

UNITED STATES DEPARTMENT OF THE INTERIOR

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

**In re FEDERAL ACKNOWLEDGMENT :
PETITION OF THE NIPMUC NATION :
(Petitioner 69A) :**
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**In re FEDERAL ACKNOWLEDGMENT :
PETITION OF THE WEBSTER/DUDLEY :
BAND OF THE CHAUBUNAGUNGAMAUG :
NIPMUCK INDIANS :
(Petitioner 69B) : SEPTEMBER 30, 2002**

**COMMENTS OF THE STATE OF CONNECTICUT AND
THE NORTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS
ON THE PROPOSED FINDINGS ON THE PETITIONS FOR
TRIBAL ACKNOWLEDGMENT OF THE NIPMUC NATION AND
THE WEBSTER/DUDLEY BAND OF
CHAUBUNAGUNGAMAUG NIPMUCK INDIANS**

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INTRODUCTION

The State of Connecticut and the Northeastern Connecticut Council of Governments (“NECCOG”) respectfully submits these comments in response to the proposed findings on the petitions for federal tribal acknowledgement of the Nipmuc Nation (Petitioner 69A) and the Webster/Dudley Band of Chaubunagungamaug Nipmuck^{1/} Indians (Petitioner 69B). As the Assistant Secretary determined in the proposed findings, both petitioners have failed to meet the mandatory acknowledgment criteria. Specifically, the Assistant Secretary found that Petitioner 69A failed to satisfy four of the seven mandatory criteria: criterion (a), identification as an American Indian entity; criterion (b), distinct community; criterion (c), political influence or authority; and criterion (e), tribal descent. With regard to Petitioner 69B, the Assistant Secretary concluded that criteria (a), (b), and (c) were not satisfied.

Both the State and NECCOG are interested parties in the proceedings on these petitions. NECCOG is a regional council of governments representing the Connecticut towns of Brooklyn, Canterbury, Eastford, Killingly, Plainfield, Pomfret, Putnam, Sterling, Thompson, Union, and Woodstock. Pursuant to Connecticut General Statutes Sec. 4-124d and 8-35a, NECCOG is charged with considering matters affecting the health, safety, welfare, education and economic conditions of the area including its member towns, and is further charged with making a plan of development for its area of operation, including land use, housing, principal highways and freeways, bridges, airports, parks, playgrounds, recreational areas, schools, public institutions, and public utilities. Because certain members of the petitioning Nipmuc groups hold title to land

^{1/}The spelling of the names of the two groups varies. These comments follow the spelling the BIA has used for each.

within the area of NECCOG's operation, NECCOG sought interested party status in these proceedings and, on October 4, 2000, was granted such status.

As is illustrated in the proposed findings' analysis of the evidence under these criteria, both petitions suffer from serious deficiencies. These deficiencies arise largely from an overwhelming lack of evidence of social and political activity from the late-nineteenth century until the late-twentieth century. Indeed, the lack of a distinct community and political authority for a century is further reflected in the massive membership recruitment efforts undertaken by the petitioners in the 1980s and 1990s. In effect, these recruitment drives created new entities having no continuity with an historic Nipmuc tribe. As the Assistant Secretary found, this is fatal to the petitioners' effort to obtain federal recognition.

In these comments, the State urges the Assistant Secretary to affirm the proposed findings as to both petitioners and to issue a final determination on these petitions denying federal acknowledgment.

BACKGROUND

On April 22, 1980, the Nipmuc Tribal Council of the Hassanamisco Reservation in Grafton, Massachusetts submitted a letter of intent to petition for Federal acknowledgment. It was designated Petition 69. After the petitioner had been placed on active consideration in July 1995, the group became divided. Pet. 69A Sum. Crit. 18. On May 31, 1996, Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians filed a letter of withdrawal from Petitioner 69, and was designated Petitioner 69B. The Nipmuc Nation continued under the original letter of intent and became Petitioner 69A. *Id.*

Petitioner 69A has defined itself in three different ways: (1) a group associated with the Hassanamisco Reservation; (2) a joint entity encompassing both the Hassanamisco (Grafton) and

Chaubunagungamaug (Dudley/Webster) groups; and (3) a group of all descendants of historic Nipmuc bands. Petitioner 69B defined itself as those associated with the Dudley/Webster Reservation. Both reservations were terminated by Massachusetts in 1869, with the Hassanamisco land being held by a single family, the Ciscos, while the Dudley/Webster lands were sold with the proceeds distributed to surviving members and descendants.

On January 19, 2002, in the waning hours of the previous administration, the Acting Assistant Secretary made a preliminary finding that Petitioner 69A had satisfied the mandatory criteria, contrary to the recommendation of the Bureau of Acknowledgment and Research (“BAR”). However, the preliminary finding had not been reviewed for legal sufficiency by the Office of the Solicitor and was never published in the Federal Register. It therefore never became a completed agency action. After review by the new Assistant Secretary, the recommendations of the BAR staff were approved, and a proposed finding that Petitioner 69A did not satisfy the mandatory criteria was published in the Federal Register.

The former Acting Assistant Secretary also issued a preliminary finding on January 19, 2001, for Petitioner 69B, but unlike Petitioner 69A, the Acting Assistant Secretary concluded that Petitioner 69B had not satisfied the mandatory criteria. That preliminary finding was not published in the Federal Register. After further review and following the recommendation of BAR, the current Assistant Secretary concluded in his proposed finding that Petitioner 69B had not satisfied the mandatory criteria.

ACKNOWLEDGMENT STANDARDS

The petitioner bears the burden of proof of satisfying each of the seven mandatory criteria for acknowledgment. 25 C.F.R. § 83.6. The acknowledgment regulations are “intended to apply to groups that can establish a *substantially continuous tribal existence and which have*

functioned as autonomous entities throughout history until the present.” 25 C.F.R. § 83.3 (a) (emphasis added). The term “continuous” means “from first sustained contact with non-Indians throughout the group’s history to the present substantially without interruption.” *Id.*, § 83.1. “History” and “historical” mean “dating from first sustained contact with non-Indians.” *Id.* The regulations specify that organizations “*that have been formed in recent times may not be acknowledged.*”^{2/} *Id.* § 83.3(c) (emphasis added); *see also* 59 Fed. Reg. 9284 (Definition of continuity “would not permit recently formed groups in areas with long-standing non-Indian settlement and /or governmental presence to claim historical existence as a tribe”).

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

A petition may be denied if the available evidence “demonstrates that it does not meet one or more of the criteria,” or if there is “insufficient evidence that it meets one or more of the criteria.” *Id.*, § 83.6(d). Although conclusive proof is not required, the available evidence must establish “a reasonable likelihood of the validity of the facts relating to that criterion” for that criterion to be met. *Id.* As the preamble states, “the primary question is usually whether the level of evidence is high enough, *even in the absence of negative evidence*, to demonstrate meeting a

^{2/}These newly formed organizations are distinguished from a group that meets all the mandatory criteria, but only recently formalized its “existing autonomous political process.” *Id.*, § 83.3(c).

criterion.” 59 Fed. Reg. 9280 (1994) (emphasis added). In many cases, “evidence is too fragmentary to reach a conclusion or is absent entirely.” *Id.* In addition, “a criterion is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner.” *Id.*

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

PETITIONER 69A, THE NIPMUC NATION

Petitioner 69A, the Nipmuc Nation, has defined itself variously as (1) a group associated with the Hassanamisco Reservation in Grafton, Massachusetts (the “Hassanamisco group”); (2) a joint organization encompassing both the Hassanamisco and Chaubunagungamaug (Dudley/Webster) groups (the “joint entity”); and (3) all descendants of historic Nipmuc bands (the “umbrella group”).³ Pet. 69A Sum. Crit. 22, 78. Regardless of how it is defined, however, Petitioner 69A fails to meet mandatory criteria (a), (b), (c) and (e).

The following are the key findings in the Assistant Secretary’s proposed finding for Petitioner 69A:

- Although there were some identifications of persons associated with the Hassanamisco reservation since 1900 (principally the Cisco family), between 1900 and the late 1970s, there were no identifications of a continuing Chaubunagungamaug group, and only since 1992 have there been identifications of a Nipmuc entity comprising more than one or both of the groups. Therefore, criterion (a), identification as an American Indian entity since 1900, is not satisfied. Pet. 69A Sum. Crit. 90.
- For the Hassanamisco group, there is weak but sufficient evidence of community until the American Revolution. However, after that, there is insufficient evidence through the nineteenth century. Moreover, from the mid-nineteenth century 1869 to the present, most of the community evidence is related only to activities of the Cisco extended family.

³ Because Petitioner 69A’s scope includes Petitioner 69B, much of the analysis and findings for Petitioner 69A apply equally to Petitioner 69B. To the extent that Petitioner 69A continues to define itself as including the members of Petitioner 69B, the comments relating to Petitioner 69B below are incorporated by reference herein.

During that period, there was only occasional social interaction between the Cisco family and other Hassanamisco families. Thus, Petitioner 69A, as defined as the Hassanamisco group, does not meet criterion (b). *Id.* at 129-30.

- For the joint entity, there is no evidence of direct social interaction between the Hassanamisco and Chaubunagungamaug groups for nearly two centuries. From the 1920s through the 1970s, there were occasional interactions involving pan-Indian or intertribal activities. Interactions after the 1970s involved primarily leaders of the groups and not broader community activities of the general memberships. Defined as the joint entity, Petitioner 69A fails to meet criterion (b). *Id.* at 130.
- For the umbrella group of all descendants of historical Nipmuc bands, there were limited social ties in the nineteenth century in the form of intermarriages and shared households between families on and off the reservation for each group, but no direct interaction between the two groups, either on or off the reservation. Again, in most of the twentieth century, the limited social interactions involved pan-Indian or intertribal events or limited individual contacts that do not show the existence of a distinct Nipmuc community. Finally, the current membership represents the massive recruitment efforts of the late 1980s and 1990s, bringing in families and members having no prior social ties to the group. However defined, therefore, Petitioner 69A fails to satisfy criterion (b). *Id.*
- After the Revolutionary War, there is a complete dearth of evidence of political authority or influence. Since 1869, the Cisco family, which became the owners of the Hassanamisco reservation land, had only occasional contact with other Hassanamisco families, but no significant political activity or influence. Thus, defined as the Hassanamisco group, Petitioner 69A fails to meet criterion (c). *Id.* at 175.

- As to the joint entity, after the late 1970s, there is evidence of some political influence or authority for the two groups, but it is limited to those persons closely associated with the modern leadership of the groups, Walter Vickers for the Hassanamisco group and Edwin W. Morse Sr. for the Chaubunagungamaug group. There is no evidence that any political influence or authority extended to the vastly increased general membership resulting from the recruitment drives in the 1980s and 1990s. The joint entity cannot satisfy criterion (c). *Id.* at 176.
- As to the umbrella group, there is no evidence from colonial times to the present that there has ever been significant political authority or influence exercised. Petitioner 69A simply cannot satisfy criterion (c). *Id.*
- The proposed finding determined that only 54 percent of Petitioner 69A’s membership descends from the historical Nipmuc tribe. This is far below what is necessary to demonstrate descent from a historical Indian tribe under criterion (e). *Id.* at 218.

As demonstrated below, the proposed finding for Petitioner 69A is well supported by the record. The Assistant Secretary’s final determination should deny acknowledgment on these grounds.

I. PETITIONER 69A FAILS TO MEET MANDATORY CRITERION 83.7(a), IDENTIFICATION AS AN AMERICAN INDIAN ENTITY ON A SUBSTANTIALLY CONTINUOUS BASIS SINCE 1900.

Mandatory criterion 83.7(a) requires proof that “[t]he petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.” There must be identifications as an “entity,” which generally describes a “political, self-governing group,” and not merely individuals. *See BIA, The Official Guidelines to the Federal Acknowledgment*

Regulations 25 CFR 83, 42 (1997). There should also be some type of documentation from each decade since 1900. *Id.* at 44.

There have been external identifications of the Hassanamisco Reservation and associated identifications of a Hassanamisco Nipmuc entity, albeit many of the references to the reservation stated that it was the property of only one family, the Ciscos. Pet. 69A Sum. Crit. 79. However, there is a lack of identifications for most of the 1920's, all of the 1930's and 1950's. *See* Pet. 69A Sum. Crit. 83-89. Moreover, to the extent that the petitioner asserts that it is more than only a Hassanamisco group, only since 1992 have there been identifications of a Nipmuc entity that included both the Hassanamisco and Dudley/Webster groups. *Id.* at 90. The proposed finding properly concludes that Petitioner 69A fails to satisfy criterion (a).

**II. PETITIONER 69A FAILS TO MEET MANDATORY CRITERION 83.7(b),
PROOF OF A DISTINCT COMMUNITY FROM HISTORICAL TIMES UNTIL
THE PRESENT.**

Petitioner 69A, as it exists today with a greatly and recently expanded membership, has not maintained historical continuity. From the mid-nineteenth century, for example, the evidence of community is related largely to activities of the extended Cisco family, with no significant social interaction between it and other Hassanamisco families. Similarly, for nearly two centuries, the Hassanamisco and Chaubunagungamaug groups had no direct social interaction, and from the 1920s through the 1970s, the only significant interactions involved pan-Indian or intertribal activities. Interactions after the late 1970s involved only leaders of the groups and not broader community activities of the general membership. The current membership, which includes many families and members that had no prior social ties to the group, simply does not constitute a distinct community within the meaning of criterion (b). Pet. 69A Sum. Crit. 130.

Under criterion (b), the petitioner must prove that “[a] predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.” 25 C.F.R. § 83.7(b). “Community,” in turn, requires a demonstration of “*consistent* interactions and *significant* social relationships” and that members “are differentiated from and identified as distinct from nonmembers.” 25 C.F.R. § 83.1 (emphasis added). There must be proof that “substantial social relationships and/or social interaction are maintained widely within the membership.” 59 Fed. Reg. 9286 (1994). The membership must be “more than simply a collection of Indian descendants.” *Id.* Furthermore, “[i]nteraction must be shown to have been occurring on a regular basis, over a long period of time. Interaction should be broadly distributed among the membership. Thus a petitioner should show that there is significant interaction and/or social relationships not just within immediate families or among close kinsmen, but across kin group lines and other social subdivisions.” *Miami Final Determ.*, Sum. Crit. 5, *aff’d*, *Miami Nation of Indians of Indiana v. U. S. Department of the Interior*, 255 F.3d 342 (7th Cir. 2001).

A. **The Proposed Finding Correctly Analyzes the Evidence Demonstrating A Profound Lack of Distinct Community Prior to the Petitioner’s Recent Recruitment Efforts.**

The proposed finding concluded that the evidence is insufficient to prove community for the post-Revolutionary period through the mid-19th century. Pet. 69A Sum. Crit. 129. From the mid-19th century to the present, most of the evidence involves only the Cisco extended family. *Id.* There is only occasional social interaction between the Ciscos and other Hassanamisco descendants, including the so-called proprietary families and those on the 1861 “Supplementary List” of the Earle Report of the State of Massachusetts, at least until the 1950’s. *Id.* Evidence is lacking for any social interaction across family lines. *Id.*; *see also* “Last Indian in Grafton,”

Worcester Sunday Telegram, at 3 (Oct. 10, 1948) (Ex. 1). Nowhere is this more evident than in the correspondence of Zara CiscoeBrough, a Nipmuc leader in the 1970s and 1980s. This correspondence reveals that her connections were principally only with the extended Cisco family and reflects only minimal interest or participation of Cisco family members in group affairs. More importantly, although the correspondence shows that CiscoeBrough had contacts with individual Cisco family members, it does not demonstrate that those family members had any significant interaction with each other, which is essential to demonstrate community. *Id.* at 122. As the BIA has consistently ruled, activities limited only to a single extended family are insufficient to demonstrate community. *Muwekma* PF Sum. Crit. 24, 26; *Miami* FD Sum. Crit. 23.

For the combined Hassanamisco and Chaubunagungamaug Bands that constituted the joint entity that was Petitioner 69 from 1980 through 1996, there is no evidence of direct social interaction between these two groups from the 1730's to the 1920's. *Pet. 69A* Sum. Crit. 130. From the 1920's through the 1970's, there was only occasional social interaction between the descendants of these groups that most often occurred in the context of pan-Indian or intertribal events. *Id.* Such activities primarily are inadequate evidence of community "because they are actions of a few people which are directed outside of the petitioning group and do not, in themselves, demonstrate that significant interaction occurs within the petitioner at a level to meet section 83.7(b)." *Muwekma Prop. Find.* at 25. From 1978 through 1996, there was interaction between some Hassanamisco and some Chaubunagungamaug descendants primarily in the context of the formally established Nipmuc organization. *Pet. 69A* Sum. Crit. 130. However, this interaction primarily involved the leaders of the two groups, and there was no indication that it involved any level of interaction of the overall memberships. *Id.*

If Petitioner 69A is defined to include descendants of all historic Nipmuc bands, there is only limited evidence of social interaction among off-reservation Nipmucs in the 18th century. *Id.* Although there is some evidence that off-reservation Nipmucs occasionally married both Hassanamisco and Chaubunagungamaug descendants, no evidence shows that the two groups of descendants had any direct interaction with each other. *Id.* Moreover, there is only minimal evidence that such contacts continued in the first half of the 19th century. In the later part of the nineteenth century, despite some intermarriages and shared households, there were no direct interaction between the Hassanamisco and Chaubunagungamaug groups. *Id.* Such interaction would be essential to demonstrate a broader Nipmuc community. In the first half of the 20th century, interaction was limited to pan-Indian and intertribal occasions, and only a few individuals were involved in these contacts. *Id.* From 1950 to 1978, there was insufficient evidence of significant social connections among the families represented in the current membership, and from 1978 to 1989, the petitioner had a much smaller membership than the current group. *Id.*

At the formal technical assistance meeting for this petition, the issue was raised as to whether the employment of various members of the Hassanamisco group in shoemaking in the late nineteenth century was evidence of community, presumably as indicating some type of common economic activity. The evidence however demonstrates that only a relatively small number of members were so employed. According to the 1861 Earle Report, only one out of eighteen of the occupations listed for the Hassaanamisco group and the Supplementary List was shoemaking. J. Milton Earle, *Report to the Governor and Council, Indians of the Commonwealth*, App., lii-lv

(1861). Similarly, a review of available census data⁴ reveals a relatively low proportion of members identified as having shoemaking occupations. Comparing the Hassanamisco members identified in the BIA's Technical Report, *see* Pet. 69A Tech. Rep. at 131-34, only one was identified in the 1850 census as a shoemaker,^{5/} only one in the 1860 census,^{6/} none in the 1870 census,^{7/} and two in the 1880 census.^{8/}

Shoemaking was a leading industry in Massachusetts both before and after the Civil War. Jack Tager & John W. Ifkovic, ed., *Massachusetts in the Gilded Age* 134 (1985) (Ex. 2); Carl Siracusa, *A Mechanical People, Perceptions of the Industrial Order In Massachusetts 1815-1880* 19-20 (1979) (Ex. 3). The shoemaking industry employed large numbers in Massachusetts. *See* Taylor & Ifkovic, at 11, 15, 37-39. For example, according to the 1860 census, approximately 62,000 out of 217,000 workers were employed in shoemaking. *Manufactures of the United States in 1860; Compiled from the Original Returns of the Eighth Census*, at 251, 257 (Ex. 4).

⁴ A complete set of census reports for all members identified in the Technical Report was not located. However, on the basis of the available data, the evidence indicates that most members were not engaged in shoemaking.

⁵ Population Schedules of the Seventh Census of the United States 1850, National Archives Microfilm Publications Microcopy No. 432, Douglas, Mass., #210/244. The person identified, Samuel Hazard, does not appear to have been a Hassanamisco descendant, but was instead a widower of a Hassanamisco woman. Tech. Rep., Petition #69A, Nipmuc-Draft 3, 15 July 1998, at 132. The husband of Aletheah (Johns) Hazard was also a shoemaker, but he was not identified by the BIA as a Hassanamisco. *Id.*; 1850 Census, Uxbridge, #236, 328. Sources examined: Population Schedules of the Seventh Census of the United States, National Archives Microfilm Publication Microcopy No. 432, rolls 340, 341, 342, 343, 344, 345; Pet. 69A Tech. Rep. 131-32.

^{6/}Asa Hector, 1860 Census, Worcester, Mass., Ward 3, #79/99, shoemaker. Sources examined: Population Schedules of the Eighth Census of the United States, National Archives Microfilm Publications Microcopy No. 653, including rolls 510, 521, 527, 528, and 531.

^{7/}Sources examined: Population Schedules of the Ninth Census of the United States, 1870, National Archives Microfilm Publications Microcopy No. 593, Rolls 653, 658, and 659; Pet. 69A Tech. Rep., 166-67.

^{8/}Leon Cisco, *id.*, shoemaker; James L. Cisco, *id.* #7/11, shoemaker. Sources examined: 10th Census, 1880, Massachusetts; Pet. 69A Tech. Rep. 167-68.

In Worcester County alone, over 9,000 persons were employed in this field, well over 25 percent of the total workforce. *Id.* at 248, 250; *see also Ninth Census-Vol. III. The Statistics of The Wealth and Industry of the United States, From the Original Returns of the Ninth Census*, at 528-29 (Ex. 5); *Census Reports Vol. VIII, Twelfth Census of the United States Taken in the Year 1900, Manufactures Part II States and Territories*, at 349 (Ex. 6). It would be only natural to expect at some members of the group to be employed in this leading industry. Such employment, therefore, is not evidence of a distinct Nipmuc community.

B. Petitioner 69A Engaged in a Radical Recruitment Effort to Overcome an Obvious Lack of Community Existence for Well Over a Century.

In the face of the extraordinarily long period of virtual nonexistence, the petitioner undertook a massive effort to recruit new members from 1989 to 1994. In the proposed finding, the Assistant Secretary found that the present membership of Petitioner 69A is “the result of a deliberate recruitment effort” from 1989 through 1994. Pet. 69A, Sum. Crit 130. That effort added many families that had no significant previous social ties. *Id.* Thus, Petition 69A suffers two major defects: First, Petitioner 69A cannot demonstrate consistent interactions and significant social relationships on a historical basis to satisfy criterion (b); and second, as a recently formed group, it has not functioned historically as an autonomous entity, as required by §§ 83.3(a) and (c).

Section 83.3(c) of the acknowledgment regulations provides: “Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations.” 25 C.F.R. § 83.3(c) (emphasis added). This bar is not limited to groups that had no prior existence whatsoever. Moreover, the regulations require that petitioners “functioned as autonomous entities throughout history until the present.”

25 C.F.R. § 83.3(a). Most of the group's constituent members are simply strangers, and never governed themselves previously as a tribal organization. A group that has been transfigured and remolded by massive recruitment so that the great majority of its members have only recently been added has not, as a whole, been historically autonomous.

Before the recruitment drives, the group was dramatically smaller. A census conducted in 1975 and 1976 by the Massachusetts Commission on Indian Affairs found only 92 persons who declared themselves to be Nipmucs.⁹ (Ex. 7). The petitioner engaged in two periods of recent expansion. The first occurred during the late 1970's, and there is no evidence that those new members maintained tribal relations before *or even after* they formally enrolled. Sum. Crit. 116. A larger and more aggressive expansion took place from 1984 to 1997, with the most intensive recruitment taking place from 1989 to 1992. *Id.* at 117. In a mere ten years, the Hassanamisco and Chaubunagungamaug groups combined went from a reported "more than 200" members to a Petitioner 69A's claimed membership of over 1,600. *Id.* at 118. From 1996 to 1997 alone, the membership leaped by 177 percent.

⁹ The report stated:

The sample was generated by the tribal councils. Starting with tribal rolls, the sample was enlarged to include those suggested by the respondents. Thus this sample comprises those known directly to the tribal councils as Indians, and those discovered by a chain of personal knowledge. It therefore tends to omit the isolated or highly transient, and those who either reside outside of the areas of focus of the Indian councils or those who choose exclusion.

Ex. 7, at 4. The questionnaire was administered in person at the respondents' residences by various tribal council members and their assistants, from January to June, 1976. *Id.* The primary source of error was caused by missing information, according to the report, which could have been due to refusal to answer or recording error, among other causes. *Id.* The report further stated that "this data represents a fairly accurate picture of those Indians who have a link with the tribal councils, but does not represent at all well the alienated or transient." *Id.* at 5. Thus, the census is a fair indication of the numbers who maintained any sort of connection with the group.

In fact, the petitioner enrolled hundreds of members who could not even document descent from the historic tribe. Pet. 69A Sum. Crit. 218. As the BIA has stated:

The petitioner's acceptance of non-[tribal descendants] as group members, and especially as leaders, is strong negative evidence of the existence of an Indian community whose historical continuity, tribal and cultural identity, and social distinction from others is concrete enough to know who its legitimate members are and to exclude from membership those who do not share the common tribal ancestry.

Mohegan PF, Sum. Evid. 5. Almost half – 46 percent – of the current membership are non-tribal descendants. Pet. 69A Sum. Crit. 218.

An analysis of the current makeup of Petitioner 69A reveals the lack of continuous tribal existence. The Cisco family descendants, who are the core of Petitioner 69A and to whom almost all of the community evidence prior to the 1970s pertains, constitute less than one percent of the current total membership. *Id.* at 218. Descendants of others associated with the Hassanamisco reservation make up a mere eight percent of the membership. *Id.* Moreover, most of these members were only added to membership rolls in 1997 as part of the massive recruitment efforts. *Id.* at 183. Thirty percent of Petitioner 69A's current membership are descendants of persons associated with the Dudley/Webster reservation, and sixteen percent are descendants of non-reservation Nipmucs. *Id.* at 218. The evidence reflects a pervasive lack of historical interaction between these constituent parts of the current membership. *Id.* at 130. The absence of a continuing distinct community is irrefutable.

Council minutes and other documents confirm the nature of the recruitment effort. A letter signed by both Walter Vickers and Edwin Morse, as chiefs, stated that the time had come “to join together,” and scheduled a meeting for September 20, 1986, “to formulate our government” and to “[i]dentify[] Nipmucs.” Letter of Aug. 2, 1986 (BIA FOIA File). On

February 2, 1996, the council discussed the need “to determine who the Historic Tribe is to facilitate tying [sic] in dispersed Nipmucs.” Minutes, Feb. 2, 1996. Later that month the council discussed “how people on the membership roll must tie in to each other and the base roll, what documents would be good to use for base roll [and] how large the membership roll should be.” Minutes, Feb. 21, 1996. The next month it was suggested that the council “get down to the business of deciding on base roll.” Minutes, Mar. 2, 1996. Extensive discussion on membership criteria continued over the next several months. Minutes, Mar. 13, 1996; Minutes, April 24, 1996; Minutes, May 8, 1996. Even as of this late date, the group had still not ascertained its historic tribe and was seeking to connect with scattered Nipmucs with whom it had no previous social or political relationship.

Records reveal the nature of the recruitment. By May 22, 1996, there were a total of 500 applications, 350 of which had been certified, with 150 awaiting review by the genealogy committee. Minutes, May 22, 1996. In addition, there were “400 returned applications that need[ed] to be checked out by council members to try to track down these family members,” *id.*, demonstrating the lack of a pre-existing social or political relationship. Minutes, May 22, 1996; *see also* “Lost (about 140 Nipmucs),” in Nipmucspohke, Autumn, 1994. Other records indicate that the council was approving genealogies that had been provided by the committee and was continuing to add to the rolls as late as October, 1996. Minutes, July 25, 1996, Oct. 10, 1996, and Oct. 28, 1996.

The Assistant Secretary properly found that the membership requirements underwent not simply incremental but radical changes, and that the major fluctuations showed a profound lack of community and political authority. Pet. 69A, Sum. Crit. 118. Even petitioner’s researcher stated that membership requirements in the group’s 1996 constitution “differ[ed] substantially from

those that were in effect at the time we began our examination of the Nipmuc community.” *Id.* at 199. Many of the more than 1,000 new names that were added were absent from attendance lists for meetings from the late 1960’s to the late 1990’s, and were absent from any other material and documentation. *Id.* at 118.

This radical recruitment process necessarily involved pasting together an “organization” whose members lacked any prior social solidarity or political relationship. The two membership expansions since 1970 incorporated those whose ancestors had ceased to maintain tribal relations. *Id.* at 118. The preservation of tribal relations is fundamental to tribal existence. *McClanahan v. State Tax Commission of Arizona*, 411 U. S. 164, 173 (1973); 43 Fed. Reg. 39,361-62 (1978).

At the formal technical assistance meeting, the petitioner expressed a desire to revise its membership base once again, presumably offering a new fourth definition of itself. *See* Formal Tech. Assistance Tr., at 132 (Jan. 23, 2002). Given the profound lapses in community and political evidence, any further remake of the group’s membership would be futile. In any event, yet another significant shift in the membership rolls of the petitioner, designed solely to correct its deficiencies in satisfying criterion (e), *see* § IV below, would do little more than underscore the lack of continuous existence and community and the recentness of the group’s organization. Such an effort to redefine itself – in effect a new petition – would therefore make the petitioner ineligible for acknowledgment under 25 C.F.R. § 83.3(c). *See* Letter of Holly Reckord, Chief, BAR, to Walter A. Vickers dated Feb. 6, 1997 (Ex. 8) (indicating that extensive membership revision would indicate that the petitioner is an organization “formed in recent times” within meaning of § 83.3(c)); Letter of Hazel E. Elbert, Deputy to AS-IA, to Chief Sachem, Narragansett Tribe, dated June 9, 1986 (Ex. 9).

The vaulting increase in membership by the massive recruitment effort confirms the petitioner fails to meet mandatory criterion 83.7 (b) under BIA precedent. Such dramatic recent changes in membership demonstrate the lack of historical community. *Muwekma* PF, Sum. Crit. 25.

C. The BIA's Interviews of Current and Past Leaders of Petitioner 69A Demonstrate a Lack of Distinct Community Over the Last Several Decades.¹⁰

1. Walter Vickers

The current Chief-for-Life Walter Vickers claimed that he became involved with the “Nipmuk movement with Zara [CisroeBrough]” in the late 1960’s. Vickers’ interview, at 3. However, the first documented reference to his participation with that group was not until May 14, 1977. Pet. 69A Sum. Crit. 120. There is no evidence of either his involvement or that of his family in documents from the 1950’s and 1960’s. *See id.* at 111-12 & n. 145.

¹⁰ All the interviewees were past or present leaders of the group, Pet. 69A Sum. Crit. 115, 158, who were involved in seeking Federal recognition, and were clearly aware of what was at stake in the interviews. *See, e.g.*, Ron Henries interview, July 13, 1998, at 21; Nipmuc Field Work Steven Austin Book I, interview with Buster Richardson and Frances Garnett, at 13; Bruce Curliss interview, July 2, 1998, at 35; Jim Lewis interview, June 30, 1998, at 33. BIA standards for evaluation of interview evidence includes whether the informant has any known prejudices, *see Eastern Pequot Technical Assistance Tr.*, July 10, 2001, at 33 (Ex. 10); whether the interviews were done with the interviewee’s knowledge of what was at stake, BIA *see* Post-Hearing Mem., *Greene v. Babbitt*, Office of Hearings and Appeals, at 161-62 (Ex. 11); whether the interviewer leads the informant, *id.*, at 162; and whether the interviewee provides specifics, *Eastern Pequot Tech. Assist. Tr.*, at 26 (Ex. 10). Interviews should be “corroborated by written materials, such as meeting minutes, correspondence and newsletters.” *Cowlitz Indian Tribe Final Determ.*, Tech. Rep., at 26; *see also Eastern Pequot Tech. Assist. Tr.*, at 21-22, 25-26, 35 (Ex. 10). Furthermore, the Department has criticized surveys not conducted on the basis of a fair representation of the overall membership, such as where the respondents were disproportionately composed of present or former council members or their immediate relatives. *Samish Final Determ.*, 52 Fed. Reg. 3709 (1987); *see also Duwamish Final Determ.*, Sum. Crit.; *Miami Final Determ.*, Tech. Rep. 12. Consistent with these standards, these interviews must be evaluated with the clear interests of the interviewee in mind.

He also stated that there were no Nipmuc pow-wows until after 1981. Vickers' interview, at 13. However, the BIA found that there had been annual pow-wows or Indian fairs on the Hassanamisco property for every year from 1924 to the present, except for World War II. Pet. 69A Sum. Crit. 149-150 & n. 187. While these events showed only intertribal ties and not a Nipmuc community, if Vickers had social interaction with the Cisco family on a regular basis with sufficient frequency to demonstrate community, he would most likely have been aware of them. The BIA found that he was associating with the Hassanamisco group by the late 1970's, but not before then. Pet. 69A Sum. Crit. 119. The evidence does not indicate how Vickers became associated with Zara CiscoeBrough, the then-leader of the group. *Id.* at 120.

When asked about communicating with the Nipmuc group and what kind of meetings would have called together a significant number of Nipmucs for that purpose, he answered simply that there was "a lot larger circuit of pow-wows today than" previously. Vickers' interview, at 12. He and his associates would visit other groups such as the Mashpees, and other groups also visited "our place." *Id.* "This is the way that we communicated with everyone – the Narragansetts, also and the Passamaquoddies, the Onandaga, the Oneida; they all came." *Id.* In other words, the communication that he relied on was with other groups, and not with the petitioner's membership.

Even those members who may have attended these events did not, as a whole, maintain regular, consistent interaction with the rest of the group. Although he claimed that a certain group of members would appear for meetings – about seven activists, former or present council members and one of his daughters – he also admitted "there are some that you only see when the festivities are on." *Id.* at 18-19.

2. Ronald Henries

Ronald Henries had no significant social relationships or interaction with Zara CiscoeBrough or her Nipmuc group until at least 1980. Ron Henries interview, at 4, 7, 11. In a letter to her of November 13, 1980, he began by stating: “First, I should like to apologize for not having your proper title or your full name I was informed that you may be of assistance to me in my efforts in attempting to find my tribal affiliation.” BIA Nipmuc File 29 H. BAR Research Files Historian 2. Historian’s on-site Visit-Box 2. B. Nipmuc Tribal Archives (Ex. 12). The letter reflects a lack of previous interaction or relations with the Nipmucs. *See also* Pet. 69A Sum. Crit. 122-23; Edwin Morse Sr. interviews, at 5 (Henries “wasn’t doing nothin’ as far as Native American people are concerned.”).

3. Lois Boyd

Although Lois Boyd stated that her mother – who, like Lois, has not been shown to have been a Nipmuc descendant^{11/} – was “very closely tied” with Zara CiscoeBrough (Lois Boyd interview, at 12), there is no indication that either Boyd or her mother had consistent, significant social connections to the other Nipmuc members prior to Boyd’s becoming a council member in 1997. Boyd simply stated that her mother had a lot of communication with “many other tribes.” *Id.* at 14.

Boyd also indicated that at least prior to her joining the council in 1997, “people weren’t being in touch with me the way I felt that they should.” *Id.* at 16. Although she stated that they all socialized and were friends, this appeared to happen only after she went to a council meeting on March 14, 1997, and subsequently joined the council. *See id.* at 19. The socializing appeared

^{11/}*See* Pet. 69A Nipmuc Fieldwork, Steven Austin, Book II, at 49; BIA GTKY file, at 330-40; Pet. 69A Sum. Crit. 210-17.

to be only with other council members and not with any overall membership. *See id.* While she asserted that there were more gatherings and meetings “this year” (presumably 1998), she did not indicate that these were exclusively Pet. 69A events. *See id.* at 26-27.

4. Jim Lewis

Jim Lewis stated that there were a lot of "family meetings" and "family reunions" that he attended and that his father took him to "family gatherings." However, he did not indicate that these events extended beyond close kin groups or involved other family lines. *See* Jim Lewis interview, at 3, 41. Nor did he refer to any exclusively Nipmuc institutions. *See id.* at 6. In addition, he never spoke to Zara CiscoeBrough, indicating a lack of social connections to her or the group. *Id.* at 23. He seemed unaware that other relatives were also Nipmucs until he conducted research. *Id.* at 42. Finally, at "[e]very powwow Jim said he would meet new cousins he never knew before." BIA Nipmuk Field notes, Petitioner #69a--S. Austin, at 18; *see also* Bruce Curliss interview, at 37.

5. Bruce Curliss

Bruce Curliss indicated that as a child growing up he attended family events once a year. Bruce Curliss interview, at 4-5. It does not appear from this statement that these concerned activities involving other family lines, so as to constitute broad-based interaction. *See id.* The fact that his grandparents took him to Narragansett annual meetings, of course, is not evidence of any social ties to the Nipmuc petitioner. *See id.* at 5. Although he stated that as a child he had also visited Zara CiscoeBrough's place (*id.*, at 15-16), this does not establish that either he or his family were socially connected to other Nipmucs of different family lines, or that this experience was typical for most other Nipmucs.

D. Recent Activities Such As The Petitioner's Pow-Wows And Other Events Do Not Show Consistent, Broad-Based Social Interaction.

The interviews conducted by the BIA fail to reveal that consistent, broad-based social interaction involving a predominant portion of Petitioner 69A occurred at the pow-wows or other similar events. Lois Boyd recalled as a child going to pow-wows for other tribes. Lois Boyd interview, June 29, 1998, at 3. It appeared that only “a few,” and “not as many as we’d had liked to have seen” from the Hassanamisco as well as the Chaubunagungamaug groups attended the Strawberry Festival conducted by the Narrangansetts. *See id.* at 27-28; *see also* Jim Lewis interview, at 28-29. Although Henries claimed that there were about 150 people attending a Strawberry month event recently (Ron Henries’ interview, at 54), there is no indication that all of these persons were Pet. 69A members rather than members of other groups or the public. *Id.* In any event, this figure is only a small portion of the total membership of 1,602, and there is no indication such attendance was typical for other Nipmuc events.

Bruce Curliss stated that he attended pow-wows throughout New England on a regional basis, most of which would appear to have involved other groups. Bruce Curliss interview, at 8, 19-20. Although he claimed that there were “hundreds upon hundreds of people” and “so many Nipmuk people” at a homecoming, the event apparently included persons other than Nipmucs. *See id.* at 30. He stated that the members of both Nipmuc groups were still “interactive” and would attend “each other's events,” but he did not indicate that these were exclusively for members of these groups, or that most or a predominant portion of these groups attended them. *Id.* at 25.

Walter Vickers stated that when he became involved with the Nipmucs there were “small gatherings” such as picnics at Zara CiscoeBrough’s reservation. Walter Vickers’ interview, p. 3.

However, these events were always intertribal in nature. The use of the property was not limited to Nipmuc members. Boy Scouts and Girl Scouts were welcome, and “Zara opened that up to be a place for all Native American Indians, Native Americans of any sort.” *Id.* at 31.

He further stated that the group had to cut back on the two day event for the pow-wows “because of the lack of participation.” *Id.*, p. 8. He at one point claimed that now they get all the help they needed, and have between 200 and 400 people at their gatherings. *Id.*, at 8-9. He did not indicate, however, that all these persons were Nipmuc members. There is also a conflict between this claim of increased participation and a later statement, in which he stated: “We don’t have the big night before anymore because, here again, lack of participation.” *Id.* at 13.

The pow-wows and fairs were annual events. Pet. 69A Sum. Crit. 149. Such events do “not replace frequent social contact.” *Miami* Final Determ., Sum. Crit. 12. These events do “not provide evidence of extensive social ties” and do “not represent a clearly defined social institution which would provide substantial evidence demonstrating that [petitioner] is a community.” *Id.* Petitioner 69A fails to demonstrate that these activities “encompassed not just some members of the group but *most* of the group.” Pet. 69A charts, crit. (b), at 85 (emphasis original); *see also Duwamish* FD 42 (“petitioner’s members, outside of the annual meetings, interacted only with individuals from their own family lines.”); *Muwekma* PF 26 (“petitioner’s activities are not multi-faceted, involving many areas of member’s lives.”).

E. The Lack of Any Requirement of Tribal Relations for Membership Demonstrates the Lack of Community That Pervades the Petitioner’s Existence.

The BIA interviews confirm that maintenance of tribal relations is not required for a person to become a member of the group, further reflecting the lack of community historically. *See* Pet. 69A Sum. Crit. 188 (Nipmuc “constitution contains no provision that applicants whose

descent from the historical tribe has been established must also have maintained tribal relations in order to be enrolled."). The absence of any requirement that members demonstrate ties to a Nipmuc tribal community reflects the corresponding absence of such a community.

When asked what the membership criteria were, Vickers stated simply that an applicant had to trace back to one of the lines on the 1860 census. Walter Vickers interview, June 30, 1998, at 25. Ron Henries stated that he had advised people that "if you're going to be smart, if you get the chance to being on both rolls (presumably referring to those of both Petitioners 69A and 69B) be on them until somebody says you've got to select one. . . . [T]hen you'll select the one and that's the winner. . . ." Ron Henries interview, at 53. Edwin Morse Sr. indicated that "[a]nybody that came by [and s]aid they was a Nipmuc" were signed up as members. Edwin Morse Sr. interview, at 2.

Between 1989 and 1992, the Nipmuc Tribal Acknowledgement Project ("NTAP") served as the basis for the massive increase in membership. Pet. 69A Sum. Crit. at 184-85, 188-89; Ron Henries interview, at 57-63. Ron Henries stated the initial contacts were made by newspaper advertisements, distribution of flyers at gatherings, door to door inquiries, and referrals received by mail. *See id.* at 58-59; Pet. 69A Sum. Crit. 187.^{12/}

Thus, Petitioner 69A's membership roll is based solely on ancestry, with no evidence of social or political requirements.

^{12/}Thomas Doughton stated that the Nipmuc census instructions were "to enroll individuals having connections to the Earle reports and guardianship lists." Petitioner 69B Nipmuc Fieldwork - Steven Austin - July 20 to July 27, 1998, p. 87. Methods of contact included newspaper advertisements, radio notices, writing everyone on the tribal rolls, fliers, and community access television. *Id.* Such solicitations obviously do not rely on any preexisting social or political relationship with those contacted.

III. PETITIONER 69A FAILS TO MEET MANDATORY CRITERION 83.7(c), PROOF OF POLITICAL INFLUENCE OR AUTHORITY AS AN AUTONOMOUS ENTITY FROM HISTORICAL TIMES UNTIL THE PRESENT.

Throughout most of the nineteenth century and well into the twentieth century, there is a complete absence of evidence of political authority or influence. After 1869, the Cisco family, which became the owners of the Hassanamisco reservation land, had only occasional contact with other Hassanamisco families, but no evidence of significant political activity or influence. Although there is evidence of some political activities between the Hassanamisco and Chaubunagungamaug groups after the late 1970s, it is limited to only those persons closely associated with the leadership of the groups. There is no evidence that any political influence or authority extended to the vastly increased general membership resulting from the recruitment drives in the 1980s and 1990s. Pet. 69A Sum. Crit. 175-76. Petitioner 69A simply cannot satisfy criterion (c).

A petitioner must demonstrate that it "has maintained political influence or authority over its members as an autonomous entity from historical times until the present." 25 C. F. R. §83.7 (c). "Political influence or authority" means a leadership or other mechanism "which the group has used as a means of influencing or controlling the behavior of its members in *significant* respects, and/or making decisions for the group which *substantially* affect its members, and/or representing the group in dealing with outsiders in matters of *consequence*." 25 C.F.R. § 83.1 (emphasis added).

Demonstrating real and meaningful political authority is essential to tribal recognition. As the Preamble to the acknowledgement regulations succinctly states:

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

influence must not be so diminished as to be of no consequence or of minimal effect.

59 Fed. Reg. 9288 (1994). Moreover, “[i]t must be shown that there is a political connection between the membership and leaders and thus that the members of a tribe maintain a bilateral political relationship with the tribe. This connection must exist broadly among the members.” *Miami FD*, Sum. Crit. 15. It is insufficient for a small number of persons to take action affecting the membership without political processes or the knowledge and approval of those concerned. *Id.* Stated otherwise, “[l]eaders by definition must have followers.” BIA, *Official Guidelines*, at 49.

A. Under Any of Its Three Self-Definitions, Petitioner 69A Lacks Evidence of Political Authority.

The BIA found, regarding the Hassanamisco Band, that from 1790 to 1869 there was insufficient evidence of political authority. Pet. 69A Sum. Crit. 175. Since 1869, the Cisco family, who owned what was left of the Hassanamisco reservation in Grafton, “existed primarily as a single extended family.” *Id.* There was only occasional contact with and no significant political influence or authority among other Hassanamisco descendants.¹³ *Id.*

As to the joint Hassanamisco-Chaubunagungamaug entity that existed between 1978 and 1996, the BIA found some evidence that there may have been “some form of political influence and authority that extended to at least a limited portion of the group’s membership.” *Id.* at 176.

¹³ The minutes of the petitioner’s council meetings support the BIA findings that most of the evidence in the record “pertains only to the Cisco extended family, and demonstrates only occasional social interaction between the Ciscos and the descendants of the other Hassanamisco proprietary families. . . .” Pet. 69A Sum. Crit. 79. All the participants who were indicated present at the April 27, 1969 meeting, the earliest one for which minutes were provided, were Cisco family members, assuming they belonged to the same families with the same surnames in the BIA’s GTKY files. Similarly, all eight participants at a January 25, 1974 meeting appear to have been Cisco family members.

This, however, involved only those persons who were actively involved with Walter A. Vickers, leader of Hassanamisco group, and Edwin W. Morse Sr., leader of the Chaubunagungamaug group. There was no evidence that this limited purported political activity extended to the tremendously increased membership after the recruitment drives of the 1980s and 1990s. *Id.* This replicates the lack of significant political influence or authority over the Hassanamisco and Chaubunagungamaug descendants from the late 19th century to the late 1970's. *Id.* at 176.

Concerning the third alleged entity, all persons considered to be of Nipmuc heritage, the BIA found no significant political influence or authority among the wider group of colonial Nipmuc band descendants as a whole. *Id.* That is the entity that petitioner most recently defined, in 1997, as its historical tribe and the one it has continuously existed as. *Id.*

B. There Is A Complete Lack of Bilateral Political Relations Between the Council and the General Membership.

The Petitioner's council is not elected by its general membership. Overview of Council Minutes-Hassanamisco and Webster-Dudley, Meeting Minutes – 1981 file; Pet. 69A Nipmuc Fieldwork, Book I, at 4; Conrad Luster interview, at 18-19, 21, 31-32. The relationship between the council and the general membership is aptly described in a Nipmuc newsletter: "Forget about the constitution, and just remember what the council is doing for you right now." Walter Vickers Interview, at 23; *see also* "Bad Blood," *Worcester Magazine*, at 11 (July 14, 1999) (Ex. 13) (reporting Thomas Doughton, a Nipmuc researcher, as stating that "neither Morse nor Vickers is a legitimate chief" and that "their councils have sandbagged the development of a legitimate tribal constitution").

Leaders have not been chosen with significant political support from the membership. The interviews do not show how Sarah Cisco or her daughter, Zara CiscoeBrough, were selected

as leaders, and the BIA found no evidence or information concerning any process or procedure for their selection. Pet. 69A Sum. Crit. 150, 155; Pet. 69A charts, crit. (c), 48; Minutes, Jan. 23, 1974. Nor do the interviews indicate any noteworthy political process for Walter Vicker's appointment as "chief for life." See Minutes, Jan. 27, 1982. Lois Boyd simply indicated that Zara CiscoeBrough had appointed him "as the chief to take over." Lois Boyd interview, at 29. Bruce Curliss stated that "Walter Vickers is where he is because Zara saw something, not because somebody else pushed that along." Bruce Curliss interview, at 14.^{14/} Vickers himself maintained that "when Zara died, Anna Mayes made it a point to tell everybody that Walter Vickers was elected chief, and he'd be chief for life." Walter Vickers interview, at 7.

The pattern of self-selection has continued. The council voted itself in for a seven year term on August 7, 1996. Minutes, Aug. 7, 1996. There is no evidence that any elections involving the membership were actually held. Removal of a council member was done by the council itself. Minutes, Nov. 26, 1996. Walter Vickers himself acknowledged that the council "held back on voting the interim council out" because they wanted to wait until the BIA acknowledgment decision was issued. Walter Vickers interview, at 22;^{15/} see also Bruce Curliss interview, at 40; Lois Boyd, Lois Boyd interview, at 28-29. This lack of council and other elections is indicative of a substantial lack of political contact between the council and membership. *Miami* Final Determ., Tech. Rep., 76. The process by which council members are

^{14/}Edwin Morse Sr. stated that Zara CiscoeBrough said that she was appointing Walter Vickers her successor as chief and that he would be chief of all the Nipmucs. Edwin Morse Sr. interview, at 2.

^{15/}Although Mr. Vickers maintained that "[a]ny tribe-holding member" had a right to vote in Nipmuc meetings, he did not state that this included voting for council members. Walter Vickers' interview, at 24.

chosen and by which information is communicated between the council and the general membership is critical to demonstrating a bilateral political relationship. *Id.*

The council's refusal to have general elections for council members appears to lack the support of the membership. Vickers admitted that when the council declined to hold elections for an interim council, "[a] lot of people disliked that." Walter Vickers Interview, at 22. The BIA anthropologist observed that there seemed to be some interest "on the part of a number of members to have some say in who the council members are." Bruce Curliss interview, at 39-40 (interviewer's remarks). However, the petitioner did not respond to these members' concerns. *See* Walter Vickers interview, at 22.

Council meetings were infrequent and irregular until the late 1970s. In fact, based on the available minutes in the record, there was a gap in the meetings extending from 1985 to 1996. Pet. 69A Sum. Crit. 115, 158. Lack of involvement or interest of the overall membership in political activities and issues is evidenced by council actions on matters that should be of considerable importance to the group, including discussion on the sale of the Hassanamisco Reservation, *see* Letter, Princess Dawn (Lois Ann Wilcox) to John Peters, Jan. 24, 1983; the continuance of the federal acknowledgment project; *see* Letter, Chief, Hassanamisco Nipmuc Indian Council, to Dr. Steven J. Reno, Sept. 12, 1986; and membership criteria, application process and the tribal roll. *See, e.g.*, Minutes, Feb. 21, 1996; Mar. 2, 1996; Mar. 13, 1996; April 24, 1996; July 25, 1996; Aug. 7, 1996; Oct. 28, 1996.

With relatively few exceptions, membership attendance at petitioner's meetings was very low.¹⁶ Walter Vickers gave no attendance figures for the period under Zara Ciscoe Brough, but

¹⁶ The three possible exceptions -- none of which are documented in the BIA findings -- involve two meetings at Nichols College in Dudley, and a meeting concerning a constitution at Worcester

merely stated that sometimes people would attend. Walter Vickers interview, at 8. When he succeeded Ciscoe Brough as chief, he complained: "The thing that we had a problem with was getting people to come." *Id.* at 3. Although he claimed that meetings had "generated a lot of people," he then said that a meeting the past year drew "several" and estimated that the average attendance at Nipmuc meetings has been 10. *Id.* at 18-20. He further indicated that those who attended regularly were mostly the activists or members of their family. *Id.* at 19. Lois Boyd similarly stated that attendance at Nipmuc meetings by non-council members ranged from anywhere from two to three to "20 something." Lois Boyd interview, at 25-26. Although she stated that after she had joined the council in 1997 "people started coming to the meetings finally," she did not indicate actual attendance numbers. *Id.* at 33. At best, this reflects a recent development, and indicates that previously people did not attend meetings.

Not only was there a lack of membership involvement, but at times a lack of council participation. At a 1997 meeting, "[d]iscussion centered around failure of council members to attend meetings." Minutes, Feb. 11, 1997. It was suggested at a 1997 council meeting that "Council members become knowledgeable of different aspects of Tribal governance, so that all

State College, which evidently occurred in February, 1998. The first meeting at Nichols College, according to Bruce Curliss, concerned election of a council. Bruce Curliss interview, at 26, 29. He claimed that almost 200 people attended it, but admitted that this was an estimate. He did not indicate that the general membership was allowed to vote for the council or otherwise participate in the selection of the alleged leadership. He acknowledged that he had called the second meeting on his own, to call for support of a 15 person council. *Id.* Curliss did not indicate the results of that meeting, or provide any further specifics. He said that the attendance was probably half that of the first and that not all attendees were the same. *Id.* at 29. Neither the BIA findings nor his interview cites any documentation regarding these meetings, including attendance records. Conrad Luster said that there was a meeting at Worcester State College in February, 1998, which concerned a constitution, at which "I'd say 125" participated or at least were present. Conrad Luster interview, at 45. He did not indicate that this figure was based on an actual attendance count, and neither the BIA findings nor his interview cites any supporting documentation for attendance.

will be able to participate in the site visit by BAR,” Minutes, May 20, 1997, indicating that as of this late date, even council members were unfamiliar with the nature of the group’s purported leadership.

The relatively low attendance and participation at the petitioner's meetings indicates that the group is unable, even now, to mobilize significant numbers of members for group purposes, that most of the membership does not consider issues acted on by alleged group leaders to be important, and that there is no widespread knowledge, communication and involvement in political processes by most of the members. *See* 25 C.F.R. § 83.7 (c)(1)(i), (ii), (iii). In general, there is no broad interest or support among the membership as a whole, and no significant political contact between the leaders and the group’s members. *See Miami* Final Determ., Tech. Rep. 68-69, 76.

Interviewees contended that there has been membership activity relating to a new constitution, an issue that Bruce Curliss described as "absolutely important to membership." Bruce Curliss interview, at 38. This, however, is not borne out by the interview evidence. Lois Boyd, for example, indicated that most of the action taken on this subject is between the council and a committee. *See* Lois Boyd interview, at 26, 38-41. Moreover, the council does not appear to have responded to concerns raised by some of the members, including in particular the need for council elections. *See* Conrad Luster interview, at 46. Indeed, Walter Vickers stated that although there was to be another meeting to vote on the constitution, "that was canceled because the voting would have disturbed several people, and we just didn't want that to happen." Walter Vickers interview, at 22.^{17/}

^{17/}Evidently earlier, a new constitution was not approved by the entire membership. *See* Walter Vickers interview, at 22.

The group's own newsletter confirmed the lack of membership involvement in tribal matters, noting that "[f]or too long, lack of communication has been a major complaint among our people and a plague to our progress." Nipmucspohke, Spring, 1994. The newsletter urged members to participate, and complained that "[w]e can hardly expect to be viewed as the Nation we are until we act that way." *Id.* A Nipmuc member stated:

There has never been a Nipmuc People's Selection Committee that was duly elected or selected to represent All the Nipmuc people, to make decisions, and choices that affect the coming seven generations of my family, and yours, and all tribal members. No one can speak for us as a people yet because we haven't come together as a "Tribal People" yet. It's that simple. The two (2) Band Chiefs have not worked at causing unity in this loosely knit group of people identifying themselves as Nipmuc.

We are not recognized as a Tribe because we don't actualize as a Tribe. . . . [A]s I said before, "We are not a Tribe YET!"

We must come together as a collective-force of positive Nipmucs, selecting a course of action that will benefit all of the Tribe and not just a select few.

Eagle Strong Sun Hart, "Purely an Objective View," Nipmucspohke, Spring 1994.

Another newsletter implied a lack of membership participation, stating: "Each one of you is missed each time our People gather. . . . We miss you. Help us mend our circle." Nipmucspohke, Winter, 1994. Still another newsletter indicated a lack of effective leadership and communication with the general membership. It asked:

Where are the Chiefs when the people need their **direction** and **leadership** the most?

Where are the Chiefs when information regarding our Federal Recognition should be disseminated to the Tribe at large [?] **Where are the Chiefs?** . . .

Where **are** our chiefs, when our People need them so much?

CHIEFS OF THE NIPMUC PEOPLE...WHERE ARE YOU? WHY DO YOU HIDE?

Eagle Strong Sun Heart, "In my Opinion," Nipmucspohke, Autumn, 1995 (emphasis original). In light of the BIA interview and the council meeting minutes reflecting the lack of interaction

between the council and the membership, such criticism cannot be dismissed merely as complaints of a disgruntled member.

A subsequent newsletter appeared somewhat defensive. It stated:

There are those who say this Council was not elected! There are those who say they don't know what's going on! There are those who would criticize the work that's been done to date. But understand, if a small group of people had not continued the efforts started a long time ago, Nipmucs would not be in the position to be on the BIA active status [list] today!

Nipmuc Nation Newsletter, Sept. 1996. The problem with this explanation, however, is that “[i]f a small body of people carries out legal actions . . . the membership may be significantly affected without political processes going on or even without even the awareness or consent of those affected.” *Miami* FD, Sum. Crit. 15. This does not reflect the necessary level of bilateral political relations.

C. The Pow-Wows and Similar Activities Were Not Political Events.

Although various pow-wows and similar activities were held on the Hassanamisco reservation, *see, e. g.*, Pet. 69A Sum. Crit. 149, there is no indication that these were political events involving group decision-making or conflict resolution. Pet. 69A charts, crit. (c), 60. Moreover, these events were largely open to the public and were intertribal in nature, with extensive non-Nipmuc participation. Pet. 69A Sum. Crit. 150-51, 160.

D. The Recent Recruitment Efforts Reveals A Lack of Political Influence or Authority.

In the proposed finding, the Assistant Secretary correctly determined that all those who were “found” through the radical recruitment process that was undertaken “would not previously have had a bilateral political relationship with the leadership of petitioner #69.” *Id.* at 171. The nature of these recruitment efforts and the resulting lack of social and political relations are

discussed fully in section II.B above. There is no evidence that these recruits were previously part of a Nipmuc entity or have maintained tribal relations either in the past or present. *Id.* at 171.

E. **Any Claim That Petitioner 69A Represents a Tribal Organization That Includes the Members of Petitioner 69B Or All Nipmuc Descendents Fails.**

Petitioner 69A cannot demonstrate political authority to the extent that it defines itself either as a joint organization encompassing both the Hassanamisco and Chaubunagungamaug groups or as an organization of descendants of all historical Nipmuc groups. *See* Pet. 69A Sum. Crit. 78. Petition documents reflect that the Nipmuc council had lost the ability to exert direct political influence over all members. BIA File entitled Stuff from Nipmuck Tribal Acknowledgment Project. Indeed, Edwin Morse, Sr. (Chief Wise Owl) of Petitioner 69B has expressly rejected the authority of Petitioner 69A. Morse described as a “misunderstanding” any claim “that the Nipmuc nation council is the umbrella for various fractions [sic] of the nations.” Letter from Chief Wise Owl to Jim Peters of the Massachusetts Commission on Indian Affairs, September 27, 1999 (Ex. 14). He stated:

They tried to claim they are the only representatives of Nipmuck people, but Washington knows different, we know different, you know different and I know darn well they know different. They are a self-appointed group with some shady background. . . . As I said the Sutton group was organized in 1996!! Check it out. How can they seriously think they can become the ‘true’ leadership of all Nipmucks, please!

Id. A joint entity of the Hassanamisco and Chaubunagungamaug groups cannot possibly be described as “united in a community under one leadership or government.” *Miami Final Determ.*, Sum. Crit. 1 (quoting *Montoya v. United States*, 180 U. S. 261 (1901)).

IV. **PETITIONER 69A FAILS TO MEET MANDATORY CRITERION 83.7(e), PROOF OF DESCENT FROM A HISTORICAL INDIAN TRIBE.**

Even defining the petitioner as broadly as possible,¹⁸ only 54 percent of the petitioner's membership has documented descent from the historical Nipmuc tribe. *See* Pet. 69A Sum. Crit. 218. This low percentage of documented tribal descent is insufficient to meet § 83.7 (e). Petitioner 69A therefore fails to satisfy this criterion.

¹⁸ As demonstrated in discussing the evidence under criteria (b) and (c), a broadly defined tribe is unsupported by the lack of historical continuity from a single Nipmuc entity.

**PETITIONER 69B, WEBSTER/DUDLEY BAND
OF CHAUBUNAGUNGAMAUG NIPMUCK INDIANS**

The Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, having withdrawn from Petitioner 69, submitted a letter of intent to petition separately for Federal tribal acknowledgment on May 31, 1996. 66 Fed. Reg. 49,971 (2001); Pet.69A Sum. Crit. 18. The BIA designated the Chaubunagungamaug group as Petitioner 69B. *Id.* Petitioner 69B defines its members as descendants of those listed as Dudley/Webster Indians on either the 1861 Earle Report or the 1891 Dudley/Webster disbursement list.¹⁹ Pet. 69B Sum. Crit. 4.

The proposed finding concludes that Petitioner 69B has failed to meet three of the mandatory criteria: (a) identification as an American Indian entity; (b) distinct social community; and (c) political authority and influence. The key findings in the proposed finding are as follows:

- Although there are some identifications of individuals and single families as Dudley/Webster Indians from 1900 to the 1970s, but not of an American Indian entity. Petitioner 69B cannot satisfy criterion (a). *Id.* at 86-87.
- Petitioner 69B has evidence of distinct community from first contact to 1870 because a significant portion of the group resided on a state-supervised reservation, and the evidence was weak but sufficient for 1870 to 1890. Thereafter, and through the mid-1970s, the evidence of community is wholly absent. There is no evidence of interaction between the Morse extended family, the group's core family, and other families. Until the massive recruitment drives of the 1980s and 1990s, the Chaubunagungamaug group

¹⁹ Because Petitioner 69A's scope includes Petitioner 69B, much of the analysis and findings for Petitioner 69A apply equally to Petitioner 69B. Therefore, to the extent relevant, the comments on Petitioner 69A above are incorporated by reference herein.

consisted only of the Morse extended family. Therefore, Petitioner 69B does not satisfy criterion (b). *Id.* at 124.

- From 1870 to 1891, there is insufficient evidence of political influence and authority, and from 1891 to the mid-1970s there is absolutely no evidence of formal or informal political activity or organization. In the late 1970s and thereafter, there is limited evidence of an organization with purported leaders, but there is no evidence of the exercise of real political authority or influence over the general membership. Accordingly, Petitioner 69B cannot meet criterion (c).²⁰ *Id.* at 166.

As demonstrated below, the proposed negative finding for Petitioner 69A is well supported by the record. The Assistant Secretary's final determination should deny acknowledgment on these grounds.

I. PETITIONER 69B FAILS TO MEET MANDATORY CRITERION 83.7(a).

As the proposed finding concludes, there have been occasional identifications of individuals and single families as Chaubunagungamaug or Dudley/Webster Nipmuck Indians, but no external identifications of this group as an existing American Indian entity between the 1891 fund distribution and the formal organization of the present Petitioner 69B. Pet. 69B Sum. Crit. 86. Most individuals identified as Dudley/Webster descendants between 1900 and the late 1970's involved families that are enrolled with Petitioner 69A. Pet. 69B Sum. Crit. 86.

Since 1981, there have been a number of newspaper articles identifying the petitioner under various names. *Id.* Most of these, however, have described it as aggregation within the larger "Nipmuc Tribe" or "Nipmuc Nation." *Id.*; see *Duwamish* FD Sum. Crit., 16. Moreover,

most of the descriptions of the Chaubunagungamaug Band indicated that from 1981 through 1996 it consisted of only one Dudley-Webster family line -- Elizabeth (Henries) Morse's direct descendants. *Id.* at 86-87. The petitioner therefore has not been identified as an American Indian entity on a substantially continuous basis since 1900 and fails to meet mandatory criterion 83.7(a).

II. AS A RECENTLY FORMED GROUP, PETITIONER 69B FAILS TO PROVE SUBSTANTIALLY CONTINUOUS TRIBAL EXISTENCE AND FAILS TO MEET MANDATORY CRITERION 83.7(b), PROOF OF A DISTINCT COMMUNITY FROM HISTORICAL TIMES TO THE PRESENT.

From the late nineteenth century through the mid-1970s, there is no evidence of community interaction between the Morse extended family, the group's core family, and other families. Until the recruitment drives of the 1980s and 1990s, the Chaubunagungamaug group consisted only of the Morse extended family, which is patently insufficient for purposes of demonstrating a distinct community.

A. Petitioner 69B Fails To Prove Continuous Tribal Existence.

Petitioner 69B came into existence in the late 1970's or early 1980's as a subgroup of the larger Nipmuc group, and was created from members most of whom had not been part of any organized Nipmuc group until then. *See* Pet. 69B Sum. Crit. 106, 108, 135. As the BIA has found, Morse, the leader since the group's creation, and members of his extended family were "not part of a Nipmuck community until at least [1977], if even then." *Id.* at 108.

As the BIA further found, the formal separation of Morse's subgroup from Petitioner 69 in May, 1996, "was the beginning of the existence of #69B as an independent political entity." *Id.*

²⁰ Unlike Petitioner 69A, the proposed finding concludes that Petitioner 69B satisfies the tribal descent requirement of criterion (c), with 87 percent of the membership demonstrating descent from the historical Dudley/Webster group.

at 106. Prior to that, Morse and his family viewed their organization "to be only a little more than a subgroup under the 'parent group' of #69." *Id.*

Given its recent formation, Petitioner 69B does not meet the requirements of § 83.3(a), which provide that the acknowledgment "is intended to apply to groups that can establish a substantially *continuous* tribal existence and which have functioned as *autonomous* entities throughout history until the present." 25 C.F.R. § 83.3(a) (emphasis added). Moreover, § 83.3(c) stipulates that "groups of any character that have been formed in recent times may not be acknowledged under these regulations." 25 C.F.R. § 83.3(c). A group that did not become an independent political entity until 1996, which by its own description was previously little more than a subgroup, obviously has neither a continuous nor autonomous existence. Rather, it is a recently formed group that is ineligible for acknowledgment.

B. Petitioner 69B Fails to Prove Distinct Community From Historical Times Until The Present.

The Proposed Finding properly concluded that the evidence does not demonstrate community between the extended Morse family and other Nipmucks of Dudley-Webster descent from 1890 to the mid-1970's. Pet. 69B Sum. Crit. 124. For most of the period, there is not even community evidence between the extended Morse family and other Sprague/Henries descendants of which it was a part. *Id.* Neither Morse nor anyone else in his extended family associated with other Dudley/Webster descendants in any regular or patterned way until the separate Chaubunagungamaug group was formed. *Id.* at 123.

There is also no evidence that the two principal family lines (descendants of Elizabeth Henries Morse and Eva Viola Brown) from whom 86 percent of the group descends had contacts with each other until very recently. *Id.* at 105, 123. In fact, many of these individuals did not

even know each other until the late 1970's or early 1980's. *Id.* Thus, until the mid-1990's, Petitioner 69B "appears to have consisted, essentially, only of the extended Morse family." *Id.* at 124. An extended family is not a tribe. *See Epps v. Andrus*, 611 F. 2d 915, 917 (1st Cir. 1979); *Golden Hill Paugussett* Final Determ., at B2; Pet. 69B Sum. Crit. 140.

Finally, Petitioner 69B's membership represents only a small fraction of Chaubunagungamaug Band descendants and also a "very select portion" of the descendants of the group's principal ancestress, Lydia Sprague. *Id.* at 123. In fact, most of her known descendants are on the membership list for Petitioner 69A. *Id.* This would undermine any historical cohesiveness or social solidarity of the Chaubunagungamaug group.

C. The Petitioner's Recruitment Efforts Demonstrates The Lack of a Historical, Distinct Community.²¹

Even within its short history, Petitioner 69B has, through extensive recruitment, transformed itself into a different entity. *Id.* at 110. The current membership reflects Morse's recruitment of those from other Nipmuck families, "many of whom Morse did not even meet until at least the late 1970's." *Id.* at 111.

²¹ The following discussions include evidence from the BIA's interviews of Petitioner 69B members. An evaluation of the BIA interviews must take into account the undeniable interest that interviewees have in the outcome of the acknowledgment petition, together with the fact that they are not representative of the overall membership. As Edwin Morse stated when asked what were the most important issues the council dealt with since 1979, "[t]he biggest and most important thing was getting federal recognition." Edwin Morse interview, at 5; *see also* Glenn and Burt Heath interview, at 1. Morse had an "exclusive agreement" with Casino Magic. Pet. 69B Sum. Crit. 156 n. 173. In addition, the group's minutes reflect significant discussion on various gaming proposals. Pet. 69B Sum. Crit. 159. Notwithstanding this, Morse urged his group to deny any talk of casinos if asked by the Federal government. *See* Pet. 69B Sum. Crit. 159. Moreover, all those interviewed were the chief, vice-chief, and present or former council members of Petitioner 69B, some of whom were interviewed together. Pet. 69B Sum. Crit. 103; List of Individuals Interviewed and Ancestor From Whom They Descend.

The number of Nipmucks participating in Petitioner 69B from the time the group was formed in the late 1970's or the early 1980's until 1998 has increased significantly. *Id.* at 111. After learning that a single family line did not constitute a tribe under the acknowledgment criteria, Edwin Morse Sr. solicited other Webster/Dudley descendants to join his group. *Id.* at 105. Other descent groups were added to its membership only after May, 1996. *Id.* at 106.

The first council meeting of the Morse-lead subgroup was July 23, 1981. The minutes of that meeting, which are entitled "The First Meeting of the Webster, Mass. Nipmuc Indian Council," have all the indicia of a newly formed group, including council elections,^{22/} its first by-laws,^{23/} setting a meeting schedule, and providing for membership qualifications. Minutes of July 23, 1981. It was at this meeting that the council elected Morse as chief.²⁴

This and other evidence confirms that petitioner 69B is only a recently formed group with no significant social interaction of any kind for almost a century. Morse has acknowledged that it was only in about 1977 that "we started to push forward as Chaubunagungamaug." Edwin Morse, Sr. interview, at 2. Moreover, when asked about any interactions with Nipmuck Indians from 1940 to 1971, he said "back then, I wasn't interested in that, so I never paid much attention." *Id.* at 5; *see* BIA Nipmuk Field notes, Petitioner # 69b, at. 7. *see also* BIA Book II, Nipmuk Fieldwork June 26 to July 3, 1998, at 94 (regarding Donald Hinckley's lack of knowledge of Nipmuks other than his cousins); Glenn and Burt Heath interview, at 1; Pet. 69B Sum. Crit. 109-

^{22/}The council members nominated each other and voted for each other, without involvement of the general membership. *See* Minutes, July 23, 1981.

^{23/}The minutes state: "The Webster council of Nipmuc Indians is now starting it's [sic] first chapter of By-Laws." July 23, 1981 minutes.

²⁴ Morse stated that "1979 was the first time that they formed a council of their own," the same year he became chief. Edwin Morse, Sr. interview, at 3. Lucy Ann Swenson, his daughter, indicated that the council was formed and her father was elected chief in 1981. BIA Nipmuk Field notes, Petitioner #69b - S. Austin, at 9.

110; Pet. 69B charts, crit. (b), 58; Ken White interview, at 1-2; Pet. 69B Sum. Crit. 110, 115; Pet. 69B charts, crit (b), 59; Pet. 69B Sum. Crit. 160-61. Thus, even according to Morse and others group members, there was no distinct Nipmuck community prior to 1977. *See* Pet. 69B charts, crit. (b), 50; Pet. 69B Sum. Crit. 106-07.

The evidence as a whole tends to support a statement by the petitioner's researcher, quoted in the press in 1981, that "[a]ny anthropologist worth his salt will say the group (the Nipmuck tribe) has disappeared entirely." Pet. 69B Sum. Crit., at 111.

D. The Pow-Wows and Intertribal Ceremonies Do Not Show Significant Social Interaction of a Predominant Portion of the Membership.

The Morse group did not hold pow-wows until 1981. *See* Nipmuk Field notes, Petitioner #69b- S. Austin, at 5. Even when the group began having its own pow-wows, they were intertribal and "Indians from all over [were] invited." Lucy Ann Swenson interview, at 1. These pow-wows were described as "like a family gathering," but with only about 50 Nipmucks attending. *Id.* This would be less than 25 percent of the membership, *see* Pet. 69B charts, crit. (c), 57, and was consistent with a group that was little more than the extended Morse family. Even those members who attended these events did not engage in significant social interaction broadly distributed among the membership, consistently, on a regular basis and over a long period of time. *See* 25 C.F.R. § 83.1 (definition of community); *Miami* Final Determ., Sum. Crit., 5. Edwin Morse, for example, said that while all his siblings come to the powwow, "none of them are active." Edwin Morse Sr. interview, at 4.

Although the BIA indicated it was possible that the Nikomo and naming ceremonies were "shared sacred or secular ritual activity," Pet. 69B charts, crit. (b), 70, 71, the BIA did not find that these encompassed most of the group. *See* 25 C.F.R. § 83.7(b)(1)(vi). In fact, the BIA

concluded that their intertribal nature raised questions about the extent to which these ceremonies "connect individuals with one another as opposed to simply connecting some group members with outsiders." Pet. 69B charts, crit. (b) 70, 71. This is confirmed in various interviews. It is reported that at the Nikomo gathering, "[t]here's all tribes. It's an intertribal thing." Heath interview, at 3. In addition, some of those attending the naming ceremonies were not Nipmuck. *Id.* As to the instruction of young people about tending fire, for example, "again, it's intertribal because it's more than just Nipmuck."²⁵ *Id.*

III. PETITIONER 69B FAILS TO MEET MANDATORY CRITERION 83.7(c).

From the late nineteenth century to 1891 to the mid-1970s, there is absolutely no evidence of formal or informal political activity or organization. The limited evidence thereafter of an organization with purported leaders does not demonstrate that the exercise of political authority or influence extended over the general membership. Accordingly, Petitioner 69B cannot meet criterion (c).

A. Petitioner 69B Did Not Become Independent Until 1996 and Has Not Been Historically Autonomous.

As demonstrated above, Petitioner 69B did not become an independent political entity until the Morse subgroup separated from Petitioner 69 in 1996. Pet. 69B Sum. Crit. 106. From its start as a component of Petitioner 69 around 1980 to the split in 1996, Morse viewed it as little more than a subgroup under the parent body. *Id.* In fact, his daughter, a council member, among

²⁵ Kenneth White claimed that mostly Nipmucks attended the gatherings. Kenneth White interview, at 3. As the BIA stated, this assertion conflicts with interviews of at least two other 69B activists. *See* Pet. 69B Sum. Crit. 119; charts, crit. (b) 72. There are other errors in White's interview. He said that ceremonies occurred "on the reservation" at Dudley-Webster. *See* White interview, at 2. There was no Dudley-Webster reservation at that time. It had been sold in the 19th century. *See* Pet. 69B Sum. Crit. 71-75. The interviewer noted "[s]omething is wrong here." *Id.*

others, maintained that the Morse and Vickers groups “were ‘factions’ of a larger Nipmuc group.” *Id.* at 158. Petitioner 69B cannot possibly be said to have exercised political influence “as an autonomous entity” – that is, independent of any other Indian governing entity’s control – as required by mandatory criterion 83.7(c). On this ground alone its petition is fatally defective.

Petitioner 69B has offered no documentary or oral history evidence of organization or formal or informal political authority or influence within its antecedent group from 1891 to 1976, whether defined as Dudley/Webster, the single line of Sprague/Henries descendants, the smaller line of Elizebeth (Henries) Morse descendants or even the direct ancestors of the petitioner’s recent members. Pet. 69B Sum. Crit. 134, 166.

B. There Is A Complete Lack of Bilateral Political Relations Between Petitioner 69B’s Council And Its General Membership.

Morse was purportedly elected chief by a 15 member council in 1979 (according to Morse) or 1981 (according to his daughter). Edwin Morse Sr. interview, at 2. There is no evidence that the overall membership itself voted for him. *See id.* at 3. Although he claimed that he had been accepted by “about 350 Nipmucks,” he did not cite any specific evidence or documentation in support of this. Furthermore, his daughter disputed the validity of his election. Pet. 69B Sum. Crit. 157.

Morse has taken the title of “Chief for life.” BIA Book II -Nipmuk Fieldwork, June 26 to July 3, 1998, Field Notes for Interviews on 69B Petition, at 70. The BIA’s interviews do not indicate what degree of support, if any, this position has from the overall membership. In fact, the BIA proposed finding states that he declared this designation for himself. Pet. 69B Sum. Crit. 135.

The council minutes show that council members nominated each other and seconded each other's nomination. Council Meeting Minutes, July 23, 1981. There is no evidence that anyone other than the council members themselves voted or otherwise participated in the meeting. At least seven out of nine members were members of Morse's immediate family. Edwin Morse interview, at 2-3, 6; Nipmuk Field notes, Petitioner 69B, at 6; *see also* Pet. 69B Sum. Crit. 140, 142, 145 & n. 165.

There is at best conflicting evidence on how council members were selected. Morse claimed that each family in his group was represented on the council and that each family decided how to choose its representative. Edwin Morse, Sr. interview, at 3; *see also* Heath interview, at 2; White interview, at 2. None of the interviewees indicated how many family members actually participated in this matter, how broadly a "family" was defined for this purpose, or refer to any supporting documentation. In fact, other interviews reveal that council members were appointed either by Morse or the council itself, with no input from the broader membership. Heath interview, at 2; Curliss interview, at 17.

These are major deficiencies. A single family does not constitute a tribe. *Golden Hill Paugussett* FD, app. 2. There must be "significant support, interest, or involvement of the membership as a whole" regarding the alleged leadership that claims to represent them. *Miami* FD, Tech. Rep. 76. "Political process requires some flow of information and opinion between leaders and followers, and vice-versa." *Id.* A "self-perpetuating" leadership without any indication of membership support fails to demonstrate political influence or authority. *Id.*

Although Morse claimed that when he lived in Worcester 50 or 60 persons would attend council meetings, Edwin Morse Sr. interview, at 3, this assertion has not been documented with attendance lists. *See* Pet. 69B Sum. Crit. 139. In more recent times, Morse concedes that "[v]ery

few of them come.” Edwin Morse Sr. interview, at 3. Kenneth White acknowledged that “[m]ostly council members” attend council meetings, even though they are open to the general membership. Kenneth White interview, at 3; *see also* Pet. 69B Sum. Crit. 139, 165. Moreover, White could not identify any issues the council heard about from the membership, *id.* at 2, 4, reflecting a lack of widespread political interest, involvement and activity. *See Miami* FD Sum. Crit. 15; Pet. 69B Charts, crit. (c), 42.

Regarding issues that the council has dealt with, “[t]he biggest and most important thing was getting Federal recognition.” Edwin Morse Sr. interview, at 5; *see also* Heath interview, at 1. It does not appear, however, that even this issue has had broad, consistent membership support. In 1985, “everybody dropped the petition. Nobody wanted to do nothing.” Edwin Morse, Sr. interview, at 6.

Morse’s daughter, Lucy Ann Swenson, maintained that the major issues the council was working on was “[k]eeping the membership. The membership are jumping ship.” Lucy Ann Swenson interview, at 2. This indicates not only instability of membership but also lack of political allegiance to the group. This in turn suggests lack of a durable, genuine political connection between members and leaders.

**THE DEFECTS IN THE TWO PETITIONS CANNOT BE ELIMINATED
BY TREATING THE TWO PETITIONERS AS ONE TRIBE.**

The proposed findings would not be different if Petitioner 69B had never separated from the original Petitioner 69. This is not merely a matter of a group that otherwise would satisfy the requirements for recognition but for a recent factional split. The shortcomings of both petitions are too overwhelming, involving long periods of time well before the modern schism between the Vickers-led Petitioner 69A and Morse-led Petitioner 69B.

The proposed findings consider the evidence not just for Petitioner 69A as defined as the Hassanamisco group, but also a joint entity involving both groups and as a broader umbrella entity involving all Nipmuc descendants. In other words, the proposed finding effectively evaluates a combined group of both petitioners and finds the evidence significantly lacking. Whether viewed together or separately, there is an absence of any significant social interactions sufficient to demonstrate a distinct tribal community or of any significant exercise of political influence or authority from the late nineteenth century to the late 1970s. This century of tribal nonexistence is capped by the creation of wholly new organizations through massive recruitment of persons not having any prior connection with the group. An attempt to paper over the lack of evidence by merging the two petitioners or treating them as one cannot hide these significant deficiencies.

CONCLUSION

The evidence fully supports the Assistant Secretary's proposed findings that neither Petitioner 69A nor Petitioner 69B can satisfy the mandatory criteria for acknowledgment. Both lack tribal continuity, and both fail to demonstrate a distinct community or political authority for the century prior to the later 1970s. In the 1980s and 1990s, the petitioners effectively created new entities, bringing in massive numbers of new members having no historical social or political connections to the groups. Accordingly, the Assistant Secretary should issue final determinations denying federal acknowledgment to both petitioners.

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