²⁴⁷ STN Proposed Finding (2002), Appendix I, p. 156: "Who is Schaghticoke?" Dec. 4, 1969.

²⁴⁸ John A Farrar, 56, known as Schaghticoke Chief Meantinaug. Sept. 17, 1992, STN Record.

petition submission. The Bruce family ancestors had relationships with Schaghticoke families, but they lack any known Indian ancestry,

MacDonald—Russell Family (8)

The MacDonald family claims ancestry through an illegitimate liaison. [REDACTED] was William Shelton Russell born in Kent. In a working hypothesis, two different William Russells (both born in 1897) are entered in **Brick FT**. As [REDACTED] there is a distinct possibility the wrong father was claimed. Certainly, no preponderance of evidence exists for either of the two William Russells [REDACTED] and in accordance with the SIT constitution, no MacDonald family descendants are eligible for enrollment. The following discussion will be easier to follow using **Brick FT**.

Case #1: William Shelton Bishop/Dwy/Russell, born 1897 in Kent, CT

At the time of [REDACTED] birth in 1926, William Shelton Russell was still married to Clara Holland. In contrast, [REDACTED] was not with her parents in 1920 census as she was in 1910, but instead was in the St. Francis Orphan Asylum, along with her brothers, Arthur Burton Young and Russell Eugene Young. Dorothy's parents, Burton Eugene Young (born 1885) and Harriet Madeline (Russell) (born around 1880) have not been located in 1920 records. Critically, the North Haven, CT 1930 census shows Dorothy was back once again living with her parents who now owned their home valued at around \$6000, in contrast to the rented home they occupied in 1910. Dorothy was with her [REDACTED] and now married to Melvin Knowleton; she now had a new [REDACTED]. To muddle the "Russell" issue more, the same census indicates that one Eleanor Russell (86 years old, mother-in-law to Burton Young—Dorothy Young's maternal grandmother) was also in the household. It appears that Eleanor Russell (born 1849 in NY) was Harriet Russell Young's mother. Harriet M. Russell Young's death certificate (died 1969) lists James O. Russell as father (birthplace Pauling, NY) and Ellen Wirtz (birthplace North Haven, CT) as mother, according to informant [REDACTED]²⁴⁹. Tracing this family back to Harriet's siblings finds one brother listed as Allen J. or James Allen Russell who married Elsie Valentine Harris of Schaghticoke. It appears that Harriet Russell Young and Allen Russell were brother and sister, so the family may have known about Allen's stepson William Allen Russell. Allen Russell died in 1925, just before [REDACTED] was born in 1926, precluding corroboration of the identity of [REDACTED] as William Russell. It remains unclear, however, whether the midwife Harriet Russell Young was reporting reliable information regarding William Allen Russell on [REDACTED].

Since the copy of the birth record for [REDACTED] looked suspicious a certified copy was obtained from the North Haven Town Hall. It had indeed been altered. Dorothy's Young's mother Harriet had been the midwife for [REDACTED] birth at their home. Consequently, there was a Delayed Registration of Birth filed and so noted at the top of the page. This was covered up with a bogus strip of paper. On the bottom of the certified copy, the notary, Emma Hermann (commission expired April 1, 1970) took an affidavit from Elmer Davis on February 27, 1967, which was received for registration by Marie Napple that day. Apparently,

²⁴⁹ Certified copy obtained from the Clinton Town Hall.

██████████ family had 41 years to decide which William Russell was her biological father. The evidence currently points to both men, with no evidence to allow for a preponderance of evidence paternity decision.

Case #2 William Low Russell, born 1897 in New Haven, CT

One *Ancestry.com* tree made by Lorraine Tatters titled *Tatters Family Tree* displays a different ancestry for ██████████. The *Tatters FT* lists one William Low Russell (born 1897) as the ██████████ and the mother as “Private.” This tree is very informative when the records are examined—these Russells were a very prestigious New Haven family. William Low’s father, Talcott Russell (born 1847), an attorney, developed the metal patenting company named the Russell Process Company. His father, William H., was a retired major-general and the developer and principal of the Russell Military Academy on Wooster Square in New Haven during the 19th century. William H. Russell was also the co-founder of the Skull and Crossbones Society at Yale University.

According to the 1880 census, William H Russell appears quite wealthy. His grandson, William Low’s 1918 World War I registration shows him as a student at Yale University. After his father’s death, William Low was living in his Aunt’s New Haven home and still single (1920 and 1930 censuses). By 1940, William Low Russell was an oil geologist married and living in Illinois with his in-laws. This alternative Russell family had the funds to make a settlement with Dorothy Young regarding her ██████████ (born 1926). Perhaps that was how her parents bought a home in which the Young-Russell family lived in 1930. This alternative genealogy casts doubt upon the ancestry claimed by the descendants of ██████████ including SIT Council member Eric MacDonald. Ce ██████████ nnderance of evidence exists for either of the two William Russells as father to ██████████ and under the SIT constitution, no descendants are eligible for enrollment.

██████████ the key progenitor of the MacDonald Russell family members on the SIT rolls, had unclear parentage. Her descendants have neither a documented relationship with the historical Schaghticoke community nor Indian ancestry. If the SIT enforced the criteria for membership in its 2002 governing document, they would be ineligible for membership.

Stoerzinger Family (51)

Former council member Janette Stoerzinger was enumerated on the SIT 2010 roll. On July 31, 2012, the SIT produced a “Notice of cease and desist to Janette Stoerzinger to stop representing herself as chairman and notice that the family is not on the tribal rolls so she is not a tribal member.”²⁵⁰ The SIT has not explained either the inclusion of Stoerzinger on the SIT rolls of 2009, 2010, and 2012 or her subsequent removal. Without any other explanation, Stoerzinger’s presence among the SIT leadership appears to evince the near abdication of the SIT leaders to non-Indian outsiders during this period. The SIT would not have met criterion (e) at that time and its enrollment of such individuals now reflects negatively on its maintenance of both a distinct

²⁵⁰ SIT Petition (2019), August 2012, G-92, pp. 124, 173; July 31, 2012, G-98, G95, pp. 124, 173; Aug. 14, 2012, G-97, pp. 124, 173)

community and tribal political authority. The members of this family on the SIT roll had no Schaghticoke ancestry or known prior relationship with the historical community. Their inclusion highlights the flaws of the SIT's political authority by allowing Janette Stoerzinger to achieve membership in violation of the governing document.

Rost Family (3)

The SIT under the leadership of Alan Russell allowed Michael Rost privileges for which Rost apparently expected to be added to the SIT rolls. The State ordered Michael Rost's buildings on the Reservation to be removed. The 2019 petition lists eventual action by the SIT against Michael Rost.²⁵¹ Like many others on the SIT roll, the Rost family members had no documented Schaghticoke ancestry or prior relationships with the historical tribal community.

June Hatstat

June (Moser) Hatstat, *a.k.a.* Princess Chikara, was an original signer of The Gathering of the Tribe and was supposedly evicted from the Reservation in 2013.²⁵² June lived with Russell Kilson and was a friend of Gail Russell Donovan since the 1990s. There is a map of the Schaghticoke Reservation that identifies "Princess Chikara's also known as the Kilson house." Even though Hatstat had no evidence of Indian ancestry, she coopted the Kilson house. Like Janette Stoerzinger and Michael Rost, June Hatstat is an example of a non-Indian individual to whom the SIT leadership extended tribal membership. This step may very well have been taken to increase the size of the SIT community and its political influence, but it was in violation of the SIT governing document.

6. Conclusions to be drawn from the SIT membership rolls

Analysis of the 2010 roll shows that the SIT, by allowing individuals without Schaghticoke descent to enroll, did not follow the membership criteria in its governing document. Additionally, the SIT allowed individuals previously questioned by the OFA to remain on the roll without providing additional explanation of their relation to the SIT. These problems surrounding the SIT membership rolls from 2002 to the present, as well as SIT's failure to abide by its own membership criteria in the past, reflect negatively on the SIT's maintenance of a distinct tribal community over which it exercised political influence or authority. This is a critical deficiency in its governance.

²⁵¹ SIT Petition (2019), pp. 122, 124.170–72, 216; e.g., Aug. 9, 2010 Council meeting minutes: Case against Michael Rost; April 21, 2011, p. 241, G-56 & 58; Sept. 1, 2012, p. 124.

²⁵² *Id.*, p. 125, June 10, 2013, Apr. 16, 2013; pp. 174, 216.

XI. Conclusion

For all the foregoing reasons discussed in these comments, the Schaghticoke Indian Tribe has failed to satisfy its burden of proof to be acknowledged as an Indian tribe under 25 C.F.R. Part 83. The OFA should issue a negative proposed finding.

Respectfully Submitted,

<p>State of Connecticut William Tong Attorney General</p> <p>By <i>Robert D. Deichert</i> Robert Deichert Assistant Attorney General Office of the Attorney General 165 Capitol Ave Hartford, CT 06106 860-808-5020</p>	<p>Town of Kent Jean C. Speck, First Selectman</p> <p>By <i>Jeffrey B. Sienkiewicz</i> Jeffrey B. Sienkiewicz Allingham, Readyoff & Henry, LLC 54 Bridge Street New Milford, CT 06776 860-350-5454</p>	<p>Kent School Corporation</p> <p>By <i>Donald C. Baur</i> Donald C. Baur Odin Smith Perkins Coie, LLP 700 Thirteenth Street, N.W., Suite 800 Washington, D.C. 20005-3960 202-654-6344</p>
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Acknowledgment as an Indian Tribe of the Schaghticoke Indian Tribe Petitioner Group**

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SCHAGHTICOKE INDIAN TRIBE et al.

v.

Jane HATSTAT.

No. CV181-422.

Superior Court of Connecticut, Judicial District of
Litchfield.

September 11, 2013

PICKARD, JOHN W., J.

This action for summary process was brought by the plaintiff, Schaghticoke Indian Tribe, to evict the defendant, Jane Hatstat, from tribal lands in Kent, Connecticut. The matter was tried on August 28, 2013.

On August 29, 2013, the day after the trial concluded, the plaintiff's attorney filed a motion titled: "Evidence after close of trial: Request for permission to submit additional evidence after court side trial." Attached to the motion was a copy of a letter dated May 12, 1986 addressed: "To whom it may concern" and signed by five people who the letter says were residents of the Reservation. The letter states that copies of the letter were sent to several people including the D.F.P. the Governor of the State of Connecticut and the Principal of the Kent Center School. The motion claims that the letter is "highly probative and critical and only recently discovered being directly relevant to the Defendant unlawfully residing on the Schaghticoke Reservation prior to 1989."

"Whether or not a trial court will permit further evidence to be offered after the close of testimony in the case is a matter resting within its discretion ... In the ordinary situation where a trial court feels that, by inadvertence or mistake, there has been a failure to introduce available evidence upon a material issue in the case of such a nature that in its absence there is serious danger of a miscarriage of justice, it may properly permit that evidence to be introduced at any time before the case is decided ... The trial judge's discretion, which is a legal discretion, should be exercised in conformity with the spirit of the law in a manner to subserve and not to impede or defeat the ends of substantial justice ... Consistent with this responsibility, the trial court may not, in light of all the relevant factors, arbitrarily or unreasonably reject a motion to introduce additional evidence after the moving party has rested." (Citations omitted.) *Singh v. Hartford*, 116 Conn.App. 50,

54 (2009).

The plaintiff was represented at trial by an experienced attorney and knew what the relevant issues would be at trial. The defendant represented herself. The plaintiff's failure to attempt to introduce this letter at trial is not adequately explained by the statement in the motion that it was "only recently discovered." Evidence in the trial had closed less than 24 hours before the plaintiff attempted to file it. Most importantly, the letter which the plaintiff seeks to have introduced as additional evidence is hearsay and would not have been admissible even if produced at trial by one of the parties who allegedly signed it. It is a statement, other than one made by the alleged signers while testifying at trial, offered in evidence to establish the truth of the matters asserted. Connecticut Code of Evidence, Article VIII, Section 8-1(3). The motion to introduce this letter does not identify any exception to the hearsay rule which might apply. Nevertheless, the court has looked at the possible exceptions and finds none which would allow this document to become evidence. Finally, even if the court were to consider it, all it would tend to show is that the defendant was in fact living on the Reservation prior to October 1, 1989. There are no facts, other than assertions, in the letter tending to show that her residence was unlawful at that time. For all of these reasons, the court denies the plaintiff's motion to submit this letter as additional evidence.

On September 5, 2013, the defendant filed her own motion for permission to submit additional evidence. Attached to the motion are several documents including a copy of a newspaper article, a letter from an attorney, a certificate, and part of a letter. For the same reasons given above, the court denies this motion.

Alan Russell testified that he is the Chairman of the Tribal Council of the plaintiff. He gave testimony concerning the efforts of the plaintiff to remove non-members. There is no doubt that the Schaghticoke Indians own the land in question ("the Reservation"). The plaintiff passed a resolution in 2005 to evict all non-members living on the Reservation. The defendant lives in a house on the reservation. The defendant is an American Indian but not a Schaghticoke Indian. The plaintiff served a notice to quit upon the defendant on March 18, 2013 ordering the defendant to quit possession of the Reservation on or before April 15, 2013 for the reason that she has no right or privilege to occupy the same.

The defendant claims two defenses to this action. First, the defendant argues that the plaintiff is not the true governing authority of the Schaghticoke Indians and that it has no right to evict her from the reservation. It is clear from the

evidence that there is a leadership dispute among the Schaghticoke Indians. There was testimony at trial from Michael Morningstar, who claimed to be the Vice Chairman of the Schaghticoke Indian Tribe, the same name used by the plaintiff. However, it is an entirely different entity with entirely different members. Both groups claim to represent the Schaghticoke Indians and use nearly identical stationery with an identical tribal symbol. Mr. Morningstar testified that his group does not support the eviction of the defendant because she is a member.

In the case of *Schaghticoke Indian Tribe et al v Rost*, 138 Conn.App. 204 (2012), the Appellate Court discussed a leadership dispute with an entirely different entity known as Schaghticoke Tribal Nation. If this entity still exists, it would mean that there are three separate groups who claim to represent the Schaghticoke Indians. That case involved an eviction of Michael Rost from the Reservation. It was brought by Schaghticoke Indian Tribe (the plaintiff in this case). The Schaghticoke Tribal Nation intervened. Both groups claimed to represent the Schaghticoke Indians but were united in their desire to evict Mr. Rost from the Reservation. The Appellate Court made it clear it would be improper for the Superior Court to use an eviction action to resolve a tribal leadership dispute, *id.*, at 216, because there is a procedure set forth in C.G.S. § 47-66(b) to resolve tribal disputes. In that case, the Appellate Court decided that the eviction would be upheld because both groups agreed upon it. A reasonable conclusion to be drawn from that case is that the result would have been different if there had been a disagreement between the two groups about the eviction.

Unlike the facts of the *Rost* case, the two contending entities known as Schaghticoke Indian Tribe do not agree about whether the defendant is a member and about whether she should be evicted. If the court agrees with the plaintiff, it will implicitly decide a leadership contest between the two factions calling themselves Schaghticoke Indian Tribe. The court is not permitted to do so. On the other hand, a decision for the defendant will merely be recognition of the court's lack of authority to act in such a dispute. The court recommends that the contending leadership groups use the procedures set forth in § 47-66(b) to resolve the leadership dispute before deciding whether the defendant should be evicted from the Reservation.

The defendant's second defense is that she is afforded the protection provided by C.G.S. § 47-64(a). That section provides, in relevant part: "Each tribe shall determine who may live on reservation land, provided each person lawfully residing on a reservation on October 1, 1989, may continue to reside on such reservation." The plaintiff testified that she came to the reservation "over 30 years ago" at the request of a Mr. Kilson, a Schaghticoke Indian who lived in a house on the Reservation. Mr. Kilson invited the plaintiff

to live with him and to take care of him. When Mr. Kilson died, she remained in the house at the invitation of Mr. Kilson's son, David. The defendant testified to these facts without contradictory evidence from the plaintiff. The court found the defendant's testimony credible and finds that, therefore, her residency on the Reservation began no later than 1983.

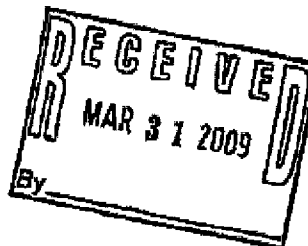
There was no evidence at trial that the Tribe had ever sought to evict the defendant in the thirty years since she began her residence. In the absence of evidence that the defendant's presence on the Reservation is unlawful, the defendant is entitled to the protection of § 47-64(a).

For all of the reasons set forth, the court enters judgment for the defendant.

GASSER LAW FIRM, LLC

20 East Main Street • Avon, CT 06001-3823
(860) 674-8342 • FAX (860) 676-8912

March 30, 2009



The Honorable M. Jodi Rell, Governor
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Re: Schaghticoke Indian Tribe

Dear Governor Rell:

Enclosed is the annual filing of the Tribal Roll for the Schaghticoke Indian Tribe. I am also enclosing the updated list of representatives of the Tribe.

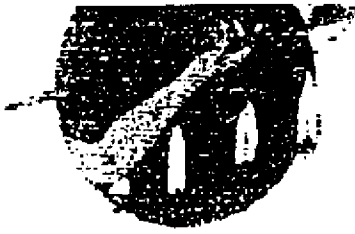
Very truly yours,
The Schaghticoke Indian Tribe

By _____
Edward W. Gasser
Its Counsel

EWG/nfb

Enclosure: Tribal Roll and List of Representatives

cc: Ms. Regina A. McCarthy, Commissioner D.E.P.
Ms. Ruth Epstein, First Selectman
Ms. Gail Harrison Donovan, Chairman Scaghticoke Indian Tribe,
without enclosure
Mr. Michael L. Carlson, Assistant Coordinator & Building Director
Scaghticoke Indian Tribe, without enclosure



Schaghticoke Indian Tribe

Chairman - Gail Harrison-Donovan
 Vice Chairman - Mary MacDonald
 Secretary - George Bruce
 Councilman - Travis Wilson
 Councilman - Justin Wilson
 Councilman - Edwin Ritchie
 Councilman - Kyle Ritchie
 Councilman - Joya Bruce

To: Lee Fleming I.B.I.A

January 23, 2009

From: Schaghticoke Indian Tribe, (S.I.T.)

Phone: 860-307-5002

Dear Mr. Lee Fleming,

As per your conversation yesterday with me, Princess Laughing Brook, (Gail Harrison-Donovan) Chief of the Schaghticoke Indian Tribe, (S.I.T.), please find the names of George Bruce and Joya Bruce which were re-enrolled on our tribal rolls and also were made members of our Tribal Council listed above.

I have also attached the updated list of our Tribal Rolls along with a few of the Tribes latest determinations concerning new representatives for the Tribe. As you will see there are additions and subtractions to these representatives.

As always if you have any questions you can contact us at any of the below listed numbers:

(860)-674-8342 Tribal Counsel, Edward Gasser

(860)-927-0182 Chairperson & Tribal Chief Gail Harrison-Donovan Home Phone

(860) 364-5607 Executive Coordinator, Micky Rost Office Phone

(860) 307-5002 Tribal Spokesman & Economic Development Coordinator, Michael Carlson

Respectfully Submitted and signed on behalf of the entire Tribe:

Tribal Chairman Princess Laughing Brook Gail Harrison-Donovan / 23/09
 Chief & Tribal Chairman, Princess Laughing Brook - Gail Harrison-Donovan Date:

Vice Chairman Sunshine White Feather Mary MacDonald / 23/09
 Tribal Vice Chairman, Sunshine White Feather - Mary MacDonald Date:

George Bruce / 1/23/09
 Tribal Council Secretary, Big Time - George Bruce Date:

SCHAGHTICOKE INDIAN TRIBE
SCHAGHTICOKE INDIAN RESERVATION
 P.O. BOX 223
 KENT, CONNECTICUT 06757
 email: SitTnbe@aol.com

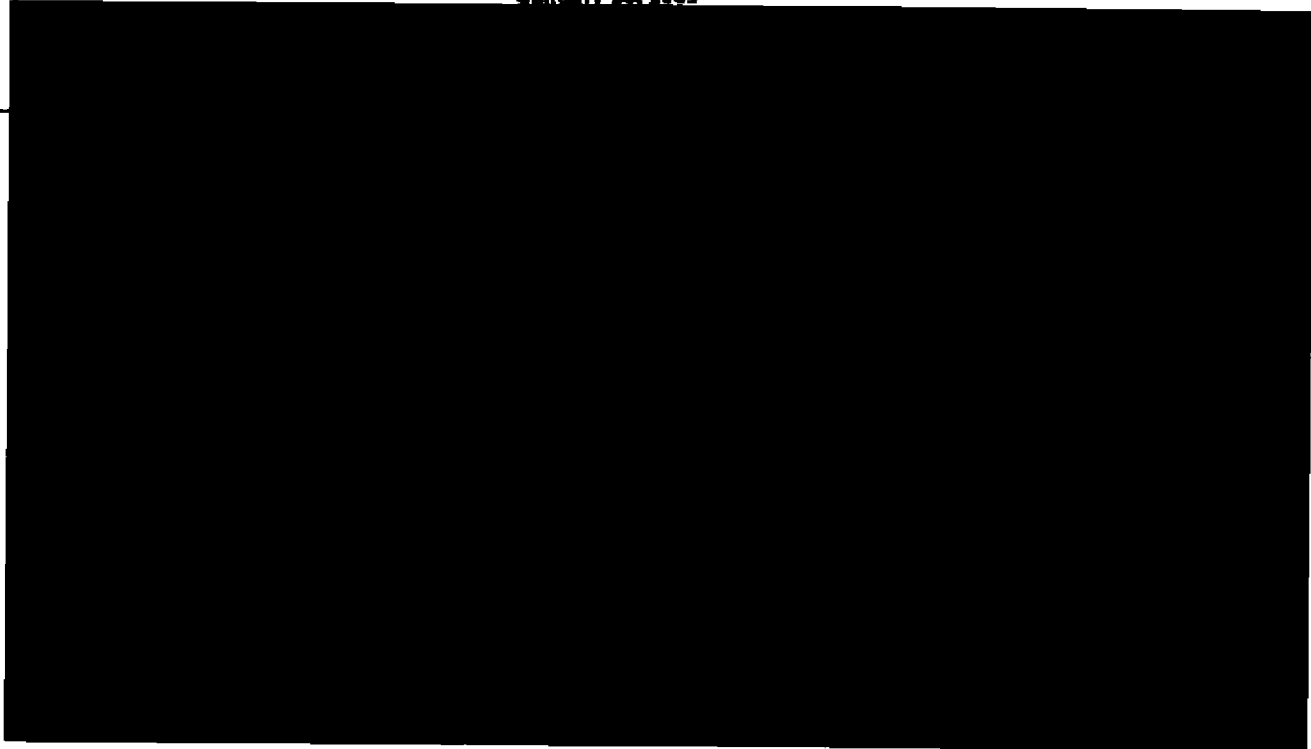


Schaghticoke Indian Tribe

Chairman - Gail Harrison-Donovan
 Vice Chairman - Mary MacDonald
 Secretary - George Bruce
 Councilman - Travis Kilson
 Councilman - Justin Kilson
 Councilman - Edwin Ritchie
 Councilman - Kyle Ritchie
 Councilman - Jays Bruce

Tribal Roll of the Schaghticoke Indian Tribe

January 23, 2009



Respectfully Submitted and signed on behalf of the entire Tribe:

Tribal Chairman Princess Laughing Brook 1/23/09
 Chief & Tribal Chairman, Princess Laughing Brook - Gail Harrison-Donovan Date:

Tribal Vice Chairman Sunshine White Feather 1/23/09
 Tribal Vice Chairman, Sunshine White Feather - Mary MacDonald Date:

George Bruce 1/23/09
 Tribal Council Secretary, Big Legs - George Bruce Date:

SCHAGHTICOKE INDIAN TRIBE
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 P.O. BOX 223
 KENT, CONNECTICUT 06757
 email: Sit7hbe@aol.com



Office of the Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

SPECIAL PAPERS

Case No. 32 Page No. 785
-793

DENISE W. MERRILL
Secretary of the State

JAMES FIELD SPALLONE
Deputy Secretary of the State

April 23, 2012

Janette Stoerzinger

[REDACTED]
Hudson NY 12534

Re: Correspondence to Governor Dannel P. Malloy, Dated March 12, 2012

Dear Ms. Stoerzinger:

I am writing to acknowledge receipt of the above-referenced correspondence copied to Secretary of the State Denise Merrill and its enclosures.¹ These were received by our office's Legislation and Elections Administration Division on March 22, 2012 and given to me today. These items appear to be intended as a submission under Sections 47-66i and 47-66j of the *Connecticut General Statutes* (CGS).

We note that CGS Sections 47-66i and 47-66j require documents relating to tribal leadership, governance and membership to be filed with the Governor. These sections do not provide for direct filing with the Secretary of the State. Therefore, while this office will retain your correspondence, we wish to inform you that doing so does not appear to satisfy the requirements of CGS Sections 47-66i and 47-66j.

We also take this opportunity to note that the Office of the Secretary of the State has no legal authority in the area of federal or state recognition of Indian tribes. Therefore, our retention of the correspondence and enclosures should not be construed as conferring such status on any individual or group named within them.

For your convenience, I am enclosing copies of CGS Sections 47-66i and 47-66j, which describe procedures for submitting tribal documentation to the Governor.

Your correspondence also refers to an incorporated entity: "Schaghticoke Indian Enterprises, Inc.," which is listed on the records of our office's Commercial Recording Division as a non-stock Connecticut corporation. Connecticut corporations are required to file annual reports of their officers and directors with the Commercial Recording Division. The reports are now required to be filed online at www.concord.sots.ct.gov. You may

¹ Enclosures are the following: 1) March 12, 2012, correspondence to Governor Dannel P. Malloy regarding tribal council composition, Constitution and tribal rolls; 2) Tribal rolls document dated February 12, 2012.

Commercial Recording Division

Legislation and Election Administration Division

General Information

(860) 509-6001 fax (860) 509-6069

(860) 509-6100 fax (860) 509-6127

(860) 509-6000

State Capitol Office

Deputy Secretary of the State

Management & Support Services

(860) 509-6200 fax (860) 509-6209

(860) 509-6212 fax (860) 509-6131

(860) 509-6190 fax (860) 509-6175

Internet Home Page: www.sots.ct.gov

CTP APPX006

SPECIAL PAPERS

Case No. 32 Page No 786

address questions regarding online filing of corporation annual reports to the Commercial Recording Division at 860-509-6003 or Commercial Recording Division, Office of the Secretary of the State, PO Box 150470, Hartford CT 06115-0470.

I hope you find this information to be helpful.

Sincerely,



Barbara Sladek
RLS Assistant Coordinator
MSS Division
860-509-6147

Enclosures: 3

c: Office of Governor Dannel P. Malloy

From the *General Statutes of Connecticut*, Revised to January 1, 2011

Sec. 47-66i. Method of selecting tribal leaders. Disputes. (a) Each tribal leader shall file with the Governor his name and a written description of the method of selecting tribal leaders and the process by which tribal leaders exercise their authority. The Governor shall file such description with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

(b) A leadership dispute shall be resolved in accordance with tribal usage and practice. Upon request of a party to a dispute, the dispute may be settled by a council. Each party to the dispute shall appoint a member to the council and the parties shall jointly appoint one or two additional members provided the number of members of the council shall be an odd number. If the parties cannot agree on any joint appointment, the Governor shall appoint any such member who shall be a person knowledgeable in Indian affairs. The decision of the council shall be final on substantive issues. An appeal may be taken to the Superior Court to determine if provisions of the written description filed with the Secretary of the State pursuant to this section have been followed. If the court finds that the dispute was not resolved in accordance with the provisions of the written description, it shall remand the matter with instructions to reinstitute proceedings, in accordance with such provisions.

(P.A. 89-368, S. 18.)

Cited. 231 C. 563.

Sec. 47-66j. Rules for tribal membership. (a) On or before March 15, 1990, and annually thereafter, the tribal leader selected in accordance with the method filed under section 47-66i shall file a copy of the rules for tribal membership and government and a current membership roll with the Governor. The membership rules may include provisions for revocation of membership. The Governor shall file the rules and membership roll with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

(b) A membership dispute shall be resolved in accordance with tribal usage and practice. Upon request of a party to a dispute, the dispute may be settled by a council. Each party to the dispute shall appoint a member of the council and the parties shall jointly appoint one or two additional members provided the number of members of the council shall be an odd number. If the parties cannot agree on any joint appointment, the Governor shall appoint such member who shall be a person knowledgeable in Indian affairs. The decision of the council shall be final on substantive issues but an appeal may be taken to the Superior Court to determine if membership rules filed in the office of the Secretary of the State pursuant to this section have been followed. If the court finds that the dispute was not resolved in accordance with the provisions of the written description, it shall remand the matter with instructions to reinstitute proceedings, in accordance with such provisions.

(P.A. 89-368, S. 19.)

Subsec. (b):

Cited. 243 C. 115.

Primary jurisdiction of tribal membership dispute belongs with council. Trial court properly dismissed plaintiffs' complaint for lack of subject matter jurisdiction where plaintiff failed to follow the procedures set forth in this section. 82 CA 11.

Business Inquiry

 HOME  HELP

Filing History

Business Id	Business Name
0990933	SCHAGHTICOKE INDIAN ENTERPRISES, INC.

Filing Number	Filing Date/Time	Effective Date/Time	Filing Type	Volume Type	Volume	Start Page	Pages #
0004088828	Dec 14, 2009 8:30:00 AM		INCORPORATION	B	01356	2004	2
0004106103	Feb 16, 2010 8:30:00 AM	Feb 16, 2010 8:30:00 AM	ORG REPORT	B	01375	1913	1

[Back](#)

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Business Inquiry

HOME HELP

Business Inquiry Details

Business Name: **SCHAGHTICOKE INDIAN ENTERPRISES, INC.** Business Id: **0990933**

Business Address: **2383 WINSTED ROAD, TORRINGTON, CT, 06790** Mailing Address: **2383 WINSTED ROAD, TORRINGTON, CT, 06790**

Citizenship/State Inc: **Domestic/CT** Last Report Year:

Business Type: **Non-Stock** Business Status: **Active**

Date Inc/Register: **Dec 14, 2009**

Principals

Name/Title:	Business Address:	Residence Address:
GAIL HARRISON-DONOVAN PRESIDENT	262 SCHAGHTICOKE ROAD, KENT, CT. 06757	262 SCHAGHTICOKE ROAD, KENT, CT, 06757
MARY MACDONALD PRESIDENT	33-3 MILE COURSE ROAD, GUILFORD, CT, 06437	33-3 MILE COURSE ROAD, GUILFORD, CT, 06437
JOYA LYNN BRUCE SECRETARY	184 VINE LAND AVENUE, E. LONGMEADOW, MA, 01028	184 VINE LAND AVENUE, E. LONGMEADOW, MA, 01028

IMPORTANT: There are more principals for this business that are not shown here.

Business Summary

Agent Name: **MICHAEL CARLSON**

Agent Business Address: **2383 WINSTED RD, TORRINGTON, CT, 06790**

Agent Residence Address: **21 GRISWOLD LANE, WINCHESTER, CT, 06098**

[View Filing History](#) [View Name History](#) [View Shares](#)

[Back](#)

SPECIAL PAPERS

Case No. 32 Page No. 790

March 12, 2012

Mar 22 2012

The Honorable M. Dannel P. Malloy, Governor
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Re: Schaghticoke Indian Tribe

Dear Governor Malloy:

Enclosed is the annual filing of the Tribal Roll for the Schaghticoke Indian Tribe, incorporated as "Schaghticoke Indian Enterprises 2383 Winsted Rd, Torrington Conn. 06790." I am also enclosing our updated Tribal recognized list of representatives for our Official Tribe.

Very truly yours,
The Schaghticoke Indian Tribe

By Janette Stoerzinger
Janette Stoerzinger,
Swooping Eagle
It's Counsel Chief

Enclosure: Tribal Roll with List of Representatives Names:
"each personal contact information upon request"

cc: Mr. Daniel C. Esty, Conn. Commissioner D.E.E.P.
Mr. Bruce K. Adams, Town of Kent First Selectman
Mr. George Jepsen, Conn. Attorney General
Mr. Ed Serabia, Conn. Indian Affairs Council Coordinator
Ms. Denise Merrill, Conn. Secretary of State
Mr. Michael L. Carlson, Executive Economic Coordinator &
Building Director Schaghticoke Indian Tribe

SPECIAL PAPERS

Case No. 32 Page No. 791

**Schaghticoke
Indian
Tribe**

Tribe Council

Chairman - Janette Stoerzinger
Vice Chairman - Mary MacDonald
Secretary - Joya Bruce
Treasurer - Linda Hicks
Councilman - George Bruce
Councilman - Eric MacDonald
Chairman - Gail Harrison-Donovan

March 12, 20102

Office of the Governor
State Capital
100 Capital Avenue
Hartford, CT 06106


To Governor Dannel P. Malloy,

I, as Tribal Chairman along with our Tribal council, being the actual governing body and authority in regards to the Schaghticoke Reservation located in Kent, Ct, have enclosed a copy of our updated Tribal rolls I have not included our Constitution since it has not changed since last year.

On September 14, 2011, The Schaghticoke Indian Tribe held their bi-monthly meeting to asses their ongoing tribal requirements and needs. The first item on the addenda was the removing of former Chairman Princess Laughing Brooke, (Gail Harrison-Donovan) for medical reasons. I as Vice Chairman, Swooping Eagle, Jannette Stoerzinger was voted in as Chairman and Sunshine White Feather, (Mary MacDonald) was voted in as Vice Chairman. Both myself and Sunshine White Feather, Mary MacDonald assumes their respective rolls immediately. Princess Laughing Brooke will assume a roll of Council member immediately. Any and all correspondences from now on should be directed to myself our new chairman, Swooping Eagle, (Janette Stoerzinger). In addition please note our NEW tribe Council members listed above.

Please file these papers properly on behalf of our Tribe.

In Friendship I sign as,
Tribe Council Chairman

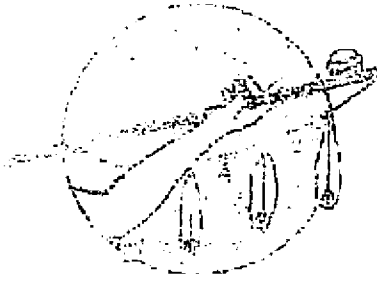

Swooping Eagle, (Janette Stoerzinger)
Schaghticoke Indian Reservation,
Kent, Ct. 06757

**SCHAGHTICOKE INDIAN TRIBE
SCHAGHTICOKE INDIAN RESERVATION
KENT, CONNECTICUT 06757**

www.sitribe.com

email:SiTribe@aol.com

CTP APPX012



SPECIAL PAPERS

Case No. 32 Page No. 792

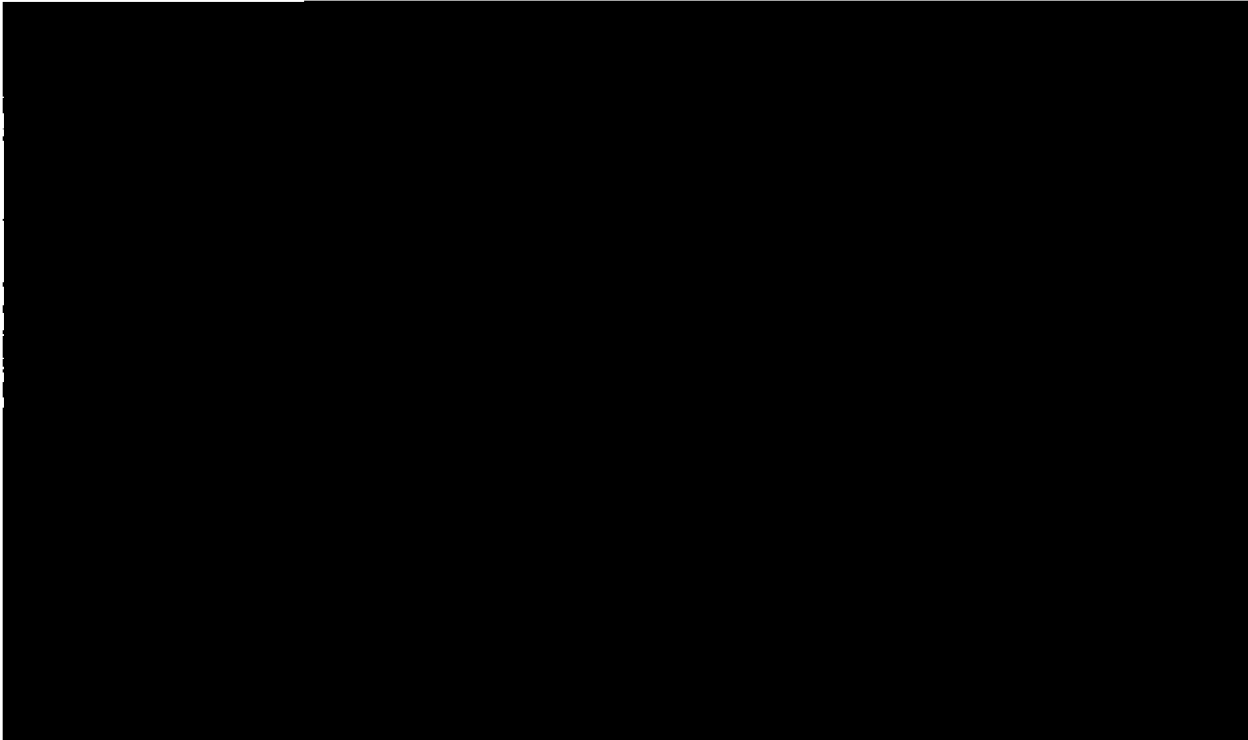
**Schaghticoke
Indian
Tribe**

Tribe Council

Chairman - Janette Stoerzinger
Vice Chairman - Mary MacDonald
Secretary - Joya Bruce
Treasurer - Linda Hicks
Councilman - George Bruce
Councilman - Eric MacDonald
Chairman - Gail Harrison-Donovan

Tribal Rolls of the Schaghticoke Indian Tribe

February 12, 2012



In Friendship I sign as,
Tribe Council Chairman

Handwritten signature of Janette Stoerzinger in cursive script.

Swooping Eagle, (Janette Stoerzinger)
Schaghticoke Indian Tribe
Schaghticoke Reservation
Kent Conn.

www.sitribe.com
sitribe@aol.com



Office of the Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

DENISE W. MERRILL
Secretary of the State
JAMES FIELD SPALLONE
Deputy Secretary of the State

SPECIAL PAPERS

Case No. 34 File No. 11
-18

September 20, 2012

Mr. Michael Morningstar
[REDACTED]
Falls Village CT 06031

Re: Correspondence to Secretary of the State Denise Merrill, Dated September 4, 2012

Dear Mr. Morningstar:

I am writing to acknowledge receipt of the above-referenced correspondence with attachment which discusses Janette Stoeringzer, Gail Harrison Donovan and the Schaghticoke Indian Tribe (copy enclosed). This correspondence was received by our office's Legislation and Elections Administration Division on September 6, 2012 and appears to be intended as a submission under Sections 47-66i and 47-66j of the *Connecticut General Statutes (CGS)*.

We would like to take this opportunity to note that CGS Sections 47-66i and 47-66j require that documents relating to tribal leadership, governance and membership be filed with the Governor. These sections do not provide for direct filing with the Secretary of the State. Therefore, while this office will retain your correspondence, we wish to inform you that doing so does not appear to satisfy the requirements of CGS Sections 47-66i and 47-66j.

We also take this opportunity to note that the Office of the Secretary of the State has no legal authority in the area of federal or state recognition of Indian tribes or tribal representatives. Therefore, our retention of the correspondence and enclosure should not be construed as conferring such status on any individual or group named within them.

For your convenience, I am enclosing copies of CGS Sections 47-66i and 47-66j, which describe procedures for submitting tribal documentation to the Governor.

I hope you find this information to be helpful.

Sincerely,

Barbara Sladek
RLS Assistant Coordinator
MSS Division
860-509-6147

Enclosures: 2
c: Office of Governor Dannel P. Malloy

Secretary of State

September 4, 2012

Denise Merrill

30 Trinity Street Hartford, CT 06106

This letter is written with the express purpose of ensuring that the State of Connecticut will recognize that Janette Stoeringzer is the legitimate Chairman/Chief of the Schaghticoke Indian Tribe of Kent Connecticut and requires a written response.

Janette Stoeringzer was appointed to the position of Chairman of the Schaghticoke Indian Tribe of Kent Connecticut on September 14, 2011, by the legitimate sitting council of the Schaghticoke Indian Tribe of Kent Connecticut. The appointment of Janette Stoeringzer was completed by adhering to all controlling Connecticut General Statutes and also the Constitution of the Schaghticoke Indian Tribe. These controlling Connecticut General Statutes and articles of the Constitution of the Schaghticoke Indian Tribe will be set forth in the following paragraphs.

We will include pertinent documents for your convenience that have already been sent and are in your possession. The necessary departments of the State of Connecticut have received all documentation required to record this change in leadership per C.G.S. Sec. 47-66i. This states: Method of selecting tribal leaders. Disputes. (a) Each tribal leader shall file with the Governor his name and a written description of the method of selecting tribal leaders and the process by which tribal leaders exercise their authority. The Governor shall file such description with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

We are of course assuming that the State of Connecticut will be bound to follow the Connecticut General Statutes and Schaghticoke Tribal Constitution that were in effect at the date of Janette Stoeringzer being appointed to her position as Schaghticoke Tribal Chairman. The State of Connecticut's failure to do their duty to enforce these statutes, we can only assert that by so doing; the State of Connecticut refuses to offer us the Schaghticoke Indian Tribe of Kent Connecticut equal protection under the law pursuant to the Equal Protection Clause of the 14th amendment.

U.S. Constitution: Fourteenth Amendment

"Section. i. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

We in good faith anticipate a timely response to this letter and respectfully request that the State of Connecticut clear up any issues the state may have as to the Chairmanship position of Janette Stoeringzer; which may be perpetrated by the States inaction and is therefore

becoming detrimental to the progress of our tribe. Through this failure to act on our behalf you are limiting our powers granted not only through our inherent sovereignty but also enumerated by C.G.S 824 Indians.

Connecticut General Statutes 824* INDIANS

Sec. 47-59a. Connecticut Indians; citizenship, civil rights, land rights. (a) It is hereby declared the policy of the state of Connecticut to recognize that all resident Indians of qualified Connecticut tribes are considered to be full citizens of the state and they are hereby granted all the rights and privileges afforded by law, that all of Connecticut's citizens enjoy. It is further recognized that said Indians have certain special rights to tribal lands as may have been set forth by treaty or other agreements.

(b) The state of Connecticut further recognizes that the indigenous tribes, the Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett are self-governing entities possessing powers and duties over tribal members and reservations. Such powers and duties include the power to: (5) determine tribal leadership in accordance with tribal practice and usage.

Sec. 47-66i. Method of selecting tribal leaders. Disputes. (a) Each tribal leader shall file with the Governor his name and a written description of the method of selecting tribal leaders and the process by which tribal leaders exercise their authority. The Governor shall file such description with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

ARTICLE V, Section 1. The SIT Council. The governing power of the Schaghticoke Indian Tribe shall be vested in the tribal council, which shall be known as the SIT Council (Tribal Council).

Section 2. Terms of Office. The term of the office of Chairman, Vice Chairman, Secretary and Treasurer shall be for two (2) years or until their successors are duly elected and installed in office. Nominations and elections of SIT officers shall be every two (2) years at the annual meeting of the SIT Council beginning in 2003.

Section 9. Voting. The SIT Council shall make decisions by a majority vote of those present, except as otherwise provided in this Constitution or in an ordinance which requires more than a majority vote. All SIT Council members shall have the power to vote. Proxy voting shall be prohibited.

ARTICLE VII - THE SIT ADMINISTRATION

Section 3. Resignation. ARTICLE IX - RESIGNATION, REMOVAL, RECALL AND VACANCY

Any SIT officer may resign at any time by giving written notice to the SIT Council or to the Chairman or Secretary of the SIT. Such resignation shall take effect when the notice is delivered unless the notice specifies a future date; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SPECIAL PAPERS

Case No. 34 Page No. 14

Section 4. Removal. Any of the officers of the SIT may be removed by the SIT Council in accordance with Article IX Section 2 of this Constitution. Election or appointment of an officer shall not of itself create any contract rights.

ARTICLE VII - THE SIT ADMINISTRATION

Section 2. Removal.

The SIT Council shall review and a decision will be made by the chairman and two other council members for removal of a SIT Council member for

- (a) Final conviction of a felony by any tribal, federal, or state court while serving on the SIT Council.
- (b) Converting SIT property or monies for personal use;
- (c) Failing to attend four (4) regular or special meetings consecutively without good cause;
- (d) Violation of the Code of Ethics.

The decision of the SIT Council shall be final. A SIT Council member removed from office must wait at least five (5) years from the official date of removal to run for office again.

STATEMENT OF FACTS

1. Alan Russell was voted out and removed as Chairman on October 4, 2007 amidst allegations of unethical acts committed toward the tribe in accordance to our constitution, Article 9, sec. 2; by the then Tribal Council.
2. On October 4, 2007 Gail Harrison Donovan was voted by the Tribal Council from her then Tribal Council position as Vice Chairman to Chairman of the Schaghticoke Indian Tribe which she then accepted. These items 1 & 2 are supported by; a letter sent out to all Tribal Members and signed by then Tribal Chairman Gail Harrison Donovan which we will include.
3. Janette Stoeringzer voted onto the Tribal Council and appointed to the position of Vice Chairman.
4. Gail Harrison Donovan resigns her position on the Schaghticoke Indian Tribal Council to join her brother Alan, who Gail had been instrumental in removing as Chairman due to his unethical actions.
5. Gail Harrison Donovan then attempts to dissolve the same council that she was a member of, in direct violation of our Tribal Constitution.

SPECIAL PAPERS

Case No. 34 Page No. 15

- 6. On September 14, 2011 Janette Stoeringzer was voted into the position of Chairman (Chief) from Vice Chairman by the Schaghticoke Indian Tribal Council of Kent Connecticut.

Alan Russell was voted out and removed as Chairman on October 4, 2007 amidst allegations of unethical acts committed toward the tribe in accordance to our constitution Article 9, sec. 2 by the then Tribal Council. These actions thereby negate any claim of any political authority he may have had prior to these accusations.

Gail Harrison Donovan voted in by the then Tribal Council thereby giving her the authority to send out the letter to the tribal members informing them of Alan's removal, the reasons and the change in leadership. All supported in her words and signed by her and included herein.

Gail Harrison Donovan then attempts to dissolve the same council that she was a member of in direct violation of our Tribal Constitution. Gail Harrison Donovan resigns her position on the Schaghticoke Indian Tribal Council to join her brother Alan, who Gail had been instrumental in removing as Chairman due to his unethical actions.

On September 14, 2011 Janette Stoeringzer was voted into the position of Chairman (Chief) from Vice Chairman by the Schaghticoke Indian Tribal Council of Kent Connecticut.

Letters also sent registered mail to the below:

- Governor Dannel Malloy
- Secretary of State, Denise Merrill
- Office of the Attorney General, George C. Jepsen
- DEEP Commissioner, Daniel C. Esty
- Connecticut Indian Affairs, Ed Sarabia

Michael Morningstar

Michael Morningstar
Vice Chairman

[REDACTED]
Falls Village, CT 06031

REGISTRATION OF
LEGISLATION
ADMINISTRATIVE
ACTION
2012 SEP -6 PM 12:03

SPECIAL PAPERS

Case No. 34 Page No. 16

2012 SEP -6 PM 12: 03
LEGISLATIVE
ADMINISTRATIVE DIVISION

SCHAGHTICOKE
INDIAN
TRIBE

October 18, 2007

To: All Tribe Members
From: Tribal Chairman Princess Laughing Brooke- Gail Harrison Donovan
Re: Status Update

1. Tribal Chairman Princess Laughing Brooke- Gail Harrison Donovan, on behalf of the Council on behalf of the Tribe, am writing to inform you of the current decisions and status of the Tribe and our Council.

1. Our Council, in accordance with our constitution Article 9: Resignation, Removal, Recall, and Vacancy; Section 2: Removal, voted to remove Gray Fox- Alan Russell from his position as Tribal Chairman due to unethical acts committed toward the Tribe.

2. As of October 4, 2007, the Council voted then Vice Chairman, Princess Laughing Brooke- Gail Harrison Donovan to take the position as Tribal Chairman.

3. As of October 4, 2007, the Council voted in S.I.T. Member Mary MacDonald to hold the position of Tribal Vice Chairman.

4. Our Executive Committee is pending until further notice due to the removal of Alan Russell.

5. The remaining Council Members resume their original Council positions.

6. Attorney Kevin Quill is the current Attorney representing our Tribe.

7. Various STN Members attempting to join our Tribal Rolls against the rules of criteria for Federal Acknowledgment were reminded of their inability due to the laws which prohibit them from joining at this time.

8. Sherry Birch Furtado, who was granted temporary residence at our Pavilion over a year ago, was formally served eviction papers. The Pavilion is our public meeting house, not a residence. The CT D.E.P. supports us regarding the necessity of this decision.

As the new Tribal Chairman, I wish to thank you all for your support. I truly look forward to our future endeavors. Please do not hesitate to contact me with any questions or comments. Thank you!

Princess Laughing Brooke- Gail Harrison Donovan
Signed By Tribal Chairman Princess Laughing Brooke- Gail Harrison Donovan Date

Exemption 6

CERTIFIED MAIL™



Mr. Michael Morningstar
Falls Village, CT 06031



7006 1300 0001 5755 9401



1000



06106

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Denise MERRille
Secretary of state
30 Trinity Street
Hartford, Ct 06106

0610601663



CTP APPX021

SPECIAL PAPERS
Case No. 34 Page No. 17

From *Connecticut General Statutes*, Revised to January 1, 2011

Sec. 47-66i. Method of selecting tribal leaders. Disputes. (a) Each tribal leader shall file with the Governor his name and a written description of the method of selecting tribal leaders and the process by which tribal leaders exercise their authority. The Governor shall file such description with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

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(P.A. 89-368, S. 18.)

Cited. 231 C. 563.

Sec. 47-66j. Rules for tribal membership. (a) On or before March 15, 1990, and annually thereafter, the tribal leader selected in accordance with the method filed under section 47-66i shall file a copy of the rules for tribal membership and government and a current membership roll with the Governor. The membership rules may include provisions for revocation of membership. The Governor shall file the rules and membership roll with the Secretary of the State and the Indian Affairs Council established under section 47-59b.

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(P.A. 89-368, S. 19.)

Subsec. (b):

Cited. 243 C. 115.

Primary jurisdiction of tribal membership dispute belongs with council. Trial court properly dismissed plaintiff's complaint for lack of subject matter jurisdiction where plaintiff failed to follow the procedures set forth in this section. 82 CA 11.

2/4/22, 2:40 PM

Town of Kent CT Mail - [Kent CT] Schaghticoke Indian tribe kent ct (Sent by Janette Stoerzinger. (Chief Swooping Eagle), Janeltea...



Jean Conlon Speck <firstselectman@townofkentct.org>

[Kent CT] Schaghticoke Indian tribe kent ct (Sent by Janette Stoerzinger. (Chief Swooping Eagle)

2 messages

Contact form at Kent CT <cmsmailer@civicplus.com>

Sun, Jan 16, 2022 at 2:38 PM

Reply-To:

To: JSpeck <firstselectman@townofkentct.org>

Hello JSpeck,

Janette Stoerzinger. (Chief Swooping Eagle) has sent you a message via your contact form (<https://www.townofkentct.org/user/34/contact>) at Kent CT.

If you don't want to receive such e-mails, you can change your settings at <https://www.townofkentct.org/user/34/edit>.

Message:

I would like to introduce my shel I'm Chief Swooping Eagle for my tribe in Kent ct my 6th great grandmother was Abigail Bradley i would like to set up a meeting with you and my tribal council to talk about land claims and the money held in trust for our tribe Thank you Janette Stoerzinger
Chief Swooping Eagle e-mail Com phone number thank you



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



SEP 14 2006

Mr. Alan Russell
P.O. Box 111
Kent, Connecticut 06757

Dear Mr. Russell:

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs (AS-IA) of the Department of the Interior (Department) provides this technical assistance (TA) review of the petition of a group known as the Schaghticoke Indian Tribe (SIT), Petitioner #239. The Department issues this TA review letter under section 83.10(b) of Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), "*Procedures for Establishing that an American Indian Group Exists as an Indian tribe.*"

This TA review letter describes obvious deficiencies or significant omissions apparent in the documented petition that Petitioner #239 submitted on October 15 and 22, 2002, and September 12, 2005, to the Department. The group's governing body certified those submissions as part of its documented petition for Federal acknowledgment. The SIT also submitted a set of four compact discs of genealogical records, which was certified on October 10, 2002, as a part of the documented petition.

The SIT's letter of intent to petition included a resolution signed by the SIT governing body dated April 4, 2001, which stated that the group's 1981 letter of intent had been "usurped" by the Schaghticoke Tribal Nation (STN) petitioner, and that the STN had then filed a petition for acknowledgment as an Indian tribe based on the 1981 document (SIT Resolution 4/7/2001). The SIT petitioner also stated that the petition for Federal acknowledgment filed by the STN was "based on the letter of intent filed by the Schaghticoke Indian Tribe, and contains documents belonging to the Schaghticoke Indian Tribe" (Certification from SIT received 9/12/2005), and concluded:

[T]his attached supplement once again reiterates, as stated in the original Certification of Petition #239 dated October 6, 2002, that the Schaghticoke Tribal Nation petition (Petition #79) is incorporated herein by reference. (Certification from SIT received 9/12/2005)

As you are aware, the STN findings include some reference to SIT. Also, to the extent your group shares a history with the STN, the findings on STN including the STN Reconsidered Final Determination (RFD) findings may also apply to the SIT petitioner for the pre-1996/1997 time period. This TA letter understands that the current SIT petitioner includes individuals who do not appear to have been a part of the overall Schaghticoke community discussed in the STN RFD. Nevertheless, we advise the SIT to review carefully the STN RFD for the specific time

CTP APPX024

periods when the evidence for community and political authority are missing. Also, please refer to the Department's letter summarizing the March 20, 2003, informal TA meeting with the SIT in which you were advised, "Since there was one body of Schaghticoke, the conclusions in the STN proposed finding (PF) for the time before 1997 would also apply for the SIT petition" (BIA to Russell 4/30/2006).

I. General Comments about the Petition

The SIT group's submission consisted of documents and CDs that were received on October 15 and 22, 2002, and September 22, 2005. See the enclosed preliminary inventories. The SIT petition materials were not organized or oriented to an overarching narrative that addressed the mandatory criteria. The submissions were intended to support the petitioner's claim that disputes over elections led "one family" (referred to as the "Harris and Velky family" or the "Velky family") to "make a clear break from the Tribe." The SIT claims that it and STN are not factions of the same group, but that the "Velky family" is a splinter group, and that it [SIT] is the "true" Schaghticoke tribe.

The STN RFD concluded that there was a single Schaghticoke group until about 1997, the point at which certain central members of the community refused to reenroll. The SIT petition does not substantially challenge this conclusion, but argues that STN is the "splinter" from the whole group rather than the SIT being such. The STN PF, FD, and RFD evaluated the history of conflicts within the Schaghticoke community both before and after 1997 in considerable detail. The RFD concluded that the STN petitioner was not the complete group, but it was not relevant or necessary to evaluate which petitioner was the "splinter." We note that on its face, the SIT petition also argues that neither the SIT nor the STN is the complete group. In preparing a response to this TA, the SIT should address the discussion in the RFD and the FD concerning criterion 83.7(b) and (c) for the post-1997 time period and the RFD concerning enrollment issues.

The record that will be reviewed for the SIT PF will include the SIT materials submitted to date, the STN administrative record (including SIT's comments before IBIA), and any additional materials submitted by SIT in response to this TA. As stated in the STN RFD, page 64, footnote 42: "Given the relationship between the SIT and the STN, materials from the record of the STN decision would normally be reviewed, to the extent relevant, during active consideration of the SIT petition." The STN RFD concluded that some of the issues raised by SIT were best addressed when SIT's petition is ready for active consideration (STN RFD, 58-64).

A section in the October 15, 2002, submission labeled "Narrative" primarily outlines the disputes over the contested elections of Schaghticoke leaders in 1996. It includes some citations to documents concerning events in the 1980's and 1990's, some of which were citations to documents found in the Federal Acknowledgment Information Resource (FAIR) database as a part of the Department's administrative record of the STN findings. The narrative does not address community or political authority for the 19th century or early 20th century. The SIT submissions included many photocopies of handwritten notes, censuses, overseers' reports, and published histories, etc. that were not cited in the very limited October 15, 2002, "Narrative." Thus, the SIT has not explained how these documents address any of the mandatory criteria.

The SIT petition materials included a January 3, 2004, report titled "Onomastics as Evidence for Schaghticoke Tribal Community and Relations Between Schaghticoke Family Lines," which shows some names that "appear across different family lines" and attempts to tie some of the names to other Indian tribes, such as Oneida and Narragansett, as well as Schaghticoke. However, the petitioner does not explain how this evidence addresses any of the mandatory criteria. Generalities about the origins or repetition of names is not acceptable evidence under the criteria to document that an Indian tribe has continued to exist.

The SIT petitioner also included a January 5, 2004, report titled, "Schaghticoke Indian Tribe Federal Recognition Petition #239" (no page numbers) with sections titled "Analytical Models," "Schaghticoke & Other Relevant Indian Lineages," "Schaghticoke Country" and "1800-1976 Timeline for Schaghticoke Leadership." These reports included assertions and assumptions, but in general did not provide evidence that addresses any of the mandatory criteria. The "Schaghticoke Country" report made general statements concerning towns where Schaghticoke or other Indians lived, but did not provide evidence that the petitioner's ancestors or current members maintained a community or political authority from historical contact to the present.

The SIT's 2002 constitution introduced "clan" names and "totem animals" for the various "core" families with descendants in the SIT. Neither the SIT nor the STN petitioner provided any evidence that a clan system historically existed or functioned. These apparently newly imposed "clan" designations do not provide evidence for community, political authority, or genealogical descent, but appear to be developed by the current petitioner to identify representatives of family lines in the group's governing body.

This TA review indicates there are significant omissions in the petition relating to criteria 83.7 (b) and (c). The SIT considers the materials in the STN petition together with their additional submissions as representing the SIT petition. Since the STN RFD concluded that criteria 83.7(b) and (c) were not met for certain time periods before 1996, the SIT needs to provide additional evidence and analysis that address those time periods when the historical Schaghticoke did not meet these criteria. Petitioner #239's submission does not deal with the critical issue of what the group did from 1920 to 1967 and 1997 to the present to demonstrate criterion 83.7(b). In addition, the submission does not provide evidence of political authority within the group from 1801-1875, 1885-1967, and 1997-present to demonstrate criterion 83.7(c), which were found in the RFD to be time periods lacking evidence.

In evaluating other criteria such as 83.7(a), (b), and (c), the Department will focus on the community defined in the membership list. There are two issues concerning SIT's membership list. First, it does not represent the whole body of Schaghticoke Indians who were a part of the group as it existed prior to 1996. Second, the SIT membership list includes several individuals who were not documented to be a part of the group as it existed prior to 1996. The SIT needs to address these issues and provide evidence on how the individuals on its membership list who were not identified in the STN FD and RFD as part of the Schaghticoke community prior to 1996 were in fact part of it.

II. Specific Comments about Criteria 83.7(a) through (g)

It is important for the petitioning group to review the acknowledgment criteria 25 CFR 83.7 (a)-(g) carefully and direct any additional research toward providing the evidence that will demonstrate it meets each criterion. Below is a discussion of the specific criteria.

A. Criterion 83.7(a): External Identification of the Group as an American Indian Entity on a Substantially Continuous Basis since 1900.

Petitioner #239 did not provide any new evidence that addressed criterion 83.7(a). The STN PF, FD, and RFD all found that there was sufficient evidence to identify a Schaghticoke Indian entity from 1900 to the present. The STN RFD found there was only one community of Schaghticoke Indians: those who were enrolled in STN and others who refused to enroll in STN, some of whom are enrolled in SIT. The SIT group also claims the STN petition represents its history, and includes in its membership some of the individuals who were identified as a part of the group that existed before 1997. Thus, the evidence in the STN administrative record that addresses criterion 83.7(a) also applies to the SIT petitioner. However, Petitioner #239's membership is only a fraction of the population that was identified as the "Schaghticoke Tribe" prior to 1996, and the SIT includes about 25 people (descendants of Nancy Chickens and of Jabez Cogswell) who were not documented to be a part of the group that was being identified from 1900 to about 1996. Thus, perhaps about one third of the SIT membership (25 of 73) descends from individuals who may have had Schaghticoke ancestors, but who the STN RFD found were not in tribal relations after the mid-1800's. This could be a problem for the SIT petitioner in demonstrating criterion 83.7(a), as well as criteria 83.7(b) and (c), since the Indian entity or community being identified did not include those individuals. Any additional research should address these issues.

B. Criterion 83.7(b): A Predominant Portion of the Petitioning Group Comprises a Distinct Community and Has Existed as a Community from Historical Times until the Present.

The SIT petitioner did not include a narrative that addressed criterion 83.7(b) or provide evidence, not already in the record, to demonstrate community for any time period. Any additional research should focus on providing evidence of a Schaghticoke community from about 1920 to 1967. The newspaper articles submitted by SIT about individuals who participated in the rattlesnake hunts and photographs of individuals who were identified as Schaghticoke Indians are the same or similar to ones already in the record. For the most part, such individual identifications as "Indian" or "Schaghticoke" do not provide evidence to demonstrate a community has continued to exist. The STN decisions found that while it appeared that SIT members were of Schaghticoke descent, some of them or their ancestors had not been part of the community for many generations (STN PF, Appendix I). Descent from the historical tribe alone is not the issue for some of the SIT membership, but demonstrating that they or their ancestors were a part of the community described under criterion 83.7(b) is a problem.

As the RFD found, the STN petitioner also failed to meet criterion (b) from 1997 to present because its membership did not include the whole body of Schaghticoke Indians that had been

well documented in the previous thirty years (1967-1996). The same issue presents itself with the SIT petitioner. The SIT membership as defined by its 2005 certified membership list does not represent the whole body of the Schaghticoke who were an active part of the group prior to 1997. Finally, you will need to address how the individuals, who were not part of the group as it existed prior to 1996, were part of the community. Please consult the RFD for additional details concerning criterion 83.7(b).

C. Criterion 83.7(c): The Petitioner Has Maintained Political Influence or Authority over Its Members as an Autonomous Entity from Historical Times until the Present.

See the STN RFD (pages 45-58) for a full discussion the reevaluation of the State relationship as evidence for political authority, as well as the time periods when there was insufficient evidence to demonstrate political authority within the Schaghticoke. In brief, the RFD found that the STN petitioner did not meet criterion 83.7(c) from 1801-1875, 1885-1967, or 1997 to the present (STN RFD, 58).

The SIT petitioner's leadership timeline (1800-1967) listed various events it considered as evidence of leadership. Some of these events are new claims. One such event was the establishment of a Foreign Mission School at Cornwall (1817-1826) for Indian children from around the country, which is presented as an event that provided the Cogswell family with the "opportunity to establish relationships with the children of the tribal leaders from many different tribes." According to this report, these supposed associations provided the long-lasting effect of the Cogswells being recognized as leaders in later generations. The petitioner has not provided any evidence that the Cogswells were in contact with the students at the school, or that the Cogswell children attended the school.

The petitioner has not documented the assertions that individuals listed in the timeline were leaders or that they represented the Schaghticoke group as it may have existed from the 1800's to 1967. For example, "1812: 'Queen' Eliza Warrups Chickens dies. Although there is not documentation to support it, her oldest son Jeremiah may have become the next Schaghticoke sachem after her death," and [in 1900] "Emily Ann (Smith) Cogswell is listed as the household head rather than the husband which is suggestive of the clan system of government that was traditional among the river tribes." Neither of these assertions was documented by any evidence.

This timeline for Schaghticoke leadership simply listed individuals, some of whom are known Schaghticoke descendants and some of whom are not, and events in their lives. The timeline did not provide evidence of leadership or influence by these listed formal or informal leaders at any point in time. For example, one entry stated: "1850 Jabez Cogswell, Samuel Coyes, Charles Lewis, Mason Gauson attend church affairs in New Milford." However, the petitioner did not include evidence that Coyes, Lewis, or Gauson were members of the Schaghticoke tribe, what church they may have belonged to, or that the church affairs in New Milford were directed by or had any affect on the Schaghticoke who were living on the reservation in Kent or elsewhere. For such claims to be meaningful, the petitioner needs to provide additional evidence that the church at New Milford was predominantly attended by Schaghticoke or established for their use and benefit. The petitioner should also provide evidence that explains what the "church affairs" were

and how the Cogswell's and others' participation in them is evidence of political authority within the Schaghticoke group.

The SIT petitioner should keep in mind that political authority under criterion 83.7(c) is demonstrated by showing that there was a bilateral political relationship between the leaders and followers within a group, not by evidence that individuals of Schaghticoke descent were active in church or civic activities carried on in the general population. Finally, you must address criterion (c) in the context of your specific members.

D. Criterion 83.7(d): Provide a Governing Document

The regulations require that the petitioning group submit its governing documents, including its membership criteria. The SIT group submitted a constitution, dated July 21, 2002, which permits an evaluation under criterion 83.7(d).

E. Criterion 83.7(e): Current Membership List and Descent from a Historical Tribe, or from Historical Indian Tribes which Combined and Functioned as a Single Autonomous Entity.

The SIT petitioner submitted a membership list dated October 5, 2002, which listed 73 individuals by name. A second list, printed from an electronic database and dated October 6, 2002, listed these same 73 individuals, with their birth dates, residential addresses, and other information such as roll number, and "generation# and clan." The SIT governing body separately certified the membership list on October 6, 2002. See Appendix I of the STN PF for an analysis of the SIT membership list as it related to the STN membership. The SIT also provided a membership list dated September 5, 2005, which was not separately certified, in the "supplemental" materials that were certified by the SIT governing body as a part of its documented petition. One of the petitioner's reports prepared by Mark Choquet also referred to a December 19, 2003, membership list; however, this list was not in the materials submitted in September 2005. The petitioner should submit this list.

The petitioner included genealogical descent charts for each of the "clans" representing the petitioner's family lines, which list generations prior to the petitioner's known ancestors by a "clan" name. For example, the section on the "Descendants of Tommuck Clan, Schaghticoke Indian Tribe" lists Generation No. 1 as "Tommuck Clan, Schaghticoke Indian Tribe," Generation No. 2 as "Child of Tommuck Clan, Schaghticoke Indian," and Generation No. 3 as "Schaghticoke Indian." Generation #3 children were identified as Mary Ett, Emma J., Charles William, Frederick and Lucy Kilson. It is unclear why the SIT's chart did not include the names of the parents (Eliza Ann Kelly and Alexander Value Kilson) both of whom were members of the Schaghticoke tribe and resided on the Schaghticoke reservation until their deaths in 1899 and 1907, respectively. See the STN PF, FD, and RFD for additional, documented evidence concerning the grandparents and great-grandparents of these five Kilson children. By omitting the already documented parents and inserting unsubstantiated, generic "Schaghticoke Indian" or "clan" designations, the SIT report omits the direct evidence that connected the Kilson siblings to members of the well-documented Schaghticoke tribe as it existed in the 1800's. The

undocumented "clan lineages" referenced in the report do not provide any new evidence for Petitioner #239's claims for descent from the historical tribe.

The SIT petition includes birth records and other vital records for most individuals on the membership list; however, there are about 15 individuals who do not have birth or other records that name parents. Some of the "short form" birth records issued by hospitals have the child's name and birth date, but not the parents' names, and some of the individuals on the membership list do not have residential addresses; in particular the individuals identified on the October 6, 2002, list as "pending" are missing the required birth dates and addresses and documentation connecting them to individuals who were identified as part of the Schaghticoke tribe. These deficiencies should be remedied. However, there appears to be sufficient evidence in the current record for the Department to make a finding concerning criterion 83.7(e).

F. Criterion 83.7(f): Members of the Petitioning Group May Not be Enrolled in Any Recognized Tribe.

This criterion prohibits the Department from acknowledging groups which are composed principally of members of recognized tribes. The SIT's constitution stated that the group prohibits dual membership in other groups or tribes. The petitioner should include a statement from the current members of the SIT that they are not enrolled members of a recognized tribe. The petitioner may already have such statements on the membership application. If SIT does not have such statements or applications, the governing body should include a statement that the predominant portion of current membership is not enrolled in any other federally acknowledged American Indian tribe.

G. Criterion 83.7(g): Neither the Petitioner nor Its Members Are the Subject of Congressional Legislation that Has Expressly Terminated or Forbidden the Federal Relationship.

Though neither the group nor its members appear, from the materials submitted, to be the subject of congressional legislation expressly terminating or forbidding a Federal relationship, please include a formal statement to that effect in the petition materials.

III. Summary

This TA review letter has described critical deficiencies which need to be addressed before the petition is placed on active consideration. These critical deficiencies are in criteria §83.7(a), (b), (c), and (e).

The Department has not made a decision concerning the SIT's documented petition. This TA review is not meant to be a preliminary determination of the petition. It does not make conclusions that the petition will result in a positive or negative decision; however, you have been advised that the findings in the STN RFD, which found that the STN did not meet criteria (b) and (c) on a substantially continuous basis, also impacts your group. Conversely, to the extent the STN RFD found that STN met a criteria, the evidence must be reviewed in the context of your group's membership. The group should not assume that positive conclusions are made

about portions of the petition not discussed in this letter. Finally, do not presume the group will meet the seven mandatory criteria by simply submitting additional data. Make certain any additional data is tailored to the criteria and that all additional submissions are properly referenced, cited, and certified.

Petitioners have the option either of responding in part or in full to the TA review, of withdrawing the petition, or of requesting in writing that the AS-IA proceed with the active consideration of the documented petition using the materials already submitted. However, the OFA will determine whether or not your petition is ready to be placed on active consideration.

If the group asks the OFA to evaluate the new material submitted in response to this review, it will do that. However, the group must request a second TA letter in writing. When more materials are received from the group, the OFA will do one of the following: it may evaluate the petition and issue an expedited finding under §83.10(e) (f) or (g) of the acknowledgment regulations; it may place the petition on the list of petitioners waiting for active consideration; and finally, it may request further documentation.

Interested parties associated with this petition under 25 CFR Part 83 are listed as follows: Governor Jodi Rell, Attorney General Richard Blumenthal, First Selectman Dolores Schiesel. Peter Urban is listed as an informed party. To obtain interested or informed party status, please consult with section 83.1 of the Federal acknowledgment regulations or contact OFA for further information.

If the group has any questions regarding this TA review letter, please write the Office of Federal Acknowledgment, Office of the Assistant Secretary-Indian Affairs, 1951 Constitution Avenue N.W., MS 34B-SIB, Washington, D.C. 20240, or call (202) 513-7650.

Sincerely,



Director, Office of Federal Acknowledgment

Enclosure: Preliminary Inventory of Petition Submission
Interested/Informed Parties List

cc: Interested/Informed Parties



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 22 2013

Mr. Alan Russell
P.O. Box 111
Kent, Connecticut 06757

Dear Mr. Russell:

Thank you for participating in a telephone conference on August 15, 2013, in which you and Gail Harrison Donovan, representing the group known as the Schaghticoke Indian Tribe (SIT, Petitioner #239), and your attorney of record, John Sarcone, and his associates, Thomas Kelly and Maurice Heller, discussed issues concerning your petition. During this call, R. Lee Fleming and Rita Souther from the Office of Federal Acknowledgment (OFA) answered questions raised in Mr. Sarcone's letter dated July 16, 2013.

Question #1 addressed the estimated \$119,000 fee to respond to a Freedom of Information Act (FOIA) request to copy the record for the Schaghticoke Tribal Nation (STN) finding. You asked if the STN petition could be used as part of the SIT petition.

Answer: The OFA will use the existing record for the STN petitioner in evaluating the SIT petition for acknowledgment as an Indian tribe. It is not necessary for SIT to obtain and resubmit all of the evidence used by the STN petitioner. The OFA has never advised SIT that this was required in order for it to have a "complete" petition. However, the SIT should provide evidence for the periods in its history not covered by the STN findings and any additional evidence not previously submitted for those periods in which the STN findings concluded that the evidence was insufficient.

The OFA advised you to study the STN findings, bibliography, and inventories that you have for specific documents that you consider beneficial. You may want to submit a new FOIA request that identifies specific documents.

Question #2 asked if the Schaghticoke history in the STN petition were incorporated in the SIT petition, would the SIT petition be "complete?"

Answer: The SIT petition would not be "complete." The SIT must also submit an updated membership list identifying all of the current, living members of the SIT. The membership list must have each living member's full name (including maiden names of married women), full birth date, and complete residential addresses (not merely P.O. Box numbers), as required by section 83.7(e) of the acknowledgment regulations. All members of the governing body must certify the membership list.

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The materials SIT submitted in June 2013 were in response to OFA's advice in previous letters regarding demonstrating community and political authority for the periods where the STN Reconsidered Final Determination (RFD) said that evidence was lacking. The previous technical assistance (TA) letters provided suggestions on the types of evidence and time periods where evidence should be submitted. During the telephone conference, OFA suggested the State libraries, archives, and agencies that may house records relating the Schaghticoke reservation and the State's relationship with its inhabitants. The STN Proposed Finding, Final Determination, as well as the Interior Board of Indian Appeals decision (41 IBIA 30) and resultant RFD, include the names of the State agencies that dealt with the reservation over time. These findings are available to the public at our website, [www.bia.gov/whowcare/ASIA/OFA/Acknowledgment Decision List](http://www.bia.gov/whowcare/ASIA/OFA/Acknowledgment%20Decision%20List).

The OFA also suggested that the SIT leadership contact other council members, family members, or other SIT participants who may have taken notes during meetings or have copies of letters or records relating to the SIT that may substitute for the records you say were lost in the Russell house fire. If the SIT has provided the materials requested to the best of its ability, the members of the governing body should write a letter stating that it considers its petition to be complete and ready for active consideration.

If necessary, SIT may request and OFA will provide additional TA, however, it is not likely we can offer any new advice or sources not already provided in the April 30, 2003; September 14, 2006; February 26, 2009; and January 16, 2013, TA letters. (Courtesy copies enclosed.)

Question #3 outlined problems SIT has with "squatters" on the reservation and asked if the Bureau of Indian Affairs (BIA) could assist in removing individuals and preventing damage to the property.

Answer: The Schaghticoke Indian Reservation is a State of Connecticut reservation. This is a State and local law enforcement issue.

The OFA advised you that newspaper articles, court documents, letters, and other evidence of how the SIT is responding to squatters may provide evidence that the SIT may use to address the mandatory criteria.

Your comment that the SIT has lost thousands of acres is confusing as the State of Connecticut's reservation is still in existence. Because this is a State reservation it is a State issue.

Question #4 asked if the "Velky group" (STN, Petitioner #79) has been "reactivated."

Answer: The OFA has not heard from the STN petitioner or members or any persons claiming to back the STN. Under the regulations 25 CFR § 83.3(f), groups that previously petitioned and denied Federal acknowledgment, may not re-petition.

Question #5 asks if there is truth to a rumor that the regulations are about to change to require only to show history to the 1930s.

Answer: The OFA advised you that a "Preliminary Discussion Draft" of proposed changes and ideas for discussion to revise the regulations governing Federal acknowledgment of Indian groups as tribes is available on the Department and OFA websites at www.bia.gov/whoweare/ASIA/OFA. Click on the "Red Lined Discussion Draft Version" for proposed changes. Any comments on the proposed revisions should be sent to the address on that document, not to OFA.

The draft proposals in the document have not gone through all of the required tribal consultation, publication, comment, and rule-making stages. Until formal revisions are made, all petitioners are being processed under the existing regulations at 25 CFR Part 83.

On July 18, 2013, Mr. Sarcone faxed a letter to OFA with questions related to a previous request for a copy of the SIT's 2005 membership list. We believe these questions were answered in OFA's August 9, 2013, letter and enclosures sent to Alan Russell and Gail Harrison Donovan. (Courtesy copy enclosed.)

To avoid confusion and improve communications, OFA will "cc" your attorney of record, John A. Sarcone, on future correspondence until you inform us otherwise. We are sending him copies of the previous TA letters discussed above.

Again, thank you for the opportunity to provide your group with additional TA. If you have other questions, please contact the Office of Federal Acknowledgment, MS-34B-SIB, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

Sincerely,

(sgd) R. Lee Fleming

Director, Office of Federal Acknowledgment

Enclosures

cc: John A. Sarcone
Interested parties



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 31 2015

Dear Petitioner:

On July 1, 2015, the Department of the Interior (Department) issued a final rule regarding Federal acknowledgment. This rule becomes effective on July 31, 2015. Enclosed please find a copy of the revised 25 C.F.R. Part 83 regulations entitled, "Federal Acknowledgment of American Indian Tribes; Final Rule."

Petitioners, such as your group, never submitted a complete petition under the previous regulations. Please note that the Department's new regulations provide:

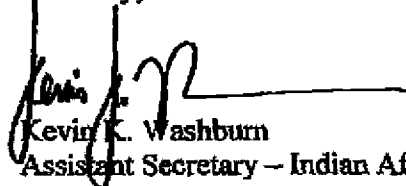
Any petitioner who has not submitted a *complete* documented petition as of July 31, 2015, must proceed under these revised regulations. We will notify these petitioners and provide them with a copy of the revised regulations by July 31, 2015.

25 C.F.R. § 83.7(a). Accordingly, please be advised that your group should prepare its petition in accordance with the enclosed final rule. Under the new regulations, the regulatory process will begin when we receive a complete documented petition from your group.

As explained in Section 83.21 of the new rule, a complete documented petition requires: (1) a certification signed and dated by the governing body, (2) a concise written narrative with citations to supporting documentation thoroughly explaining how the petitioner meets each of the criteria listed in Section 83.11 of the rule, (3) supporting documentation, and (4) membership lists and explanations. In addition to the complete original petition, please also submit those pages where you redact or remove privacy material from your petition. As such, when we receive a complete petition from your group the petition will be reviewed under the new regulations.

Should you have any questions, please contact the Office of Federal Acknowledgment, 1951 Constitution Avenue, MS 34B-SIB, Washington, D.C. 20240, or by telephone at (202) 513-7650.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Enclosure

CTP APPX035



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 09 2016

Mr. Alan Russell
Post Office Box 111
Kent, Connecticut 06757

Dear Mr. Russell:

Thank you for your material dated May 19, 2016, submitted on behalf of the "Schaghticoke Indian Tribe" (SIT). This material of 159 pages was hand-delivered to the Office of Federal Acknowledgment (OFA) on June 3, 2016. OFA reviewed it to see whether it meets the definition of a "documented petition" under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83 (2015)). Please be advised that the materials do not meet the regulatory requirements to be a documented petition in the Department of the Interior's (Department) Federal acknowledgment process.

SIT should not be confused with the "Schaghticoke Tribal Nation" (STN). The Department issued STN a Reconsidered Final Determination declining Federal acknowledgment which became effective in 2005.

On July 1, 2015, the Department published in the Federal Register revisions to 25 CFR Part 83, "Procedures for Federal Acknowledgment of Indian Tribes," which became effective on July 31, 2015 (2015 regulations). By letter of July 31, 2015, the Assistant Secretary – Indian Affairs (AS-IA) contacted groups (including the SIT) that had not submitted "complete documented petitions" under the 1994 regulations and informed them that they must submit a documented petition under the 2015 regulations before the Department considers them petitioners. The AS-IA advised, "Under the new regulations, the regulatory process will begin when we receive a complete documented petition from your group." We are providing you a copy of that letter and a copy of these 2015 regulations.

The previously submitted SIT materials remain on file. These materials neither met the requirements for a complete documented petition under the superseded 1994 regulations nor do they meet the requirements for a documented petition under the current 2015 regulations. Under § 83.21(a), the documented petition must include the following: (1) a certification, signed and dated by the group's governing body; (2) a concise written narrative, with citations to supporting documentation, thoroughly explaining how the group meets each of the criteria in § 83.11; (3) supporting documentation; and (4) membership lists and explanations. Your submission did not satisfy any of these four requirements and therefore is not a "documented petition." You also will need to comply with § 83.21(b). Please pay special attention to removing or redacting privacy or other protected information from your submissions.

The Department finds that your recent submission of material, together with the documents that you previously submitted, do not meet the requirements for a documented petition under the 2015 regulations. Until such material is supplemented in accord to § 83.21 and all of its subsections, SIT is not considered a petitioner. Should you have any questions, please feel free to contact us directly or visit OFA's Web page at: <http://www.bia.gov/WhoWeAre/ASIA/OFA/index.htm>. We look forward to receiving SIT's documented petition under the 2015 regulations.

Sincerely,

Director, Office of Federal Acknowledgment

Enclosures

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Page No - SIT	Document Reference	2002 STN PF	2004 STN FD	2005 STN RFD	Comments
34-57	Court of Common Pleas, State Forest and Forest Commission, Commissioner of Welfare- Numerous reports providing basic information on population, residence figures for the reservation and status of Trust Fund	pp. 10-11	pp. 58-59	pp. 49-50	The SIT petition cites several of the documents created by state officials from the overseers in the pre-1926 system of the County Court of Common Pleas through the State Park and Forest Commission to the Commissioner of Welfare. The petition asserts that the regular reports produced by these officials and agencies demonstrate State recognition of an Indian community. The FD found that the State's appropriations and legislative actions demonstrated continuous state recognition. The RFD rejected this reasoning and determined that the State relationship did not provide evidence of social interaction or cohesion among the Schaghticoke.
34	A-1; Lane, Martin, 1900, "Court of Common Pleas, Litchfield County"	p. 12	None	pp. 49-50	While none of the three USG reports refer to this particular document, the PF discusses the Litchfield County Court of Common Pleas in its discussion of criterion (a). It concluded that the overseer reports demonstrated identity as an American Indian entity. The PF makes no specific conclusions about its applicability for criterion (b) or (c); however, it determined that there was a gap from 1885 until the late 1960s where the continuous State recognition with a reservation may not have been sufficient to meet the requirements for (b). The RFD determined that the State relationship, of which this document is evidence, did not provide evidence of social interaction or cohesion among the Schaghticoke.
35-49	Schaghticoke Rattlesnake Club- Numerous primary and secondary sources documents- those that DOI referred to have their own rows	pp. 125-126	pp. 96-102	None	The BAR and OFA referred to the Rattlesnake Club as "a group which met annually on the reservation to hunt rattlesnakes and hold drinking parties." It also described the Club as "made up almost entirely of non-Indians, most of whom came to the reservation once a year from New York City and other urban areas" (PF, 126). The FD argued that there is not significant evidence of the club or the hunts as community efforts. The OFA does not use the Club to support to STN's claim of community and dismisses it as evidence (FD, 96-102). The RFD does not address the activities of the Club in the context of (b); it does, however, cite the FD in its review of the Club for (c) and concurs with the FD's analysis.
36	A-4; Dyer, Edward, 1903; Gradense: The Lake of Grace, pp. 213-221.	p. 123	None	None	In the PF, the BAR refers to Dyer's book as they describe the reservation and the residential function of the tribe in 1903. The BAR does not draw any conclusions from Dyer concerning a distinct tribal community or tribal authority and leadership.
37	A-103; New Milford Gazette, "Preacher Jim Hams", 7/17/1903	p. 125	p. 89	None	In the PF, the BAR discusses this article as they describe what is known about James Henry Hams. He is described as a preacher and mail carrier and a participant in the Rattlesnake Club. The PF concludes that there was "nothing to indicate this [the Club] showed leadership of Schaghticoke Indians." The FD observed that the churches were not specifically Indian (FD, 89). Likewise, the PF does not indicate that this is positive evidence of community.
37	A-104; Prince, J. and Frank Speck, 1903; "Dying American Speech Echoes from Connecticut"; Speck, Frank; "Notes on Scatacook Indians" 8/15/1903	p. 123	None	None	The SIT petition asserts that Speck's use of the term "band" in one of the two cited documents demonstrated that he thought they were a "discrete Indian community." Moreover, his statement that "the off-Reservation members 'claim tribal rights and relationship with this clan'" is used to assert that the off-Reservation members were in community relations with those living on the Reservation. The BAR characterized Speck's visit as little more than a stop of those resident on the reservation or elsewhere. The BAR also stated that "Speck did not describe the existence of a distinct culture."
38	A-5; State of Connecticut, Litchfield County Supreme Court, 1903, "The New Milford Power Co. vs Martin B. Lane et al. Stipulation as to Amendment, 9/1/1903, p. 1	None	None	None	The petitioner asserts that the documents from a court case regarding the condemnation of land adjacent to Schaghticoke lands demonstrate that government entities and local residents recognized that the Schaghticoke were "a distinct tribal community" and that the communal land ownership was a regular feature of tribal Indian communities. Much like many of the petitioner's claims for criterion (b) from State documents, the petitioner does not explain how they meet the DOI's requirements for (b). They seem more suited to provide evidence for (a).
38	The Judgement of the Court of Common Pleas, 2/1904; Numpate citation	None	pp. 102-103	None	The petitioner asserts that the judgement from a court case recognized the Schaghticoke burying ground on the Reservation and its continued use by the Tribe. Furthermore, it argues that this shows government recognition of the tribe, that the community had strong ties to the cemetery, and that the "corporate nature of Schaghticoke land ownership and shared spirituality in the Tribe's cemetery characterize a traditional, discrete Indian community." Much like many of the petitioner's claims for criterion (b) from State documents, the petitioner does not explain how they meet the DOI's requirements for (b) and it is not clear that the documents do so. The document seems more suited to provide evidence for (a). The petitioner provided no evidence of how the Tribe and its members used the burying grounds or how it tied into community functions. In the FD, the OFA did not address this document, but it did indicate that other documents cited by STN that the SIT were alleged to have consulted with the Tribe- possibly over damages from the sale of lands to the Milford Power Company. However, it concluded that there was insufficient information to establish that there was consultation, and the SIT does not appear to argue for consultation.
39	A-8; New York Times; "The Rattlesnake Club Makes a Good Hunt" 5/21/1906	p. 126	pp. 95-96	None	The SIT argues that the 1926 Times article demonstrates that George Cogswell and James Hams were Schaghticoke leaders, and that members of the family assisted with the event. Cogswell is referred to as the "Chief" of the Reservation. In the FD, the OFA concluded that these descriptions of their activities during the hunt "do not present them as leaders of the Schaghticoke." As such, they also fail to support the SIT's claim that the Club evinced Schaghticoke community.
40	A-102; Sunday Herald; "Exciting Day's Sport of the Schaghticoke Rattlesnake Club, 6/5/1906	p. 126	pp. 93-94	None	The BAR and OFA dismissed the claims of the petitioner regarding the Club as demonstrating community and leadership. They described the Club as "made of almost entirely of non-Indians." According to the PF, the only potentially significant evidence was the possible existence of a guest book that Cogswell kept but no actual evidence was included (PF, 126). The FD noted that a book "by itself does not show that the community was controlling, as opposed to recording, who came onto the reservation for some purposes" (FD, 94).
41	A-115; New Milford Gazette; "A Day in Kent", 7/5/1907	None	p. 103	None	The SIT petition argues that the article discussing the Rattlesnake Club's wish to create a game preserve would have bolstered hunting "a traditional economic activity of the Schaghticoke." The FD observed that rather than being initiated by tribal members, the idea was developed by non-Indians and that the club was not for tribal members was evident. Moreover, the establishment of such a preserve would have provided an alternative to the hunts on the reservation and not necessarily been to the advantage of the Schaghticoke.
44	A-122; New Milford Gazette; "Village and Vicinity" 5/27/1910	None	p. 87	None	The SIT petition argues that the election of George Cogswell as "Scout" demonstrated the Tribe's traditional knowledge that tribal members had and that knowledge "indicated a discrete community separate from local white Kent folks." The FD dismissed that argument and noted that there was no evidence of any Schaghticoke involvement in the election or appointment to Club offices. Moreover, the office of "medicine man" was held by a non-Indian.
45	Sunday Herald; "Schaghticoke Rattlesnake Club goes after Rattles Today" 6.15/1913	p. 126	pp. 96-102	None	The BAR and OFA dismissed the claims of the petitioner regarding the Club as demonstrating community and leadership. The BAR describes the Club as "made of almost entirely of non-Indians." The PF does not comment on the SIT claims that the Club activities demonstrate storytelling, basketmaking and other tribal traditions. The FD questioned that activities such as selling baskets at Club events constituted a community effort (FD, 99). Furthermore, the FD noted that the evidence of cultural knowledge transmission was lacking in the early 20th century after the death of several older individuals (FD, 101). Whatever cultural transmissions on the place appeared to occur within family lines rather than passing down knowledge into the broader community (FD, 100).
46	A-15; Judge John T. Hubbard; "Appeal for the Scatacook Tribe", 5/14/1915	None	pp. 40, 93	None	The SIT petition argues that the letter demonstrated that officials of the town and State recognized that the Tribe was an Indian community. In the FD, the OFA accepted the letter as providing evidence of a community on the reservation and of connection between reservation and non-reservation residents.
48	Letter from George Cogswell to CIA: 1/29/1925, and replies (Hauke to Schaghticoke, 3/10/1925 and Asst CIA Merritt to Frank Cogswell 3/19/1925)	None	p. 109	None	The SIT argues that George Cogswell wrote a letter in January 1925 to the CIA regarding the Reservation and that the USG replied twice- via Clerk Hauke and Asst CIA Merritt. Merritt allegedly wrote to Frank Cogswell that the Reservation was administered by the State, not the Federal Government. It is unclear as to how these letters are supposed to demonstrate community. At best, they demonstrate that the USG was aware that the Schaghticoke Reservation was administered by the State of CT. Another problem with the SIT's interpretation of these letters is that George Cogswell died in 1923. The OFA pointed out that Julia Cogswell Barre sent a letter to the USG in 1925 that concerned the possible loss of the Reservation. That may have been the petitioner is referring to.

48-49	A-25; State of CT, Park and Forest Commission Ninth Biennial Report of the State Park and Forest Commission; 6/1926	pp 127-128	None	pp. 43-44, 49-50	The SIT petition asserts that the Commission "acknowledged that Schaghticoke were a discrete Indian community." The PF used the 1926 report as evidence of occupation of the reservation by these people, and of housing in need of repairs. The report also noted that there were "some fifty people who claim to be members of this tribe scattered through the states." In the RFD, the OFA rejected the argument that the State's jurisdiction over the role, including of the Park and Forest Commission, provides evidence of (a) and that it is carryover to (b). The RFD also determined that the State's relationship, of which this document is evidence, did not provide evidence of social interaction or cohesion among the Schaghticoke. The SIT argues that Lane's manuscript demonstrates that the Schaghticoke were an Indian community. Much like several other entries from the petitioner, this does not try to argue that the tribe met the regulatory burden of community in the criterion or that the document contained evidence of aspects of community such as social patterns, social relationships between members, or marriage patterns. The PF used Lane's manuscript to verify the occupation of the reservation by three families, perhaps only 3 people. It did not draw any conclusion about the existence of a distinct tribal community or of community functions.
49	A-27; Lane, Fred, unpublished manuscript, 5/20/1927	pp 126-127	None	None	The SIT describes the article as portraying "discrete but viable Indian tribe in tribal relations" and asserted that the journalist "believed he was visiting a discrete Indian community." The FD cited the article as documentary evidence of the Schaghticoke as "an existing community." The RFD argued that the article "shows continued residence on the reservation, but does not prove additional evidence of community."
48	A-28; Danbury Evening News; "Indians Still State Wards", 2/1/1929	None	p. 40	p. 44	While the SIT petition argues that the list of tribes within the minutes demonstrates that CT "recognized the Schaghticoke as a discrete Indian community, they do not offer any details how it does aside from being included in a list. The PF observed that within these minutes, the Schaghticoke were noted as having no leader "recognized by tribe." The FD and RFD accepted the State's observation that the tribe lacked leadership in 1936.
52	A-36; State of CT, Park and Forest Commission Meeting No. 282; 3/11/1936	p. 128	p. 121	pp. 49-50	Though the SIT petition does not address this document, the STN PF observed that the Indian Service anthropologist reported that the Schaghticoke had been without formal leadership in recent years, had no organization and lacked myths, folk beliefs and language. The BAR in the PF noted that Tambourgeon tended to underestimate tribal organization and continuity. The FD called the anthropologist's conclusions "a fact definition."
None	Tantaquoggon; 1934	p. 128	p. 121	pp. 56-57	It is very likely that this 1934 application from a NY resident is that of Franklin Bearce (Swimming Earth). The BAR only asserted that there was no evidence that Bearce was of Schaghticoke and that he left the state of CT or tribal members considered him as such. It is unclear why the petitioner included this application as evidence for the tribe.
51	No citation but it is B-51; SIT described it as CT receipt of application from a NY resident claiming Schaghticoke ancestry; 1934	p. 137	None	None	The petitioner argues that the article demonstrates that CT identified the Schaghticoke as an Indian community through its approval of a well and the repair of a house. There is no direct comment on the document in the Pre-1950 evaluations. In the RFD, the OFA concluded that the maintenance of the reservation by the State did not provide evidence for criterion (c), though responses by the Schaghticoke to State action are evidence to be evaluated under (c). There was no evidence of Schaghticoke communication to the State about this in the late 1930s. Thus, this would lose its value to (b) via the accepted carryover provision.
52-53	A-43; New Hartford Times, "Kent," 11/4/1937	None	None	pp. 50-51	The petitioner asserts that Bearce's letter to the State of CT on behalf of the Schaghticoke, Mohegan and Pequot tribes regarding tribal rights to hunt and fish without a license provides evidence that the Mohegan and Pequot tribes recognized the Schaghticoke as a tribal community. The petitioner's argument seems better suited for meeting criterion (A). The PF observed that it was unknown as to whether any Schaghticoke asked him to pursue the matter and thus demonstrate that the issue was important to the community.
53	A-47; Bearce letter to R.P. Hunter, CT Board of Fisheries and Game, 5/18/1939	p. 138	None	None	The SIT petition discusses an autumn 1939 "Indian Day" celebration and powwow and cites to several newspaper articles describing the event. It asserts that the event demonstrated that the tribe was an Indian community and that the American Indian Association of America (AIAA) identified the Schaghticoke as an Indian community. The PF briefly discussed a 1939 powwow and cites an August 16 handbook. The BAR and OFA argued that this event was intertribal and at least one of the organizers, the Agricultural Council, was a pan-Indian organization with no evidence of being a specifically Schaghticoke organization. In the PF, the BAR tried to determine if the Schaghticoke had used the powwows as a venue for tribal meetings; however, it could not find strong evidence that there were Schaghticoke meetings associated with the celebration. Apparently, there's some oral interview evidence for business meetings in the 1940s.
53-54	Powwow 1939- Numerous primary source documents, mostly newspaper articles, describing the October event	p. 134	p. 109	None	The SIT argues that Bearce's August 1940 reply to a Speck letter demonstrated Frank Cogswell's official role through Bearce's alleged identification of Frank Cogswell as a Sachem and that Cogswell acted as a political intermediary between the tribe and outsiders via his visit to an Innuquo community. Cogswell was a member of the pan-Indian Federated Eastern Indian League, and it is unclear as to whether he was thus an affiliate of a member of the League or as an alleged Schaghticoke leader. The SIT also argues that the 1941 powwow was evidence that the tribe's status as an affiliate of the Federated Eastern Indian League demonstrated that leaders of other tribes recognized the Schaghticoke "as a discrete Indian community." Again, this argument is better suited for (a) than (b). In the FD, the OFA noted that the PF accepted Bearce's description of Cogswell as a Sachem in 1939-40; however, there is no discussion of Cogswell's activities or actions as a leader. The FD concluded that his role was largely ceremonial. Furthermore, the FD found that the balance of the evidence for the powwows was that the pan-Indian organizations organized and carried out the powwows.
54	A-58; E. Bearce, Letter to Frank Speck; 8/1940	None	p. 105	None	The SIT petition describes the August 1940 pow-wow as inter-tribal and argues that the acceptance of the Schaghticoke by pan-Indian organizations demonstrated their identity as a "discrete Indian community." The PF did not comment on the 1940 pow-wow. In the FD, the OFA interpreted the evidence (citing the 1939 event) similarly to the 1939 pow-wow as being a function of pan-Indian organizations (FD 109).
54-55	Powwow 1940- Two newspaper articles: "Tribe Plan Greatest pow-wow at Kent "Corn Harvest Dance", 8/11/1940 and "Kent Indians Hold Three- Day Dance", 8/17/1940	None	p. 109	None	The SIT petition does not discuss the 1941 powwow aside from citing the Bridgeport Post article. The PF cites an unidentified newspaper article from 1941. The article described the event as being sponsored by the Town of Kent, chaired by "Chief Grey Fox (Mohican)", and attended by 6000 non-Indians and 100 Indians. It was also reported that Franklin Bearce was the chief and medicine man. The BAR observed that a few individuals (in their interviews) described gatherings or "informal powwows" that they took place in the 1940s. These could be activities by the council. Little detail was provided. Nor could the date be pinned down to the 1940/1941 intertribal powwows.
55	Pow-wow, 1941- Newspaper article from Bridgeport Post, 8/7/1941 No title	p. 134-135	p. 109	None	The SIT petition briefly referred to this as the "tribe files unsuccessful land claim with Indian Claims Commission in 1947." Aside from the fact that the claim is unlikely to have been filed before 1949, the SIT petition does not discuss the tribe's organization, decision-making process or internal support regarding the ICC claim. The BAR however, went into some detail about the effort and argued that there was insufficient evidence of broad support among the Schaghticoke. In the FD, the OFA did not evaluate the ICC petition for (b); however, in its evaluation of (c), it did argue that there was a "continuity of concern with the issue of protecting the reservation" of which the ICC was a part.
55	A-32; Marataka, 2004	pp 27, 138-140	pp 122-123	None	The SIT petition argued that the meeting demonstrated political leadership and the existence of community concerns, particularly regarding housing. This isn't relevant to criterion (b) as it is for (c). The BAR and OFA did not appear to analyze this in the context of (b). In the PF, the BAR argued that there was insufficient evidence of broad support about the claims issue among the Schaghticoke. However, the BAR found that there may have support among members regarding housing on the reservation. In the FD, the OFA didn't discuss the minutes in detail, but they interpreted the 1949 meeting as being "based on preexisting officers and relationships", due to the new evidence of a 1943 meeting (FD, 110).
55	A-134; Minutes of the Legal Tribal Council Meeting; 7/10/49	pp 27, 138-139	None	None	The SIT petition lists the filing of petition to the ICC (that became Docket No. 112) but offers no analysis and makes no claims about its relevance in demonstrating community. The BAR wrote extensively about the attendance of political meetings where the claims were likely discussed. In the PF, the BAR argued that there was insufficient evidence of broad support concerning the ICC claim among the Schaghticoke.
55-56	ICC Claims Petition Docket No. 112	pp 27, 138-145	None	None	

56	A-144: ICC Docket No. 112: "Order Dismissing Petition", 9/9/1958	pp. 27, 145	None	None	The SIT petition lists the dismissal of petition to the ICC (that became Docket No. 112) but offers no analysis and makes no claims about its relevance in demonstrating community. The BAR wrote extensively about the attendance of political meetings where the claims were likely discussed and tried to discern the level of community engagement and support for the claim. It also noted its dismissal. In the PF, the BAR argued that there was insufficient evidence of broad support concerning the ICC claim among the Schaghticoke.
56	A-10: Secretary, 1979: Struggle against Welfare Dept	pp. 149-150, 153	None	None	The SIT refers to a late 1960's struggle against the Welfare Department led by Schaghticoke and that tied to a statewide movement for further autonomy. No primary sources provided. It is unclear as to precisely what the petitioner is referring. Two possibilities: 1) The BAR noted that Schaghticoke were present at 1953 legislative hearings to discuss a bill proposed by the Welfare Department to terminate the State's reservations. This was only related to the BIA's initiative to terminate the U.S. relationship with tribes around the country. The SIT petition does not refer to the 1953 hearing. 2) The PF also briefly discussed an effort to change the State's relationship with the tribes in 1970 that resulted in the creation of the CIAC in 1973. The BAR reviewed minutes of tribal meetings and found that the Schaghticoke were supportive of Harris' efforts to change the tribe's relationship with the State. The SIT argues that the 1973 legislation establishing a CIAC demonstrated that the State "considered the Schaghticoke a bona fide Indian community." This is another example of how the petitioner seems to misunderstand the requirements of criterion (b). While the BAR did not discuss these articles in particular in the PF, they referred to Harris' efforts to change the state recognized tribes' relationship with the State and argued that those efforts led to the 1973 legislation. Minutes of Schaghticoke meetings (uncited by the petitioner) demonstrate that the tribe as a whole and their governing body were supportive of Harris' work.
57	A-147: Bridgeport Telegram, "Indian Council Measure Set to be Approved" 6/22/1973 and Bridgeport Telegram, "Governor Signs Bill on Indians", 6/23/1973	p. 153	None	None	The SIT petition lists as evidence the summer 1984 CIAC decision to accept the 1981 constitution as valid and to recognize that the council elected on 6/26/1983 as the only valid council for the tribe. This is one of the few documents that the SIT petition uses that suggests intra-tribal conflict during the 70s and 80s. The PF also discusses the document briefly and makes clear that it will not review the details of the CIAC decision to support one or the other side in the conflict. The DOI takes the view that the intra-tribal conflict is evidence of political authority. There is no reference to evidence of criterion (b); however, the FD also stated that the "intense patterns of an tribal conflict" is evidence of (c) and that such evidence can be used for (b) under certain circumstances (FD p. 48).
58	B-5, CIAC decision 7/1984	p. 167	None	None	

Page No - SIT	Document Reference	2002 STN PF	2004 STN FD	2005 STN RFD	Comments
					Nearly every reference in the SIT Petition from p. 64 to p. 72 references the Rattlesnake Club and argues that the Club had involvement of Schaghticoke members demonstrate political influence/authority. According to the FD, the SIT argued that the tribal participation of the Club and the execution of rattlesnake hunting parties were what demonstrated political presence (FD, 96). The SIT, however, is quiet that the tribe "led the hunt" and the Club (SIT, 84). The DOI rejected the petitioner's interpretation on several points: there was no evidence to show Schaghticoke as a whole organized the Club; the members of the Club were identified as being of non-Indians; there was no evidence to support the depiction that the Rattlesnake Club had a role in the tribe's stature or public image; no evidence to show evidence of any ceremonial hunting parties; and no evidence that named individuals as culture keepers demonstrated a tribal leadership.
63-72	Schaghticoke Rattlesnake Club: New York primary and secondary sources, including that BIA referred to hunt from own rows	pp. 125-126	pp. 96-102	pp. 55-57	
64	A-4, Dyer, Edward "1933 Gnadensee The Lake of Grace, pp. 213-221	p. 123	None	None	In the PF, the BAR refers to Dyer's book as they describe the reservation and the residential situation of the tribe in 1903. The BAR does not draw any conclusions from Dyer concerning a distinct tribal community or tribal authority and leadership.
65	A-109, New Milford Gazette, "Preacher Jim Harris", 7/17/1903	p. 125	pp. 89-94-96	None	In the PF, the BAR discusses that article as they describe what is known about James Henry Harris. He is described as a preacher and a 300 owner and a participant in the Rattlesnake Club. The PF concludes that there was "nothing to indicate that participation in the Club showed leadership of Schaghticoke Indians." The FD observed that the churches were not specifically Indian and none of the accounts provided evidence of specific forms of tribal leadership (FD, 94). The FD concluded that there was no substantial evidence for Cogswell or Harris or any other individual to be argued as leaders in the early 20th century (FD, 96).
65	Mohican News Report re. conveyance of land to New Milford Power Company, 11/4	None	p. 103	None	The SIT petition lists Tribal Overseer and Agent Martin Lankford (1914) report on the conveyance of Mill Pond land to the Millford Power Company as evidence that the State of CT dealt with the tribe as a political entity. The SIT is not the same as the tribe demonstrating political authority relations with the government that the group interacted with the state as one polity to another. Moreover, the OFA stated in the FD that there was "insufficient evidence in the record to establish that the overseer was negotiating with the Schaghticoke community" (FD, 103).
65-66	A-106, New Milford Globe, "Rattlesnake Den Attack", 11/12/1905	None	pp. 97-99	None	The SIT petition argues that the 1905 article demonstrated Cogswell's leadership of the Club and that Harris was a traditional leader and culture keeper. In the FD, the OFA used the article to argue that the membership of the Club in 1905 seemed originate from the local non-Indian population and that this appeared to change in the next few years as more out-of-town participants became involved. John Monroe, a local individual mentioned in the article. Neither the SIT nor the OFA indicated that the article demonstrated that the Club was a tribal organization in any way, so Cogswell leadership of the Club would be irrelevant to the tribe's demonstrating tribal political influence/authority. The FD argued that only Harris and Cogswell were involved in the hunt itself. Harris' son, Edson Harris, helped with preparations such as "soaking." Thus, there was no communal involvement in the hunt or the Club.
66	A-8, New York Times "The Rattlesnake Club Makes a Good Hunt", 5/21/1906	None	pp. 95-97	None	The SIT petition deploys the NYT article to support their assertion of Cogswell and Harris as tribal leaders. The NYT refers to Cogswell as the "chief" of the Schaghticoke Reservation and Harris as "club boss." The petition argues that outsiders referred to them as tribal leaders and they acted as intermediaries for the tribe. In the FD, the OFA reviewed numerous accounts of the rattlesnake hunting and club, and observed that Harris and Cogswell are "essentially never referred to as tribal leaders or tribal heads, exceptions in the 1906 NYT article. The OFA argued that they were well-known, particularly to non-Indians. The OFA concluded that there was no substantial evidence for Harris, Cogswell, or any other Schaghticoke acting as leaders in the early 20th century.
66	A-109, Sunday Herald, "Exciting Day's Sport of the Schaghticoke Rattlesnake Club, 6/9/1906	p. 126	pp. 100-102	None	In the PF, the BAR dismissed the claims of the petitioner regarding the Club as demonstrating political authority and leadership. The BAR described the Club as "making good hunting" for the tribe. The SIT petition also claims that the Cogswell's and Harris' were culture keepers, the custodians of the physical knowledge of the Reservation's physical environment and wildlife. (While the FD noted that the OFA argued that the petitioner's argument of "culture keepers" via the Club. The FD also stated that there was no evidence of cultural transmission between family lines, and that the evidence for transmission (such as basket-making and snake hunting/handling). Furthermore, the knowledge of how to hunt and handle snakes "was not limited to Schaghticoke but shared at least to some degree by non-Indians in the area" (FD, 102). Thus there was not good evidence here for political leadership of James Harris, George Cogswell, and the others cited" (FD, 102).
66	A-117, New Milford Gazette, "At the Rattlesnake Den", 4/29/1904	None	pp. 99-102	None	The petitioner states that the article provides evidence of tribal leadership as though Cogswell and Harris are tribal intermediary and culture keeper. He shows a reporter around the reservation, and ordered him to tribal members and induces him to buy a basket. The petitioner also argues that Cogswell and Harris were portrayed as culture keepers by preserving and handing down tribal knowledge of rattlesnake lore to the next generation of Schaghticoke. The petitioner did not explain how or in whom they did this. In the FD, the OFA argued that there was no evidence that basketmaking for sale at the hunt was a tribal strategy. They observed that Harris' wife, a non-Indian, made and sold baskets for the 1909 hunt, that did not make it a community effort. As for passing down knowledge such as rattlesnake lore, the OFA noted that this evidence described continuity within family lines rather than in interfamily relationships. The OFA concluded that there was not adequate evidence for the political leadership of Harris, Cogswell and others based on their experience as "culture keepers." (FD, 102)
67	A-122, New Milford Gazette, "Village and Vicinity", 5/17/1904	None	p. 94	None	The SIT petitioner used this article to argue that George Cogswell was a tribal leader since he acted as a intermediary for the tribe with the Ent Wile Association. In the FD, the OFA observed that the article noted that he had offered the use of the reservation for a meeting as President of the Schaghticoke Rattlesnake Club. The article did not indicate that the article was taken by Cogswell as a tribal leader, and the OFA dismissed the article since it appears that the offer was made in the name of the Club.
68	New Milford Gazette, "John Harris", 10/17/1909	p. 123	p. 94	None	The SIT petition argues that the news item on the death of John Harris demonstrated awareness of his status as a tribal leader and culture keeper. To support this, the petitioner cited that the article mentioned John's participation in the Colonial Division of a parade in 1907. In the FD, the OFA acknowledged that Harris (and Cogswell) were well-known in the region and that the parade included Schaghticoke members from the reservation. However, the accounts of the parade do not show that he was being represented specifically or even nominally as leaders of the Schaghticoke tribe (FD, 94).
69	A-12, New Milford Gazette, "Erecting Tribal Lands", 7/1/1908	None	p. 95	None	The petitioner argues that this article demonstrates that George Cogswell was a tribal leader who functioned as an intermediary between white outsiders and the Tribe (SIT, 84). The OFA observed that Harris acted on the behalf of the Club and was not evidence of tribal influence within a political structure established by the Schaghticoke (FD, 95).
69	A-122, New Milford Gazette, "Village and Vicinity", 5/17/1904	None	p. 97	pp. 53-57	The SIT petition argues that the election of George Cogswell as Tribal demonstrated the "transfer of tribal knowledge" that tribal members had and that knowledge "indicated a shift in the membership of the tribe from white Kent folks." The FD dismissed that argument and noted that there was no evidence that any Schaghticoke involvement in the election or appointment to Club offices. Moreover, the title of "medicine man" was held by a non-Indian.
69	A-122, New Milford Gazette, "Village and Vicinity", 6/3/1910	None	pp. 97-98	pp. 53-57	The SIT petition discusses the events at a Club gathering, including the burial of the late James Harris by Club members. The petition refers to Harris' role as an intermediary between white outsiders and the Tribe. Neither the PF nor the FD discuss the article, but the PF noted that there was "nothing to indicate that [participation in the Club] showed leadership of Schaghticoke Indians" (PF 125). The FD suggested that Harris participated as an individual.
71	A-122, New Milford Gazette, "Schaghticoke Funerals", 11/1/1915	None	p. 95	None	The petitioner argues that the news account of the funeral of Mary (Kison) Jansen demonstrates that Cogswell took a traditional leadership role as the overseer of the ceremony and that this role "has left no problem in the Tribe." In the FD, the OFA concurred that the role of sexton had "some indication of status within the Schaghticoke village community" (FD, 95). The OFA also questioned the nature of the ceremony as a "native American burial".
73	CT Park and Forest Dept assumes authority over Reservation from individual overseer, 1924-1926	p. 12	None	pp. 49-50	The petitioner listed this transfer of jurisdiction as evidence of criterion (c). It did not provide an explanation. In the RFD, the DOI declared that the overseer system prior to 1924 and the transfer of jurisdiction did not provide evidence that demonstrated a bilateral political relationship within the group or that between the group and the state.
73	Legislative Committee on Parks and Reservation Actions, including repealing statutes, placing Indians under care of Commissioner	p. 12	None	pp. 49-50	The petitioner listed this transfer of jurisdiction as evidence of criterion (c). It did not provide an explanation. In the RFD, the DOI declared that the overseer system prior to 1926 and the transfer of jurisdiction did not provide evidence that demonstrated a bilateral political relationship within the group or that between the group and the state.

Page	Source	Relevance	Page	Page	Page
73	B-48, National Archives, Indian Affairs, Letter from George Cogswell to CIA re. tribe's reservation, 1/29/25	Name	p 109	None	None
73	A-139, Franklin "Swimming Eel" Bearce, Letter to A. Reservation and Isolated Kent Schaghticoke Indians, 5/18/1955	PF	pp 128-136-139	pp 104-110, pp 122-123	pp 55-57
74	No citation but it is B-51, which described R as CT receipt of application from a NY resident claiming Schaghticoke in 1934	p 137	None	None	None
74	B-52, Materials from the Schaghticoke Indian Reservation Fund, 1931-1940	p 12	None	pp 49-50	None
74	A-32, S. Hilly, 1979, CT State Park and Forest Dept Survey of Schaghticoke tribe, 1934	p 12	None	pp 49-50	None
75	B-54, Unfiled material re. report to report Kison house but no funds for repairs, 1947	None	None	p 50	None
75	A-36, State of CT, Park and Forest Commission Meeting No. 262, 3/17/1938	pp 27, 128	p 121	pp 49-50, 56-57	None
75	E. Bearce/Swimming Eel to Speck, 8/13/1939	p 134	pp 105-107	None	None
77	A-55, E. Bearce/Swimming Eel Letter to Frank Speck, 8/5/1940	None	pp 105, 109-110	None	None
75-77	Powwow, 1942, Newspaper primary source documents, mostly newspaper articles describing the event	p 134	pp 109-110	None	None
77	Powwow, 1940, "Kent Indians Hold Three Day Dance," 8/17/1940	None	pp 109-110	None	None
77	Powwow, 1941, Newspaper article from Bridgeport Post, 8/7/1941, 12 lines	pp 134-135	pp 109-110	None	None
77	A-32, Soulsby, 1979 and A-30, Manataka, State transfers jurisdiction to Wildlife Department, 1941	None	None	pp 49-50	None
77	A-81, Schaghticoke Fund Reports, 1941-1947	None	None	pp 49-50	None

The petitioner cites a letter from George Cogswell to the Commissioner of Indian Affairs regarding the tribe's reservation. No further details are included regarding the content of the letter. It is unclear why the petitioner cited the letter. Moreover, George Cogswell died in 1923. In the FD, the OFA noted that the SIT also provided a 1925 letter from Julia Cogswell Babie to the Federal Government concerning the same topic as the reservation. It is unclear as to whether this is the same letter or whether it pertains to the same topic since the petitioner's citation omits the content and explanation. In the FD, the OFA observed that with the only evidence of Schaghticoke concern in the 1920s about the subject.

The petitioner argues the following from the 1955 Bearce letter: 1) that transactions between 1933 and 1936, the tribe "reorganized" and elected Wm. Cogswell as Sachem, Earl Kison and Howard Harris as Sagamoras and Bearce as Medicine Man; 2) As Bearce tells it, once the federal land was sold in 1936, he was elected Tribal Chairman; 3) Frank Cogswell became sachem/chief of the tribe after 1936. The BAR and OFA addressed aspects of these claims in its PF and FD. In the PF and FD, the BAR and the OFA concluded that there was little evidence that William Cogswell had been a leader (FD, 105). They stated that there was evidence for Frank Cogswell as a leader from the early-mid 1930s until 1937, but not earlier. Furthermore, neither the SIT or the OFA could find evidence of a land claims lawsuit in the U.S. Court of Claims filed in 1938 (FD, 107). However, there were sufficient details to substantiate activities and organization, at least since the 1935-39 period (FD, 107-109).

The BAR determined that it was very likely that this 1934 application from a Connecticut is that of Franklin Bearce (Swimming Eel). The BAR clearly stated that there was no evidence that Bearce was a Schaghticoke ancestor and that neither the State of CT or tribal members considered him as such. It is unclear why the petitioner included this as evidence for criterion (c).

The petitioner listed these reports of the Indian Fund as evidence of criterion (c). It did not provide an explanation. In the RFD, the ADS declared that the State's guardianship role does not provide evidence to meet criterion (c).

The petitioner listed this transfer of jurisdiction as evidence of criterion (c). It did not provide an explanation. In the RFD, the ADS declared that the overseer system prior to 1926 and the transfer of jurisdiction did not provide evidence that demonstrated a bilateral political relationship within the group and that between the group and the state.

The SIT cites a letter allegedly addressing that the Kison house needed repairs and that a decision was made to move it rather than repair it. No explanation is provided as to how the system met criterion (c). In the RFD, the ADS concluded that the maintenance of the reservation by the State did not provide evidence of criterion (c).

The petitioner argues that the inclusion of Schaghticoke on the State's list of tribes for which the Park and Forest Commission was the overseer demonstrated that the State recognized the tribe as a distinct Indian community. The petitioner also argues that the Commission was ignorant of off-Reservation members and that its conclusion that the tribe had no formal leaders was incorrect. It cited Bearce's 1955 letter and the State's 1934 report regarding the lack of Schaghticoke leaders as accurate. In its RFD, the ADS affirmed the FD's determination that there were no Schaghticoke leaders in 1936 and concluded that the evidence presented was insufficient to satisfy criterion (b) between 1855-1938. Furthermore, in its RFD, the ADS declared there was insufficient evidence that the interactions between the representatives and tribal members demonstrated political organization and activity. The guardianship role of the State did not provide evidence of criterion (a).

The SIT argues that Bearce's August 1939 reply to a Speck letter shows that Frank Cogswell was identified as a Sachem and thus a tribal leader. Oddly, while the Speck letter allegedly asked about the Schaghticoke community, the petitioner does not include any other information within Bearce's reply. One would think that it could be a rich source of material. In the PF, the BAR observed that Bearce invited Speck to attend the powwow and identified himself as a medicine man. In the FD, the OFA noted that the PF accepted Bearce's description of Cogswell as a Sachem in 1939-40; however, there is no discussion of Cogswell's activities or actions as a leader. The FD concluded that his role was largely ceremonial.

The SIT argues that Bearce's August 1940 reply to a Speck letter demonstrated political authority through Bearce's alleged identification of Frank Cogswell as a Sachem and that Cogswell acted as a political intermediary between the tribe and the state via his visit to an Indian community. Cogswell was a member of the pan-Indian Federated Eastern Indian League and the only individual who he had met was as an individual, a member of the League or as an alleged Schaghticoke leader. The SIT also argued that the 1942 powwow was evidence of political authority since the main purpose of the event was ceremonial, in part. In the FD, the OFA noted that the PF accepted Bearce's report of Cogswell as a Sachem in 1939-40; however, there is no discussion of Cogswell's activities or actions as a leader. The FD concluded that his role was largely ceremonial. Furthermore, the FD found that the balance of the evidence for the powwows was that pan-Indian organizations organized and managed the powwows. Neither the SIT nor the SIT provided direct evidence of Schaghticoke planning or organization of the events.

The SIT petition discusses an autumn 1939 "Indian Day" celebration and powwow and cites to several newspaper articles describing the event. It asserts that the announcements and articles provided information on the tribe's leadership, particularly Frank Cogswell. Cogswell, Bearce and Earl Kison all participated in the event's proceedings. It also reiterates the tribe's claims concerning leadership of the Cogswells and of Harris, particularly regarding the Rattlesnake Club and as "culture keepers." The PF and FD addressed many of these matters elsewhere, including the claims of leadership in the 1930s (FD, 105-109). The FD observed that substantial evidence suggests that pan-Indian organizations organized and planned the events, and that there is no significant evidence of Schaghticoke members organizing (FD, 109-110).

The petitioner argues that the "Corn Dance" event indicates Schaghticoke political authority, since it was held on the Reservation and tribal leadership would have needed to give permission for the pan-Indian organization to do so. They also state that the title of the news report "suggests that the reporter witnessed the Schaghticoke participation in the management of the event." It is unclear how the petitioner came to that conclusion. In the FD, the OFA did not address the question of permission for use of the Reservation, it argued, however, that the pan-Indian individuals were identified in other accounts as the key party and cited to an article that the petitioner did not reference "Invade Danes", 8/9/1940 (FD, 109). Among the Schaghticoke, only Frank Cogswell was identified as perhaps having a role in organizing (through his participation), and he was identified as a member of the pan-Indian Federated Eastern Indian League. The OFA suggested that the issue may have largely revolved around access to the event.

The SIT petition does not discuss the 1941 powwow aside from noting the religious nature of it. Interestingly, their brief description of the event as "Annual Corn Harvesting Festival of the Federated Eastern Indian League takes place on the Schaghticoke Reservation." The PF cites substantial newspaper reports from 1941. The article described the event as being sponsored by the town of Kent, chaired by "Chief Grey Fox (Mohican)", and attended by 8000 non-Indians and 100 Indians. They also reported that Franklin Bearce was the chief and medicine man. The BAR observed that a few individuals (in their interviews) described gatherings or "informal powwows" that likely took place in the 1940s. These could be activities by the council. Little detail was provided. Nor could the dates be pinned down to the 1940/1941 pan-Indian powwows. These meetings could refer to the 1943 council.

The petitioner listed this transfer of jurisdiction as evidence of criterion (c). It did not provide an explanation. In the RFD, the ADS declared that the overseer system prior to 1926 and the transfer of jurisdiction did not provide evidence that demonstrated a bilateral political relationship within the group and that between the group and the state.

The petitioner listed these documents as evidence of criterion (c). It did not provide an explanation. In the RFD, the ADS stated that the guardianship role of the State did not provide evidence of criterion (c).

					<p>The petitioner argues that the tribe's ICC claim, filed on 5/16/1951 and dismissed on 9/9/1958, demonstrated community and political authority. It did not provide an explanation as to how the petition demonstrated these attributes. In its PF, the BAR discussed the petitioner's process of filing and stated the tribe's membership list submitted to the ICC with the petition. It asserted that the claims issues had not been shown to be the result of a separate process to the membership process (FD, 127). In the FD, the OFA concluded that the evidence, including the 1946-67 period documents, social and political organization, and the evidence of meetings, which the ICC claim was reviewed, indicated community and authority. The OFA stated that Bearce "worked closely with other political figures and that activities addressed issues of the tribe's membership" (FD, 128). The IFD re-evaluated the state relationship with the petitioner and whether or not it met the ICC claim or the political organization and actively around it, the BIA concluded that activities in the state and the relationship, the petitioner did not meet the requirements for (c) from 1936-1967.</p>
76	A-144, ICC, "Order Dismissing Petition" 9/9/1958	pp. 27, 138-145	pp. 60, 122-124	p. 57	<p>The SIT petition argues that the ICC claim shows that the Tribe "had political recognition to be heard in the Commission and political authority was exercised by using the United States government." No further explanation was provided. The DOI did not interpret the claim similarly; it reviewed the political process and organization used by the STN to demonstrate internal political influence and authority and whether the membership was engaged in the process. Review the findings for A-144 for further discussion of the ICC claim.</p>
77	B-58, 1952 ICC Case Petition Docket 112	pp. 27, 138-145	pp. 60, 122-124	p. 57	<p>The petitioner cites to the article on Frank Cogwell who was then the oldest member living on the reservation. No explanation of the importance of the article is included. Though the petitioner did not explain why the article seems likely that the article was an interview for Frank Cogwell. The SIT argues throughout the petition that Frank Cogwell was a tribal leader. In the FD, the BIA concluded that the petitioner's evidence consisted of evidence that Frank Cogwell was identified as a tribal leader by the tribe from the early or mid-1930s until his death in 1953, but not earlier" (FD, 107). This includes the RattleSnake Club. However, OFA concluded that the evidence revealed that he largely acted in a ceremonial role and did not act as a leader "to provide from the office he held in the organization established by Bearce." OFA determined that such activities "alone is not evidence of leadership" (FD, 107).</p>
78	A-71, Waterbury Republican 12/1950	p. 17	pp. 105-107	None	<p>The SIT petitioner briefly described a council meeting held in October 1954 where elections for tribal officers were held. The DOI did not dispute that. The petitioner also asserted that Howard Harris was elected "Chief of the Tribe." While the BAR and OFA accepted this, they questioned his actual leadership role and relationship with the membership and with the state. In the PF, the BAR reviewed the evidence and concluded that he had a relationship with the State or that he exercised a significant political role. In the FD, the OFA considered new evidence and argued that Harris had been involved in some degree from 1949 and acted as an ally of Bearce and a participant on the Bearce-era councils. Toward the end of his term as chief, Harris may have been two axes of bodies, which could explain the very different interpretations in the interviews. That said, the FD focused on Bearce's leadership and did not attempt to support the petitioner's argument of Harris as a leader.</p>
78	B-59, Henretta Peckham, Schaghticoke Reservation, "Official Minutes", 10/20/1954	pp. 27, 143-144, 148-149	pp. 112-113	None	<p>The SIT refers to a late 1960's tribal effort led by Schaghticoke and that led to the creation of the CIAC. No primary sources provided. The petitioner provides no details about the effort or whether it was supported by the membership of the tribe. The PF briefly discussed an effort to change the State's relationship with the tribe in 1970 that resulted in the creation of the CIAC in 1973. The BAR reviewed minutes of tribal meetings and found that the Schaghticoke were supportive of Harris' effort to change the tribe's relationship with the State.</p>
80	A-32, Soudby, 1979; Late 1960's tribal movement led to creation of CT Indian Affairs Council, 1973	p. 153	None	None	<p>The petitioner cites to the 1977 Kaleher memo about the state of Indian Affairs in CT but does not provide an explanation. They may be arguing that the bill is responsible, at the least, for the Dept. of Welfare to the Dept. of Environmental Protection and the Indian Affairs Council established a bilateral political relationship. In the RFD, the ADS concluded that the transfer of jurisdiction over the reservation did not provide evidence that demonstrated a bilateral political relationship with the state or that between the petitioner and the state.</p>
81	A-84, Kaleher, Indian Affairs Coordinator Merritt 7/0/77	None	None	pp. 49-50	

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BEFORE THE INDIAN CLAIMS COMMISSION

Booklet No. 112

Legal and Enrolled Members of The Kent Tribe of Schaghticoke Indians as Listed and Registered At the City of Hartford, State of Connecticut "As Overseers," Mrs. Sarah Cogswell Orinaga, Richard Orinaga, Claudet Orinaga, Ronald Orinaga, Theodore Deckerne Cogswell, Sr., Theodore Cogswell, Jr., William Cogswell, Elsie Frances Cogswell, Alice Beverly Cogswell, Beatrice Arlene Cogswell, Jeanne Marie Cogswell, Gloria Wilson Thompson, Earl A. Wilson, Jr., Russell, Kilson, Joyce A. Thompson, Earl Kilson, Sr., Suzanne Henarvita Peckham, Stewart Pennywell, Olive Pennywell, Gabe Russell, Adam Russell, Nellie Russell, William Pan Russell, Howard Paul Hattie, Margie Overstrand, Howard Harris, Jr., Mary Russell, Florence Johnson, Harrison Johnson, Harriette Johnson Packham, Marie Johnson Kiberling, Herbert Johnson, Julie Parmelee, Hazel Smith, Felbert Parmelee, Julia Cogswell Batio, Frank Cogswell Cogswell, Gertrude Cogswell, Maud Cogswell, Hazel Whidby, Senora Cogswell, Margaret Roy, Catherine Catharin Riley Straver, Edward Riley, Patricia Riley, Florence Straver, Earl Straver, Donald Straver, Shirley Straver, Julia Riley, Glinch, Doris K. Glinch, I. Glinch, Graft, Edward Bruce, Maud Bruce, Marjoria Bruce, Etta Bruce, Arthur Bruce, Nellie Bruce, Frederick Solomoff, Beryl Solomoff, Margaret Solomoff, Frances Solomoff, Irene Beards, Julia Mine, Nina Marsh, Lila Marsh, Elsworthum Swearing, Ed Beards, Ethelyn Green Fern Beards Thornton, Robert Kilson,



Plaintiffs,

v.

The United States of America,

Defendant.

ANSWER

Comes now the defendant by its Assistant Attorney General and for its answer to the petition herein alleges and states:

First Defense

1. The petition fails to state a claim against defendant upon which relief can be granted.

2. The Commission lacks jurisdiction over the subject matter.

3. The Commission lacks jurisdiction over the defendant. Plaintiffs have no legal capacity to institute and maintain this action.

4. The so-called "tribe of Schaghticoke Indians" was not at any time one of the plaintiffs' claims, and is not a tribe, band or other group of Indians within the meaning of the Indian Claims Commission Act so to entitle it to have this action instituted or maintained on its behalf.

5. Neither plaintiffs nor the so-called "Kent Tribe of Schaghticoke Indians" is a real party in interest or a successor to a real party in interest.

Second Defense

1. Defendant admits the allegation in the first paragraph on page two of the petition that the Kent Tribe of Schaghticoke Indians have never made or signed any treaty with the United States of America.



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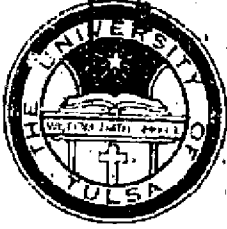
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8. Defendant is without sufficient information to form a belief as to the truth or falsity of the remaining allegations of the petition and therefore denies each and every other material allegation of fact in said petition, except that defendant admits that the United States of America has paid no compensation to plaintiffs or their alleged predecessors for any of the lands referred to therein.

WHEREFORE, defendant prays that the plaintiffs recover nothing by this action, and that the petition be dismissed.



Ferry H. Norton
Assistant Attorney General

William C. Martin
Attorney
Room 2111, Department of Justice
Washington 25, D. C.

CERTIFICATE

I hereby certify that on the _____ day of July, 1954, 4 copies of the foregoing answer were mailed to the representative of plaintiffs, Mr. Blawieithus Swinburn Bal Beesoe, 18 Comet Street, Stamford, Connecticut.

William C. Martin
Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SCHAGHTICOKE TRIBE OF INDIANS, : CIVIL ACTION H-75-125
et al., :
: PLAINTIFFS, :
: V. :
: KENT SCHOOL CORPORATION, INC., :
et al., :
: DEFENDANTS. :

PLAINTIFFS' RESPONSE TO DEFENDANTS' INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, as amended, plaintiffs Schaghticoke Tribe of Indians, Trudy Lamb, Kay Peck and Catherine Valky, respond to the interrogatories propounded by defendants Kent School Corporation, Inc., Preston Mountain Club, M. Bruce Solomon, as conservator of the Estate of Florence E.M. Baker Bonos, Arjay Miller, Francis Miller, J. Porter Brinton, Jr., and Raymond Cross, dated August 15, 1975, as follows:

(1) Identify the incumbent Chief of the Schaghticoke Tribe of Indians and all former Chiefs of the Tribe. State as to each such Chief the dates of his tenure in office.

The traditional leader of the Schaghticoke Tribe has been referred to variously as "Captain" (in the case of Gideon Mauwee, for example), "Sachem," "grand Sachem," "Chief Sagamore," or "Chief." The incumbent leader of the Schaghticoke Tribe is Chief Irving Harris, Old South Road, Litchfield, Connecticut. He is also President of the Schaghticoke Indians of Kent, Connecticut, Incorporated, the organization incorporated by the Tribe for purposes of doing business in the State of Connecticut. He was first elected in 1968, succeeding his father, who was Chief from 1954 until his death in 1967.

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Plaintiffs are not in possession of any written accounts of the internal functioning of the Tribe prior to 1949. The following is an incomplete list of tribal leaders. The precise dates of their tenure are not known to plaintiffs at the present time, but will be supplied as soon as this information is available to plaintiffs:

Gideon Mauwea ("Captain" from approximately 1736 until his death, c. 1785)

...

Henry Harris (Father of James Pann Harris)

James Pann Harris, d. 1904

...

William Cogswell

Frank Cogswell (Sachem c. 1940)

Theodore Cogswell

Earl Kilson 1949-1954

Howard Harris 1954-1967

Irving Harris 1968-present

(3) Identify all incumbent officers and members of the Tribal Council of the Sakaghticooka Tribe of Indians other than the Chief and identify all former such officers and members of the Tribal Council. State as to each such officer and member of the Tribal Council the title of his office and the dates of his tenure in office.

Officers and Council Members elected in 1949:

Elwaththum Swimming Eel Bearce - Chairman

Theodore Cogswell - Treasurer

Henrietta Peckham - Secretary

William Pan Russell

Officers and Council Members elected in 1954:

Elwaththum Swimming Eel Bearce - Chairman

Theodore Cogswell - Sagamore

Jeanette Renault - Treasurer

Henrietta Peckham - Secretary

Council Members elected in 1968:

James Hennessey

James Hennessey, Jr.

Mabel Birch

Paul Velky, Jr.

Arlene Birch

Catherine Velky

Joseph Velky

Following incorporation of the Schaghticoke Indians of Kent, Connecticut, Inc., Council members are also directors of the corporation.

Officers and Council Members elected in 1972:

Claude Grinage - Sagamore and Vice President

Claudette Bradley - Secretary-Treasurer

Mabel Birch

Ruth Garby

Trudy Lamb

Catherine Velky

Paul Velky, Jr.

Officers and Council Members elected 1975:

Claude Grinage - Sagamore and Vice President

Claudette Bradley - Secretary

Kent Grinage - Treasurer

Kay Peck

Catherine Velky

Paul Velky, Jr.

Trudy Lamb

Kenneth Duval (removed 9-20-75)

Plaintiffs are not in possession of any written accounts of the internal functioning of the tribe prior to 1949, and do not know the names of councilors or officers prior to that date.

(3) Identify all current members of the Schaghticoke Tribe of Indians.

ANDREWS, Beatrice Assmar Avenue, RFD #1 Jewett City, Connecticut 06357	BISHOP, Edward Jr. 16 Skyline Terrace Danbury, Connecticut 06810
ANDREWS, Glen Assmar Avenue, RFD #1 Jewett City, Connecticut 06357	BISHOP, Edward 16 Skyline Terrace Danbury, Connecticut 06810
ANDREWS, Kevin Assmar Avenue, RFD #1 Jewett City, Connecticut 06357	BISHOP, Gloria 14 Chapel Place Danbury, Connecticut 06810 BISHOP, Laurel
BIRCH, Ariens 153 Mallett Lane New Milford, Connecticut 06776	BISHOP, Ralph 105 Oil Mill Road Danbury, Connecticut 06810
BIRCH, Charlotte 102 Elm Street Ext. New Milford, Connecticut 06776	BISHOP, Ralph Jr. 105 Oil Mill Road Danbury, Connecticut 06810
BIRCH, Leon RFD Welleville New Milford, Connecticut 06776	BISHOP, Robert 16 Skyline Terrace Danbury, Connecticut 06810
BIRCH, Harold RFD New Preston, Connecticut 06777	BISHOP, Shelley
BIRCH, Ralph Bethlehem, Connecticut 06751	
BIRCH, Mabel 102 Elm Street Ext. New Milford, Connecticut 06776	BISHOP, Timothy 16 Skyline Terrace Danbury, Connecticut 06810
BIRCH, Shirley 102 Elm Street Ext. New Milford, Connecticut 06776	BISHOP, William C. 14 Chapel Place Danbury, Connecticut 06810
BIRCH, Walter Frisco, Texas 75034	BISHOP, William Jr. 14 Chapel Place Danbury, Connecticut 06810
BISHOP, Cynthia	BOURQUE, Carol 668 So. Pine Creek Road Fairfield, Connecticut 06430
BISHOP, Daniel	BOURQUE, Coray 668 So. Pine Creek Road Fairfield, Connecticut 06430

BOURQUE, Jody 127 Marion Street Bridgeport, Connecticut 06606	DUVAL, Kenneth Lyden 2 Great Hill Road Oxford, Connecticut
BRADLEY, Claudette Grinage 195 Parkway Drive Stratford, Connecticut 06497	ELLIS, Leon 100 W. 21st Street Dear Park, New York 11729
BRADLEY, Jonathan (Coggswell) 195 Parkway Drive Stratford, Connecticut 06497	GARBY, Adele Harris 23 Woodside Terrace Milford, Connecticut 06460
BROWN, Jeanne M. Coggswell South County Trail Kenyon, Rhode Island 02836	GARBY, David 23 Woodside Terrace Milford, Connecticut 06460
BROWN, Lisa Marie South County Trail Kenyon, Rhode Island 02836	GARBY, Michael 23 Woodside Terrace Milford, Connecticut 06460
BROWN, Melanie A. South County Trail Kenyon, Rhode Island 02836	GARBY, Ruth 23 Woodside Terrace Milford, Connecticut 06460
BROWN, Theodore E. South County Trail Kenyon, Rhode Island 02836	GONSALVES, David, Jr. 92 Tolman Street Norwich, Connecticut 06360
COGSWELL, Beatrice 86-15 208th Street, Apt. J-D Queens Village, New York 11427	GONSALVES, Elaine 92 Tolman Street Norwich, Connecticut 06360
COGSWELL, Theodore 659 Berkeley Avenue Orange, New Jersey 07050	GONSALVES, Virginia 92 Tolman Street Norwich, Connecticut 06360
COGSWELL, Truman Route 1 Equinunk, Pennsylvania 18417	GONZALEZ, Bette P.T. BARNUM Bldg. 7, Apt. 205 Bridgeport, Connecticut
COCCERELLI, Roberta Harris 397 Summerfield Avenue Bridgeport, Connecticut 06610	GONZALEZ, Luis P.T. BARNUM Bldg. 7, Apt. 205 Bridgeport, Connecticut
CRONE, Anthony 1341 Madison Avenue Bridgeport, Connecticut 06606	GRINAGE, Claude M. 195 Parkway Drive Stratford, Connecticut 06497
CRONE, Katherine 1341 Madison Avenue Bridgeport, Connecticut 06606	GRINAGE, Kent 21 Hobson Street Brighton, Massachusetts 02135
CRONE, Paulette 1341 Madison Avenue Bridgeport, Connecticut 06606	GRINAGE, Ronald 195 Parkway Drive Stratford, Connecticut 06497
CSIRS, Barbara Fuhnestune Avenue Bridgeport, Connecticut	GRINAGE, Sarah Coggswell 256 Davenport Street Bridgeport, Connecticut 06607
CSIRE, Cathy Fuhnestune Avenue Bridgeport, Connecticut	GROVES, Penny Louise 48 Fort Hill Avenue Shelton, Connecticut 06484
CSIRE, Elinor Fuhnestune Avenue Bridgeport, Connecticut	GROVES, Sandra 48 Fort Hill Avenue Shelton, Connecticut 06484

HARRIS, Charles 89 Herald Avenue Bridgeport, Connecticut 06606	JOHNSON, Gregg P. East Plymouth Road Terryville, Connecticut 06786
HARRIS, James 401 Summer Field Avenue Bridgeport, Connecticut 06610	KALADISH, Arthur, Jr. 71 Elm Street Trumbull Br., Connecticut 06611
HARRIS, Howard 399 Summerfield Avenue Bridgeport, Connecticut 06610	KALADISH, Cherie 71 Elm Street Trumbull Br., Connecticut 06611
HARRIS, Irving A. Old South Road Litchfield, Connecticut 06759	KALADISH, Elizabeth 71 Elm Street Trumbull Br., Connecticut 06611
HARRIS, Paul Old South Road Litchfield, Connecticut 06759	KAYSER, Branda Lee Azalea Court Melbourne, Florida 32901
HARRIS, Kateri Old South Road Litchfield, Connecticut 06759	KAYSER, Eric 23 Beaver Brook Road Danbury, Connecticut 06810
HARRISON, Edward 152 Smith Street Derby, Connecticut 06418	KAYSER, Gary Grassy Plain Street Bethel, Connecticut 06801
HARRISON, Gail 152 Smith Street Derby, Connecticut 06418	KAYSER, Hazel 39 Griffing Avenue Danbury, Connecticut 06810
HARRISON, Ronald 152 Smith Street Derby, Connecticut 06418	KAYSER, Lisa Ann Azalea Court Melbourne, Florida 32901
HENNESSEY, James, Jr. 89 Herald Avenue Bridgeport, Connecticut 06606	KAYSER, Ronald J. 23 Beaver Brook Road Danbury, Connecticut 06810
HOUSE, Arthur III 134 Waldorf Avenue Bridgeport, Connecticut 06605	KAYSER, Terry Azalea Court Melbourne, Florida 32901
JOHNSON, George Grove Street New Milford, Connecticut 06776	KAYSER, Terry Lane Azalea Court Melbourne, Florida 32901
JOHNSON, Harold M. 33 Lincoln Street Plainville, Connecticut 06062	KILSON, David
JOHNSON, Lillian Grove Street New Milford, Connecticut 06776	KILSON, Jeffery
JOHNSON, Phyllis L. East Plymouth Road Terryville, Connecticut 06786	KILSON, Russell
JOHNSON, Shirley Box 166 New Milford, Connecticut 06776	LaCONTE, Johanna Ray 64 McKinley Avenue Bridgeport, Connecticut 06606
JOHNSON, Philip L. East Plymouth Road Terryville, Connecticut 06786	LAMB, Erin 57 Akron Street Meriden, Connecticut 06450

LAMB, Jason
57 Akron Street
Meriden, Connecticut 06450

LAMB, Trudy Ray
57 Akron Street
Meriden, Connecticut 06450

LYDEM, Steven Michael
41 New Street
Shelton, Connecticut 06484

LYDEM, Wayne J., Jr.
41 New Street
Shelton, Connecticut 06484

LYDEM, Wayne Joseph Sr.
41 New Street
Shelton, Connecticut 06484

MOYNIHAN, Louise Harris
West Street
Litchfield, Connecticut 06759

NADEAU, Cheri
39 Griffing Avenue
Danbury, Connecticut 06810

NADEAU, Kimberly
39 Griffing Avenue
Danbury, Connecticut 06810

NADEAU, Michelle
39 Griffing Avenue
Danbury, Connecticut 06810

NADEAU, Patricia
208 Josie's Ring Road
Monroe, Connecticut 06468

NADEAU, Shelly
39 Griffing Avenue
Danbury, Connecticut 06810

NADEAU, Tracy
39 Griffing Avenue
Danbury, Connecticut 06810

NADEAU, Valerie
208 Josie's Ring Road
Monroe, Connecticut 06468

NAGLE, Nancy
607 Bridgeport Avenue
Milford, Connecticut 06460

O'NEIL, Muriel E. (Johnson)
9 Atwood Street
Plainville, Connecticut 06062

PANE, Marjorie
25 Rose Lane
Danbury, Connecticut 06810

PANE, Michael
25 Rose Lane
Danbury, Connecticut 06810

PARMALEE, Gilbert
300 Bishop Avenue - Bldg. 94
Bridgeport, Connecticut 06610

PARMALEE, Julia
610 Chopsy Mill Road
Bridgeport, Connecticut 06606

PARSONS, Estell Harris
West Shore Road
Bantam, Connecticut 06750

PARSONS, Scott
West Shore Road
Bantam, Connecticut 06750

PECK, Alan Edward
Paper Mill Road
New Milford, Connecticut 06776

PECK, Gregory Richard
Paper Mill Road
New Milford, Connecticut 06776

PECK, Kandy Renaye
Paper Mill Road
New Milford, Connecticut 06776

PECK, Kay
Paper Mill Road
New Milford, Connecticut 06776

PECKHAM, Henrietta
94 Elm Street Ext.
New Milford, Connecticut 06776

PENNYWELL, Olivia
94 Elm Street Ext.
New Milford, Connecticut 06776

POMROY, Christopher
25 Rose Lane
Danbury, Connecticut 06810

POMROY, Dean
25 Rose Lane
Danbury, Connecticut 06810

POMROY, Toni
25 Rose Lane
Danbury, Connecticut 06810

RAY, Barbara
100 Miles Street
Bridgeport, Connecticut 06607

RAY, Margaret (Cogswell)
100 Miles Street
Bridgeport, Connecticut 06607

RENAULT, Jeannette (Cogswell)
260 Sixty-fifth Street
Brooklyn, New York 11220

RICH, Deborah
46 Roosevelt Drive
Seymour, Connecticut 06483

RICH, Candy
46 Roosevelt Drive
Seymour, Connecticut 06483

RITCHIE, Friedon
131 Wellsville Avenue
New Milford, Connecticut 06776

RITCHIE, Gordon J. 78 Fort Hill Street New Milford, Connecticut 06776	TERRI, Ethel Crossbrook Road New Milford, Connecticut 06776
RITCHIE, Gordon R. 78 Fort Hill Street New Milford, Connecticut 06776	THORPE, Lenore (Cogswell) 36-15 208th Street, Apt. 1D Queens Village, New York 11427
RUSSELL, Alan 66 Walnut Street Seymour, Connecticut 06483	TILFORD, David Jr. 6512 North Orange Blossom Trail Lockhart, Florida 32810
RUSSELL, Leonard 465 Saw Mill Road West Haven, Connecticut 06516	TILFORD, Sean 6512 North Orange Blossom Trail Lockhart, Florida 32810
SANABRIA, Francina 6512 North Orange Blossom Trail Lockhart, Florida 32810	TILFORD, Gloria 6512 North Orange Blossom Trail Lockhart, Florida 32810
SANABRIA, Frank, Jr. 6512 North Orange Blossom Trail Lockhart, Florida 32810	TILFORD, Scott 6512 North Orange Blossom Trail Lockhart, Florida 32810
SANABRIA, Ronald 6512 North Orange Blossom Trail Lockhart, Florida 32810	TILFORD, Vicki 6512 North Orange Blossom Trail Lockhart, Florida 32810
SILVA, Jessie E. 56 Russell Avenue Plainville, Connecticut 06062	VAN VULKENBURGH, Brian 51 Miniver Street Derby, Connecticut 06418
SIMONDS, Alice Kenyon, Rhode Island 02836	VAN VULKENBURGH, Claude Anderson Road New Milford, Connecticut 06776
SIMONDS, Christina Kenyon, Rhode Island 02836	VAN VULKENBURGH, Claudia 46 Roosevelt Drive Seymour, Connecticut 06483
SIMONDS, Guy Kenyon, Rhode Island 02836	VAN VULKENBURGH, Dawn 46 Roosevelt Drive Seymour, Connecticut 06483
SIMONDS, Lawrence S. Kenyon, Rhode Island	VAN VULKENBURGH, Elwood E. 266 North State Street Ansonia, Connecticut 06401
SIMONDS, Yvonne N. Kenyon, Rhode Island 02836	VAN VULKENBURGH, Gene 46 Roosevelt Drive Seymour, Connecticut 06483
TANI, Aaron Chad Lakeside Road Southbury, Connecticut 06488	VAN VULKENBURGH, Gregory 46 Roosevelt Drive Seymour, Connecticut 06483
TANI, Charles G. Lee Farm Drive Southbury, Connecticut 06488	VAN VULKENBURGH, LeAnn New Milford, Connecticut 06776
TANI, Genevieve Yachawang Lakeside Road Southbury, Connecticut 06488	VAN VULKENBURGH, Richard 52 Jewett Street Ansonia, Connecticut 06401
TANI, Gregory 57 Dodgington Road Newtown, Connecticut 06470	VELKY, Catherine 3172 Fairfield Avenue Bridgeport, Connecticut 06605
TANI, Joan 48 Fort Hill Avenue Shelton, Connecticut 06484	VELKY, Colette C. 66 Valley Road Huntington, Connecticut 06484
TANI, Joseph 57 Dodgington Road Newtown, Connecticut 06470	

VELKY, Colleen L. 56 Valley Road Huntington, Connecticut 06484	WILLIAMS, Dorothy Richard's Road Brookfield, Connecticut 06804
VELKY, James 13 Jones Hill Road Monroe, Connecticut 06468	WILLIAMS, Herbert 61 Sheridan Street Danbury, Connecticut 06810
VELKY, John 12 Jones Hill Road Monroe, Connecticut 06468	WILLIAMS, James Jr. Richard's Road Brookfield, Connecticut 06804
VELKY, Joseph Jr. 12 Jones Hill Road Monroe, Connecticut 06468	WILLIAMS, James W. Richard's Road Brookfield, Connecticut 06804
VELKY, Joseph 12 Jones Hill Road Monroe, Connecticut 06468	WILLIAMS, Patty Richard's Road Brookfield, Connecticut 06804
VELKY, Paul F. Jr. 66 Valley Road Huntington, Connecticut 06484	WILLIAMS, Ronald Richard's Road Brookfield, Connecticut 06804
VELKY, Richard L. 511 Main Street Monroe, Connecticut 04668	WILLIAMS, Sandra Richard's Road Brookfield, Connecticut 06804
WERDEN, Linda Corbette Avenue Norfolk, Virginia 23518	

(4) Specifically describe the location, boundaries, size and title history of the "lands in the Township of Kent, Connecticut, on the west side of the Housatonic River" which are alleged in paragraph 12 of your complaint to constitute "part of" the "aboriginal territory" of the Schaghticoke Tribe of Indians.

The location, boundaries, size and title history of the aboriginal territory of the Schaghticoke Tribe of Indians, except for the lands which are the subject of this litigation, are not known to the plaintiffs at the present time. The location, boundaries, and size of that part of the aboriginal territory of the Schaghticoke Tribe involved in this litigation are described in paragraphs 29 - 38 of the complaint, as well as the map appended thereto. The title history for those parcels of land, insofar as the same is known to plaintiffs, is as follows:

PARCEL #1* (Preston Mountain Club)

A portion of that parcel purportedly conveyed by Herman Swift and John Talmadge, being a Committee of the Legislature, to Ebenezer Preston by deed of September 1, 1801, recorded in the Kent land records at 10:318. The original parcel (which also includes Parcel #5, claimed by defendant J. Porter Brinton) was estimated to be 600 acres.

Ebenezer Preston and his family sub-divided the 600 acre parcel into seven tracts as follows:

Grantor: Ebenezer Preston
Grantee: Michael Barley
Approximate size: 50 A
Date, etc.: 4-27-1805, Kent Land records (KLR) 11:82

Grantor: Ebenezer Preston
Grantee: Aron Chappel
Approximate size: 87 A
Date, etc.: 4-27-1805, KLR 11:83

Grantor: Ebenezer Preston, John Preston, Smith Preston,
Jackson & Hannah Wing
Grantee: Abijah Preston
Approximate size: 141 A
Date, etc.: 3-6-1827, KLR 16:395

Grantor: Ebenezer Preston, Abijah Preston, John Preston,
Smith Preston
Grantee: Hannah Wing
Approximate size: 183 A
Date, etc.: 3-6-1827, KLR 16:396

Grantor: Ebenezer Preston, Abijah Preston, John Preston,
Jackson & Hannah Wing
Grantee: Smith Preston
Approximate size: 98 A
Date, etc.: 3-6-1827, KLR 16:397

Grantor: Abijah Preston, Smith Preston, John Preston,
Jackson & Hannah Wing
Grantee: Ebenezer Preston
Approximate size: 52 A
Date, etc.: 3-6-1827, KLR 16:398

Grantor: Ebenezer Preston, Abijah Preston, Smith Preston,
Jackson & Hannah Wing
Grantee: John Preston
Approximate size: 89 A
Date, etc.: 3-6-1827, KLR 16:398

SUBSEQUENT HISTORY ARON CHAPPEL LOT (INCLUDES HISTORY J. PRESTON,
A. PRESTON, S. PRESTON and WING LOTS)

1. Chappel conveyed to Rufus Fuller, 10-7-1831, KLR 16:359

Reference to Exhibit "A" to the Complaint.

2. Fuller conveyed to Kent Iron Co., 1-26-1881, KLR 25:513
Also included in deed were the following lots:
Camp (J. Preston) Lot 90 A
A. Preston Lot 141 A
Smith Preston Lot 98 A
Wing Lot 183 A
3. Kent Iron Co., conveyed all five lots to Frank E. Turkington, 7-31-1908, KLR 31:71
4. Turkington conveyed undivided interests in all five lots to Aaron Crutch (KLR 28:453), Eugene L. Phelps (KLR 28:459) and Theron J. Loveland (KLR 28:455), by deeds dated August 22, 1908
5. Crutch reconveyed to Turkington 4-6-1918, KLR 28:618
6. Phelps reconveyed to Turkington 1-3-1918, KLR 28:613
7. Loveland reconveyed to Turkington 12-22-1917, KLR 28:614
8. Turkington conveyed to Chase Companies, Inc., 4-16-1918, KLR 30:251
9. Chase Companies, Inc., conveyed to Preston Mountain Club, Inc., 1-26-1925, KLR 30:512

SUBSEQUENT HISTORY MICHAEL BARLEY LOT

1. Barley conveyed to Ezekial Thayer, 4027-1839, KLR 19:67
{Intervening history not searched.}
2. Kent School Corporation conveyed Thayer lot to William Brown Maloney, 12-31-1962, KLR 52:482
3. Maloney conveyed all of Thayer lot west of Colt Barn Road to Preston Mountain Club by deed recorded 5-28-1964, KLR 53:300, 302
4. Elizabeth Crane Maloney, as executrix of the William Brown Maloney estate, conveyed the remainder of the Thayer lot to E.C. Kip Finch as trustee to convey to Preston Mountain Club 12-30-1971, KLR 60:35
5. E.C. Kip Finch conveyed to Preston Mountain Club 5-26-1972, KLR 61:91

PARCEL #5 (J. Porter Brinton)

A portion of that parcel purportedly conveyed by Herman Swift and John Tallmadge, being a Committee of the Legislature, to Ebenezer Preston by deed of September 1, 1801, KLR 10:318

1. Abijah Preston, Smith Preston, John Preston, Hannah & Jackson Wing conveyed their interest in a 52 acre lot to Ebenezer Preston, 3-5-1827, KLR 16:399
2. Preston conveyed to Ousatonic Iron Mountain Manufacturing Co., 8-14-1832, KLR 17:71

3. Russell Judd acquired the parcel by writ of execution 2-18-1839, KLR 18:643
4. Betsey R. Judd, et al., as heirs of Russell Judd, conveyed to Sophia R. Eaton, 10-21-1878, KLR 24:475.
5. Alice Eaton McBee, et al., as heirs of Sophia R. Eaton, conveyed to J. Porter Brinton 8-16-1972, KLR 61:94, 97

PARCEL #2 (Kent School Corp., Inc.)

Consists of those parcels purportedly conveyed by Herman Swift and John Talmadge, being a Committee of the Legislature, to John Raymond, 9-1-1801, KLR 10:319 (approximately 159 A) and to Ephraim Beardsley, 9-1-1801, KLR 10:318 (approximately 370 A), minus PARCELS #4 (Arjay and Francis Miller) and #6 (Cross). For history of these parcels see below.

1. Beardsley conveyed his interest to Raymond, 2-28-1805, KLR 11:40
2. Raymond conveyed to John R. Blair, 4-2-1838, KLR 18:111
3. Mira A. Blair reconveyed to Raymond, KLR 18:389, 19:484
4. Raymond conveyed to Lorenzo Morehouse and Bennett Caldwell, 11-29-1851, KLR 21:5, who reconveyed to Raymond by various deeds
5. Raymond conveyed to Charles Edwards, 3-2-1853, KLR 21:94
6. Edwards conveyed to Rufus Fuller, 2-3-1872, KLR 25:217
7. Following Fuller's death, his widow, M. St. John Fuller, and his children Florence A. Fuller and Clarence Fuller divided up the land 1-11-1890. See Kent Probate drawer D-52; KLR 26:479, 480, 481
8. M. St. John Fuller's share was distributed to her children, Florence & Clarence 11-29-1900. See Kent Probate drawer G-158
9. Clarence conveyed a 14 acre parcel to his daughter Florence Baker Bonos 4-28-1925, KLR 30:509
10. Clarence Fuller and Florence Fuller Baker conveyed a .84 A parcel to Willetts DeGarrig and Raymond Cross 5-21-1925, KLR 38:80 (This is Parcel #6)
11. Florence A. Fuller conveyed 1/2 undivided interest in trust to her daughter Florence Baker Bonos 4-14-1931, KLR 40:477
12. Florence A. Fuller Baker conveyed the remainder of her interest to Florence Baker Bonos 4-19-1934, KLR 40:477
13. The estate of Florence Baker Bonos conveyed to Kent School Corporation, September 1966, KLR 54:490. In addition to conveyances 9 and 12 above, the deed recites a devise from Florence Fuller Baker and Clarence L. Fuller to Florence Baker Bonos, which I was unable to locate.

PARCEL #3 (Kent School)

1. William Williams and Nathaniel Crary (or Cary) surveyed this lot 10-29-1751, KLR 1:629
2. Williams and Simon Minor conveyed to Joseph Fuller and John Mills 11-8-1752, KLR 2:98
3. Fuller and Mills partitioned the lot, 12-13-1752, KLR 2:99
4. Fuller conveyed his interest to Mills, 1-23-1753, KLR 2:93

The subsequent history of this tract is very confused.

There are no conveyances out of John Mills. The land was evidently divided on an informal basis between the children or heirs of John Mills, including Philo Mills, Captain Peter Mills, Philo Mills and Bradley Mills. The land presently is claimed by Kent School Corporation, Inc., under one or more of the following conveyances:

1. From Lizzie D. Fuller, 8-2-1907, KLR 27:738
2. From Clarence L. Fuller and Florence A. Fuller Baker, 12-3-1931, KLR 39:311
3. From Mary Bacon, 6-6-1929, KLR 39:187
4. From Josi Pratt, 6-11-1928, KLR 39:116
5. From the estate of Florence Baker Bonos, September 1966, KLR 54-490

PARCEL #4 (Arjay and Francis Miller)

This parcel is within the area purportedly conveyed by Herman Smith and John Talmadge, being a Committee of the Legislature, to John Raymond, 9-1-1801, KLR 10:319 and to Ephraim Beardsley, 9-1-1801, KLR 10:318. It was acquired by defendant Kent School Corporation, Inc., as part of the 1966 conveyance from the estate of Florence Baker Bonos. See PARCEL #2, conveyance #12 above.

Kent School Corporation, Inc., conveyed this tract, containing approximately 50 acres, to defendants Arjay and Francis Miller, 3-8-1968, KLR 55:383.

PARCEL #6 (Raymond A. Cross)

See Parcel #2, conveyance #10, above.

PARCEL #7 (M. Bruce Solomon)

1. Abel Beach, as overseer for the Schaghticoke Tribe, conveyed a 20 acre parcel to Ezekial Thayer 9-9-1811, KLR 12:526
2. Thayer conveyed to John & John M. Raymond 1-17-1824, KLR 15:151
3. Raymonds conveyed to Charles Edwards, 3-2-1853, KLR 21:94
4. See Parcel #2, conveyances 6-8, above.
5. Clarence L. Fuller and Florence Baker conveyed to Florence E.M. Baker (Bonos) 4-28-1925, KLR 3-508

PARCEL #8 (Connecticut Light and Power)

FIRST TRACT:

1. Martin B. Lane, as overseer for Schaghticoke Tribe, conveyed 3-1/2 acres to the New Milford Power Company 2-8-1904, KLR 29:392
2. New Milford Power Co. conveyed to Housatonic Power Company 7-16-1917, KLR 33:72 (75)
3. The Housatonic Power Company conveyed to the Rocky River Power Co. (which became Connecticut Light and Power Co., [see KLR 33:229]) 8-9-1917, KLR 33:94 (104, 129).

SECOND TRACT:

1. Martin Lane, as overseer for the Schaghticoke Tribe, conveyed to Nicholas Staub 6-21-1898, KLR 29:161
2. Staub conveyed to Robert N. King 2-27-1902, KLR 29:261
3. King conveyed to New Milford Power Co. 2-27-1902, KLR 29:273
4. See Parcel #8 First Tract conveyances 2, 3 above.

PARCEL #9 (Town of Kent)

Kent School Corporation, Inc., gave a 50 year renewable lease to the Town of Kent 10-6-1970, KLR 57:238

NOTE ON BOUNDARY DESCRIPTIONS

The northern boundary of Parcels #1-3 is described in paragraphs 29-31 of the Complaint as E 28° 15' S. The northern boundary of the reservation established for the Schaghticoke in 1752 was described by a Committee of the Legislature in 1757 as

running E 21° S. See VIII PUB. REC. COL. COMN. 38. The United States Department of Commerce, National Oceanic and Atmospheric Administration, Environmental Data Service, National Geophysical and Solar Terrestrial Data Center in Boulder, Colorado, has corrected this for shifts in magnetic declination to a 1975 adjusted reading of E 28° 15' S - the bearing used in the Complaint.

The southern boundary of Parcels #1, 2 is described in paragraphs 29 and 30 of the Complaint as a line drawn from the New York - Connecticut boundary S 81° 39' E to the Middle Gate, so called, of Grapevine Brook (and thence easterly in the line of the brook to the Housatonic River). The southern boundary of the purported conveyances in 1801 by the Committee of the Legislature to Messrs. Raymond and Preston is described as due east from the New York - Connecticut boundary to the Middle Gate, etc. The National Geophysical and Solar Terrestrial Data Center has corrected this for shifts in magnetic declination to a 1975 adjusted reading of S 81° 39' E - the bearing used in the Complaint.

The length of the western boundary of Parcel #1 as described in paragraph 29 of the Complaint (10,085 feet) is taken from the 1801 deed from the Committee to Ebenezer Preston, which describes that boundary as 610 rods - or 10,065 feet.

The description of Parcel #1 in paragraph 29 of the Complaint otherwise corresponds to the description in the 1801 purported deed from the Committee to Preston, excepting the 53 acre parcel (Parcel #5) claimed by defendant J. Porter Brinton.

The description of Parcel #2 in paragraph 30 of the Complaint otherwise corresponds to the description in the 1801 purported deeds from the Committee to Messrs Raymond and Beardsley, excepting the 50 acre parcel (Parcel #4) claimed by defendants Arjay and Francis Miller and the .84 acre parcel (Parcel #6) claimed by defendant Cross.

The descriptions of Parcels #4-6, 7 and 8 in paragraphs 32 - 36 of the Complaint are as described in the deeds for those parcels identified in response to this interrogatory.

(5) Specifically describe the location, boundaries, size, and title history of what is alleged to be the "aboriginal territory" of the Schaghticoke Tribe of Indians, as referred to in paragraph 13 of your Complaint.

See Answer to Interrogatory 4 above.

(6) Specifically describe the location, boundaries, size, and title history of the "reservation of the Schaghticoke Tribe of Indians", as that phrase is used in paragraph 16 of your Complaint.

As used in paragraph 16 of the Complaint, the "reservation of the Schaghticoke Tribe of Indians" refers to the lands which are the subject of this litigation. See answer to Interrogatory 4 above.

(7) Specifically describe the location, boundaries, size, and title history of the Cary and Williams tract, as that phrase is used in paragraph 17 of your Complaint.

The location, boundaries, and size of that portion of the Cary and Williams grant relevant to this litigation are described in paragraph 31 of the Complaint. The tract is identified as "Tract 9" on the map attached thereto. The title history of this tract, insofar as the same is known to the plaintiffs is set forth in response to Interrogatory numbered 4, above.

(8) State the amount of attorneys' fees for work performed as of the date of this interrogatory for which you are claiming an award. To the extent incurred, list the amount paid or due and owing and identify the person or persons to whom said amount has been paid or is due and owing.

Plaintiffs object to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence; that the sole purpose of the request is to ascertain the extent of plaintiffs' trial preparation; that the request is oppressive in that it would require constant updating

of the hours worked by counsel on the litigation, as well as the costs incurred; and that the information sought would necessarily be incomplete, speculative and misleading prior to a determination of defendants' liability at trial.

(9) List each cost of this action incurred as of the date of this interrogatory for which you are claiming an award. To the extent incurred, list the amount paid or due and owing and identify the person or persons to whom said amount has been paid or is due and owing.

Plaintiffs object to this interrogatory for the reasons set forth in their answer to Interrogatory 8.

(10) Identify each person who prepared, assisted in the preparation of or provided information for, answers to the foregoing interrogatories 1 through 8 inclusive and state as to each interrogatory, which such person or persons, prepared, assisted in the preparation of, or provided information for, the answer.

Interrogatory 1

David C. Crosby, Esq. (Prepared)
Box 392
Calais, Maine 04619

Irving Harris (Provided information)
Old South Road
Litchfield, Connecticut 06759

Trudy Lamb (Provided information)
57 Akeron Street
Meriden, Connecticut

Julia Parmalee (Provided information)
610 Chopsy Hill Road
Bridgeport, Connecticut

Interrogatory 3

David C. Crosby, Esq. (Prepared)

Irving Harris (Provided information)

Claudette Bradley (Provided information)
195 Parkway Drive
Stratford, Connecticut 06497

Interrogatory 3

David C. Crosby, Esq. (Prepared)

Claudette Bradley (Assisted in preparation)

Interrogatories 4 - 9

David C. Crosby, Esq. (Prepared)

(11) Identify each person who has custody of each document produced in response to defendants' Request for Production, dated August 15, 1978.

Request #1

David C. Crosby, Esq., is in possession of all known originals of documents which plaintiffs have offered to produce pursuant to Request #1. Several of the documents exist only in copy form, and as to these documents David C. Crosby is in possession of copies.

Request #2

Same as for #1.

Request #3

David C. Crosby is in possession of geneological materials prepared by or submitted to the Schaghticoke Tribe, as well as copies of original geneological data in the custody of Brenden Keleher, Connecticut Department of Environmental Protection, State Office Building, Hartford, Connecticut.

Request #4

Documents in public domain; David C. Crosby in possession of copies.

Request #5

Same as for #4.

Request #6

Same as for #4.

Request #7

Objected to.

Request #8

Same as for #4.

Request #9

Same as for #4.

Request #10

Same as for #4


Request #11

Objected to.

Request #13

Objected to.

Dated: October 17, 1975
Calais, Maine



David C. Crosby
Attorney for Schaghticoke
Tribe of Indians

Dated: Meriden, Connecticut

Trudy Lamb, plaintiff

Dated: New Milford, Connecticut

Ray Peck, plaintiff

Dated: Bridgeport, Connecticut

Catherine Velky, plaintiff

David C. Crosby
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Robert Nicola
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June 25, 2020

VIA E-MAIL TO FOIA.APPEALS@SOL.DOI.GOV

U.S. Department of the Interior
Office of the Solicitor
ATTN: FOIA APPEALS OFFICER
1849 C Street, NW
MS-6556 MIB
Washington, DC 20240

Re: **FREEDOM OF INFORMATION APPEAL, BIA-2020-00368**

Dear FOIA Appeals Officer:

Pursuant to the Freedom of Information Act (FOIA or Act), 5 U.S.C. § 552 *et seq.*, and 43 C.F.R. §§ 2.57 - 2.59 of the U.S. Department of the Interior's (DOI) FOIA regulations, this is an appeal of the February 20, 2020 response of the Bureau of Indian Affairs (BIA) to FOIA request BIA 2020-00368. Exhibit A.

On January 21, 2020, Sheri Pais, a paralegal within our office, filed a FOIA request with the BIA for:

[A]ll documents relating to Schaghticoke Indian Tribe's (SIT) petition for federal acknowledgment submitted to the Department of the Interior on or around December 23, 2019. This request includes but is not limited to (1) SIT's petition narrative and all supporting materials submitted as the petition package on or around December 23, 2019, and (2) all documents relating to the Department of the Interior and/or the Office of Federal Acknowledgment (OFA) review of the petition and any responses to SIT concerning the adequacy of the petition and/or recommending technical or other revisions or deficiencies, including the January 10, 2020 determination letter..

Exhibit B (BIA 2020-00368). On January 22, 2020, the request was assigned to the Office of Federal Acknowledgment (OFA) for a response. Exhibit B. Additional correspondence

regarding this FOIA request is enclosed as Exhibits C - F (including attachment to Exhibit D, OFA's February 7, 2020 partial production).

The February 20, 2020 final response of the OFA does not include any membership list submitted by the SIT. See Exhibit A, Attachments 1 and 2. Membership lists are a required part of a petition for acknowledgment, see 25 C.F.R. § 83.21(a)(4), and are enclosures described in the SIT's transmittal letter submitting the December 23, 2019 petition. See Exhibit A, Attachment 1 at 2.¹ The lack of production of these lists within the applicable time limits constitutes a denial, and is hereby appealed on that basis.

The February 20, 2020 response does not specifically address the withholding of the membership lists, but it is likely that OFA withheld or would choose to withhold the lists under FOIA Exemption 6 as records the disclosure of which would constitute "a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). In response to a previous FOIA request specifically requesting the membership list included in a prior submission of the SIT, OFA produced the list with the names of members (and other personal information) redacted under Exemption 6. See Exhibit G and Attachment (August 27, 2019 response to FOIA request BIA 2019-01106). In addition, OFA redacted similar information from the February 20, 2020 production, explaining that:

The information that has been withheld under Exemption 6 consists of personal information, such as the name, address, family configuration, genealogical information, parentage, ancestry, and enrollment number of individuals. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding such information, and releasing it would violate their privacy.

Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information, and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly

¹ The SIT's transmittal letter describes the enclosures as including "5) A list and personal data from each current member of the Schaghticoke Indian Tribe. 6) An explanation of prior membership lists utilized by the Schaghticoke Indian Tribe and a copy of the prior membership rolls; 7) The Schaghticoke Indian Tribe requests that the membership list and accompanying personal data be kept confidential by the Office of Federal Acknowledgment and exempt from Freedom of Information Act requests by third parties."

unwarranted invasion of the privacy of these individuals, and we are withholding it under Exemption 6.

Exhibit A at 2. OFA provided an almost verbatim explanation in its August 27, 2019 response to FOIA request BIA 2019-01106 when it produced a previous SIT membership list with redactions of all names and personal information. Exhibit G at 2.

The names of the members of the SIT petitioner group are not exempt from disclosure under FOIA Exemption 6, as they are not information the disclosure of which would constitute “a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Under controlling precedent, the presumption in favor of disclosure under FOIA is as strong under Exemption 6 as anywhere in the Act, and exemption from disclosure is only allowed where the privacy interests affected outweigh the public interest in disclosure.² The strong public interest in evaluating OFA’s administration of, and compliance with, the tribal acknowledgment process and criteria—for which this information is essential—outweighs the privacy interest of these individuals. In addition, numerous previous membership lists of the SIT are publicly available, Exhibits H - K (2002, 2009, 2010, and 2012 membership lists), and thus the privacy interest of current members that appear on previous lists is minimal at best.

As OFA acknowledges, the relevant public interest that must be weighed against the privacy interest that would be affected by disclosure is the extent to which the information sought would shed light on an agency’s performance of its statutory duties. Exhibit A at 2. The agency’s duties include evaluation of the descent of a petitioner’s members from a historical Indian tribe. The acknowledgment regulations at 25 C.F.R. Part 83 require petitioners to demonstrate that “[t]he petitioner’s membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).” 25 C.F.R. § 83.11(e). This requirement of Indian descent is fundamental to the federal acknowledgment of an Indian tribe, and indeed, is essential to the definition of a tribe under Supreme Court precedent. In turn, the federal acknowledgment of an Indian tribe, with all of its attendant sovereign rights and powers as a domestic dependent nation, is one of the most solemn and momentous exercises of the federal government’s plenary authority over Indian affairs. The public interest in verifying the appropriate administration of this aspect of the federal tribal acknowledgment process is therefore of great magnitude.

Whether a petitioner meets the descent criterion cannot be determined without personal information of the petitioner’s members sufficient to conduct the genealogical research and

² See *Nat’l Archives and Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (“The term ‘unwarranted’ requires us to balance the . . . privacy interest against the public interest in disclosure.”); *Multi Ag Media LLC v. U.S. Dep’t of Agric.*, 515 F.3d 1224, 1227 (D.C. Cir. 2008) (“under Exemption 6, the presumption in favor of disclosure is as strong as can be found anywhere in the Act”).

analysis necessary to determine the descent of those members from a historical tribe or tribes—at a minimum, this requires the names of a petitioner’s members. This is precisely why OFA requires the submission of membership lists, 25 C.F.R. § 83.21(a)(4), and the same applies to the public’s need for that information to determine if the agency is properly evaluating the descent criterion. Without the identity of a petitioner’s members, members of the public cannot verify OFA’s determinations under the descent criterion, or make fully informed comments during the public comment periods provided in the acknowledgment process. The public interest in the requested information is therefore substantial, and cannot be satisfied by alternative means.

In contrast, the privacy interests affected are minimal at best. Under controlling precedent, the relevant privacy interest in lists of names and addresses is the likely consequences that would result from the disclosure of potentially sensitive information that goes beyond the mere names and addresses of the individuals on the list.³ In this case, the relevant information is membership in the SIT petitioner group. There is, however, no reason to believe that disclosure of this information would result in adverse consequences to the individuals identified on this basis.⁴ In addition, the disclosure of these names, especially without addresses, is unlikely to result in unwanted contact by third parties.⁵

Moreover, the privacy interest of individuals in their status as current members of the SIT is minimal when such individuals are identified on past membership lists that are publicly available.⁶ The SIT transmits membership lists to the State of Connecticut on an annual basis, and these lists are in the public domain. *See, e.g.*, Exhibits H - K (2002, 2009, 2010, and 2012

³ *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 876-77 (D.C. Cir. 1989) (*NARFE*) (“Every list of names and addresses sought under FOIA is delimited by one or more defining characteristics, as reflected in the FOIA request itself; no one would request simply all “names and addresses” in an agency’s files, because without more, those data would not be informative. The extent of any invasion of privacy that release of the list might occasion thus depends upon the nature of the defining characteristics, *i.e.*, whether it is significant that an individual possesses them. A non-embarrassing characteristic may or may not be otherwise significant, in a manner relevant to the individual’s privacy interests, depending upon whether many parties in addition to the party making the initial FOIA request would be interested in obtaining a list of and contacting those who have that characteristic. ... We are thus left with circuit precedent establishing only that the disclosure of names and addresses is not inherently and always a significant threat to the privacy of those listed; whether it is a significant or a *de minimis* threat depends upon the characteristic(s) revealed by virtue of being on the particular list, and the consequences likely to ensue.”).

⁴ *See Washington Post Co. v. U.S. Dep’t of Agric.*, 943 F. Supp. 31, 34 n.3 (D.D.C. 1996) (“None of the information at issue in this case is stigmatizing, embarrassing or dangerous”).

⁵ *Cf. NARFE*, 879 F.2d at 878 (“In this case, there is little reason to doubt that the barrage of solicitations predicted will in fact arrive—in the mail, over the telephone, and at the front door of the listed annuitants.”).

⁶ *See Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 35 (D.C. Cir. 2002) (“Here, the private property owners are similarly concerned that disclosure will result in unwanted contact from strangers. Insofar as the pygmy owl is concerned, however, the property owners already have divulged information about the sightings to the State agency with the understanding that the information, although confidential, might be subject to release under disclosure laws.”).

membership lists).⁷ There is no indication in those transmittals that the SIT anticipates or has experienced any adverse consequences from their release.⁸ The relevant individual privacy interests are therefore minimal at best.

The balance of interests is thus between a powerful public interest in the information necessary to verify the agency's compliance with a duty of immense importance, against a privacy interest that is minimal at best. The public interest in the personal information necessary to understand how the acknowledgment regulations are applied therefore outweighs the individual privacy interests in that information.⁹ Thus, to the extent that such personal information is essential to an analysis of whether the Department is complying with the acknowledgment regulations—at a minimum, the names of the current members—the release of such information is not “clearly unwarranted” under 5 U.S.C. § 552(b)(6), and may not be withheld from release under the FOIA.

I therefore respectfully request that the Department produce the current and past membership lists submitted by the SIT with the names of its members unredacted. I do not request that other personal information, such as addresses and telephone numbers, be released.

Thank you for your prompt attention to this appeal. Please do not hesitate to contact me at 202-654-6344 should you have any questions.

Very truly yours,

/s/ Odin A. Smith

Odin A. Smith

Attachments

⁷ Whether the membership lists submitted by the SIT to OFA match those submitted to the State is unknown.

⁸ The SIT requests that OFA not disclose the names of its members, *supra* n.1, but provides no basis for this request. Nondisclosure would aid the SIT petitioner—regardless of privacy interests or lack thereof—in that it would prevent third parties from offering an independent analysis in opposition to the petition.

⁹ See *Gilman v. U.S. Dep't of Homeland Security*, 32 F. Supp. 3d 1, 17-18 (D.D.C. 2014) (discussing D.C. Circuit precedent; “The sum of these cases establish that where the requester has articulated a legitimate public interest in the information, courts have ordered disclosure of names and addresses, even if such information is associated with financial information, views held by the landowner, or would risk unwanted contact.”).

EXHIBIT A



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 20 2020

FOIA
BIA-2020-00368

Ms. Sheri Pais
700 13th Street, NW, Suite 600
Washington, DC 20005

Dear Ms. Pais:

This letter is in response to your Freedom of Information Act (FOIA) request of January 21, 2020. The Office of Federal Acknowledgment (OFA) received your FOIA request on January 22, 2020. Your FOIA request was assigned the control number BIA-2020-00368. Please cite this number in any future correspondence with OFA regarding your request.

You requested copies of the following:

- (1) SIT's petition narrative and all supporting materials submitted as the petition package on or around December 23, 2019, and
- (2) all documents relating to the Department of the Interior and/or the Office of Federal Acknowledgment (OFA) review of the petition and any responses to SIT concerning the adequacy of the petition and/or recommending technical or other revisions or deficiencies, including the January 10, 2020 determination letter.

OFA searched its files and found 125 responsive pages. OFA made redactions on 12 of the pages under FOIA Exemption 6.

Exemption 6

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). We are withholding in part 12 pages under Exemption 6 of the FOIA.

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

The only relevant public interest to consider under Exemption 6 is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, given that a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, such as the name, address, family configuration, genealogical information, parentage, ancestry, and enrollment number of individuals. We have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding such information, and releasing it would violate their privacy.

Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information, and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals, and we are withholding it under Exemption 6.

Agreement to Pay Fees

You have agreed to pay up to \$250.00 for the processing of your request.

"Other" Requester

We have classified you as an "other" requester. Accordingly, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs. Additionally, you are entitled to up to 2 hours of search time and 100 pages of photocopies for free. See 43 C.F.R. § 2.39.

Costs:

We are advising you of the costs of processing your request. We used the "Managerial Rate" of \$62.00 per hour.

Search

The search took 2 hours. As an "other" requester you are entitled to 2 hours at no charge. Therefore, the search cost is \$0.00.

Review

Managerial review took 2 hours. However, there is no charge for review. Therefore, the review cost is \$0.00.

Duplication

The duplication fee is \$0.15 per page. The duplication of 125 pages is \$18.75. However, as an "other" requester, you are entitled to the first 100 pages without cost. Therefore, the duplication cost is \$0.00.

Fees—No Charge

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.37(g). Therefore, there is no billable fee for the processing of this request.

Appeal Right

We are formally advising you with this partial release of copies of responsive records, FOIA BIA-2019-00368 is now considered closed. In addition to myself, the official responsible for this partial withholding is Mr. Kelly Meacham, Acting FOIA Officer. This decision was also made in consultation with Mr. Samuel E. Ennis, Assistant Solicitor, Branch of Tribal Government Services, Division of Indian Affairs, Office of the Solicitor, Department of the Interior.

Under law, we are required to advise you of your appeal rights. If you are not satisfied with this FOIA response, you may file an appeal by writing to:

U.S. Department of the Interior
Office of the Solicitor
Attention: FOIA Appeals Officer
1849 C Street, NW/ MS-6556 MIB
Washington, DC 20240

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

Your appeal must be received by the FOIA Appeals Officer no later than 90 workdays (Saturdays, Sundays and public legal holidays excluded) from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA Appeals Officer by mail, courier service, fax, or email. Your appeal should be marked, both on the envelope and on the face of the appeal letter, with the legend "FREEDOM OF INFORMATION ACT APPEAL."

You must include an explanation of why you believe the OFA's response is in error. You must also include with your appeal copies of all correspondence between you and OFA concerning your FOIA request, including your original FOIA request and OFA's response. Failure to include with your appeal all correspondence between you and OFA will result in the

Department's rejection of your appeal, unless the FOIA Appeals Officer determines that good cause exists to accept the defective appeal. Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the FOIA Appeals Officer needs additional information or clarification of your appeal.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS via regular mail at:

Office of Government Information Services (OGIS)
National Archives and Records Administration
8601 Adelphi Road, Room 2510
College Park, Maryland 20740-6001

You may also contact OGIS in the following ways:

E-mail: ogis@nara.gov
Phone: (301) 837-1996
Fax: (301) 837-0348
Toll-free: (877) 684-6448

Please note that using OGIS's services does not affect the timing of filing an appeal with the Department's FOIA Appeals Officer. You also may seek dispute resolution services from our Acting FOIA Public Liaison, Mr. Kelly Meacham, 1849 C Street NW, MS-4658 MIB, Washington, DC 20240; telephone: (202) 208-3135; and email: foia@bia.gov.

Should you have any questions regarding any of the above, please contact Mr. Lee Fleming, FOIA Coordinator, at (202) 513-7650; fax: (202) 219-3008; e-mail: lee.fleming@bia.gov; or mail: Office of Federal Acknowledgment, 1849 C Street, NW/MS-4071 MIB, Washington, DC 20240.

Sincerely,



Director, Office of Federal Acknowledgment

Enclosures



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO
Appeal No. 2020-120

March 28, 2022

Odin A. Smith
Perkins Coie LLP
700 Thirteenth St., N.W., Ste. 800
Washington, DC 20005-3960

Dear Mr. Smith:

This responds to the June 25, 2020, Freedom of Information Act ("FOIA") appeal ("appeal") that you filed with the Department of the Interior's FOIA & Privacy Act Appeals Office ("Department"), which the Department assigned as **Appeal Number 2020-120**. The Department apologizes for the delay in reaching a decision on your appeal, which occurred because of a change in and shortage of staff, an extraordinarily large number of FOIA appeals pending in the Department ahead of yours, and other unforeseen circumstances.

The appeal concerns your firm's January 21, 2020, FOIA request to the Bureau of Indian Affairs ("BIA") that sought "a copy of all documents relating to Schaghticoke Indian Tribe's (SIT) petition for federal acknowledgment submitted to the Department of the Interior on or around December 23, 2019." You filed the appeal to challenge the BIA's decision to withhold, pursuant to FOIA exemption (6),¹ "personal information, such as the name, address, family configuration, genealogical information, parentage, ancestry, and enrollment number of individuals" who are identified in some of the documents that are responsive to the FOIA request.

After fully reviewing this matter, the Department concludes that the BIA properly invoked exemption (6) as a basis to withhold the information at issue in the appeal. The BIA's February 20, 2020, final response to the FOIA request fully explains the rationale for the withholdings it made under the exemption, which the Department fully adopts and incorporates into this decision. Accordingly, your appeal is **DENIED**.

This completes the Department's response to your appeal. You have a right to seek judicial review of this decision under *5 U.S.C. § 552(a)(4)(B)*.

If you have any questions regarding this matter, please e-mail them to the FOIA Appeals Office at foia.appeals@sol.doi.gov. Regrettably, due to the coronavirus pandemic, no one is available in the FOIA Appeals Office to answer or return any phone calls.

Sincerely,

Darrell R. Strayhorn
FOIA & Privacy Act Appeals Officer
Department of the Interior

cc: BIA FOIA Officer
Office of Federal Acknowledgment, BIA
Office of the Solicitor

¹ Exemption (6) allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *5 U.S.C. § 552(b)(6)*.



Allingham,
Readyoff &
Henry, LLC

Attorneys at Law

Attorneys at Law
54 Bridge Street
New Milford, CT 06776

www.allinghamlaw.com
Phone: 860-350-5454
Fax: 860-350-5457

March 11, 2022

Via Telefax (202) 219-3008
and First Class U.S. Mail

Mr. Lee Fleming,
Director, Office of Federal Acknowledgment
Office of the Assistant Secretary - Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Schaghticoke Indian Tribe, Petition #401

Dear Mr. Fleming,

I represent the Town of Kent, Connecticut in connection with matters concerning the Schaghticoke Indians. Pursuant to 25 CFR 83.22(b)(1)(v), I request to be kept informed of the proceedings concerning Schaghticoke Indian Tribe, Petitioner #401.

The Town of Kent plans to submit evidence and comments concerning this petition pursuant to 25 CFR 83.22(b)(1)(iv). In order that the Town of Kent have a meaningful opportunity to comment, I request a copy of the following documents that have not been published on the OFA's website.

- 1) The Schaghticoke Indian Tribe's governing document or description of membership criteria and current governing procedures as required by 22 CFR 83.11(d);
- 2) The current membership list and evidence of the current members' descent from the historical tribe as submitted by this petitioner.
- 3) All other membership lists provided by the Petitioner to establish continuity or descent from a historical tribe.

If the Schaghticoke Indian Tribe provides additional documents within the scope of this request during review of the petition, I request that such additional documents be provided to me unless otherwise published on the OFA website.

22 CFR 83.11(e) establishes descent from a historical Indian tribe as one of the criteria that must be established to qualify for acknowledgment. 22 CFR 83.11(f) requires that the membership of the petitioner consist of persons who are not members of any other recognized

CTP APPX077

Mr. Lee Fleming
Director, Office of Federal Acknowledgment

2

March 11, 2022

tribe. The petition materials published to date by the OFA do not include any material evidence supporting either of these criteria.

Because the criteria for acknowledgment require that the current membership descend from a historical tribe, there is a clear public interest in disclosure of the requested information. The Town of Kent requires the requested information in order that it may provide meaningful comment and evidence with respect to the pending petition. "The comment process is a critical part of administrative rulemaking, which is itself central to the operations and activities of government agencies." *N.Y. Times Co. v. Federal Communications Commission*, 457 F.Supp.3d 266, 275 (S.D. N.Y. 2020). Moreover, since the Department is required to make findings concerning descent and membership under 22 CFR 83.11(e) and (f), the public is entitled to know the facts upon which its findings, and ultimately its decision, are based.

The disclosure of the requested information will not constitute a clearly unwarranted invasion of privacy. This is because, by filing its petition on behalf of its members, the Schaghticoke Indian Tribe has placed the questions of membership and descent into issue before the Department. Freedom of Information exemptions, including exemption 6, are to be construed narrowly. There is a strong presumption in favor of disclosure. *Associated Press v. U.S. Department of Defense*, 554 F.3d 274, 283 (2d Cir. 2009).

I request that a prompt disclosure of the requested information given the limited time allowed in which the Town of Kent is required to submit its response.

Sincerely,


Jeffrey B. Sienkiewicz

JBS/jbs

cc: Jean Speck, First Selectman

CTP APPX078

Jeff Sienkiewicz

From: admin@foiaonline.gov
Sent: Friday, March 25, 2022 10:32 AM
To: Jeff Sienkiewicz
Subject: FOIA Request DOI-BIA-2022-002828 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: DOI-BIA-2022-002828
- Requester Name: Jeffrey B Sienkiewicz
- Date Submitted: 03/25/2022
- Request Status: Submitted
- Description: Requesting informed party status and membership lists and governing documents filed by Schaghticoke Indian Tribe, Petitioner #401 in order to provide responsive comments as part of acknowledgment process. Response deadline July 7, 2022, so expedited review requested. See uploaded letter dated March 11, 2022 directed to Lee Fleming.

Jeff Sienkiewicz

From: Jeff Sienkiewicz
Sent: Monday, April 25, 2022 4:27 PM
To: 'FOIA.Appeals@SOLDOI.Gov'
Subject: Freedom of Information Appeal, DOI-ASIA-2022-002828 - Expedited Review Requested
Attachments: FOI Appeal 3-25-2022.pdf

Dear Ladies and Gentlemen,

Attached, please find the Town of Kent, Connecticut's appeal concerning the denial of information critical to its response to the pending petition for federal acknowledgment of the Schaghticoke Indian Tribe as an Indian tribe. The Town has only 120 days total to respond to that filing, of which approximately 50 days have already elapsed. Due to this urgency, expedited review is requested.

Sincerely,

Jeffrey B. Sienkiewicz
860-350-5454

Allingham, Readyoff & Henry, LLC
54 Bridge Street,
New Milford, CT 06776

CTP APPX080



Allingham,
Readyoff &
Henry, LLC

Attorneys at Law

Attorneys at Law

54 Bridge Street

New Milford, CT 06776

www.allinghamlaw.com

Phone: 860-350-5454

Fax: 860-350-5457

APRIL 25, 2022

VIA E-MAIL TO FOIA.APPEALS@SOL.DOI.GOV

Department of the Interior
Office of the Solicitor
1849 C Street, NW
MS-6556 MIB
Washington, DC 20240

ATTENTION: FOIA Appeals Office

**Re: FREEDOM OF INFORMATION APPEAL,
DOI-ASIA-2022-002828
EXPEDITED REVIEW REQUESTED**

Dear Ladies & Gentlemen:

The group calling itself the Schaghticoke Indian Tribe has filed a documented petition for federal acknowledgment as an Indian tribe pursuant to the provisions of 25 C.F.R. §83.1 *et seq.* The Office of Federal Acknowledgment (OFA) designated the petition as petition #401 and on March 5, 2022 published the petition narrative. None of the supporting documentation or evidence cited in the narrative was published by OFA in contract to the requirements of 25 C.F.R. §83.22(c). See [Petition #401 Schaghticoke Indian Tribe \(SIT\). CT | Indian Affairs \(bia.gov\)](#).

Because the petitioner claims to be located in Kent, Connecticut, the Town of Kent is entitled to notice of the petition and to participate in the acknowledgment proceedings pursuant to 25 C.F.R. §83.22(d)(3) and (5). The Town of Kent has a limited period of 120 days in which to submit comments and evidence concerning whether the group is entitled federal acknowledgment. 25 C.F.R. §83.22(b)(1)(iv). The Town's comment period expires on July 5, 2022.

By letter dated March 11, 2022, the Town of Kent, through counsel, filed a Freedom of Information request to the Office of Federal Acknowledgment for the following documents deemed critical to its review of the petition and potentially to its response.

- 1) The Schaghticoke Indian Tribe's governing document or description of membership criteria and current governing procedures as required by 22 CFR 83.11(d);
- 2) The current membership list and evidence of the current members' descent from the historical tribe as submitted by this petitioner.

CTP APPX081

3) All other membership lists provided by the Petitioner to establish continuity or descent from a historical tribe.

The request was resubmitted on March 25, 2022 through the Department of the Interior' website and assigned Tracking Number DOI-BIA-2022-002828. (See attachments).

More than twenty (20) days have elapsed since submission of the request. The Department has taken no action to provide or deny the requested documents or to otherwise act on the request.

Membership lists and governing document(s) are a required part of a petition for acknowledgment, *see* 25 C.F.R. 83.21(a)(4) and §83.11(d).

The acknowledgment regulations require an examination of the membership to determine whether the *current* membership descends from a historical tribe and whether that membership is and has been continuously united in one community (criteria (b) and (d)). It is essential that the Town of Kent have access to the membership of the group, both current and historical, in order that its right to comment is preserved.

The acknowledgment regulations also require an examination of the group's governing document since that document is expected to define the group's qualifications for membership (criteria (d)). As such, the content of the governing document is essential to the Town's ability to analyze and comment upon the petition. Denial of that documentation prejudices the Town's opportunity to submit evidence and comment on the group's qualification for acknowledgment.

The failure to produce these documents within the time permitted by statute constitutes a denial and is hereby appealed from on this basis.

The acknowledgment regulations require petitioners to demonstrate that "[t]he petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity)." 25 C.F.R. § 83.11(e). This requirement of Indian descent is fundamental to the federal acknowledgment of an Indian tribe, and indeed, is essential to the definition of a tribe under Supreme Court precedent. In turn, the federal acknowledgment of an Indian tribe, with all of its attendant sovereign rights and powers as a domestic dependent nation, is one of the most solemn and momentous exercises of the federal government's plenary authority over Indian affairs. The public interest in verifying the appropriate administration of this aspect of the federal tribal acknowledgment process is therefore of great magnitude.


Whether a petitioner meets the descent criterion cannot be determined without personal information of the petitioner's members sufficient to conduct the genealogical research and

April 25, 2022

analysis necessary to determine the descent of those members from a historical tribe or tribes - at a minimum, this requires the names of a petitioner's members. This is precisely why OFA requires the submission of membership lists, 25 C.F.R. 83.21(a)(4). And the same applies to the public's need for that information to determine if the agency is properly evaluating the descent criterion. Without the identity of a petitioner's members, the Town of Kent is unable to verify the group's claims as well as the OFA's ultimate determinations under the descent criterion. The Town of Kent is also unable to make fully informed comments during the public comment period. The public interest in disclosure of the requested information is substantial.

In contrast, the privacy interests affected are minimal at best. The disclosure of the requested information will not constitute a clearly unwarranted invasion of privacy. This is because, by filing its petition on behalf of its members, the Schaghticoke Indian Tribe has placed the questions of membership and descent into issue before the Department. Freedom of Information exemptions, including exemption 6, are to be construed narrowly. There is a strong presumption in favor of disclosure. *Associated Press v. U.S. Department of Defense*, 554 F.3d 274, 283 (2d Cir. 2009).

Sincerely,


Jeffrey B. Sienkiewicz

Attachments 1) March 11, 2022 letter to Lee Fleming, Director OFA
2) Acknowledgment and tracking assignment number



ALLINGHAM,
Readyoff &
Henry, LLC

Attorneys at Law

Attorneys at Law

54 Bridge Street

New Milford, CT 06776

www.allinghamlaw.com

Phone: 860-350-5454

Fax: 860-350-5457

March 11, 2022

Via Telefax (202) 219-3008
and First Class U.S. Mail

Mr. Lee Fleming,
Director, Office of Federal Acknowledgment
Office of the Assistant Secretary - Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Schaghticoke Indian Tribe, Petition #401

Dear Mr. Fleming,

I represent the Town of Kent, Connecticut in connection with matters concerning the Schaghticoke Indians. Pursuant to 25 CFR 83.22(b)(1)(v), I request to be kept informed of the proceedings concerning Schaghticoke Indian Tribe, Petitioner #401.

The Town of Kent plans to submit evidence and comments concerning this petition pursuant to 25 CFR 83.22(b)(1)(iv). In order that the Town of Kent have a meaningful opportunity to comment, I request a copy of the following documents that have not been published on the OFA's website.

- 1) The Schaghticoke Indian Tribe's governing document or description of membership criteria and current governing procedures as required by 22 CFR 83.11(d);
- 2) The current membership list and evidence of the current members' descent from the historical tribe as submitted by this petitioner.
- 3) All other membership lists provided by the Petitioner to establish continuity or descent from a historical tribe.

If the Schaghticoke Indian Tribe provides additional documents within the scope of this request during review of the petition, I request that such additional documents be provided to me unless otherwise published on the OFA website.

22 CFR 83.11(e) establishes descent from a historical Indian tribe as one of the criteria that must be established to qualify for acknowledgment. 22 CFR 83.11(f) requires that the membership of the petitioner consist of persons who are not members of any other recognized

CTP APPX084

Mr. Lee Fleming
Director, Office of Federal Acknowledgment

2


March 11, 2022

tribe. The petition materials published to date by the OFA do not include any material evidence supporting either of these criteria.

Because the criteria for acknowledgment require that the current membership descend from a historical tribe, there is a clear public interest in disclosure of the requested information. The Town of Kent requires the requested information in order that it may provide meaningful comment and evidence with respect to the pending petition. "The comment process is a critical part of administrative rulemaking, which is itself central to the operations and activities of government agencies." *N.Y. Times Co. v. Federal Communications Commission*, 457 F.Supp.3d 266, 275 (S.D. N.Y. 2020). Moreover, since the Department is required to make findings concerning descent and membership under 22 CFR 83.11(e) and (f), the public is entitled to know the facts upon which its findings, and ultimately its decision, are based.

The disclosure of the requested information will not constitute a clearly unwarranted invasion of privacy. This is because, by filing its petition on behalf of its members, the Schaghticoke Indian Tribe has placed the questions of membership and descent into issue before the Department. Freedom of Information exemptions, including exemption 6, are to be construed narrowly. There is a strong presumption in favor of disclosure. *Associated Press v. U.S. Department of Defense*, 554 F.3d 274, 283 (2d Cir. 2009).

I request that a prompt disclosure of the requested information given the limited time allowed in which the Town of Kent is required to submit its response.

Sincerely,

Jeffrey B. Sienkiewicz

JBS/jbs

cc: Jean Speck, First Selectman

CTP APPX085

Jeff Sienkiewicz

From: biafoia@email.doi.gov
Sent: Friday, March 25, 2022 10:35 AM
To: Jeff Sienkiewicz
Subject: FOIA Tracking Number Change for request DOI-BIA-2022-002828 (to DOI-ASIA-2022-002828)

The FOIA request DOI-BIA-2022-002828 has had its Tracking Number changed to DOI-ASIA-2022-002828. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: DOI-BIA-2022-002828
- New Tracking Number: DOI-ASIA-2022-002828
- Requester Name: Jeffrey B Sienkiewicz
- Date Submitted: 03/25/2022
- Long Description: Requesting informed party status and membership lists and governing documents filed by Schaghticoke Indian Tribe, Petitioner #401 in order to provide responsive comments as part of acknowledgment process. Response deadline July 7, 2022, so expedited review requested. See uploaded letter dated March 11, 2022 directed to Lee Fleming.

Jeff Sienkiewicz

From: DOI FOIA and Privacy Appeals <FOIA.APPEALS@sol.doi.gov>
Sent: Thursday, May 5, 2022 8:46 AM
To: Jeff Sienkiewicz
Subject: Your Freedom of Information Act Appeal (No. 2022-122)
Attachments: 43 CFR § 2.20.pdf; 43 CFR § 2.63.pdf

Mr. Sienkiewicz: Thank you for your submission. The Department of the Interior's Freedom of Information Act ("FOIA") Appeals Office ("Department") has accepted the FOIA appeal you filed on behalf of the Town of Kent, Connecticut, for processing, with a date of receipt of April 25, 2022, and it has assigned the matter as **Appeal No. 2022-122**.

Please be aware that the FOIA requires an agency to make a determination on an appeal within 20 workdays after the receipt of such appeal. *5 U.S.C. § 552(a)(6)(A)(ii)*. While the Department will make every effort to reach a decision on your appeal within this time limit, if you do not receive a determination within 20 workdays, you may seek judicial review under *5 U.S.C. § 552(a)(4)(B)*. However, should the Department not timely make a determination on the appeal, it hopes that you will delay filing a lawsuit so that it can thoroughly review the issues you raised and make a decision.

As a final matter, the Department notes your request for "expedited review" in the e-mail message you sent transmitting the appeal. Please be aware that if you are seeking "expedited processing" of the appeal, to properly do so, the Department's FOIA regulations ("regulations") require you to submit a statement to the Department that: 1. Explains in detail how all elements and subcomponents of your client's request meets each element of one or both of the expedited processing criteria set forth in the regulations at *43 C.F.R. § 2.20(a)*; and 2. Certifies that your explanation is true and correct to the best of your knowledge and belief. *See 43 C.F.R. §§ 2.20(b); 2.63(a)*. *See also 5 U.S.C. § 552(a)(6)(E)(vi)*. Finally, note that the FOIA and the Department's implementing regulations require a decision on a request for expedited processing to be made within 10 calendar days after receipt of such a request, not a determination on the underlying FOIA request or appeal itself within that time frame. *See 5 U.S.C. § 552(a)(6)(E)(ii)-(iii); 43 C.F.R. §§ 2.20(e)-(f), 2.63(b)-(c)*. With that noted, if you remain interested in requesting expedited processing of this appeal, you may submit a proper expedited processing request to the Department any time before the bureau issues its final response to the FOIA request (which is an action that would resolve the issue you raise in the appeal) or before the Department issues its decision on the FOIA appeal.

If you have any questions regarding this matter, please e-mail them to the FOIA Appeals Office. Regrettably, due to the pandemic, no one is available in the FOIA Appeals Office to answer or return any phone calls. Thank you.

—
Darrell R. Strayhorn
FOIA & Privacy Act Appeals Officer
Department of the Interior

This e-mail (including attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

CTP APPX087

From: Jeff Sienkiewicz <jsienkiewicz@allinghamlaw.com>

Sent: Monday, April 25, 2022 4:27 PM

To: DOI FOIA and, Privacy Appeals <FOIA.APPEALS@sol.doi.gov>

Subject: [EXTERNAL] Freedom of Information Appeal, DOI-ASIA-2022-002828 - Expedited Review Requested

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Dear Ladies and Gentlemen,

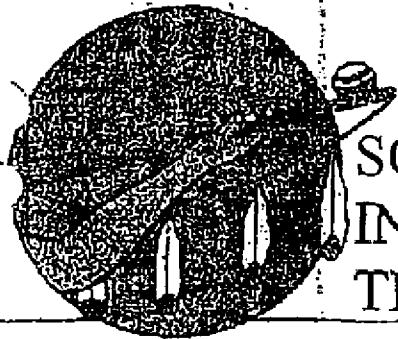
Attached, please find the Town of Kent, Connecticut's appeal concerning the denial of information critical to its response to the pending petition for federal acknowledgment of the Schaghticoke Indian Tribe as an Indian tribe. The Town has only 120 days total to respond to that filing, of which approximately 50 days have already elapsed. Due to this urgency, expedited review is requested.

Sincerely,

Jeffrey B. Sienkiewicz
860-350-5454

Allingham, Readyoff & Henry, LLC
54 Bridge Street,
New Milford, CT 06776

CTP APPX088



SCHAGHTICOKE
INDIAN
TRIBE

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OCT 15 2002

BIA, Branch of Acknowledgment
and Research

CERTIFICATION OF MEMBERSHIP LIST
OF THE SCHAGHTICOKE INDIAN TRIBE

We the Schaghticoke Tribal Council, as the governing body of the Schaghticoke Indian Tribe, hereby certify that the attached membership list reflects the list of members enrolled in the Schaghticoke Indian Tribe as of the date of this certification

Dated this 6 day of October, 2002.

Alan Russell
Alan Russell, Chairman

Russell Kilson
Russell Kilson, Councilman

Gail Harrison
Gail Harrison, Vice Chairman

Michael Eades
Michael Eades, Councilman

Gary E. Ritchie
Gary E. Ritchie, Secretary

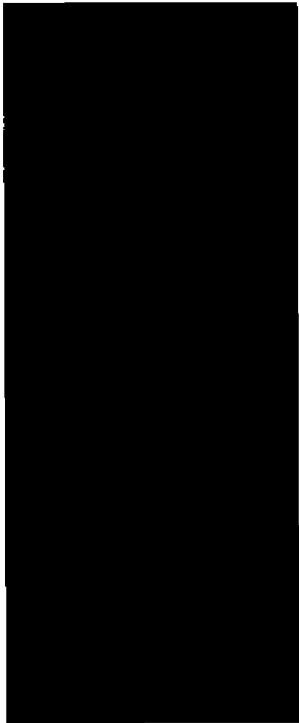
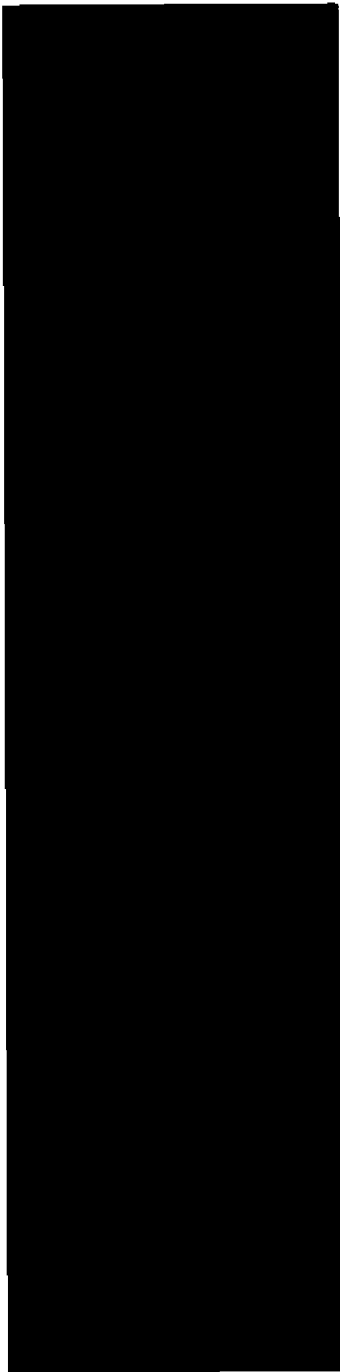
David Kilson
David Kilson, Councilman

Wells V. Offutt III
Wells V. Offutt III, Councilman

Elton Jenkins
Elton Jenkins, Councilman

PO Box 111, Schaghticoke Indian Reservation, Kent, Connecticut 06757

*Schaghticoke Indian Tribe
Tribal Rolls
October 5, 2002*



BAR
RESERVE
7/13/99



THE GATHERING OF THE TRIBE

We the members of Schaghticoke Tribe hold hands in peace and friendship! Once more we go back into the Sacred Hoop! Hear us... Not for ourselves, but for our tribe.

To whom it may concern:

We the Schaghticoke Tribe from the Schaghticoke Reservation in Kent CT. Do hereby... let it be known... concerning Schaghticoke Tribal Nation from Monroe CT. They have "NO" authority or jurisdiction over us.

They do not recognize us, or the rest of the tribe, who live off our reservation. THIS we do not recognize them from Monroe. They have authority over themselves only! Not our reservation or residents.

May we all have peace in true freindship.

The Schaghticoke residents and families from the Schaghticoke Reservation.

Gail Harrison 10.24.97
Alan Russell 10/24/97

Ronald D Harrison 10-24-97

Amy E Harrison 10/24/97

Edward W Harrison 10/24/97

Maria C. Harrison 10/24/97

Edward J Harrison 10/24/97

Russell W Harrison 10/24/97

(June) Princess Chikara 10/24/97

Crystal Russell 10/24/97

Karen Russell 10/24/97.

Jason Lamb

Summary of Research on SIT Genealogy

The following is a summary of research conducted into the genealogy of the Schaghticoke Indian Tribe (SIT) petitioner group, including identification of the likely current members of the SIT. Full supporting documentation is available upon request, including access by authorized parties to the reconstructed family trees and linked source documents available on Ancestry.com.

Available sources regarding the membership and ancestry of the SIT petitioner include the 1900 and 1910 Schaghticoke Indian Reservation censuses, from which family trees have been reconstructed on Ancestry.com. Other reservation censuses of 1850, 1860, 1870, 1880, 1920, 1930, and 1940 have also been examined for continuity. From these sources, it is possible to trace the family lineages through time, particularly to identify marriages and name changes. Information from the Schaghticoke Tribal Nation (STN) Proposed Finding and Final Determinations has also been consulted. Access to the Ancestry.com family trees can be provided to authorized persons upon request. The online file serves as an accessible electronic database for individuals and collateral families associated with both the SIT and STN genealogies. Ancestry.com provides most of the electronic public records used to document an individual's ancestry and residency, and allows the linking of records to each family member and the reconstruction of family lines with visual clarity and validation. Additional sources include Schaghticoke genealogies compiled by the State of Connecticut to track descendants regarding residency on the Kent Reservation, and to determine future need for State services. These combined resources establish the initial framework for evidence of Schaghticoke ancestry.

The SIT submitted a membership list in 2001 that included 73 individuals, 19 of whom were also on a 1982 STN membership list and an additional 17 who had a parent or grandparent on the 1982 list. Thirty-six (36) of the 73 SIT members (49%) were also a part of the STN membership. Fourteen (14) had resigned from STN membership, including 11 that were on the 1982 STN membership list. All of these SIT members descended from the three primary Schaghticoke family lineages and eleven (11) of the SIT members were residents of the Schaghticoke Reservation.

In 2010 the SIT submitted a membership roll to the Connecticut Department of Environmental Protection, which oversees the Schaghticoke Reservation in Kent. Attached. This roll contained the names of 200 adults and children. Analysis of this roll has determined that the 2010 membership consisted of: (1) individuals who were formerly associated with the STN petitioner (33%); (2) individuals who had Schaghticoke ancestry but were not part of the Schaghticoke tribal community (1%); and (3) individuals that had no identifiable Schaghticoke or Indian ancestry (65%).

In March 2019, the SIT submitted a 178-page narrative and further petition documentation to the Department of the Interior. The March 2019 petition was rejected as incomplete, and the SIT subsequently resubmitted a petition in December 2019, which was again rejected as incomplete. A review of the December 2019 narrative reveals that it is essentially identical to the March 2019 submission. The March 2019 and December 2019 submissions included membership lists, which the Department subsequently released in redacted form under the Freedom of Information

Act (FOIA). The redacted lists nevertheless revealed that the membership of the SIT included only 40 (March 2019 list) or 47 (December 2019 list) adult members.

The SIT's 2022 petition claims 44 adult members. The current and past narratives make no reference to the much larger roll the group had submitted to the State in 2010. The unredacted 2010 list reveals the names of 200 adult members, which has allowed genealogical research on the SIT's 2010 membership.

The research conducted confirms that the overwhelming majority of the 2010 members do not descend from the historical Schaghticoke tribe. The research also allows the identification of the likely current members of the SIT, which is summarized in table form below. Summary files for each likely current member are available upon request.

Verifiable descent from the historical tribe identifies 25 likely current members. An additional 31 individuals that are likely to be members can be identified based on other evidence, including current or prior participation in the SIT, resignation of membership in the STN, and familial relations to other likely members. The resulting total of 56 adult individuals that are likely to be members compares closely to the total of 44 current adult members. Of the 56 identified individuals that are likely to be current members, at least 13 can be documented as resigning their membership in the STN, and an additional 15 individuals can be identified as STN members from STN membership rolls and other documents (and many were STN council members). Thus, it is likely that 64% of the SIT's current members (28 out of 44) are former members of the STN, confirming that the SIT membership is derivative of the STN. As such the SIT is clearly a splinter group of the STN.

In addition, out of the remaining 28 likely current SIT members identified, at least 22 (possibly 23) were minors when the STN and SIT separated in 1997. Thus, potentially all of the SIT's current membership are individuals that were likely either enrolled members of the STN or minors that weren't enrolled yet at that time.

The conclusions of this research can easily be verified by the Department by comparing the current SIT membership lists to the membership lists previously submitted by the STN.

PROPOSED SIT MEMBERSHIP and PRIOR MEMBERSHIP in the STN

FAMILY LINE	ID #	NAME	BIRTH YEAR	RESIGN-ATION FROM STN AFTER 1997	PROB-ABLE SIT 2019 ROLL	NOTES <i>Membership documents include signed consent to be listed as a STN member, not just ancestry.</i>
Harris, Elsie (Russell) 1	1.	Russell, Alan	1946	Split 1997: signed "Gathering of the Tribe"	Yes	1982 Corporate List* STN Council Chairman 1984; member 1985, still on 1994 STN roll.; 1997: never submitted full membership documents to STN. Current 2019 SIT chairman from 1997.
	2.	Russell, Crystal	1977	Split 1997: signed	Yes	On 1994 STN roll: 1997: never submitted full membership documents to STN.

*1982 Corporate List is derived from the STN Final Determination (2004), pp. 53-54, and is not comprehensive.

Exemption 6

2				"Gathering of the Tribe"		
3	3.	Harrison-Donovan, Gail Russell	1948	Split 1997: signed "Gathering of the Tribe"	Yes	1982 Corporate List; STN Council Treasurer, still on 1994 STN roll; 1997: never submitted full membership documents to STN; SIT vice chair 2019; Off and on SIT council since 1997.
4	4.		1996		Yes	Never submitted membership documents to STN.
5	5.		1966	Split 1997: signed "Gathering of the Tribe"	Yes	On 1994 STN roll; 1997: never submitted full membership documents to STN.
6	6.		1968	Split 1997: signed "Gathering of the Tribe"	Yes	On 1994 STN roll; 1997: never submitted full membership documents to STN.
7	7.		1983		yes	Never submitted full membership documents to STN.
8	8.		1952		yes	Never submitted full membership documents to STN.
9	9.		1970		yes	Never submitted full membership documents to STN.
10	10.		1992		yes	Never submitted full membership documents to STN.
11	11.		1946		yes	1982 Corporate List; Never submitted full membership documents to STN.
12	12.		1948		yes	1982 Corporate List; Never updated full membership documents to STN.
13	13.		1973		yes	Never updated full membership documents to STN.
14	14.		1971		yes	Never submitted full membership documents to STN; On current 2019 SIT council.
15	15.		1996		yes	Never submitted full membership documents to STN.
16	16.		1997		yes	Never submitted full membership documents to STN.
17	17.		1999		yes	Never updated full membership documents to STN.
Harris/G race Storm/Mabel Birch 18	18.		1958	No	yes	Never updated full membership documents to STN; Mother was on STN council 1973, 1974; On current 2019 SIT council.
19	19.		1981	No	yes	Never updated membership documents to STN.
20	20.		1994	No	yes	Never updated membership documents to STN.
Kitson/Mary Jessen 21	21.		1955	No	yes	1982 Corporate List; Never submitted membership documents to STN; Not on SIT 2010 roll; On current 2019 SIT council.

Exemption 6

22	22		1977	No	yes	Father, Russell Kilson on STN tribal council 1987 & 1989-1995; Never submitted membership documents to STN
23	23		1981	No	yes	Claims Grandfather, Russell Kilson; Never submitted full membership documents to STN.
24	24		1957	No	yes	1982 Corporate List; Never submitted membership documents to STN; On current 2019 SIT council.
25			1966		yes	No information

The following Table illustrates the number of probable current members of the SIT who have no direct ancestors on the early 20th century Reservation censuses.

No Direct Ancestor on the 1900 or 1910 Schaghticoke Reservation Census

FAMILY LINE	ID #	NAME	BIRTH YEAR	RESIGN-ATIO FROM STN AFTER 1997	PROB-ABLE SIT 2019 ROLL	NOTES <i>NB: Membership documents include signed consent to be listed as a STN member not just ancestry.</i>
Kilson/Bradley 26	1.		1953	Yes	Yes	Lived in NY.
	2.		1955	Yes	Yes	Lived in NY.
27			1986		Yes	No information
28			1988		Yes	No information
29			1960	Yes	Yes	Lived in NY.
30	4.		1982		Yes	No information. Mother. Regina.
31			1996	Yes	Yes	Father, Gary submitted resignation
32	5.		1957	Yes	Yes?	1982 Corporate List;* Council member; 1984; Lived in and out of CT.
33	6.	Ritchie. Gary Eugene			removed from SIT council 2006	

* 1982 Corporate List is derived from the STN Final Determination (2004), pp. 53-54, and is not comprehensive.

Exemption 6

34	8.		1979	No	Yes	Never submitted full membership documents to STN.
35	9.		1988	No	Yes	Never submitted full membership documents to STN.
36			1981		Yes	No information
37					Yes	No information
38					Yes	No information
39					Yes	No information
40	10.		1958	Yes	Yes	Lived in NY & Texas.
41			About 1978		Yes	No information
42			About 1981		Yes	No information
43	11.		1954	No	Yes	Never submitted full membership documents to STN.
44			1973		Yes	No information
45			1974		Yes	No information
46			1977		Yes	No information
47	12.		1963	Yes	Yes	1982 Corporate List; Never updated full membership documents to STN.
48	13.		1957	Yes	Yes	1982 Corporate List; Never updated full membership documents to STN.
49	14.		1992	No	Yes	Never submitted membership documents to STN.
50	15.		1995	No	Yes	Never submitted membership documents to STN.
51			1956	No	Yes	Father, Stuart Bradley Pennywell, died 1999 when still a member of STN; Never submitted

Exemption 6

						membership documents to STN.
52			1986	No	Yes	Never submitted membership documents to STN.
53			1988	No	Yes	Never submitted membership documents to STN.
54			1982	No	Yes	Never submitted membership documents to STN.
55			1989	No	Yes	Never submitted membership documents to STN.
56			1989	No	Yes	Never submitted membership documents to STN.

GASSER LAW FIRM, LLC

20 East Main Street • Avon, CT 06001-3823
(860) 674-8342 • FAX (860) 676-8912

April 29, 2010


Mr. Lee Fleming
Office of Indian Services
Division of Tribal Government
Bureau of Indian Affairs
MS-4513-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Re: Schaghticoke Indian Tribe, Kent, Connecticut

Dear Mr. Fleming:

On behalf of Ms. Joya Bruce, Tribal Secretary, I am enclosing correspondence to you as well as the Tribal Rolls effective February, 2010 of the Schaghticoke Indian Tribe.

Very truly yours,


Edward W. Gasser

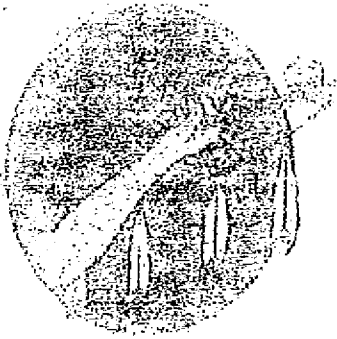
EWG/nfb

Enclosure: Correspondence and Tribal Rolls

cc: The Hon. M. Jodi Rell, Governor State of Connecticut
Mr. Edward Serabia, Indian Affairs Coordinator
Ms. Joya Bruce, Secretary Schaghticoke Indian Tribe

RECEIVED
MAY -4 2010
Dept. of Environmental Protection
Indian Affairs Coordinator

CTP APPX098



Schaghticoke Indian Tribe

Tribe Council

Chairman - Mary MacDonald
 Vice Chairman - Gail Harrison-Donovan
 Secretary - Joya Bruce
 Councilman - George Bruce
 Councilman - Ian Porter
 Councilman - Janette Stoezinger
 Councilman - Travis Kilson
 Councilman - Justin Kilson

RECEIVED APR 12 2010

To: Lee Fleming I.B.I.A

February 15th 2010

From: Schaghticoke Indian Tribe, (S.I.T.)

Phone: 860-307-5002, Tribe Phone

Dear Mr. Lee Fleming,

I, as Tribal Secretary along with our Tribal Council, being the actual governing body and authority in regards to the Schaghticoke Reservation located in Kent, Ct, hereby wants to inform you as to the personal changes to our Tribe Council.

On February 15, 2010, The Schaghticoke Indian Tribe held their bi-monthly meeting to asses their ongoing tribal requirements and needs. The first item on the addenda was the resignation from Chairman Princess Laughing Brooke, (Gail Harrison-Donovan) for medical reasons. Vice Chairman Sunshine White Feather, (Mary MacDonald) was voted in as Chairman. Sunshine White Feather, (Mary MacDonald) assumes the Chairmanship roll immediately. Princess Laughing Brooke will assume the roll of Vice Chairman immediately. Any and all correspondences from now on should be directed to our new chairman, Sunshine White Feather, (Mary MacDonald). In addition please note our NEW tribe Council members listed above.

As always if you have any questions you can contact us at any of the below listed numbers:

(860)-674-8342 Tribal Counsel, Edward Gasser

(203)-623-0634 Chairperson & Tribal Chief Mary MacDonald

(413) 949-2185 Tribal Secretary, Joya Bruce

(860) 307-5002 Tribal Spokesman & Economic Development Coordinator, Michael Carlson

Respectfully Submitted and signed on behalf of the entire Tribe:

In Friendship I sign as,
Tribe Council Secretary,

Joya Bruce

Joya Bruce,
262 Schaghticoke Reservation,
P.O. Box 223,
Kent, Ct. 06757

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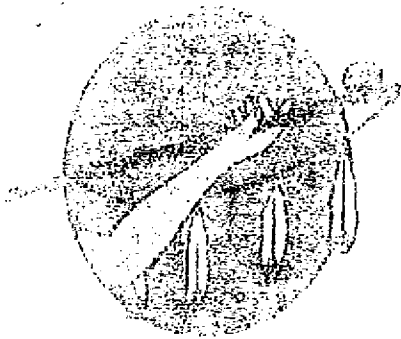
MAY -4 2010

Dept. of Environmental Protection
Indian Affairs Coordinator

BO, PLEASE
SEND THIS TO
LEE FLEMING IN
WASHINGTON, D.C.
Here his address
Thanks Mike

SCHAGHTICOKE INDIAN TRIBE
 SCHAGHTICOKE INDIAN RESERVATION
 P.O. BOX 223
 KENT, CONNECTICUT 06757
 email: SitTribe@aol.com

CTP APPX099



Exemption 6

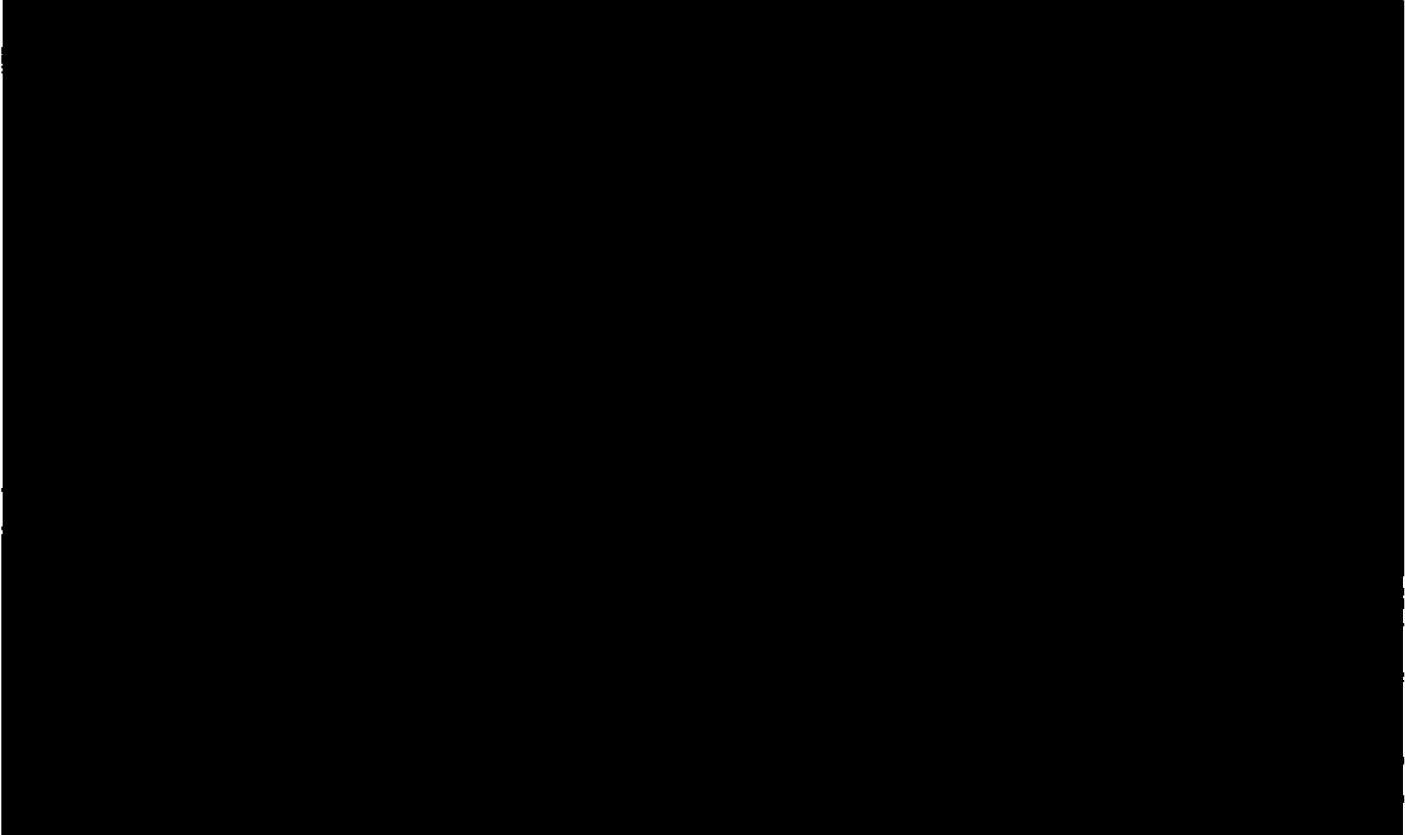
Schaghticoke Indian Tribe

Tribe Council
 Chairman - Mary MacDonald
 Vice Chairman - Gail Harrison-Donovan
 Secretary - Joya Bruce
 Councilman - George Bruce
 Councilman - Ian Porter
 Councilman - Janette Stoezinger
 Councilman - Travis Kilson
 Councilman - Justin Kilson

Tribe Roll of the Schaghticoke Indian Tribe

February 3, 2010

Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name	Last Name	First Name
-----------	------------	-----------	------------	-----------	------------	-----------	------------	-----------	------------



In Friendship I sign as,
Tribe Council Secretary,

Joya Bruce 2/15/2010
Date:

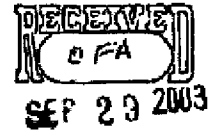
Joya Bruce,
Secretary,
Schaghticoke Indian Tribe
262 Schaghticoke Reservation,
P.O. Box 223,
Kent, Ct. 06757

RECEIVED

MAY - 4 2010

Dept. of Environmental Protection
Indian Affairs Coordinator

SCHAGHTICOKE INDIAN TRIBE
 SCHAGHTICOKE INDIAN RESERVATION
 P.O. BOX 223
 KENT, CONNECTICUT 06757
 email: SitTribe@aol.com



**SCHAGHTICOKE TRIBAL NATION'S ANALYSIS
OF THE SCHAGHTICOKE INDIAN TRIBE'S
MEMBERSHIP LIST
(DATED SEPTEMBER 28, 2003)**

**Submitted as Part of the Schaghticoke Tribal Nation's
Response to Third Party Comments**

by

**Steven L. Austin, Ph.D.
Dean Markham
Submitted: September 29, 2003**

In the Schaghticoke Tribal Nation's Proposed Finding, the Assistant Secretary – Indian Affairs (AS – IA) concluded that there is only one historical Schaghticoke Tribal Nation (hereinafter, "STN," or "the Tribe"). The AS – IA also concluded that the STN, as it is currently configured, appeared to be missing some key individuals from its membership list. Some of the missing individuals in question are on the membership list of a petitioner calling itself the Schaghticoke Indian Tribe (SIT), led by Alan Russell. In addition to those represented by Alan Russell, there are a few other significant individuals whom the AS – IA concluded were missing from STN's membership list. The two sets of third party comments on the Proposed Finding that were submitted criticized the Tribe's petition under criteria 83.7(b) and (c) of the Federal acknowledgment regulations for failing to demonstrate that the Tribe had a sufficiently unified community, for failing to demonstrate political unity, and for not representing all potential tribal members. Some of these criticisms have already been responded to in other submissions by the Tribe, during the comment and response periods. The analysis presented in this paper supercedes the analysis in Austin's Response to Several Anthropological and Legal Issues Raised in Third Party Comments because it takes into consideration the addition of fifteen individuals to STN membership on September 28, 2003.

During the comment period, STN's genealogists identified 42 individuals who had always been part of the Tribe's historical community, but were currently unenrolled. As the response period comes to a close, there are still 26 individuals who have always

been part of the Schaghticoke tribal community but are not currently enrolled in STN (See Appendix B). This includes some but not all of the 59 individuals who are still on the SIT's membership list. The SIT member list provided by the OAR in the FAIR database had 73 names (dated October 5, 2002; see Appendix A). During the comment and response period, one of SIT's members died (Russ Kilson), two dually enrolled individuals reaffirmed their relationship with the STN, and eleven of them resigned from SIT,¹ leaving only 59 members. This leaves only 17 SIT members who might qualify for membership in STN, if they were to make application. As will be discussed, the vast majority of SIT's remaining members (71 percent) are not likely to be able to meet STN's membership criteria ($42/59=.711$). There are eight other individuals who are part of the STN's community but are not currently affiliated with either Schaghticoke petitioner; that is, they are not on the membership list of STN or SIT. The 26 individuals who are part of STN's community but not on the STN tribal membership roll represent only eight percent of the Tribe's overall community, enrolled and unenrolled ($26/312=.833$).

This paper also briefly discusses the efforts the STN has made during the response period to invite these individuals, plus those not represented by SIT, to apply for membership in STN. During the comment period the STN's Chief, Tribal Council, and tribal members made a number of attempts to contact unenrolled tribal community members, but only one of these forty-two individuals made application. However, the STN redoubled its efforts during the response period. As a result an additional fifteen

¹ Effective August 5, 2003, one of SIT's members was accepted onto the STN's tribal roll and effective September 28, 2003, another ten SIT members were accepted into membership with the STN.

individuals, five unaffiliated and ten SIT affiliated individuals, applied for membership and were added to the tribal rolls.

This paper was prepared by Steven L. Austin, an anthropologist working for the STN, and Dean Markham, with assistance from Tribal Genealogist Linda Gray.

Analysis of SIT Members

In the following analysis, SIT members have been divided into two broad categories: those who are not likely to qualify as members of STN and those who are. Those SIT members who are likely to qualify have been subdivided into: 1. those who resigned; 2. those who started but did not complete their applications to STN membership; and, 3. those who are dually enrolled in STN and SIT.

SIT Members Who Would Not Likely Qualify as Members of STN

The Schaghticoke Tribal Nation (STN, petitioner #79) has serious reservations about two groups of Schaghticoke Indian Tribe members (See Table 1). The first group includes forty-two individuals who are of questionable Schaghticoke Indian ancestry, or are otherwise not likely to be able to demonstrate they meet the STN's membership criteria, which include living in tribal relations on a substantially continuous basis (marked by shading in Appendix A). There is no reliable evidence available to the STN that demonstrates most of these forty-two individuals descend from the Schaghticoke Indians whom they claim as their ancestors. For those of unknown descent, the STN also has no evidence that these individuals or their ancestors have participated in Schaghticoke tribal affairs.

TABLE 1
SIT Members Who Will not Likely Qualify for Membership in STN

Claimed descendants of Ellen Cogswell (Trueheart family) with pending applications in SIT	15
Other Claimed descendants of Ellen Cogswell (Trueheart family), not pending	8
Claimed, unconfirmed descendants of William Russell	7
Claimed, unconfirmed descendants of Nancy Cogswell and Nancy Chickens	4
Individuals whose families have not lived in tribal relations	8
TOTAL	42

STN has no information on the 23 individuals claiming descent through Ellen Cogswell (b. 1846; m. Elias Seely, a non-Indian; the Trueheart family), aside from what was provided to the Office of Acknowledgment and Research, Bureau of Indian Affairs (OAR) by the SIT and included in the FAIR database. There are fifteen individuals on the SIT membership list marked as "pending." All of them are Trueheart family members. This would seem to imply that these fifteen individuals were not officially members of SIT as of October 22, 2002, the date of SIT's membership list. There are eight individuals who claim descent from Ellen Cogswell who have been accepted by the SIT as members of their group.

The STN will not accept the claimed Ellen Cogswell descendants as members of the Schaghticoke Tribal Nation simply because they are included on the SIT list. They would first need to provide acceptable documentary evidence that they meet the Tribe's membership criteria. This includes the criteria as stated in the Constitution, and the unwritten requirement by tribal custom that they and their ancestors have always been part of the STN community without any significant interruptions.

We understand and agree that Jabez Cogswell had a daughter named Ellen Cogswell. We do not have any evidence to support the SIT's claim that their members in

the Trueheart family are, in fact, her descendants. In addition to the lack of evidence for genealogical descent from the historical Schaghticoke Tribe, there is no evidence that Ellen Cogswell ever participated in social or political tribal matters since she became an adult in her own right (about 1864). There is no evidence to demonstrate that Ellen Cogswell's children lived in tribal relations during their lifetimes. The evidence indicates that only one of Jabez' children continued to maintain tribal relations after 1900, and that is George Cogswell. Most of George Cogswell's descendants who have continued to be associated with Schaghticoke tribal affairs are already members of the STN (some of his descendants are members of the Narragansett Indian Tribe in Rhode Island by virtue of two inter-tribal marriages; a few of them have recently² chosen to resign their membership in STN (See section below).

There are four individuals claiming descent from Nancy Cogswell on the paternal side (abt. 1853-1934; married Bland Moody, non-Indian) and from Nancy Chickens on the maternal side. There is no evidence that they or their ancestors participated in the social and/or political life of the Schaghticoke Tribal Nation. They would not, therefore, likely qualify for membership in the STN.

There are seven persons on the STN membership list who have claimed descent from William Russell through an alleged extra-marital relationship between Mr. Russell and their mother. STN has no evidence that these individuals are, in fact, descendants of William Russell. Given what STN knows about these seven individuals at the time of writing, they would not qualify for membership in STN.

² The Cogswell descendants who resigned their STN membership did so after 1997. Before 1997, they and/or their ancestors had participated in STN tribal meetings and events.

SIT Members Who Might Qualify for Membership in STN

There are three Schaghticoke descendants who are claimed as members by the SIT, but who have stated to family members who belong to the STN that they neither requested nor consented to such membership. They have also stated that they are moving out of state and do not care to belong to either Schaghticoke petitioning group. It is herein pointed out that it is contrary to the BIA's tribal acknowledgment related policies for petitioning groups to list individuals as members without their consent. The OAR should investigate whether or not there are individuals who have been placed on SIT's membership list without their knowledge and consent. These three people are still considered part of the STN's unenrolled tribal community as defined in the constitutional amendment passed September 28, 2003.

At this writing, there are nine individuals who were once members of STN, resigned their membership, and subsequently joined the SIT. Table 2, below, provides a summary of these nine individuals by family group. The STN does not have the power to coerce individuals to be members of STN against their will. However, by letter dated March 25, 2003, STN offered to reopen its membership application process to these individuals pursuant to conclusions in the AS - IA's proposed finding and technical assistance advice provided by the OAR (See letter of this date submitted to the OAR with the STN's comments on the Proposed Finding). Subsequent follow-up letters were written and mailed to Alan Russell and his attorney, Michael Burns. These letters, dated April 7, 2003, and April 22, 2003, were also submitted to the OAR at the end of the comment period. The STN has offered these individuals the opportunity to apply for membership in STN, the assistance of tribal researchers and staff members to complete

the required application documentation, and has stated STN's willingness to hire a mediator to help resolve political differences. For the most part, these individuals have not responded to the outreach efforts of the STN.

TABLE 2
Number of SIT Members Who have Resigned from STN
(by family group)

Harris family	0
Coggswell family	4
Kilson family	5
Total SIT members who resigned from STN	9

At the time of writing, there are seven individuals on the SIT membership list who started but did not finish the application process before the tribal rolls closed in 2000. These persons might qualify for membership in the STN (see Table 3). Another person applied to STN, but by the time her application file was complete with the necessary information, the rolls had been closed. Afterwards she requested her application to be returned. Five individuals who still remain on the SIT member list have never applied to STN for membership. Some of them are descendants of the historical Schaghticoke Tribal Nation; some of them are undocumented as of this writing.

TABLE 3
SIT Members Who Might Qualify for STN Membership

Started requested membership, but did not complete process	7
Application completed after roll was closed	1
Never applied to STN	5
TOTAL	13

During the comment and response periods, there were 24 of these individuals. One of the 24, Russell Kilson, died earlier this year. The remainder was contacted directly by the

STN's Chief, the Tribal Council, and other tribal members. These contacts included letters, phone calls, private face-to-face meetings, and larger tribal socials. The response of these individuals to the STN's outreach efforts has been mixed. Ten of these individuals (all from the category of those who had never applied for membership in STN) decided to put the interests of the Tribe first. They applied for membership and subsequently were added to the STN Tribal Roll, effective September 28, 2003. Among their number was the half-sister of Alan Russell.

The few very obstinate SIT members who are still in this group have expressed their opposition to the current Tribal Council and some of its policies and practices as a reason for not enrolling in STN at this time. This includes Alan Russell, Gail Russell Harrison, and their immediate family members and some members of the Ritchie family. Tribal members who have been communicating with Alan Russell, Gail Russell Harrison, and Gary Ritchie have said that these individuals are making demands that are impossible to meet because of tribal constitutional restrictions governing the Tribe's political process. For example, they have stated that they would not apply for membership in STN unless the current Chief and several Tribal Council members resign from office (personal communications with Chief Richard Velky and Vice-Chairman Michael Pane). Alan Russell and Gary Ritchie, through the SIT's attorney, also made demands as preconditions to holding mediation sessions. These demands were completely unreasonable and were a pretext for not holding any discussions with STN leaders. It appears that no reasonable offer of dialogue or mediation is acceptable to them. They have not responded positively to appeals to join efforts to create political change through the Tribe's established political process. They have also stated to tribal members who

have spoken with them that they do not care if the Tribe gets federally recognized because they do not want to do anything that will benefit the current leadership.

There are two elderly STN members who are also currently enrolled with SIT: Olivia Pennywell and Shirley Johnson. It is unknown at this time how these two women came to be members of the SIT. STN does not know if they ever consented to have their names added to the SIT membership list. STN does know that they have never resigned from the STN. Steven Austin conducted interviews with both of these women and each stated that they never intended to leave STN, and voiced considerable frustration with Gary Ritchie. They each stated that they had been pressured and berated by Mr. Ritchie on a number of occasions, including when he twice forced them to cancel interview appointments which they had initially made during the comment period (one appointment with Angelito Palma and one with me).³ It should be noted that none of their family members are members of SIT; rather, their family members are tribal members of STN. The STN still considers these two individuals to be members in good standing of their Tribe. The STN encourages the OAR researchers to contact these two women, if need be, to confirm that they are still affiliated with STN.

Significant Individuals Who are not on Either Membership List

The AS – IA noted that, in his opinion, there were a few individuals who had been significant in what he referred to as the historical Schaghticoke Tribe. These include Irving Harris, and Truman and Theodore Coggsell (representing only themselves and two of their children, not the entire Coggsell family, as they sometimes seem to assert).

³ In July 2003, Gary Ritchie moved his family to the Maryland area and has had no contact with any STN members. STN Vice-Chairman Michael Pane, who has met several times with Alan Russell (Chairman of SIT), reports that Gary Ritchie (Secretary of SIT) has not had contact with him, either.

The AS – IA, through his staff in the OAR, suggested that the STN leadership offer these individuals the opportunity to apply for membership in STN. During a phone interview with Steven Austin (March 5, 2003), he explained the Tribe's position to Irving Harris. Mr. Austin encouraged Mr. Harris to apply for membership in STN. Mr. Harris rejected this suggestion, saying that he did not have to send in documentation of his ancestry (as required under the STN Constitution and By-laws) because "everyone already knows who I am," and because he did not want to lend legitimacy to some of the provisions in the Tribe's current Constitution and By-laws. At a recent gathering of some tribal members in Danbury (on September 21, 2003), Mr. Harris sent a statement which reaffirmed this position. The STN leadership has requested Mr. Harris' application on other previous occasions and has always gotten a similar response. The STN agrees with the AS – IA, that Irving Harris has been an important member of the Tribe, and has reserved the first number on the tribal roll for him, if he were to ever apply. This is intended as a sign of the honor and respect the STN has for Mr. Harris.

With regard to Theodore and Truman Cogswell, along with his two daughters, the STN responded to the technical assistance advice of the OAR by writing to them and offering them the opportunity to apply for membership in the STN. The Cogswell brothers phoned the STN office to say that they would be responding through their attorney. Their personal attorney stated that they did not intend to apply for membership at this time. Since the initial exchange of letters there have been many phone calls between the Cogswell brothers and Chief Velky, as well as several face-to-face meetings between them.⁴ The Cogswell brothers have also had phone conversations and

⁴ Chief Velky provided the following account of his activities in contacting the Cogswell brothers: "As previously reported, I continued telephone conversations with Truman Cogswell throughout August. On

met in person with Tribal Council Vice-Chairman Michael Pane, with Tribal Elder Trudie Lamb-Richmond, and with other tribal members. Some of these discussions seemed to create measure of good will. But always in the end, the Coggswell brothers made unreasonable demands about the need for immediate changes in leadership and vague assertions about their desire to be "compensated" prior to applying for membership in the STN. As of this writing, neither the Coggswell brothers nor Truman Coggswell's daughters have applied for tribal membership.

Conclusions

Forty-two of the individuals who remain on SIT's membership list are not likely to qualify for membership (over 70 percent of the remaining SIT membership; 42/59= 71%). These are individuals who have not established their genealogical descent

August 27th. Truman and Theodore Coggswell, Jr. traveled from their homes in Missouri and New Jersey, respectively, to Danbury, Connecticut, holding a four-hour meeting to air mutual concerns and discuss the importance of their affiliation with STN. The Coggswell's and their children Donna Rymer and Robin Coggswell had previously been enrolled members of STN but withdrew their membership in 2000 and 2001. Truman and Theodore Coggswell brought documentation in the form of personal letters of their father, Theodore Coggswell, Sr. to and from Franklin Bearce, (a.k.a. Swimming Eel) to augment issues of political leadership from the 1940s to 1960s but chose not to release them to STN for purposes of this submission."

"After much discussion, Truman indicated that it was the intention of the brothers to eventually affiliate back with STN. A week later, Truman Coggswell called the Tribe's General Counsel, Thomas Van Lenten, and informed him that it was his brother and his intention to wait to affiliate or enroll with STN until after Federal Recognition. He also stated that any information they had would be made available in the event a decision on Federal Recognition is appealed. It was pointed out that new documentation could not be submitted in an appeal forum and if they had information important for the recognition process, it should be presented with this submission. They declined. If their enrollment had occurred at this time, there would be no known members of the Coggswell family not affiliated with STN."

"Neither of the Coggswell brothers has been particularly active in the Tribe since their childhood in the early 1950s. Truman Coggswell attended the April 13, 1997 and October 5, 1997 tribal meetings. Theodore Coggswell attended the April 13, 1997, May 17, 1998, May 16, 1999 and May 21, 2000 tribal meetings. In their interviews submitted in April 2002 to BAR, they admit that they attended a tribal meeting in the early 1950s, one in the mid 1970s and then not again until 1997. Certainly, their significance or importance to the Tribal community reverts to their father, Theodore Coggswell, Sr. who was a member of the "Legal and Schaghticoke Claims Committee" relating to Docket No. 112 in the 1940s and 1950s. Both brothers and their families have resided outside Connecticut for most of their adult lives and apparently do not feel comfortable enrolling with STN."

from the historical Schaghticoke Indian Tribe or are otherwise not likely to meet the STN's criteria for membership. They also have provided no known evidence of continuous social or political participation on the part of their ancestors or themselves. Two people on the SIT membership list are already enrolled with STN. They have never resigned from STN, so no action is necessary on STN's part. The remaining 17 individuals ($59-42=17$) would likely qualify for membership in STN, if they were to apply. There are also eight unaffiliated individuals (not members of SIT or STN) who would likely qualify for membership if they were to apply. Thus, the number of tribal community members who are not currently enrolled with STN but are likely to meet its membership criteria is 26. As of this writing, there are 286 enrolled STN tribal members and 26 unenrolled community members, making a total of 312 enrolled and unenrolled community members. Thus, only eight percent of community members are still unenrolled ($26/312=.083$).

During the comment and response periods there have been extensive follow-up contacts, both formal and informal with the unenrolled tribal community members. The STN Tribal Council has sent multiple letters to the SIT leaders and to its individual members. Council members have also made phone calls and personal visits to the homes of unenrolled community members. In addition to the outreach by Chief Velky and the Tribal Council, a number of other tribal members, including Tribal Elders³ and "ordinary" tribal members have been working diligently to encourage qualifying unenrolled tribal community members (those in SIT and those unaffiliated with either Schaghticoke petitioner) to reunify with the STN. In addition to letters, phone calls, and

³ Elders involved in the outreach effort include: Earl Kilson, Jr.; Charles Kilson; and Trudie Lamb-Richmond.

personal visits, at least two large community meetings have been called⁶ for the purpose of encouraging the unenrolled community members to set aside their personal and political differences and reunite as one tribe.

Initially, the STN's effort to bring these community members onto the tribal roll was coolly received. Many of the individuals cited their political and personal differences with the Tribe's current leadership and their dissatisfaction with the way in which they perceive the Tribe is currently governed. These individuals have indicated that these are obstacles to their applying for membership at this time.

On August 5, 2003, the Schaghticoke Tribal Nation's Tribal Council passed a resolution indicating its support for a Tribal Constitutional amendment which would allow 42 individuals to apply for membership in the future and, pending the submission of the required documentation, are reasonably certain they would be granted the same (See Table 4). On September 28, 2003, the constitution amendment was passed by unanimous vote (See Appendix C). The open-ended offer applies to these individuals and their children, but not to subsequent generations. As of the time of writing, 16 of the original 42 unenrolled community members (38 percent) have now enrolled in STN (See Table 4, shaded individuals). These include, [REDACTED] of Gail Harrison; [REDACTED] and four of her children; and, ten additional SIT members. This leaves 26 tribal community members who are still not enrolled in STN. These 26 individuals are still covered by the provisions of the constitutional amendment (passed unanimously

⁶ One meeting was a social in New Milford that was officially sponsored by the Tribal Council (June 29, 2003), at which I was personally present. The other meeting was not an official meeting called by the entire Tribal Council, but was called by Tribal Council Vice-Chairman Michael Pane, who had been delegated the responsibility of contacting unenrolled community members to get them enrolled. The second meeting was held in Danbury (September 21, 2003).

September 28, 2003), which will allow them and their children special privileges with regard to applying for membership in the STN.

TABLE 4
List of 42 Individuals in Tribal Council Resolution,
Indicating Their Likely Acceptance for Membership
(Resolution passed August 5, 2003)

No.	Name	No.	Name	No.	Name
[Redacted Content]					

Shaded individuals joined STN during the response and comment periods

Finally, it should be noted that the process of reaching out to the unenrolled tribal members generated significant tension and conflict among Tribal Council members and between the Tribal Council and tribal members.⁷ Nevertheless, the process has also

⁷ A case in point the series of special elections which were called for the consideration of two constitutional amendments. An amendment to the STN constitution requires the presence a quorum of 55 percent of the voting membership. The first meeting (July 27, 2003) was boycotted by one part of the Tribe in order to express their dissatisfaction on an unrelated political issue. This resulted in a low voter turnout (18 percent) and the inability to consider the two amendments. A second meeting (September 7, 2003) called for this purpose, which was not boycotted, also failed to turn out the quorum (32 percent). Finally, on September 28, 2003, the quorum was assembled due to the efforts of all tribal members to "get out the vote" and the two amendments were passed. The fact that the Tribe marshaled a quorum on short notice, and only one week before the annual meeting, is especially noteworthy. This means that these same

provided additional evidence of both modern community and political leadership. Enrolled tribal members have called upon their own unenrolled relatives, as well as contacting unenrolled people who are from other families. Individuals from all three of the Tribe's families have worked together, across family lines, to promote this effort. They have sacrificed significant amounts of time, energy, and money to address what they felt was an important issue for the Tribe. Tribal members have been communicating their interests to the Chief and Tribal Council, and the latter have been responding. At the same time, when the Chief or Tribal Council have called upon tribal members for their assistance, members have done their best to comply. This is very clear evidence of a bilateral political relationship between the Tribe's leadership and its members.

individuals will have to make time once again to conduct tribal business, several of them coming from out of state. Tribal members have shown a significant degree of dedication throughout this process.

APPENDIX A
LIST OF SIT MEMBERS
AS REPORTED IN THE FAIR DATABASE
(Shading indicates individuals who would not likely qualify for tribal membership)

No.	Name	Schaghticoke Ancestor?	STN's Evaluation
		yes	currently dually-enrolled
		yes	currently dually-enrolled
		yes	resigned from STN
		yes	resigned from STN
		yes	resigned from STN
		yes	resigned from STN
		yes	did not complete documentation
		yes	resigned from STN
		yes, Gary's dau.	resigned from STN (6 y.o.)
		yes	resigned from STN
		yes, Brenda's son	never applied to STN
		yes, Brenda's dau	never applied to STN
		yes	resigned from STN
		yes	resigned from STN
		yes	resigned SIT and joined STN effective September 28, 2003
		yes, Fieldon's dau	never applied to STN
		yes	STN roll closed before docs. were complete
		yes	did not complete documentation
19.	Russell Kilson	yes	deceased in 2003
		yes	never applied to STN
		yes	The names of 21, 22, and 23 are on one SIT petition. They stated they are moving and do not care about either group.
		yes	
		yes	
		unknown	24, 25, 26, and 27 claim descent from Riley Cogswell through his daughter Nancy Cogswell and from Nancy Chickens through her daughter Mary Ann Phillips. STN has no documentation regarding their claim. Therefore, we cannot evaluate it. See below.
		yes; William Russell's sister	resigned SIT and joined STN effective September 28, 2003
29.	Alan Russell	yes	did not complete documentation

Exemption 6

No.	Name	Schaghticoke Ancestor?	STN's Evaluation
30	Gail Harrison	yes	did not complete documentation
		yes	resigned SIT and joined STN effective September 28, 2003
		unknown	34, 35, 36 claim descent through an extramarital union of William Russell. STN has no documentation to support their claim. See also 39, 41, 42, and 43.
		unknown	
		unknown	
		yes; Gayle Harrison's son	did not complete documentation
		yes; Gayle Harrison's son	
		unknown	see evaluation at 34, 35, and 36
		yes; Alan Russell's daughter	did not complete documentation
		unknown	see evaluation at 34, 35, and 36
		unknown	see evaluation at 34, 35, and 36
		unknown	see evaluation at 34, 35, and 36
		yes; Gayle Harrison's grandson	never applied to STN
		yes; Gayle Harrison's grandson	Applied to STN, accepted for membership effective August 5, 2003
		unknown	Claims descent from Jabez Cogswell through Ellen Cogswell. STN does not have the evidence to evaluate the claim of this family to be Schaghticoke.
		<i>unknown</i>	<i>RE: 47, 48, and 49, are Trueheart family; see 46, above.</i>
		<i>unknown</i>	
		<i>unknown</i>	
		unknown	50, 51, 52, and 53 are Trueheart family; see 46, above.
		unknown	
		unknown	
		unknown	<i>Trueheart family; see 46, above.</i>
		<i>unknown</i>	<i>not located in FAIR database</i>
		<i>unknown</i>	<i>not located in FAIR database</i>
		<i>unknown</i>	<i>Trueheart family; see 46 above.</i>
		<i>unknown</i>	<i>in FAIR database, but no info.</i>

³ Those individuals marked by italic font are noted as "pending" members in the SIT.

Exemption 6

No.	Name	Schaghticoke Ancestor?	STN's Evaluation
		<i>unknown</i>	<i>not in FAIR; may be Diane Jones; if so, Trueheart family.</i>
		<i>unknown</i>	<i>in FAIR database, but no info.</i>
		<i>unknown</i>	<i>Trueheart family; see 46, above.</i>
		<i>unknown</i>	<i>Trueheart family; see 46 above.</i>
		<i>unknown</i>	63, 64, and 65 are Trueheart family;
		<i>unknown</i>	see 46, above.
		<i>unknown</i>	<i>Trueheart family; see 46 above.</i>
		yes	resigned SIT and joined STN effective September 28, 2003
		yes	
		yes	
		yes	
		yes	
		<i>unknown</i>	<i>Trueheart family; see 46 above.</i>
		<i>unknown</i>	<i>Trueheart family; see 46 above.</i>

APPENDIX B
Remaining Unenrolled Tribal Community Members
(By Family Group)

Bold italic indicates formerly enrolled members of STN who withdrew their membership

Harris Family	
On SIT Membership List	Unaffiliated Community Members
[REDACTED]	
Kilson Family	
On SIT Membership List	Unaffiliated Community Members
[REDACTED]	
Coggsweil Family	
On SIT Membership List	Unaffiliated Community Members
	[REDACTED]

[REDACTED] and [REDACTED] may not be enrolled in SIT with their knowledge and consent.

APPENDIX C
Constitutional Amendment on Unenrolled Community Members
(Passed September 28, 2003)