

**FINAL DETERMINATION**

**GOLDEN HILL PAUGUSSETT TRIBE**

**September 17, 1996**

**United States Department of the Interior  
Bureau of Indian Affairs  
Branch of Acknowledgment and Research**

**(202) 208-3592**

Summary Under the Criteria and Evidence for  
Final Determination against Federal Acknowledgment

of the

Golden Hill Paugussett Tribe

Prepared in response to a petition submitted  
to the Assistant Secretary - Indian Affairs  
for Federal acknowledgment that this group  
exists as an Indian Tribe.

Approved:

9-16-96

(date)

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Assistant Secretary - Indian Affairs

## INTRODUCTION

### Administrative History

The Golden Hill Paugussett Tribe (GHP) submitted a letter of intent to petition for Federal acknowledgment on April 13, 1982. On April 12, 1993, the group submitted a documented petition. The Bureau of Indian Affairs (BIA) made a formal technical assistance (TA) review of this documented petition, and on August 26, 1993, the Agency sent the first obvious deficiency (OD) letter to the petitioner. The petitioner responded to this first OD letter on April 1, 1994. The BIA then provided the petitioner a second TA review, under the revised regulations at 25 CFR Part 83, which became effective March 28, 1994. Both TA letters addressed the problem of the claimed descent of the petitioning group from one person, William Sherman, instead of descent from a historical tribe.

On November 10, 1994, the GHP responded to the second TA letter by providing additional documentation and instructed the BIA to place the petition on active consideration. On November 21, 1994, the BIA placed the GHP on the "Ready, Waiting for Active Consideration" List and informed the petitioner that preparatory genealogical processing would begin. During this stage of the procedure, the BIA decided to process the GHP petition under §83.10(e), the section in the 1994 revised regulations which describes the expedited process for issuing negative proposed findings under criteria 83.7(e), (f), or (g) (see below for a more detailed explanation). The decision to follow this procedure was based on the fact that little or no evidence was available to demonstrate that the group met criterion 83.7(e).

A notice of the Proposed Finding to decline to acknowledge the GHP was published in the FEDERAL REGISTER on June 8, 1995 (60 FR 30430), pursuant to 25 CFR 83.10(e) of the revised Federal acknowledgment regulations, which became effective March 28, 1994. The 180-day comment period closed December 5, 1995. The GHP submitted its response to the Proposed Finding in a timely fashion. The BIA received a number of letters during the 180-day comment period, which either supported or rebutted the Proposed Finding. After the close of the 180-day comment period, the GHP was accorded a period of 60 days under the regulations to respond to the third-party comments, and did so in a timely fashion.

This Final Determination is made after a review of all of the documents submitted with the GHP's original documented petition, the GHP's responses to the two OD/TA letters, submissions and comments by interested parties submitted both before publication of

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the Proposed Finding and in response to the Proposed Finding, the GHP's response to the Proposed Finding, and the GHP's response to third-party comments. Third-party comments that included substantive documentation were given more consideration in the Final Determination than the undocumented comments. BIA staff also performed additional research in preparing the Final Determination.

#### Bases for the Final Determination

**Purpose of the Federal acknowledgment regulations.** The purpose of the Federal acknowledgment regulations is "to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes" (25 CFR 83.2).

On February 25, 1994, the present Federal acknowledgment regulations were published in the FEDERAL REGISTER (59 FEDERAL REGISTER 9280-9300 (1994)). The 1994 regulations revised the prior regulations which became effective in 1978 (43 FEDERAL REGISTER 39319-39560 (1978)), but did not alter either the basic purpose of the acknowledgment procedure or the standard of continuity of tribal existence. The revised regulations in some circumstances reduced the burden of proof on petitioners.

**Procedures for handling expedited negative proposed findings under 25 CFR 83.10(e).** One of the purposes of the revised regulations, which became effective on March 28, 1994, was to clarify the application of the seven mandatory criteria (83.7(a)-(g)). In the 16 years that the acknowledgment process had operated, certain types of evidence had been found to be more effective than others. The changes in the regulations were not intended to alter the outcome of cases. Those groups which would have been acknowledged under the previous regulations would be acknowledged under the revised regulations. Those which would not have been acknowledged under the previous regulations would be denied under the revised regulations.

A major concern of Congress, the Department of the Interior (Department), and petitioners had been the length of time it took petitioners to complete the acknowledgment process under the 1978 regulations. The revised regulations include section 83.10(e), which describes an expedited process under criteria 83.7(e), 83.7(f), or 83.7(g). The GHP Proposed Finding was issued under 83.10(e), utilizing the expedited process under criterion 83.7(e).

Criterion 83.7(e) concerns descent from a historical Indian tribe, or from tribes which have amalgamated and functioned as a single unit. Descent from an Indian tribe is determined through a

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standard methodology based on a well-defined set of genealogical facts. The BIA undertakes the genealogical evaluation early in the Government's review process. Therefore, the Department revised the regulations to provide an "expedited" review of certain petitions on the basis of criterion 83.7(e). By providing for an "expedited" Proposed Finding under criterion 83.7(e), the BIA would avoid time-consuming research under the other six mandatory criteria on petitioners unable to document North American Indian tribal ancestry within the meaning of the 25 CFR Part 83 regulations.

The process for issuing an "expedited" Proposed Finding received broad public input before it became part of the current regulations. In 1993, the draft revised regulations were circulated to more than 1,000 individuals and organizations for review. The BIA's response to public comments on the proposed revised regulations included discussion of this provision:

Commentors generally approved the addition of this section, which provides for a limited, speedy review of petitions which cannot, upon examination, meet the requirements of certain acknowledgment criteria. The primary concern was whether sufficient review and due process would be accorded (59 FEDERAL REGISTER 38:9290 (1994)).

In the response to comments on the revised regulations published in the FEDERAL REGISTER on February 25, 1994, the BIA made the following statement concerning expedited negative Proposed Findings:

This limited evaluation will only occur after the petitioner has had the opportunity to respond to the technical assistance review (59 FEDERAL REGISTER 38:9290 (1994)).

The BIA also explained the level of proof required:

The section requires clear evidence, apparent on a preliminary review, that one of the three named criteria are not met (59 FEDERAL REGISTER 38:9290 (1994)).

Expedited decisions may only be done after the petition is complete and before the petition has been placed on active consideration. In the regulations themselves, the time frame and the requirements for issuing an expedited Proposed Finding is clearly delineated:

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical

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assistance review letter indicate that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7 (83.10(e)).

An expedited finding is undertaken in cases where there is little or no evidence that the group can meet one of the three criteria listed. The standard under which the proposed finding is made is stated as follows:

83.10(e)(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a Proposed Finding to that effect in the FEDERAL REGISTER. The periods for receipt of comments on the Proposed Finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section (83.10(e)(1)).

In the present case, the Assistant Secretary - Indian Affairs (AS-IA) concluded after review of the GHP petition materials, including the original GHP documented petition and the GHP responses to the two TA letters, that there was little or no evidence that the GHP met criterion 83.7(e). The AS-IA therefore made the Proposed Finding in accord with the requirements of 83.10(e), which requires a conclusion that the petitioner clearly does not meet the requirements of one of the listed criteria, 83.7(e), 83.7(f), or 83.7(g). To make an expedited negative Proposed Finding under 83.10(e), the burden of proof is on the Government to clearly establish that the petitioner does not meet the mandatory criterion used as a basis, in this instance, criterion 83.7(e).

In the Proposed Finding, the AS-IA concluded that the GHP clearly did not meet criterion 83.7(e). This met the burden of proof required of the Government for issuing a Proposed Finding under 83.10(e).

After the AS-IA issues a Proposed Finding, the burden of proof shifts to the petitioner to rebut the conclusions prior to issuance of the Final Determination. The standard of proof for rebuttal is a lesser one, the "reasonable likelihood of the validity of the

facts" standard described in section 83.6, the standard which petitioners must meet in all acknowledgment determinations. If, in the response to the Proposed Finding, the petitioner provides sufficient evidence that it meets criterion 83.7(e) under the "reasonable likelihood of the validity of the facts" standard, the BIA will undertake a review of the petition under all seven mandatory criteria. If, in the response to the Proposed Finding, the petitioner does not provide sufficient evidence that it meets criterion 83.7(e) under the "reasonable likelihood of the validity of the facts" standard the AS-IA will issue the final determination based upon criterion 83.7(e) only. This Final Determination is issued based on the finding that the GHP response did not show that the group met criterion 83.7(e) under the "reasonable likelihood of the validity of the facts" standard.

#### Overview of the Proposed Finding

The Proposed Finding proposed to deny Federal acknowledgment to the petitioner on the grounds that the GHP membership did not descend from a historic tribe, but from a single individual whose Indian ancestry had not been demonstrated. The Proposed Finding stated:

In order to meet criterion 83.7(e), the petitioner must demonstrate Indian ancestry through descent from a historical tribe, or from tribes which combined and functioned as a single entity. When documenting descent from members of the historical tribe or tribes, the petitioner must show that: (1) the persons claimed as Indian ancestors were of Indian descent from a particular tribe; and (2) Indian descent [of the petitioning group as a whole] must be derived from more than one Indian person (60 FEDERAL REGISTER 110:30430 (1995)).

The Federal acknowledgment process is not intended to recognize single individuals or single extended families of Indian descent, even if of Indian ancestry. Nor is it intended to recognize the descendants of single individuals or families, no matter how large a body of such descendants exist[s]. Criterion e is one of the criteria which is intended to insure continuous existence as a tribal body. Descent from a single Indian ancestor does not meet this requirement (60 FEDERAL REGISTER 110:30430 (1995)).

The petitioner does not meet criterion e for the following reasons: (1) the petitioner's single common ancestor, William Sherman, has not been documented conclusively to have Indian ancestry from the historic

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Golden Hill Paugussett Tribe or from any other historic Indian tribe; and (2) even if William Sherman was shown to have Indian ancestry, from the historic Golden Hill Paugussett or from any other historic Indian tribe, the present group would be descended from a single Indian individual. It, therefore, would not meet the requirements of criterion e, which requires ancestry as a tribe, not simply Indian ancestry (60 FEDERAL REGISTER 110:30430 (1995)).

The Golden Hill Paugussett Tribe's petition for Federal acknowledgment claims that, "The Golden Hill Paugussett tribe has existed in the State of Connecticut since time immemorial, and has maintained its autonomy and unity as an American Indian tribe while interacting with non-Indian populations since the Colonial period" (60 FEDERAL REGISTER 110:30430 (1995)).

The Golden Hill Paugussett Tribe's petition for Federal acknowledgment also maintains that as long as a single Golden Hill Paugussett descendant remains alive, the tribal entity continues to exist. This does not accord with the definition of tribal existence in 25 CFR Part 83, and the underlying precedents in Federal law and judicial decisions (60 FEDERAL REGISTER 110:30430 (1995)).

A substantial body of documentation was available on the petitioning group and their individual ancestors. This extensive evidence does not demonstrate either the Paugussett Indian tribal ancestry claimed in the petition or other Indian tribal ancestry. Furthermore, had Indian ancestry had been documented, Indian descent would remain from only one individual. One individual Indian ancestor does not qualify the group for Federal recognition as an Indian Tribe. Based on this factual determination, we conclude that the Golden Hill Paugussett Tribe should not be granted Federal acknowledgment under 25 CFR part 83 (60 FEDERAL REGISTER 110:30430 (1995)).

Petitioner's Response and Third Party Comments  
on the Proposed Finding

The negative Proposed Finding was published in the FEDERAL REGISTER on June 8, 1995. It stated in part:

As provided by 25 CFR 83.10(e)(1) and 83.10(h) through 83.10(l), any individual or organization wishing to



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challenge the Proposed Finding may submit factual or legal arguments to rebut or support the evidence relied upon. This material must be submitted on or before December 5, 1995 (60 FEDERAL REGISTER, 30430 (1995)).

The petitioner responded in a timely fashion. Interested and informed third parties submitted both documented and undocumented comments. The most extensive comments which were intended to rebut the Proposed Finding were received from Mr. Wes Taukchiray and Mr. Roger Joslyn. The most extensive comments which supported the Proposed Finding were received from Connecticut Homeowners Held Hostage (CHHH) and the Attorney General, State of Connecticut. The GHP was accorded a period of 60 days under the regulations to respond to third-party comments, and did so in a timely fashion.

Litigation

The Golden Hill Paugussett Tribe of Indians sued the State of Connecticut in Federal district court in 1992 for land claims arising under the Indian Nonintercourse Act, 25 U.S.C. § 177. In the suit, the GHP requested the return to them of Paugussett tribal lands in Bridgeport, Connecticut, which they alleged had been sold by Connecticut without the consent or approval of the United States as required by the Act.

The district court ruled in 1993 that the GHP did not have standing to bring a claim under the Indian Nonintercourse Act without a showing that it existed as a tribe. The court held that although Federal recognition was not a prerequisite to bring a Nonintercourse claim, tribal existence was a prerequisite, and that the proper forum to determine tribal existence was the administrative process for acknowledgment under 25 CFR 83. The court declined to make a determination of tribal existence itself, stating that the interest in requiring exhaustion of the administrative remedy afforded by the acknowledgment process was particularly strong, given the expertise of the Department and because the "multifaceted question of tribal recognition is best considered in terms of flexible fact-finding procedures of agencies not limited by Article III" (Golden Hill Paugussett Tribe of Indians v. Weicker, 839 F. Supp. 130, 134 (D. Conn. 1993)).

On appeal, the Second Circuit remanded to the district court and directed it to stay GHP's action. The Second Circuit allowed the BIA 18 months (or until April 28, 1996) in which to reach a decision on the tribal status of the GHP. After that date, the GHP can reapply to the district court for a ruling on the merits (Golden Hill Paugussett Tribe of Indians v. Weicker, 39 F.3d 51, 60-61 (2nd Cir. 1994)).

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List of Abbreviations and Acronyms

AG	Attorney General - State of Connecticut
AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research
BIA	Bureau of Indian Affairs
CHHH	Connecticut Homeowners Held Hostage
GHP	Golden Hill Paugussett Tribe
OD	Obvious Deficiency letter (under 1978 25 CFR Part 83 regulations)
TA	Technical Assistance letter (under 1994 25 CFR Part 83 regulations)

SUMMARY CONCLUSIONS UNDER CRITERION 83.7(e)

**83.7(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.**

**Introduction.** This final determination is based upon a new analysis of all the information in the record. This includes the information available for the Proposed Finding, the information submitted by the GHP in its response to the Proposed Finding, new evidence and documentation submitted by interested and informed parties during the comment period, and new evidence and documentation collected by the BIA staff for evaluation purposes.

The GHP claimed ancestry from the historic Paugussett tribe through a single individual, William Sherman, a common ancestor of the entire present membership. The evidence submitted for their petition concerning tribal ancestry focused on William Sherman's ancestry. For purposes of this determination, however, evidence has also been examined to determine if the group's membership otherwise meets the requirements of criterion 83.7(e), of descent from a historic tribe.

No new evidence submitted by the GHP or third parties or located by BIA researchers effectively rebutted the conclusions of the Proposed Finding. Specifically, no document was submitted or located for the final determination that identified the parents of William Sherman, the person from whom all the present-day GHP membership descends. No document was submitted or found for the Final Determination that provided sufficient evidence acceptable to the Secretary as specified in 25 CFR Part 83 that William Sherman was descended from a historical Indian tribe. On the contrary, considerable documentation was submitted by third parties and located by BIA researchers which provided additional circumstantial evidence that William Sherman did not live in tribal relations during his lifetime and was closely associated with demonstrably a non-Indian Sherman family. In brief, in the Final Determination the AS-IA concludes that the GHP has not demonstrated that William Sherman was descended from a historical Indian tribe.

In the Final Determination, the AS-IA also reemphasizes the conclusion stated in the Proposed Finding that descent of a petitioning group from one individual who did not live in tribal relations does not meet the standard of tribal descent established under criterion 83.7(e).

**Background history of the Paugussetts.** The historical record clearly shows that from as early as 1658, the Connecticut courts were concerned that Stratford and Fairfield Plantations, which included the land that would become the towns of Trumbull and Bridgeport and the Golden Hill Reservation, allow the Indians living in their cities sufficient land for their own subsistence. The Connecticut General Assembly in 1762 directed that 80 acres be set aside for the use and benefit of the Indians at Stratford. During the 18th century, some Indians continued to live on the 80 acres, though many members of the tribe either moved to New York or to other Indian groups in Connecticut.

In 1763, non-Indian settlers were occupying all but eight acres of the 80 acre tract. At that time, Sarah Shoran and Eunice Shoran Sherman "the surviving heirs of the aforesaid [Pequanock/Paugussett] Indians to whom said lands were laid out" and Eunice Shoran Sherman's husband, Tom Sherman, and their children, were the only Indians remaining on the eight acres of land. As a result of Tom and Eunice Sherman's and Sarah Shoran's 1763 petition to regain the Indian land, in 1765 the family was given a place to live called Golden Hill. The colony of Connecticut appointed overseers to act as guardians of the Golden Hill Indians' affairs.

Sarah Shoran married Elijah Wampey, a Brothertown Indian, and moved to Oneida, New York. She did not appear in the Golden Hill records after about 1765. Eunice Shoran died before 1797. Her husband, Tom Sherman, whose tribal affiliation (if any) is unknown, died at Golden Hill in 1800 or 1801. In 1802, "the remainder of the tribe," four members of the Sherman family and a man named John Chops, petitioned the General Assembly, requesting that the land at Golden Hill be sold and the money be put in a fund for their benefit. The reservation lands were sold. Later state records no longer referred to a tribe at Golden Hill. Throughout the 1800's, the funds from the sale of the land provided for the "heirs" of Sarah Shoran (who had moved to Oneida) and Eunice (Shoran) Sherman. The overseers' reports dealt with administering the money in the Indian fund, and not with issues concerning a tribe of Indians.

**There is no documentation of William Sherman's parentage or more remote ancestry.** Using standard genealogical methodology and standards of evidence, the BIA found no evidence that documented a line of descent from the above Golden Hill Paugussett Sherman family to William Sherman, the claimed ancestor of the petitioner (GHP). The petitioner's claim to Golden Hill ancestry rests on three generations from Tom and Eunice (Shoran) Sherman to William Sherman. Within those three claimed generations, the two earliest connections were documented, namely: (1) that Tom and Eunice (Shoran) Sherman had a son, Tom Sherman, Jr.; and (2) that Tom Sherman, Jr. had a daughter, Ruby Sherman. The following three

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connections were not documented: (1) that Ruby Sherman, daughter of Tom Sherman, Jr., was later known as both Ruby Mack and Ruby Mansfield; (2) that Ruby Sherman [as Ruby Mack or Ruby Mansfield] was the mother of Nancy Sharpe *alias* Pease; and (3) that Nancy Sharpe *alias* Pease was the mother of William Sherman, the only ancestor through whom the present-day GHP membership claims Paugussett descent.

Documents produced in the 1840's clearly identified Ruby Mansfield and Nancy Sharpe *alias* Pease as Golden Hill Indians, so the question of the precise genealogical tie of these two women to the earlier Sherman family was of secondary importance. It was of primary importance that none of the evidence submitted by the petitioner, submitted by interested and informed parties, or located by the BIA during the acknowledgment process, demonstrated that William Sherman (1825-1886) was a descendant of either Ruby Mansfield or of Nancy Sharpe, *alias* Pease.

The AS-IA's conclusion in the Proposed Finding that William Sherman had not been shown to be of Paugussett Indian ancestry has been confirmed by the extensive evidence reviewed for the Final Determination. There was insufficient documentation to demonstrate who William Sherman's mother was. Thus, his maternal lineage remains undocumented.

No original document identifies William Sherman as a son of Nancy Sharpe, *alias* Pease, whom the GHP petition claims as his mother. Nancy Sharpe, *alias* Pease was identified in records from the 1840's as a Golden Hill woman. One local historian, Samuel Orcutt, attempted to trace Sherman's ancestry to the Golden Hill through her, but did not document his assertions.

At the time the Proposed Finding was issued, the only evidence which appeared to link William Sherman to Nancy Sharpe, *alias* Pease, appeared in Sherman's diary/account book. In it, Sherman recorded that in 1857 he was paid by the Golden Hill fund overseer to care for Henry Pease. Orcutt's history stated that Henry Pease was a nephew of William Sherman. The GHP Response claimed that this Henry Pease was a son of Nancy Sharpe, *alias* Pease, which would have made him a half-brother rather than a nephew.

No documentation was submitted for the Final Determination that verified the claimed relationship of Henry Pease to Nancy Sharpe, *alias* Pease. The Golden Hill fund overseer who made the payments to William Sherman on behalf of Henry Pease was simultaneously overseer of the poor for the township. There was no documentation that the 1857 payments were taken from the Golden Hill fund. The GHP Response referred to a Civil War pensioner named Henry Pease who served from Fairfield County, Connecticut. The pension record

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pertained to a different Henry Pease. The GHP Response submitted no verification that William Sherman and Henry Pease were related.

William Sherman's paternal lineage is unknown. There was no evidence concerning who his father, nor his earlier paternal ancestors, were. The petitioner does not claim that William Sherman was Indian, or Paugussett, through his father's family.

**Contemporary original documents do not consistently identify William Sherman as Indian.** No document was found from 1825 through 1869 which identified William Sherman as either Indian or Paugussett. The documents examined in which William Sherman appeared before 1870 included the 1850 and 1860 Federal census records, his seaman's certificate, his marriage record, and the record of the births of his children. The 1850 and 1860 Federal censuses did not identify him as Indian, nor did the other records examined. His seaman's certificate provided a physical description of him but did not identify his ethnicity.

By all accounts William Sherman was born in New York in 1825. He apparently spent his youth as a sailor on whaling ships, and first appeared in records relating to Trumbull, Connecticut, in 1857.

William Sherman never appeared as a beneficiary in the records of the administrator of the Golden Hill funds. He does not appear at all during the period prior to 1876, when he borrowed money from the Golden Hill funds by mortgaging land he had purchased in 1875. His appearance in those records afterwards is as a borrower of funds, something which non-Indians commonly did to obtain money for investments. His later appearance in the records of the administrator of the Golden Hill fund after 1876 does not identify him as Paugussett nor provide any evidence that he was Paugussett.

**William's Sherman's identification as Paugussett was based on late, unreliable secondary documents created near the end of his life.** Although some later historical records identified William Sherman as a claimant to Golden Hill funds, these identifications appeared late in his life and were based on unreliable evidence. On the 1870 census, William Sherman may have been identified as Indian but the entry is smudged. The other members of his household were identified as Indian in the 1870 census, including his wife, who has been documented to be non-Indian. Those of his children who reached adulthood and left his household during his lifetime were identified as non-Indian in census records. The 1880 census identified William Sherman as Indian. These census records are not sufficient in themselves to establish that William Sherman was Indian, in light of earlier evidence which did not indicate that he was Indian. In addition, they provide no evidence that he was a Paugussett.

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Two books published within William Sherman's lifetime identified William Sherman as a Golden Hill. One, by D. Hamilton Hurd, was published in 1881. The other, by Samuel Orcutt, published in 1886, attempted to link Sherman's genealogy to known Golden Hill descendants of the first half of the 19th century. A review of Orcutt's genealogical statements demonstrated that they contained internal contradictions and thus were not reliable. Orcutt did not cite references. Despite extensive effort by BIA researchers, the BIA was not able to locate any documentary sources upon which these two writers might have based their assertions. There was little evidence that these writers had significant direct personal experience and acquaintanceship with William Sherman.

The church record of William Sherman's death identified him as Golden Hill. It specifically referenced Orcutt's county history, published in the same year, as the source of its information. Additionally, Sherman's 1886 newspaper obituary identified him as a Paugussett. It also appears to have been based on secondary sources rather than on the personal knowledge of the recorder.

**It has not been shown that William Sherman associated with known Paugussett descendants during his lifetime.** The GHP, in its Response to the Proposed Finding, third party commenters, and BIA researchers attempted to identify known descendants of the Paugussett Indians in the 19th century. Although several were identified, none were documented to have been associates of William Sherman.

For the Final Determination, the BIA searched in records in the States of New York and Connecticut and found additional evidence concerning William Sherman's known associates. None were identified as Paugussett Indians. Conversely, there is no record that William Sherman associated with the known Paugussett descendants who were his contemporaries, or with other identified Connecticut Indians, even though considerable information concerning William Sherman's social interactions is available. Thus his social contacts provided no circumstantial evidence that he was of Paugussett or other tribal descent.

One of the arguments used by the GHP in the Response to the Proposed Finding was that in evaluating the historical tribal entity from which descent was to be traced, the BIA had incorrectly limited its examination to just the Connecticut records of the two Paugussett families that migrated to Golden Hill during the 18th century. The research for the Proposed Finding, and for this Final Determination, was not limited to the people who were called "remnants" of the Golden Hill.

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The BIA did extensive research for the Proposed Finding attempting to identify the Paugussett Tribe, and whether it existed in the time period of William Sherman's adult life. Paugussett descendants were identified, but it was not established that a Paugussett tribe existed during William Sherman's lifetime. No determination concerning tribal existence was required, however, because evidence indicated that William Sherman did not, in any case, live in tribal relations. There was no record that William Sherman associated with the known Paugussett descendants who were his contemporaries.

**The GHP membership does not descend from other Indians.** The GHP descend from two of William Sherman's nine children. Neither William Sherman nor his children married Paugussett Indians or other Indians; therefore, the membership cannot establish tribal or Indian ancestry through any other possible Indian ancestors.

**Records reviewed.** The regulations explicitly describe the types of evidence which are acceptable to the Secretary under 83.7(e). The types of record are listed in the regulations in order of their importance in the weighing of the evidence for Federal acknowledgment. The acceptable evidence is not limited to the categories listed. The specified types of acceptable evidence that can be used for criterion 83.7(e) include:

(i) Rolls prepared by the Secretary on a descendency basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.



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For the Proposed Finding and the Final Determination, BIA researchers searched the extensive records kept by Connecticut on the State's Indians, and other Federal, State, and local records which might provide documentation pertaining to Indians in Connecticut. In the case of the GHP, the level of evidence under each of the specified types of documentation listed in criterion 83.7(e) is as follows:

- (i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

The Secretary never prepared tribal rolls for the Golden Hill Paugussett.

- (ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

The Federal and State governments had census and overseer reports. William Sherman was never listed on them as descended from an historic tribe.

Pertinent Federal records existed primarily in the form of four decennial censuses, from 1850, 1860, 1870, and 1880. In 1850 and 1860, he was identified as non-Indian. In 1870, his own identification was smudged on both the state and Federal copies of the census, but the other members of his household were identified as Indian. He was identified as Indian in 1880, the latest of the four Federal census reports. The Federal census records did not show tribal descent.

There were many Indians of many kinds in Connecticut during the 19th century. Connecticut records contain extensive documentation concerning many of the State's Indian tribes. William Sherman was never listed on an overseer's report as being descended from any tribe, only as having borrowed money, for which he provided collateral, from the fund established to benefit the Golden Hill remnants.

Evidence pertaining to his obtaining a loan to purchase land by borrowing from Golden Hill funds was ambiguous in that similar mortgages from the fund were also obtained by known non-Indian individuals. The original financial documents indicated that Sherman provided collateral for the loan, as did the known non-Indian borrowers.

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No other Indian documents from the State of Connecticut ever mentioned William Sherman as an Indian of any kind. Other official State records, such as vital statistics, never identified William Sherman as a Golden Hill Paugussett, or as a Paugussett. On some records, such as those of his marriage and the births of some of his children, he was specifically identified as non-Indian. The data obtained from taxation and voting records indicated that he was not living in tribal relations. Records for William Sherman showed extensive participation in non-Indian society and status as a citizen, which Connecticut Indians usually did not have under the State laws of the day. William Sherman's own journal, although admittedly incomplete, made no reference to his being Indian or associating with Indians.

**(iii) Church, school, and other similar enrollment records identifying present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.**

There were no contemporary church, school, or other enrollments that listed William Sherman as a member of or descendant of a tribe. The only church record submitted for William Sherman was that of his death in 1886. It identified him as a Golden Hill, but specifically referenced a secondary historical work, Orcutt's 1886 county history, in making this identification. No school or other enrollment records contemporary with William Sherman's lifetime were submitted for him or for his children.

**(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.**

The GHP documentation concerning William Sherman contained no affidavits of other tribal leaders made during William Sherman's lifetime. No such document from any known Paugussett descendant dating to the period of William Sherman's lifetime was submitted by the petitioner or third parties, or located by BIA researchers.

**(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.**

The least acceptable form of documentation, two county histories, described William Sherman as a remnant of the Golden Hill tribe, but provided internally inconsistent genealogical information. Neither of the county histories provided information concerning a

Summary under the Criteria, Golden Hill Paugussett Tribe, Final Determination

continuously existing Golden Hill Paugussett tribal entity of which he could have been a member.

**Summary.** With no other contemporary documentation, the AS-IA concluded in the Proposed Finding that the two county histories, the least acceptable forms of genealogical documentation, coupled with two census returns that did not list any tribal origin, and a church death record that referred to one of the county histories, were not sufficient evidence acceptable to the Secretary to establish tribal ancestry for William Sherman. When these documents were weighed in combination with all the other records: vital records, other census returns, and an absence of overseer documentation of Indian interaction or listing of William Sherman, the AS-IA concluded in the Proposed Finding that there was little or no evidence to indicate tribal descent for the GHP.

In the Proposed Finding, the AS-IA also concluded that the evidence clearly established that the GHP did not meet criterion 83.7(e) because the petitioner's present-day membership claimed Indian descent through only one individual. Under the 25 CFR Part 83 regulations, descent through one Indian individual who did not live in tribal relations does not establish tribal ancestry for the petitioning group.

This Final Determination has re-analyzed all available evidence from Connecticut colonial and state Indian records pertaining to Connecticut Indians. The evidence confirmed the existence of the Golden Hill Paugussett tribe in the 18th century. However, in the Response to the Proposed Finding, the GHP failed to document under the "reasonable likelihood of the validity of the facts" standard, using acceptable genealogical methods, that William Sherman, the sole ancestor through whom the present-day GHP membership claims Golden Hill Paugussett descent, descended from a historic tribe, or from tribes that combined and functioned as a single autonomous political entity, within the meaning of criterion 83.7(e). Rather, additional material received for the Final Determination provided circumstantial evidence that William Sherman was closely associated with a non-Indian Sherman family and did not live in tribal relations. Therefore, it was not necessary that the BIA undertake a review of the GHP petition under all seven mandatory criteria contained in 25 CFR Part 83.

Additionally, it remains the case that the present-day GHP membership claim Indian and Paugussett ancestry through a single individual, William Sherman. Even if William Sherman had been shown to be a Golden Hill Paugussett, descent of the present-day membership of the petitioning group as a whole through a single Indian individual who did not live in tribal relations during his

Summary under the Criteria, Golden Hill Paugussett Tribe, Final Determination

or her lifetime does not meet the requirements of criterion 83.7(e) for tribal descent.

The Golden Hill Paugussett Tribe has not demonstrated that its membership is descended from a historic tribe, or tribes that combined and functioned as a single autonomous political entity. Therefore, the Golden Hill Paugussett Tribe does not meet criterion 83.7(e).

Summary under the Criteria, Golden Hill Paugussett Tribe, Final Determination

cc: Sec'ySurname;101A;BureauRF  
BIASurname;440B;440Chron;400  
Hold:DeMARCE;x3592;rs3/1/96;ved;3/5/96;gr4/5/96;ved4/22/96:  
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KOO360-96/35420

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Final Determination Against Federal Acknowledgment of the Golden Hill Paugussett Tribe**

**AGENCY:** Bureau of Indian Affairs, Interior

**ACTION:** Notice of Final Determination

---

**SUMMARY:** This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary declines to acknowledge that the Golden Hill Paugussett Tribe, P.O. Box 1645, Bridgeport, Connecticut 06601-1645, exists as an Indian tribe within the meaning of Federal law. This notice is based on the determination that the group does not satisfy one of the criteria set forth in 25 CFR 83.7, namely: 83.7(e).

**DATES:** This determination is final and is effective 90 days after publication in the FEDERAL REGISTER, pursuant to 25 CFR 83.10(1)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

**FOR FURTHER INFORMATION CONTACT:** Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208-3592.

A notice of the Proposed Finding to decline to acknowledge the Golden Hill Paugussett Tribe (GHP) was published in the

FEDERAL REGISTER on June 8, 1995 (60 FR 30430, June 8, 1995), pursuant to 25 CFR 83.10(e) of the revised Federal acknowledgment regulations, which became effective March 28, 1994. Under 25 CFR 83.10(e), prior to active consideration the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet any one of the mandatory criteria in paragraphs (e), (f), or (g) of §83.7.

The GHP received one obvious deficiency (OD) letter dated August 26, 1993, and a second technical assistance (TA) letter dated October 19, 1994. Both OD/TA letters addressed the issue of the undocumented parentage of William Sherman, the only ancestor through whom the petitioner claimed Golden Hill Paugussett ancestry. They also addressed the problem posed under criterion 83.7(e) of the claimed Indian descent of the present-day GHP membership through one person, William Sherman, rather than descent from a historical tribe. The GHP responded to both TA letters and on November 15, 1994, requested the petition be placed on active consideration. The GHP petition was not placed on active consideration, but on November 21, 1994, was added to the "ready" list of petitioners waiting to be placed on active consideration.

The Assistant Secretary concluded after the responses to the TA letters that there was little or no evidence that the GHP met

criterion 83.7(e). Preliminary genealogical analysis by the BIA indicated that there was little or no evidence that the petitioner could establish descent from a historical tribe. Under 25 CFR 83.10(e), the Federal acknowledgment regulations call for issuance of an expedited Proposed Finding by the Assistant Secretary when there is little or no evidence that the petitioner can meet criterion 83.7(e). Expedited findings may only be done after the petition is complete and before the petition has been placed on active consideration. In the regulations themselves, the time frame and the requirements for issuing an expedited Proposed Finding are clearly delineated:

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7 (83.10(e)).

The standard under which the Proposed Finding is made is stated as follows:

83.10(e) (1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7, a full consideration of the documented petition



under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a Proposed Finding to that effect in the FEDERAL REGISTER. The periods for receipt of comments on the Proposed Finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section (83.10(e)(1)).

The Proposed Finding was issued in accord with 83.10(e), which requires a conclusion that the petitioner clearly does not meet the requirements of criterion 83.7(e). To make a Proposed Finding under 83.10(e), the burden of proof is on the government to show that the petitioner clearly does not meet the criterion. The Proposed Finding demonstrated that the GHP clearly did not meet criterion 83.7(e), descent from a historical tribe, meeting the burden of proof required of the government for making a proposed finding under 83.10(e).

Once a Proposed Finding has been issued, however, the burden of proof shifts to the petitioner for rebuttal. The standard of proof which must be met in the petitioner's response to the Proposed Finding is a lesser one, the "reasonable likelihood of

the validity of the facts" standard described in section 83.6, the same standard used for all acknowledgment determinations. If, in its response to the Proposed Finding, the petitioner can show that it meets the criterion under which the expedited negative Proposed Finding was issued under the "reasonable likelihood of the validity of the facts" standard, then the BIA will undertake a review of the petition under all seven mandatory criteria before the Assistant Secretary issues the Final Determination. The petitioner's response to the Proposed Finding did not establish under the "reasonable likelihood of the validity of the facts" standard that the GHP met criterion 83.7(e). No new evidence was submitted or found which rebutted the conclusions of the Proposed Finding. Therefore, the GHP response did not trigger a BIA evaluation of the GHP petition under all seven mandatory criteria.

The Associate Solicitor has responded to the petitioners concerning legal issues raised by their attorney about the acknowledgment process as it operated in this matter and to inquiries from the state of Connecticut pertaining to post-comment period meetings between the petitioners and their attorney with him and with the Assistant Secretary - Indian Affairs.

This Final Determination is based upon a new analysis of all the information in the record. This includes the information available for the Proposed Finding, the information submitted by

the petitioner in its response to the Proposed Finding, evidence and documentation submitted by interested and informed parties during the comment period, the petitioner's response to the third party comments, and new evidence and documentation collected by the BIA staff for evaluation purposes. None of the evidence submitted by the petitioner, submitted by interested parties, or located by the BIA during the acknowledgment process demonstrated that William Sherman was of Paugussett or other Indian ancestry.

The petitioner continued to claim ancestry from the historic Paugussett tribe through a single individual, William Sherman, a common ancestor of the entire present membership. Extensive research by the petitioner, third parties, and the BIA has failed to document, using acceptable genealogical methods, that William Sherman was Paugussett or Indian. The evidence submitted in the GHP Response focussed on William Sherman's ancestry. No document was submitted or located for the Final Determination that identified the parents of William Sherman. No document was submitted or found for the Final Determination that provided sufficient evidence acceptable to the Secretary that William Sherman was descended from a historical Indian tribe. Considerable circumstantial evidence was submitted and located to indicate that William Sherman did not live in tribal relations during his lifetime (ca.1825-1886).

There was insufficient documentation to demonstrate who

William Sherman's mother was, and thus his maternal lineage remains undocumented. William Sherman's paternal lineage is unknown. There was no evidence concerning who his father was, nor his earlier ancestors on his father's side. The petitioner did not claim that William Sherman was Indian, or Paugussett, through his father's family. It was not documented that he was the descendant of either Ruby Mansfield or of Nancy Sharpe, alias Pease, who were identified in historical records as Golden Hill Paugussett Indians and whom the petitioner claims were the ancestors of William Sherman.

By most accounts, William Sherman, the GHP ancestor, was born in New York in 1825. On Federal census records, his age varied somewhat. He apparently spent his youth as a sailor on whaling ships, and first appeared in records relating to Trumbull, Connecticut, in 1857. While documentation pertaining to William Sherman's ethnicity in Federal census records and state vital records was inconsistent, he was not identified as Indian until 1870 or later, nor were his children identified as Indian in records predating the 1870 Federal census. The documents do not indicate that he interacted with known Paugussett descendants who lived elsewhere in Connecticut during the 19th century. Most accounts of his supposed Paugussett ancestry have depended upon internally inconsistent descriptions provided in books published by two local historians, D. Hamilton Hurd in 1881 and Samuel Orcutt in 1886.

For purposes of this determination, evidence has also been examined to determine if the group's membership otherwise meets the requirements of criterion 83.7(e) of descent from a historic tribe. The present-day membership of the GHP descends from two of William Sherman's nine children. Neither William Sherman nor his children married Paugussett Indians or other Indians; therefore, the membership does not have Indian ancestry through any other possible Indian ancestors.

A substantial body of documentation was available about the petitioning entity and its ancestors. None of the documentation demonstrated descent from the historic Paugussett tribe or from any other tribe for the GHP. The available documentation did not demonstrate any American Indian descent, regardless of tribal affiliation. Even if Paugussett or other Indian ancestry could be determined for William Sherman, descent through one person with Indian ancestry does not meet the requirements of criterion 83.7(e) for tribal descent.

The Golden Hill Paugussett Tribe has not demonstrated that its membership is descended from a historic tribe, or tribes that combined and functioned as a single autonomous political entity. Therefore, the Golden Hill Paugussett Tribe does not meet criterion 83.7(e).

This determination is final and will become effective 90 days from the date of publication, unless a request for

reconsideration is filed pursuant to §83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (§83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the FEDERAL REGISTER (§83.11(a)(2)).

ada E. Deer  
Ada E. Deer  
Assistant Secretary - Indian Affairs

Dated: 9-16-96

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TECHNICAL REPORT

FINAL DETERMINATION

GOLDEN HILL PAUGUSSETT TRIBE

Purpose of the Federal acknowledgment regulations. The purpose of the Federal acknowledgment regulations is "to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes" (25 CFR 83.2). The "Standards of Evidence" section of the regulations explains further that:

The purpose of the acknowledgment process is to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians (25 CFR Part 83, "Standards of Evidence and Stringency of Requirements," 59 FEDERAL REGISTER 9281 (1994)).

In 1994, the revised Federal acknowledgment regulations, which became effective March 28, 1995, were published in the FEDERAL REGISTER (59 FEDERAL REGISTER 9280-9300 (1994)). The revised regulations did not alter either the basic purpose of the acknowledgment procedure as stated in the 1978 regulations or the standard of continuity of tribal existence. The revised regulations in some circumstances reduced the burden of evidence on petitioners. In the 16 years that the acknowledgment process had operated, certain types of evidence had been found to be more effective than others.

One of the purposes of the revised regulations was to clarify the application of the seven mandatory criteria (§83.7(a)-(g)). The changes in the regulations were not intended to alter the outcome of cases. Those groups which would have been acknowledged under the 1978 regulations would be acknowledgeable under the revised regulations. Those which would not have been acknowledged under the 1978 regulations would be denied under the revised regulations.

A major concern of Congress, the Department of the Interior (Department), and petitioners had been the length of time it took petitioners to complete the acknowledgment process under the 1978 regulations. The revised regulations include

section 83.10(e), which describes an expedited process under criteria 83.7(e), that the group descends from a historic tribe; 83.7(f), that the membership does not consist principally of members of an acknowledged tribe; or 83.7(g), that the petitioner has not been terminated or forbidden a Federal relationship, would receive an expedited negative determination (59 FEDERAL REGISTER 9297 (1994)).

Criterion 83.7(e) concerns descent from a historical Indian tribe, or from tribes which have amalgamated and functioned as a single unit. Descent from an Indian tribe is determined through a standard methodology based on a well-defined set of genealogical facts. The BIA undertakes the genealogical evaluation early in the Government's review process. Therefore, the Department revised the regulations to provide an "expedited" review of certain petitions on the basis of criterion 83.7(e). By providing for an "expedited" Proposed Finding under criterion 83.7(e), the BIA would avoid time-consuming research under the other six mandatory criteria on petitioners unable to document North American Indian tribal ancestry within the meaning of the 25 CFR Part 83 regulations.

#### Evaluation Procedure under 25 CFR Part 83.

The Golden Hill petitioner's (hereafter referred to as GHP) Proposed Finding was made under §83.10(e); the section in the revised regulations which describes the expedited process for criteria 83.7(e), (f), or (g), as follows:

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7 (83.10(e)).

83.10(e)(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and

publish a Proposed Finding to that effect in the FEDERAL REGISTER. The periods for receipt of comments on the Proposed Finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section (83.10(e)(1)).

The BIA's response to public comments on the proposed revised regulation included discussions of this provision:

Commenters generally approved the addition of this section, which provides for a limited, speedy review of petitions which cannot, upon examination, meet the requirements of certain acknowledgment criteria. The primary concern was whether sufficient review and due process would be accorded (59 FEDERAL REGISTER 9290 (1994)).

The response explained further of the level of proof required:

The section requires clear evidence, apparent on a preliminary review, that one of the three named criteria are not met (59 FEDERAL REGISTER 9290 (1994)).

These expedited reviews would take place after the petition is completed by the petitioner and before active consideration begins. The response to the public comment on the proposed regulation states:

This limited evaluation will only occur after the petitioner has had the opportunity to respond to the technical assistance review (59 FEDERAL REGISTER 9290 (1994)).

Under §33.10 (e)(1), Ada E. Deer, the Assistant Secretary - Indian Affairs (AS-IA) issued the Proposed Finding to decline to acknowledge the Golden Hill Paugussett Tribe as an Indian tribe on May 24, 1995. This Proposed Finding was made after two technical assistance (TA) letters had been sent to the GHP (BIA 8/23/93; BIA 10/19/94) and the GHP had requested that the petition be placed on active consideration (GHP 11/21/94). The Proposed Finding found that the

GHP membership did not descend from a historic tribe, but from a single individual whose Indian ancestry was not demonstrated.

The proposed negative finding was published in the FEDERAL REGISTER on June 8, 1995. It stated in part:

As provided by 25 CFR 83.10(e)(1) and 83.10(h) through 83.10(l), any individual or organization wishing to challenge the Proposed Finding may submit factual or legal arguments to rebut or support the evidence relied upon. This material must be submitted on or before December 5, 1995 (60 FEDERAL REGISTER 30430, June 8, 1995).

#### Introduction and Administrative History.

The GHP first submitted a letter of intent to petition for Federal acknowledgment in 1982. An extensive and ongoing exchange of information and advice took place between the GHP and Bureau of Indian Affairs (BIA) evaluators from the beginning of the administrative process in 1982.

The GHP submitted a documented petition on April 12, 1993. Since that time, BIA researchers have frequently been in contact with GHP members, leaders, and their researchers. The problems with their petition have been clearly stated to them on many occasions in person and in writing. The BIA made a formal technical assistance review of the documented petition, and on August 26, 1993, sent the first obvious deficiency ("OD") letter to the petitioner (BIA 1993). This letter was required by the acknowledgment regulations and allowed the petitioner to revise and augment the petition before it was evaluated on its merits. The purpose of the technical review and obvious deficiency letter in the 1978 regulations was to prevent the possibility that a petitioner might receive a negative decision because of technicalities or failure to develop fully the available evidence.

The 1993 GHP OD (BIA 1993) letter clearly discussed the deficiencies of the petition as submitted in demonstrating that the group met criteria 83.7(a), (b), and (c). Concerning criterion 83.7(e), it referred specifically to the issue of descent from a historical tribe:

Criterion (e) requires that the membership of a petitioning group consist of individuals who can

show descent "from a tribe which existed historically" or from historical tribes which combined as a single entity. You need to provide evidence to establish the lineal descent of William Sherman and George Sherman from the historical Paugussett tribe. Ruby Mansfield Sharpe's descent from a specific tribe rather than from the grouping of "Golden Hill Indians" needs clarification as well. (BIA 1993).

The petitioner responded to this first "OD" letter on April 1, 1994. The BIA then sent the GHP a second technical assistance review (BIA 1994a) under the revised regulations which became effective March 28, 1994. This letter, like the first OD letter (BIA 1993), listed many obvious problems the petition had in documenting evidence for criteria 83.7(a), (b), and (c). In regard to criterion 83.7(e), the TA letter specifically pointed out that documentary evidence of William Sherman's parentage should be submitted if it was available:

Criterion (e) requires that the membership of a petitioning group consist of individuals who can show descent "from a historical Indian tribe. . . ." The new data you submitted have answered many of the BAR's questions about your genealogy. However, if you have documentary evidence identifying the parents of William Sherman, the ancestor who provided the descendance for the entire group, we encourage you to submit it now (BIA 1994a).

By specifically requesting information on the parentage of William Sherman, the second TA letter (BIA 1994a) focussed the attention of the GHP petitioner and their researchers on Indian ancestry as a threshold requirement for meeting 83.7(e). Descent from a historic tribe under 83.7(e) cannot be determined without documentation of Indian ancestry.

The second TA letter (BIA 1994a) included a statement which informed the GHP that a determination by the BIA that a petitioner has submitted enough information for the BIA to make an evaluation of the petition does not imply that either the evaluation or the decision would be positive:

The acknowledgment regulations provide a technical assistance review to ensure that a petitioner will be able to present its best possible case and that

a petition will be considered on its merits. This review does not mean that the BAR has reached or will reach a positive or negative conclusion on the Golden Hill Paugussett petition, or on the portions of the petition not discussed in this letter (BIA 1994a).

On November 10, 1994, the GHP instructed the BIA to place the petition on active consideration. On November 21, 1994, the BIA assigned the petitioner place number six on the "Ready, **Waiting** for Active Consideration" [emphasis added] list and informed the petitioner that genealogical work would begin (BIA 1994b).

As is normal practice in processing a petition, after the petition has been placed on the "ready" list, but before the petition has been placed on active consideration, the BIA genealogist begins to enter the genealogical data into a data base. During this process of data entry, the genealogist is often the first BIA researcher to discover that a particular case may have significant problems under criterion 83.7(e).

Expedited decisions may only be done at this stage, after the petition has been placed on the "ready" list and before active consideration. The possibility of doing an expedited finding on single criterion was provided for in the revised regulations, 25 CFR 83.10(e). In 1993, the draft revised regulations were circulated to more than 1,000 individuals and organizations for review. To assure due process to petitioners, in the response to comments on the revised regulations published in the FEDERAL REGISTER on February 25, 1994, the BIA wrote concerning expedited negatives:

This limited evaluation will only occur after the petitioner has had the opportunity to respond to the technical assistance review (59 FEDERAL REGISTER 1994, 9290)

In the regulations themselves, the time for the expedited review is clearly delineated:

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the



group can meet the mandatory criteria in paragraphs (e), (f) or (g) of §83.7 (25 CFR 83.10(e)).

The BIA had issued one expedited negative decision based on §83.10(e) before the GHP Proposed Finding. The MOWA petitioner received an expedited negative Proposed Finding January 5, 1995, some six months before the GHP expedited decision was published.

Through continuing technical assistance and availability of the government's researchers, the BIA provides due process to petitioners in the period between issuance of a Proposed Finding and issuance of a Final Determination. Since the GHP Proposed Finding was issued on June 8, 1995, the petitioner has had many opportunities to consult with BIA staff members and researchers. The BIA researcher and branch chief have held many discussions with the petitioner's members, researchers, and attorneys. The BIA's detailed technical report was provided to the petitioner and was also made available to the public. The petitioner has had full access to all of the BIA's genealogical and historical documentation and interview materials, and to all materials that have been submitted by third parties. This type of open communication and continual interchange is how the BIA normally works with petitioners.

For the Proposed Finding, the BIA reviewed a substantial body of documentation. This included documentation submitted as evidence by the petitioner, documentation submitted by interested parties, and documentation located by the BIA researchers. The BIA clearly showed that the evidence did not support the petitioner's claims to Golden Hill Paugussett Indian tribal ancestry, nor did nor was the evidence adequate to document Indian ancestry for the petitioner within the meaning of the regulations. In demonstrating that the petitioner clearly did not meet criterion 83.7(e) due to lack of evidence, the BIA met the burden of proof standard the regulations required of the government when making expedited Proposed Findings under §83.10(e).

Once a Proposed Finding has been issued under 83.10(e), the burden of proof shifts to the petitioner in responding to the Proposed Finding. A lesser standard of proof is applied to the petitioner's response. The petitioner is only required to show it met the criterion under which the expedited Proposed Finding was issued, in this case criterion 83.7(e); under the "reasonable likelihood of the validity of the facts" standard. If the petitioner's response

demonstrates that the petitioner met the criterion under which the Proposed Finding was issued, in this instance criterion 83.7(e), under the "reasonable likelihood of the validity of the facts" standard, the BIA would then review the entire case under all seven mandatory criteria before issuing a final determination. This procedure was stated clearly in the Yuchi expedited negative finding, which was based on the petitioner's not meeting criterion 83.7(f):

In the event that the comments submitted demonstrate that the petitioner meets the requirements of criterion 83.7(f), the Assistant Secretary has the authority under sections 83.10 (1)(1) to conduct such additional research and request from the petitioner and interested parties such information as is necessary to supplement the record concerning the other criteria and evaluate the petitioner under those criteria (BIA 1995b, 5; Yuchi Proposed Finding, Summary under the Criteria).

The GHP Proposed Finding was based both on a lack of positive evidence that William Sherman was of Golden Hill Paugussett descent and on negative evidence that William Sherman had not been shown to descend from an American Indian tribe.

This Final Determination represents a new analysis of all the information in the record. This includes the information available for the Proposed Finding plus the extensive information submitted by the petitioner in the GHP Response, the new evidence and documentation submitted as third party comments, the GHP Response to the third-party comments, and new evidence and documentation collected by the BIA staff for evaluation purposes.

No new documents submitted or found rebutted the GHP Proposed Finding. No document was submitted or found for the Final Determination that identified the parents of William Sherman, the person from whom all the present-day GHP membership descends. No material was submitted or found for the Final Determination that documents with evidence acceptable to the Secretary that William Sherman descended from a historical American Indian tribe. New evidence substantiated the conclusion reached in the Proposed Finding that William Sherman did not live in tribal relations during his lifetime.

Evaluation of Genealogical Evidence by the BIA.

The BIA bases its findings under criterion 83.7(e) on evidence obtained through standard research methods in the discipline of genealogy:

The standards used by the BIA to evaluate evidence do not differ from those universally accepted by genealogists. How [the] BAR researchers handle genealogical evidence is clear from the precedents set in earlier BIA acknowledgment decisions. These precedents are not the product of one individual, but of peer review of the evidence (Rama-pough Final Determination 1995, 17).

The BIA researchers are aware that there may be periods of time or areas for which records are not extant. The regulations clearly illustrate that in the absence of any one particular type of record, others may be used. Thus:

CONCLUSIVE PROOF is not possible in genealogical research. It is impossible to "prove" ancestry to an absolute certainty . . . . Unfortunately, there are no witnesses to a birth present today to testify regarding a birth of a child born in 1800. In genealogy, since *personal knowledge* (except in rare instances) is lacking the rule is that ancestry may be established by a *preponderance or greater weight of the evidence*. This term does not mean physical weight, such as ten books stating the same facts against one book which states a different fact. It means quality, not quantity. For example, the genealogical facts stated in a valid last will and testament will be considered very reliable and, if the ten books disagreed, you would reject the ten printed volumes (Stevenson in Rubincam 1980, 1:40).

The BIA researchers attempt to ascertain the truth, even though their conclusions may be contrary to family or tribal tradition. This possibility that research may contradict tradition is not unique to research on American Indians:

It is natural for people to feel that a special sanctity inheres in the traditions of their own family. To doubt them is to doubt the veracity of their parents and grandparents . . . . Those who employ genealogists, on the other hand, should

realize that their genealogist gets no pleasure out of destroying their traditions. He is employed to ascertain the truth, and it is his duty to report what the records reveal . . . . Therefore, traditions must be sifted, and tested, and utilized as clues, but not accepted as true until verified from contemporary documentary sources (Jacobus in Rubincam, 1980, 1:16-17).

Many books on how to do genealogical research have been written. Most contain information about the weighing of evidence. Rubincam's two volume text, Genealogical Research: Methods and Sources (Rubincam 1980), categorized the acceptability of various genealogical sources. They are reproduced from his book by permission of the author.

Facts of each case must be interpreted and judged on its merits as circumstantial evidence cannot be accepted without careful research and deliberation

**Admissibility of Evidence**

This is the term one often hears on television, bandied about in the so-called dramas about the law. Please remember that when evidence is "admissible" or "admitted into evidence," it is no indication that the evidence or information is true. It merely means the court or jury may consider it and judge whether it is true or not. That is what you as a one-person jury sitting in a "court of genealogy" should do: consider and analyze all of the facts, regardless of the source, whether tradition or an official record, then decide if you should accept or reject those facts.

**General Rules for Judging the Reliability of Genealogical Evidence**

Class or Category	Source of Evidence	Type of Evidence	Rating of the Evidence
1st	Testimony of Witnesses: Evidence from a witness who has personal knowledge of the facts sought to be proven. An "eye-witness."	Testimonial Personal Knowledge	Excellent - depending on the competency and credibility of the witness.
2nd	Official records, such as vital, land, probate and other court records.	Hearsay	Excellent, but still hearsay. Nevertheless, apt to be correct in most cases.
3rd	Testimony of Witnesses: Evidence from a witness who does not know the facts from his own personal knowledge. (Testimonial family declarations.)	Testimonial Hearsay	Generally reliable, but still hearsay. In isolated cases more reliable than Class 2.
4th	Private records, such as church, corporation and other business records.	Hearsay	Reliability varies greatly, but generally dependable.
5th	Family records: Diaries, journals, letters, Bible records and any other records compiled by a member of a family (Documentary Family Declarations).	Hearsay	Reliability varies from poor to reliable. If it is

Class or Category	Source of Evidence	Type of Evidence	Rating of the Evidence
6th	Newspaper: Eites Contemporary accounts of births, marriages, and deaths.	Hearsay	Generally reliable. Hazard here is the informant and printer's errors.
7th	Family genealogies: Printed and manuscript works.	Hearsay	Poor to reliable. The test is who compiled the work and when and from what sources.
8th	General printed works: County and other local histories. Newspaper accounts: Obituaries, biographies, genealogies which are not contemporary accounts.	Hearsay	Fair. Often unreliable, but there are some excellent local histories. Judge each on its merits.
9th	Traditions: Stories or information presumably passed from one generation to another.	Hearsay	Unreliable. It is necessary to search additional sources.
10th	Folklore: Legends, stories and other information not originating in the family.	Hearsay	Very unreliable.

The decision whether to accept or reject, wholly or partially, the genealogical evidence you discover in your research is difficult and often agonizing, but it is hoped this brief chapter, which must of necessity be limited in its scope, will aid you as the judge and jury presiding in your Court of Genealogy.<sup>5</sup>

<sup>5</sup> Since this chapter was written, Mr. Stevenson has published Genealogical Evidence: A Guide to the Standard of Proof Relating to Pedigree, Ancestry, Heirship and Family History (Laguna Hills, CA, Aegean Press, 1979) (used by permission of author)

In comparison, the regulations in 25 CFR part 83.7(e) read:

The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribe or tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendency basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

Acceptable genealogical sources as listed in Rubincam's manual (Rubincam 1980) are similar to the list of sources acceptable to the acknowledgment process. Evidence acceptable for meeting the mandatory criterion 83.7(e) is well within the bounds of standard genealogical research.

The regulations do set standards for what is acceptable evidence that a criterion has been met, specifically stating that insufficient evidence that a criterion has been met is grounds for denial of Federal acknowledgment:

A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more of the criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met (§83.6(d)).

Under §83.10(e), petitioners who provide "little or no evidence" that the group can meet the mandatory criterion 83.7(e) are the petitioners who fail to provide a minimal level of evidence, using acceptable genealogical methods, to establish the present day membership's descent from a historic tribe.

#### THE PETITIONER'S RESPONSE TO THE PROPOSED FINDING

The Proposed Finding found "that the claims of the GHP petition to Indian tribal ancestry were not valid. The documents did not support the claims" (GHP Proposed Finding, Summary under the Criteria, Introduction).

The Arguments and Evidence in the Response to the BIA Proposed Finding (hereafter cited as Response) were submitted in two parts on December 5, 1995. The first part (Petitioner's response, PART I, LEGAL ANALYSIS) contained legal arguments and the second part contained both arguments and documents.

Correspondence between the petitioner and the Associate Solicitor, Division of Indian Affairs, concerning these legal issues appears in Appendix C. In brief, none of the legal issues indicate that the BIA researchers or the Department failed in any way to afford the petitioner due process in the Proposed Finding. There is no supportable legal basis upon which to issue a new Proposed Finding.

*Petitioner's response PART II. FACTUAL REFUTATION OF THE "BASIC CONCLUSIONS" AND "SPECIFIC EXAMPLES" OF THE BIA PROPOSED FINDING.*

The second portion of the petitioner's Response contained both arguments and documents. In the Response, the petitioner detailed the "following facts and evidence that William Sherman was an Indian" (Response 1995b, 27). Each of the petitioner's points will be followed by the BIA response.

*Petitioner's Response, Part II.A:*

The petitioner stated in the Response to the Proposed Finding:

1. The BIA erroneously concluded that William Sherman has not been "conclusively Documented" as a descendant of any historic Indian tribe (Response 1995b, I).

The GHP also alleged in the Response that "William Sherman is not the only historical ancestor claimed" (Response 1995b, 11).

The Department's response to Part II.A.

As will be seen from the point-by-point discussion below, William Sherman has not been documented by a "reasonable likelihood of the validity of the facts" standard to be a descendant of any historic Indian tribe.

All of the present-day members of the GHP descend from William Sherman. He is the only ancestor the GHP claims to be a Paugussett Indian.

*Petitioner's Response Point II.A.1.*

Overseer reports show that Tom Sherman, Jr. and Eunice Sherman were present at Golden Hill and were of the right ages (and names!) to be the children of Tom Sherman and Eunice Shoran Sherman. The BIA has provided no evidence to overcome reasonable inference that Tom, Jr. and Eunice were children of Tom and Eunice Shoran Sherman (Response 1995b, 27).

The Department's response to point II.A.1:

There is no contradiction between the Proposed Finding and the GHP Response on this point. The Proposed Finding made no attempt to "overcome reasonable inference" on this point. The BIA agreed that Tom Sherman, Jr. and Eunice Sherman were children of Tom Sherman, Sr. and Eunice (Shoran) Sherman, as stated in the Proposed Finding on page 15. Nothing has changed this conclusion.

*Petitioner's Response Point II.A.2.* The petitioner stated:

The wife of Tom Sherman, Jr. is not named in any corroborating document (i.e., there is no marriage license), so we cannot prove her name was Sarah; however, we do know from Golden Hill overseer reports that Tom Sherman, Jr. had a wife and children (Response 1995b, 27).

The Department's response to point II.A.2:

There is no contradiction between the Proposed Finding and the GHP Response on this point. The BIA agreed that Tom Sherman, Jr. had a wife and children, as stated in the Proposed Finding on page 30. Nothing has changed this conclusion.

*Petitioner's Response Point II.A.3.* The petitioner stated:

The overseer reports from 1811 to 1839 and the 1823 census of Golden Hill confirm that a Ruby Sherman was a member of the Golden Hill Tribe, and was the right age to have been Tom Sherman, Jr.'s daughter; no birth certificates or baptismal records prove or disprove this relationship (Response 1995b, 27).

The Department's response to point II.A.3:

There is no contradiction between the Proposed Finding and the GHP Response on this point. The BIA agreed that a Ruby Sherman was a member of the Golden Hill Tribe, and was the right age to have been Tom Sherman, Jr.'s daughter, as stated in the Proposed Finding on page 30. Nothing has changed this conclusion.



*Petitioner's Response Point II.A.4:*

We know that Ruby Sherman was a Golden Hill Indian from the overseer reports and that she was variously known as Ruby Sherman, Ruby Mansfield, and Ruby Mack (Response 1995b, 27).

The Department's response to point II.A.4:

The comment in the GHP Response is partially incorrect. It is true that a Ruby Sherman, daughter of Tom Sherman, was listed on the Golden Hill overseer's report of 1823 (Proposed Finding, 30). However, there is no evidence to show that Ruby Sherman, daughter of Tom Sherman, was the same person as Ruby Mansfield or Ruby Mack. Neither is there evidence to show that Ruby Mansfield and Ruby Mack were the same person. Evidence was located which indicated that they were two separate individuals.

There is evidence that one Ruby was the daughter of Eunice Mack of Woodbridge, Connecticut. A Ruby Mack died in 1841 (see discussion of the Mack family in the section on Orcutt, below).

The Ruby Mansfield who petitioned for a home in Bridgeport, Connecticut, in 1841 with a Nancy Sharpe, alias Pease, appears to have been a different person from the Ruby Mack who died the same year (see discussion under Nancy Sharpe, alias Pease). The use of an "alias" name form was common during this time period (Rubincam 1987, 40). However, the Ruby Mansfield who was listed on the 1841 petition for a home in Bridgeport was not called "alias Mack or Sherman" as was her contemporary "Nancy Sharpe, alias Pease."

The use of an alias may have several meanings. In his book, Pitfalls in Genealogical Research (Rubincam 1980), Milton Rubincam states:

Sometimes one finds an ancestor with two surnames separated by the word alias . . . . Parish registers often used it [alias] to indicate illegitimacy, the putative father's name and the mother's surname, with "alias" in between. Sometimes it meant an inheritance--a man marrying an heiress and adding her name to his, separated by "alias." In other cases a man whose wife or mother belonged to a distinguished family might assume the additional name, again indicated by "alias"

(Rubincam 1987, 40-41).

In addition, the Ruby Mack who died in 1841 was identified as "Black(Indian)" on her death record, which did not indicate whether "Mack" was her maiden name or married name, or identify her parents (see discussion in PF). However, a Ruby Mansfield was listed as living with her husband, "a colored man," in 1848, seven years after Ruby Mack's death (Fairfield County, Connecticut, Court Files, 1858-1849). These documents provide clear evidence that Ruby Mansfield and Ruby Mack were not the same person.

The petitioner did not submit substantive evidence that would undermine the conclusion in the Proposed Finding that Ruby Sherman, daughter of Tom Sherman, was not identified with Ruby Mansfield or Ruby Mack. There is no evidence that the Ruby Sherman of the 1823 overseer's report was either of the persons known as Ruby Mack or Ruby Mansfield.

*Petitioner's Response Point II.A.5:* The petitioner stated:

No birth records were kept in Poughkeepsie, the place of William Sherman's birth, before 1882 (see Appendix I); death records were kept from 1866 in that New York town. No Connecticut law required that vital records be kept until 1852, though some towns kept them prior to this date. Thus, no birth records are likely to exist for any individuals, including William Sherman, born prior to the mid to late 1800's (Response 1995b, 28).

The Department's response to point II.A.5:

Although it is true that research has not located a birth record for William Sherman in Poughkeepsie, Dutchess County, New York, other records which may contain information identifying birth, death, and marriage information do exist for Dutchess County, New York. For example, the county clerk has civil court records from 1847, and land records from 1718. The Surrogate Court has probate records (though no dates are listed for them) (Everton 1981, 205).

BIA research found that the series of "Records of the Town of Poughkeepsie, 1742-1854, Highways," contained some records of the Overseer of the Poor. Most of them were manumissions of slaves in New York. Some were births of the children of slaves. One Stephen Booth of Reading, Fairfield County, Connecticut, submitted a petition for the

manumission of his slave "according to the laws of New York" (Poughkeepsie Town Records, Highways, 94). The slave had been born in New York, and thus needed to be manumitted in New York. The Overseer of the Poor's records within this record series were supposed to continue until 1835, but the pages were cut cleanly as with a sharp object or scissors, from the first entry of 1826, concluding the entries pertaining to the Overseer of the Poor's documents. Approximately 20 pages were missing.<sup>1</sup> The book is in original form only, and may not be photocopied. It is in the Greater Poughkeepsie Library District, Local History Room. There is no index for the entries.

Although the GHP is correct in noting that Connecticut law did not require recording births and deaths until 1852, many of the towns kept vital records from much earlier dates. For example, Bridgeport, the county seat of Fairfield County, has vital records from 1700 (Everton 1981, 143).

Orcutt's The History of the Old Town of Stratford and the City of Bridgeport, Connecticut (Orcutt 1886), a secondary source, is the only known record which purports to state William Sherman's birth date and parentage. The accuracy and sources of Orcutt's history is discussed later (see discussion under Orcutt, pages 42-48).

*Petitioner's Response Point II.A.6:*

William Sherman's death registry and obituary say he was Indian (Response 1995b, 28).

The Department's response to point II.A.6:

It is correct that the death record on file at Trumbull, Connecticut (Trumbull Vital Records), and the obituary (Bridgeport Standard May 19, 1886; see extensive discussion below) stated that William Sherman was an Indian. However, William Sherman's death record from the church records

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<sup>1</sup> The edges of the paper were aged and were the same color and texture as the aged document. Since the century old documents were in original form only, a recent cut would have been of a different color than that of an older cut. Upon observation and discussion with the Poughkeepsie librarian, both the librarian and the BIA researcher concluded that this particular record mutilation had probably been done over 20 years ago, and would not be likely to be connected with the GHP petitioning process.

specifically stated that the information on his background had been drawn from Orcutt:

May 18. William Sherman died, age - 61 years - He was from the Golden Hill tribe of Indians - See Orcutts [sic] - History of Stratford - page 43 (Trumbull Connecticut (Formerly North Stratford) Congregational Church Records, 1730-1931 [unpaginated], 1886; photocopy of original in GHP Pet. Ex.).

A registrar of vital records in a town generally received his information from informants available at the time of the event, such as a doctor, parent, spouse or child. A death record, or death registry, is not primary evidence of a decedent's date or place of birth or parentage. It is unclear that the registrar who recorded the civil record of William Sherman's death had any independent source. No informant was named. The registrar may have simply copied information from Orcutt's or Hurd's books. He may have had personal knowledge of local gossip.

William Sherman's obituary also said that he was Indian. Like death records, obituaries are not primary evidence of the decedent's place or date of birth, or parentage. A discussion of the obituary is found on page 82 of this report.

*Petitioner's Response Point II.A.7:*

The 1880 Census of Trumbull identifies William Sherman as Indian, wife Nancy as Black, and Charles as Mulatto. The 1870 Census shows all of his children as Indian (Charles wasn't born yet). Though the written designation of William's race is illegible, the designations for his children show that they were Indians. The likelihood, therefore, is that the 1870 Census designated William as an Indian. This likelihood is further bolstered by the fact that Hurd likely obtained his information from the overseers of the Tribe or from the 1880 Census; at least in the Preface of his history, he said that he used such primary data. The overseers, of course, had reason to be accurate about William Sherman's lineage, as they were bound by law to distribute Golden Hill funds only to blood descendants of Golden Hill tribal members (Response 1995b, 28).

The Department's response to point II.A.7:

William Sherman's ethnic identity was reported differently during various periods of his lifetime. On the earliest census on which he has been located, he was listed "black" (U.S. Census 1850a); on the next census, he was "mulatto" (U.S. Census 1860\*\*\*); on yet a third census the information is obscured, but possibly reads "I" for Indian (U.S. Census 1870a); while on a fourth he was identified as "Ind" (U.S. Census 1880a). All other records, except for the death record and obituary, that were made during the lifetime of William Sherman or immediately thereafter, did not identify William Sherman as Indian.

The reporting of William Sherman's ethnic identity changed about 1870. Late in his life, William was identified as Indian on four documents discussed in this report (1886 church death record, 1886 obituary, the 1880 Federal census, and possibly the 1870 Federal Census). William Sherman's "color" was not legible on the 1870 census (U.S. Census 1870a) because of an overwritten smudge. The 1870 Federal Census was the only document that listed his children as Indian. His other sons, Henry and William, who were no longer residing in his household, were listed as black on the same census (U.S. Census 1870a).<sup>2</sup> Aside from the children in his household in 1870, the only child of William Sherman to be listed as an Indian during the 19th century was Henry Sherman, on his 1876 death record (Trumbull Vital Records, 1877).

Census returns are good secondary sources of information, but are only indicators for determining age, familial relationships, birthplaces and ethnicity. The census

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<sup>2</sup> 1870 Federal Census, Huntington, Fairfield County, CT:

Dwelling #49, Family #46				
Buckingham, Chas	54, M, W, Farmer	5000/825		b. Conn.
Mary	44, F, W, Keeping home			b. Conn.
Fanny	17, F, W, At home			b. Conn.
Sherman, Henry	12, M, B, Farm Laborer			b. Conn.
Dwelling #59, Family #56				
Buckingham, W. C.	50, M, W, Farmer	4200/1980		b. Conn.
Samuel	89, M, W, None			b. Conn.
Almira	35, F, W, Keeping home	/1100		b. Conn.
Sherman, William	12, M, B, Farm help			b. Conn.

NOTE: The brothers were not twins, but were close in age. Ages recorded on census records were often approximate.

enumerations were made by observations of the census taker or by self identification by the person being enumerated. The census records were not consistent in identifying William Sherman and his children as Indian. In 1860 the family was listed as mulatto (U.S. Census 1860).

The 1880 census listed the child with William Sherman as mulatto (U.S. Census 1880a). Most of William Sherman's other children, no longer residing in his household, were listed as black, with one listed as white, in the same census (U.S. Census 1880a).<sup>3</sup> None were listed as Indian.

The petitioner's assumption that Hurd "likely obtained his information from overseers of the Tribe or from the 1880 Census" (Response 1995b, 28) is inconsistent with the availability of the records. While Hurd may have had some access to the financial records of the town, the 1880 Federal census was legally not available to him or other members of the public until 1952, 72 years after it was taken (Twenty Censuses 1979, 4). Hurd's book was published in 1881.

The petitioner's assumption that the overseers, "had reason to be accurate about William Sherman's lineage, as they were bound by law to distribute Golden Hill funds only to blood descendants of Golden Hill tribal members" (Response 1995b, 28) is inaccurate. We have no overseer's reports concerning determination of Paugussett lineage for William Sherman. There is no way to know, as the GHP asserts, that or if William Sherman was determined to be a "blood descendant of Golden Hill tribal members," by any Golden Hill overseer.

<sup>3</sup> 1880 Federal Census, Bridgeport, Fairfield County, CT

Dwelling #150, Family #186			
Quonmer, Elijah F.	W, M, 59	retired	Conn/Conn/Conn
Elizabeth	W, F, 66, wife	keeps house	Conn/Conn/Conn
Lupton, Chas. S.	W, M, 33, son-in-law	Mfgr	Conn/Conn/Conn
Sarah S.	W, F, 28, daughter	at home	Conn/Conn/Conn
Mary C.	W, F, 2, grandchild		Conn/Conn/Conn
Sherman, Carrie	B, F, 15, servant		Conn/Conn/Conn
Living with the Charles Peet family in Bridgeport:			
Huldah Sherman	B, F, 13, servant		Conn/Conn/Conn
Trumbull, Fairfield County, CT			
Dwelling #11, Family #12			
Edwards, Isreal	W, M, 66	Farmer	Conn/Conn/Conn
Delice	W, F, 56, wife	keeping house	Conn/Conn/Conn
Sherman, Mary	W, F, 11, servant	housekeeper	Conn/Conn/Conn

The following analysis of his land transactions demonstrates that Golden Hill funds were not "distributed to" him, but loaned to him on a mortgage for which he provided collateral.

William Sherman borrowed money from the Golden Hill fund and used his land as collateral. The original documents of this transaction do not cite Indian identity as the reason for his borrowing the money from the fund: known non-Indians borrowed from it. To reiterate, William Sherman was not a recipient of a fund distribution. He borrowed the money as would any other person, Indian or non-Indian, from an Indian fund which the administrator was bound to protect, and to distribute should a need arise.

Generally, the overseers in Connecticut distributed Indian funds to those eligible persons who would otherwise be a burden on the town in which they lived -- poor people. In many instances, overseers were Selectmen from the towns, who had the dual responsibility of Overseer of the Poor as well as Overseer of the Indians in their towns. City funds were used for other poor, while Indian funds were used for Indian poor. William Sherman was not destitute, and hence received no funds under this distribution system.

*Petitioner's Response Point II.A.8:*

Orcutt seems to have reviewed the census and legislative reports, interviewed overseers, and possibly even interviewed Sherman himself, since he did include William Sherman's picture. Significantly, William Sherman is treated by Orcutt as a prominent Indian, even though Sherman was a laborer. Orcutt specifically attributes much to Roland [sic] Lacey, a Golden Hill overseer, whom Orcutt knew personally. See Appendix N, Supplements 1 and 8 (Response 1995b, 28).

Appendix N, referred to in this quote, contained the title pages of Orcutt's 1886 book, with the Preface and the title page of D. Hamilton Hurd's 1881 book as well Hurd's biography of Rowland B. Lacey.

Appendix N, Supplement 1 contained a memo prepared by Robert A. Schpero Esq. on June 6, 1995 to Chief Quiet Hawk, aka Aurelius Piper, Jr.<sup>4</sup>

Appendix N, Supplement 8 contained the biographical information concerning Orcutt, his connections to Tomlinson and Lacey, and his notes and letters copied from the Orcutt Papers in the Bridgeport Connecticut Public Library.

The Department's response to point II.A.8:

The petitioner's statements in Point 8 concerning Orcutt's methodology are not valid. As stated earlier, the 1880 census was not available to the public until 1952; therefore, Orcutt could not legally have reviewed the census records. Neither did William Sherman have the "prominent Indian" status described by the petitioner on the basis of Orcutt (Orcutt 1886). Orcutt did not ascribe the term to William Sherman.

Orcutt did not cite any legislative reports pertaining to William Sherman. There is no evidence that Orcutt interviewed William Sherman or others, including overseers, for his 1886 book. Instead, Orcutt relied on contributions from his many correspondents in compiling his history (Response 1995b, Supplement 8). Orcutt did know Roland Lacey, who may have been an informant. It is probable that Orcutt read Hurd's 1882 book on Fairfield County, though he did not cite it. There is evidence that he had read DeForest's 1851 book on the Indians of Connecticut (DeForest 1851) because he cited DeForest.

Robert A. Schpero's memo to Aurelius Piper, Jr. detailed "some of the major inaccuracies, misstatements and wrong conclusions" regarding William Sherman's life and origins (Response 1995b, Exhibit 1, 1). Schpero stated:

Reverend Samuel Orcutt 1824-1893 prolific historian and genealogist. Interviewed William Sherman and wrote about him and the Sherman genealogy (Response 1995b, Exhibit 1, 2).

Schpero did not submit any evidence confirming that Orcutt interviewed William Sherman or even knew him personally. Orcutt may, however, have surveyed Hurd's 1881 book (Hurd

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<sup>4</sup> This memorandum also appeared elsewhere, in Supplement 3.



1881), which had been published three years before Orcutt moved to Bridgeport in 1884, and five years before Orcutt published his Stratford and Bridgeport history in 1886 (see Orcutt discussion, pages 42-48 below).

Schpero also enclosed annotated genealogical charts that did not cite to any sources not already considered in the Proposed Finding. He used the materials submitted by Wes Taukchiray (see Third Party Comments, Taukchiray, pages 53-58 below), but did not submit any evidence to document the assumptions of ancestry.

Schpero's points have been considered by the BIA in evaluation of the evidence for the Final Determination. However, his comments were completely undocumented and could not be verified by the available evidence.

*Petitioner's Response Point II.A.9:*

The birth certificate of William Sherman, Jr. shows that his parents were William and Nancy Sharpe. This established a connection between William Sr., and the name Sharpe, that of his mother. BAR acknowledges that William Sr.'s association with his mother, Nancy's other children suggests the existence of a familial relationship between William Sr. and Nancy. While this document may be itself, insufficient to conclude that William Sherman was the son of Nancy Sharp (See Technical Report at 41), when viewed in conjunction with other, corroborating evidence, it cannot be ignored. Certainly this document established that William Sherman, Jr. was called William Sharp at the time of his first son's birth in 1857. It seems extremely unlikely that a son born on September 22, 1857 in Trumbull to some other sailor of the right age, or to anybody other than William Sherman, Sr. and his wife, Nancy Sharpe. Many documents establish that William Sherman, Sr. and his wife Nancy lived in Trumbull in 1857 (Response 1995b, 28).

The footnote to the Supplements says that "The designation of white race is the only error in this vital record, which is information that was regularly inconsistently recorded."

The Department's response to point II.A.9:

Information submitted to the BIA by the petitioner and found by the BIA researchers allows only glimpses of William Sherman. The BIA agrees that the records show that William and Nancy **SHERMAN** lived in Trumbull from at least 1857 until they died. The BIA researcher found the 1857 record of the birth of a male child to a William and Nancy **SHARPE** in the Trumbull Town records and informed the GHP researchers, as well as the Paugeesukq group. The petitioners were advised that the document in question would not be evidence, but it was the only document ever that would in any way circumstantially connect any Sherman with any Sharpe. The BIA did not conclude that this was birth record of William Sherman, Jr.

There are more inconsistencies in the record than the footnote in the petitioner's submission would lead one to believe. The document read:

First of Jany 1858			L.G. Beers Registrar				
DATE OF BIRTH	NAME OF CHILD	SEX	NAMES OF PARENTS	AGE	COLOR	OCCUPATION	RESIDENCE
Sep 22		Male	William Sharpe	30	White	Sailor	Trumbull
			Nancy Sharpe	24	White		
(Trumbull Town Birth Records 1858)							

The Sherman Bible submitted with the GHP petition listed the birth of William Sherman, Jr. on September 22, 1857 (Proposed Finding 1995, 40).

The entry in the Bible and the birth of the male child of William and Nancy Sharpe would appear to be the same child. However, the ages of William and Nancy Sherman as listed on the other documents show that either William Sharpe was not the same person as William Sherman or the registrar received invalid information from which to record the birth of the male child in 1857.

It has not been shown that the child born to William and Nancy Sharpe in 1857 was the same as the child of William and Nancy Sherman, i.e. that William and Nancy Sharpe were William and Nancy Sherman. The father listed on the Sharpe birth record was not "the right age" as claimed by the Response. William Sherman's age varied greatly among the documents, as shown on Chart 1. Although age variations of several years on census records are not uncommon, in this instance the variations are so great as to raise the possi-

bility that the documents pertained to two different men named William Sherman. The sailing records are consistent with one another.

**TABLE 1**

RECORD	WILLIAM SHERMAN'S AGE	NANCY SHERMAN'S AGE
1848 Ship Montezuma	23	
1850 Federal Census (Sailor)	25	
<b>1850 Federal Census</b>	<b>30*</b>	<b>15</b>
1851 Ship Clematis	26	
1853 Ship Clematis	28	
1858 birth of male child	33	30
<b>1860 Federal Census</b>	<b>40*</b>	<b>25</b>
1862 birth of son	38	30
<b>1870 Federal Census</b>	<b>44*</b>	<b>36</b>
1873 birth of stillborn child	49	41
<b>1880 Federal Census</b>	<b>55*</b>	<b>45</b>
1886 Death Record	61	

(\*Note the age discrepancies of William Sherman between the 1850 and 1860 Federal censuses and the 1870 and 1880 Federal censuses on which Indian designation was listed.)

The birth registrar who in January 1858 recorded a male child born to William and Nancy Sharpe in 1857, was the same person who recorded the birth of the male child born to

William and Nancy Sherman in 1858 (Trumbull Town Records 1857, 1858).<sup>5</sup>

*Petitioner's Response, claims pertaining to the relationship of William Sherman and Henry Pease, under Point II.A.9. The Response states that:*

William [Sherman] Sr.'s association with his mother, Nancy's other children suggests the existence of a familial relationship between William Sr. and Nancy (Response 1995b, 28).

In addition, the Response to Lynch<sup>6</sup> states:

If Henry Pease is Indian as the BAR concedes William Sherman is related to Henry Pease then William Sherman must be Indian [*sic*] (Response to Lynch 1996, n.p.).

The Department's response to petitioner's response, claims pertaining to the relationship of William Sherman and Henry Pease, II.A.9. The Petitioner asserts in the Response that William Sherman's relationship to Henry Pease constituted a direct genealogical link between William Sherman and the Indian woman, Nancy Sharpe, alias Pease, and to the historical Golden Hill Paugussett tribe. However, the Proposed Finding did not "concede" that Henry Pease was Indian. The assumptions made by the petitioner involve two separate statements. The first pertained to the children of Nancy Sharpe, alias Pease:

Nancy . . . had William Sherman; after which she m. John Sharpe, and had Beecher, Nancy and Charles, and Sharpe being sent to State's Prison, she lived with a man Rensler [no surname] and had Olive<sup>7</sup> (Orcutt 1886, 43).

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DATE OF BIRTH	NAME OF CHILD	SEX	NAMES OF PARENTS	AGE	COLOR	OCCUPATION	RESIDENCE
October 21		male	William Sherman Nancy	33 30	white	laborer	Trumbull

(Trumbull Town Birth Records 1858)

<sup>6</sup> For more extensive discussion of the GHP Response to Lynch, see below in this report.

<sup>7</sup> In 1850, a Rensellar Peas was residing in Bridgeport, Fairfield County, Connecticut, age 43, M[ale], M[ulatto], with Caroline Jackson, 35, F[emale], M[ulatto], and Olivette Peas, age seven, F[emale],

Hurd stated that Henry Pease was the nephew of William Sherman, without specifying the parentage of Henry Pease (Hurd 1881, 65). The parentage of Henry Pease is undocumented. In 1850, he was age five, residing in the household of a Levi Peas (U.S. Census 1850a, 320, Dwelling #5, Household #5).<sup>8</sup>

Documents available to the BIA at the time the Proposed Finding was issued supported the claim that William Sherman, Sr. was involved in the life of Henry Pease (see Proposed Finding 1995, 42-44) and was perhaps involved in the life of Olive, daughter of Nancy Sharpe, alias Pease, if the child Olive mentioned by Orcutt was the same person as Olivette Peas in the household of Renslaer Peas in the 1850 census and the same person as Mary Olive Jackson (see Proposed Finding 1995, 36-37, 40). On the basis of the documents available at the time the Proposed Finding was issued, the BIA stated that, "[a]vailable records tie William Sherman closely to the other known children of Nancy Sharp, alias Nancy Pease" (Proposed Finding 1995, 36).

However, these documents did not prove that Nancy Sharpe, alias Pease, was the mother of William Sherman, Sr. The context of William Sherman's association with the persons named by Orcutt as children of Nancy Sharpe, alias Pease (Orcutt 1886, 43) did not presuppose the existence of a familial relationship between Sherman and them: according to his diary/account book, from 1857 to 1860, he "traded" with Levi Peas, in whose household Nancy Peas [Sharpe?] and Charles Sharpe, as well as Henry Pease, lived in 1850 (Proposed Finding 995, 44). Although William Sherman's diary/account book frequently mentioned Henry Pease, it never mentioned Nancy Peas [Sharpe?] or Charles Sharpe.

No documentation submitted by the petitioner, or by third parties, or located by BIA researchers, directly documented

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M[ulatto] (U.S. Census 1850a, 281, Dwelling #972, Household #1287). See discussion (Proposed Finding 1995, 36-37).

Renseller Pease married Caroline Jackson on October 10, 1850, in Litchfield, Connecticut (Litchfield Vital Records 1850); a Caroline Pease was on the 1860 census in Litchfield (see Proposed Finding 1995, 36-37 n24).

<sup>8</sup> The household contained the following residents: Levi Pease, 45, M[ale], B[lack], born in Connecticut; Henry [Peas], age 5, M[ale], M[ulatto], born in Connecticut; Nancy [Peas], age 19, F[emale], M[ulatto], born in Connecticut; Charles Sharp, age 17, M[ale], M[ulatto], born in Connecticut (U.S. Census 1850a, 320, Dwelling #5, Family #5).

any familial relationship between Henry Pease and Nancy Sharpe, alias Pease; or between the Mary Olive Jackson mentioned in William Sherman's family Bible and Nancy Sharpe, alias Pease. In 1881, Hurd had mentioned "a family named Jackson" in North Stratford, Connecticut, as among the few surviving Golden Hill descendants (Hurd 1881, 65), but provided no further information concerning this Jackson family--no given names, and no ancestral ties. Orcutt did not mention the Jacksons (Orcutt 1886, 43).

In an effort to more clearly define the relationship between Henry Pease and William Sherman, the BIA researchers reviewed William Sherman's diary/account book for the Final Determination. In 1857, William Sherman was paid to care for Henry Pease by Dwight Morris, who was then the Golden Hill fund overseer (William Sherman Diary/Account Book, 1857).<sup>9</sup> This entry implied that Henry Pease may have been Indian, but did not require it, since Dwight Morris was also Overseer of the Poor. Neither did the payment prove a family relationship between Henry Pease and William Sherman. It also increased doubt as to the 1857 Sharpe birth record, which listed William Sharpe (white) as a sailor in September of 1857, the same year that William Sherman received funds for caring for Henry Pease and "dockterin" [sic].

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<sup>9</sup> A count [sic] William Sherman and Dwight Morris

in 1857 receive - - - - -	\$8.00
for Henry Peas	
William Sherman receive - -- - -	\$10.00
for Dockterin [ <u>sic</u> ] in 1857	
William Sherman receive - - - - -	\$3.00
Cash - - - - in 1858	
William Sherman receive - - - - -	\$5.00
for dockterin [ <u>sic</u> ] Jan 14 1859	
December 22th in 1859	
Paid to Birdseys	\$6.00
William Sherman	
March the 24th in 1860	
For turning Paid to William Sherman	\$6.00
January the 18th 1862	
Cash paid to	\$31.00
William Sherman	

There were no entries found for Henry Pease in the William Sherman diary/account book for the years 1863-1865. However, such entries may have been on some of the pages that were cut out of the diary/account book. The Proposed Finding alluded to the pages that had been cut out (Proposed Finding 1995, 42), but the fact that pertinent items are missing has become more important in evaluating evidence for the Final Determination. It is here noted that many pages were cut out completely; portions of pages were also cut. The cuts were clean, as from scissors or a sharp object--not worn or torn. There were cuts from pages in 1857, 1858, 1863, 1864, 1865, and entire pages were cut out in various portions, making date identification impossible.

Certainly by the time Hurd wrote (Hurd 1881), William Sherman was listed in the Overseer of the Poor's reports as having cared for Henry Pease in the 1850's. Orcutt (Orcutt 1886) attempted to fit William Sherman into the Golden Hill picture, using documents pertaining to known Golden Hill Indians.

The only possible connection of William Sherman to other children of Nancy Sharpe, alias Pease, contained in documentation submitted for the GHP petition is the Sherman Bible entries concerning a Mary Olive Jackson, born 1842 (Proposed Finding 1995, 40-41), who may be the same person as Olivette, who seems to be the child of the Renseller Pease who in 1850 married Caroline Jackson. This identification presupposes two undocumented assumptions: (1) that seven-year-old Olivette Peas in the 1850 census was the same person as Olive, daughter of Nancy Sharpe, alias Pease, mentioned by Orcutt (Orcutt 1886, 43); and that (2) this Olive was recorded in William Sherman's family Bible under the surname of Jackson.<sup>10</sup>

*Petitioner's Response PART II. FACTUAL REFUTATION OF THE "BASIC CONCLUSIONS" AND "SPECIFIC EXAMPLES" OF THE BIA PROPOSED FINDING.* The numbering in the following section does not follow logically after the numbering in the above section. However, it is consistent with the order of presentation in the petitioner's Response.

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<sup>10</sup> For further discussion of the Pease family, see Appendix D.

*Petitioner's Response, Part A, Point 2.* The petitioner's Response states that:

The BIA erroneously required proof of descent from more than one individual ancestor (Response 1995b, I).

The Department's response to II.A, point 2:

The BIA thoroughly discussed this issue in its letters to Congressmen Miller and Faleomavaega, as well as to Senator Inouye (AS-IA 1995a; AS-IA 1995b; see Appendix B2). The Proposed Finding did not erroneously require proof of descent from more than one ancestor.

*Petitioner's Response, Part A, Point 3:*

The BIA improperly imposed a "continuous existence" requirement (Response 1995b, I).

The Department's response to II.A, point 3:

The Response did not identify this comment except in the Index, nor did the petitioner present evidence or arguments to support the allegation. However, the Proposed Finding did not impose a continuous existence requirement. The regulations require documented descent between the current membership and the historical tribe in order to meet criterion 83.7(e). The BIA clearly established that the GHP did not demonstrate the generational linkage (descent) required.

*Petitioner's Response, II Part B, Point 1. Specific Findings relating to Criteria (e), (f), and (g):*

a. "Ancestor not documented as Indian" (Response 1995b, I).

*Petitioner's Response, first part of II Part B, Point 1.a.* In the arguments for the concept that William Sherman was not documented as Indian, the Response stated that "[t]he regulations do not require that tribal ancestors be documented as Indian" (Response 1995b, 16).



The Department's response to II.B, point 1.a, first part:

The Federal acknowledgment regulations clearly define a member of an Indian Tribe:

Member of an Indian tribe means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls were kept (§83.1 Definitions).

Under criterion 83.7(e), a petitioner's members must document their descent from a historic Indian tribe. The Proposed Finding found that neither the petition documentation submitted nor evidence located by BIA researchers showed William Sherman, the sole ancestor through whom the GHP claims Paugussett lineage, to be Indian, or a member of an Indian tribe as defined in the regulations. Thus, the BIA clearly demonstrated that William Sherman was not documented to be a Golden Hill Paugussett Indian.

*Petitioner's Response, second part of II Part B, Point 1.a.*  
The petitioner's Response went on to state:

The Golden Hill Indians have long intermarried with Black Persons, and, as a result, some Indian tribal members have more prominent Black features than Indian features. It should come as not surprise, then, that the documentary record is confused. Whites recording the data saw only the darker skin or Negroid features of some of the mixed Black/Indians. On the other hand, mixed White/Indians were more recognizable to the reporters of data, who reported "red" and "bronze" for white-looking Indians, and "Black" for dark ones . . . These designations reflect only the subjective designation of the person recording the data on the document. That is why William Sherman's death registry and obituary both identify him as an Indian, while other documents indicate otherwise (Response 1995b, 17).

Under II Part B, Point 1a, supplements numbered 3, 4, 5 and 6 were submitted by the petitioner as documentation for this statement.

Under II Part B, Point 1a, the Response further indicated that "circumstantial evidence indicates William Sherman's strong association with Golden Hill Indians" (Response 1995b, 17) and offered Supplement 6 as documentation.

Supplement 3 contained a memorandum from Mr. Robert A. Schpero to Chief Quiet Hawk, dated June 6, 1995, with a preliminary review of the Proposed Finding (Schpero 1995; this memorandum was also submitted as Appendix N, Supplement 1). The documents included background information on Orcutt, a page from a book entitled Tomlinsons in America with no other cites to it, a letter written to Orcutt in 1884, an abstract of the death record of William Sherman, two documents of unknown origins, but which appeared to be legislative enactments, selected pages of the Journal of the Senate of the State of Connecticut, and selected pages of the Journal of the House of Representatives of the State of Connecticut. Supplements 4, 5 and 6 are addendums to Supplement 3 and contained genealogical materials, including pedigree charts.

The Department's response to II.B, point 1.a, second part:

None of the documents presented in the Response supported the assertion that William Sherman associated with Golden Hill Indians during his lifetime. Even if he had, criterion 83.7(e) deals with descent, not with associations.

*Petitioner's Response, II Part B, Point 1.b. "Descent from one ancestor" (Response 1995b, I).*

The petitioner claimed that the revised genealogy showed "three ancestors prior to William Sherman: Tom and Eunice Sherman and Molly Hatchet" (Response 1995b, 19).

The Department's response to II.B, point 1.b:

The Proposed Finding discussed the "one ancestor" question because all of the present-day GHP membership claimed Golden Hill Paugussett lineage through only one ancestor, William Sherman. The issue is not how many ancestors William Sherman had. Every individual human being has many ancestors. The issue was whether or not the GHP membership descended through more than one ancestor: whether today's

membership as a whole descended from an antecedent historical tribe as a whole. The Proposed Finding concluded that Eunice (Shoran) Sherman was a Pequannock Indian (Proposed Finding 1995, 10). However, the GHP documentation did not show that William Sherman was descended from her.

The addition of Molly Hatchet to the list of ancestors of William Sherman would not add to tribal ancestry, since the petitioner's members would still be claiming tribal ancestry through only one individual, William Sherman. Additionally, the descent of the same one man, William Sherman, from Molly Hatchet has not been demonstrated. On the contrary, the descendants of Molly Hatchet were enumerated by the Superior Court in 1871 (Superior Court document 1871 in Siefer), clearly at a time when William Sherman, who was still living, would have been listed had he been a descendant of Molly Hatchet.

*Petitioner's Response, II Part B, Point 2. Specific Factual Findings Beyond the Scope of a § 83.10(e) Determination.*

*Petitioner's Response, II Part B, Point 2.a. "Tribal entity" (Response 1995b, I).*

The Response stated that evidence of continued existence of the historic Paugussett/Pequannock tribe over the years did not need to be demonstrated because the Proposed Finding dealt with only one criterion, 83.7(e).

The petitioner submitted documents about the Paugussett tribe. Included was the Tercentenary Pictorial and History of the Lower Naugatuck Valley, which stated:

about 1732, the remnants joined their brethren further up "the great river," although even in the last century, a small group called the Panns, led by a chief named Pannee, had their headquarters near Indian Well (Response 1995b, 27).

The Response also discussed dispersal of the Paugussett tribe:

"Most moved and assimilated with other tribes such as the Oneida in New York" [from the Proposed Finding]. There is no evidence that Paugussetts or another [sic] other New England Algonquian Indians "assimilated" with the Oneida. Some Paugussetts, specifically Pequannock from Golden

Hill, did move to the refugee Indian community at Farmington where the [sic] mixed with other Western Connecticut Indians who spoke the same language (e.g., the Tunxis and Winnipiac) (Rudes 1995). The whole community at Farmington later moved to Oneida territory where they, with other Algonquian Indians from New England formed communities called the Brother Towns (later Brotherton) (see I.P. 2, II:153). The people living in the Brother Towns did not assimilate into the host Oneida culture but remained separate. (See petition for federal acknowledgment from the Brotherton Indians of Wisconsin.) (Response Appendix "J", B).

The Department's response to II.B, point 2.a:

In the Proposed Finding, the BIA researchers attempted to determine whether the tribal existence of the historic Paugussetts at Golden Hill extended until at least the lifetime of William Sherman. If this had been the case, and if William Sherman could have been documented to descend from such a continuously existing tribal unit, it would have provided a possible basis for the GHP's claims to descent from a historic tribe. The BIA found that there was no Paugussett tribal entity at Golden Hill past 1765. (Proposed Finding 1995, Summary, 14).

The BIA Received the Brothertown petition for Federal acknowledgment on February 7, 1996, though it was dated and approved for submission on October 21, 1995. Since the GHP referenced this petition in its December 5, 1995, Response, someone researching for the Golden Hill had access to the Brothertown petition prior to its submission to the BIA. Since the Brothertown petition is now in possession of the BIA and was referenced by the petitioner, the BIA reviewed it for other references to the historical Paugussett tribe. Statements in the Brothertown petition clarify some questions about the Paugussetts.

The Brothertown petition's narrative describes the New England setting, quoting and summarizing the Colonial Records of Connecticut and the works of DeForest. The Brothertown petition listed four Connecticut groups from which their membership descends, the Western Pequot, the Eastern Pequot, the Narragansett/Niantic and the Mohegan (Brothertown Petition Narrative, 29-42).

The move of Connecticut groups to New York was described as follows:

Occom's plan was to bring together the Indians from seven communities who were interested in moving west. The communities were Mohegan, Mashantucket, Stonington and Farmington in Connecticut; Charlestown and Niantic in Rhode Island; and Montauk on Long Island. Only persons who had converted to Christianity would be welcomed. To make their enterprise a success they needed a large area of land suitable for farming. And they knew where to find such a place. Occom and his two assistants, David Fowler and Joseph Johnson, had spent considerable time among the Oneidas and were well acquainted with the region. There was plenty of land available and, they were sure, a sympathetic ear (Brothertown Petition Narrative, 46).

In 1785, Guy Johnson, Superintendent of Indian Affairs for the Northern Department, wrote that the Oneida chiefs agreed to allow the Mohegan, Narragansett, Montauk, Pequots of Groton and of Stonington, Nahatick, Farmington to settle on their land:

With this Particular Clause or Reservation that the same shall not be possessed by any Persons Deemed of the said Tribes Who are Descended from or have Intermixed with Negroes and Mulattoes (Johnson 1833 8:222-223 in Brothertown Petition Narrative, 50-51).

It is clear from the documents presented in the Brothertown petition that the Connecticut Indians who became part of the Brothertown did not "assimilate" with the Oneidas, and the Proposed Finding used inaccurate wording. Instead, the Connecticut Indians became an integral part of the formation of the Brothertown on land given to them by the Oneida, and later, brought some Stockbridge Indians into their Brothertown group (Brothertown Petition Narrative, 51).

Elijah Wampey was a leader in the Brothertown group. Sarah Wampey, alias Sarah Monaugk/Shoran was known to be related to the Golden Hill Indians (see Proposed Finding, Technical Report, footnote 10). This fact, coupled with the information submitted by the Brothertown, gives a clearer picture of the Connecticut Indians who moved to New York. Included among those Indians was Sarah (Monaugk/Shoran) Wampey, who

was named on the 1765 Golden Hill record as one of the last of the Golden Hill Indians petitioning the Connecticut Assembly for redress.

The conclusion in the Proposed Finding that only one family remained at Golden Hill in 1765 remains valid. There were no documents submitted to refute that claim.

When Orcutt wrote about the Paugussett tribe, he took much of his information from DeForest, rewording some, quoting some, and misquoting some (Proposed Finding 1995b, 26-7). Regarding the Paugussetts who settled in New Milford, now called Orange, Connecticut, Orcutt quoted DeForest:

The clan which collected at New Milford was quite considerable in size, although I cannot find that it had a distinctive name. It was unquestionably a mere collection of refugees and wanderers, who had migrated hither from the southern and eastern parts of Connecticut, to escape from the vicinity of the English settlements (DeForest 1851, 389).

Orcutt continued to quote DeForest regarding the emigration of Connecticut Indians.

One feature of this later period of Indian history, in our State, is the emigration of breaking up of old tribes, and the temporary formation of new ones. We shall see whole clans forsaking their ancient habitations, and moving off, almost bodily, until they come to some spot where they can fish and hunt in streams and forests hitherto little visited by the white man. We shall see new communities of considerable size, collecting under the leadership of individuals of more than ordinary genius, and then melting away like the tribes from which they were originally composed. We shall see portions of the Indian population leaving the State altogether . . . (DeForest 1851, 347-8).

DeForest made many references to the Collections of the Massachusetts Historical Society, Vol. X. This contained a series of articles and letters about New England, and in particular, Indians of New England. Page 111 begins:

AN ACCOUNT OF THE INDIANS IN AND ABOUT STRATFORD (CONNECTICUT), IN A LETTER FROM REV. NATHAN BIRDSLEY TO REV. E. STILES, DATED STRATFORD, SEPT. 3, 1761.

Rev. Sir,

Your's of June 24 Ec. I received; and in compliance with your request have made inquiry and got the best information on concerning the number of Indians and their wigwams and families in and about Stratford 40, 50, or 60 years ago; and also the present few broken remains of them. At Oronoake there have been no wigwams, unless one or two for a few months in winter, for above 40 years. There were about 80 or 90 years then two Indian villages at Oronoake, but when the English settled here the Indians removed. At Paugasset, i.e., by Derby ferry and against Derby neck, there were 50 years ago about 8 or 10 wigwams, probably containing 10 or 12 families: but now no remains of them. At Turkey Hill at the lower corner of Derby by the river, there was an Indian village of, I suppose 8 or 10 families, who had a tract of land incurred to them by the government. They have continued the longest of any; but they are now reduced to but one or two broken families, I believe not above 2 or 3 men belonging to them.

There were at Pauquannuch, i.e. Stratfield, the place called Golden hill, about 20 to 15 wigwams, 50 years ago [i.e., circa 1711]. And in several other parts of the town there were small clans of two or three wigwams; but now not one at Golden hill or in any part of the town that I can learn, only here and there a scattering squaw, and scarcely a poppoose.

At Poodatook by the river against Newtown, I have been lately informed by some Newtown people, when Newtown was first settled, a little above 50 years ago, there were reckoned of that tribe 50 men; but now only one man among the broken remains of 2 or three families. I suppose in the whole bounds of Stratford 50 years ago, the best calculation that can be made of their numbers is about 60 or 70, perhaps 80, fighting men; now not above 3 or 4 Indian men, reckoning every straggler in all the town.

NOTE BY DR. STILES

The tribe that 50 years ago lived about Derby, Newtown &c. are now retired back to the

upper end of Kent on the West side of Oustonnoc river over against Raumaug, and consist of 127 souls according to the publick census in 1761 (Collections of the Massachusetts Historical Society 1809, 10:111-112) [emphasis added].

Subsequently the census taken for the Connecticut Colony on January 1, 1774 was cited. The following table shows the number of Indians, broken down by counties, and then by cities, for the Indians pertinent to this report.

Though other counties and cities were listed in the report, the ones listed on Table 2 illustrate the counties and cities that included the Paugussetts. Stratford, which contained the Golden Hill reservation, had 16 adults and 19 young people. New Haven County, in which both Derby and Milford are situated, had a total of 14 adults and 10 young people. The chart shows a distinct movement to Kent in Litchfield County before 1774, with Kent having twice the number of both adults and children as New Haven and Fairfield Counties combined.

**TABLE 2**  
**CONNECTICUT INDIAN POPULATION, 1774**  
[Selected Counties and Cities only]

<b>COUNTIES CITIES</b>	Indian males under 20	Indian females under 20	Indian males over 20	Indian females over 20	Total Indians
NEW HAVEN DERBY	5	5	5	5	20
MILFORD	0	0	1	3	4
FAIRFIELD STRATFORD	7	12	9	7	35
LITCHFIELD KENT	18	20	11	13	62

(Collections of the Massachusetts Historical Society 1809, 10:118)



DeForest attempted to fill in the history as to why the changes in the Paugussett tribe had taken place. He stated that after the death of Konckapotanauh in about 1731:

the nation broke up: some joined the Potatucks; some went to the country of the Six Nations; some perhaps migrated to Scatacook; and of those on the eastern side of the river very few remained about their ancient seats. In 1774, the Milford part of the tribe was reduced to four persons, who lived on a small reservation at Turkey Hill, now in the township of Derby (DeForest 1851, 354-355).

On the Western side of the river, the Paugussetts continued to reside quietly on their reservations: one on Coram Hill in Huntington; and one, of about eighty acres, on Golden Hill in Bridgeport. In 1765 only three women and four men remained on Golden Hill (DeForest 1851, 355).

As discussed in the Proposed Finding, in 1763, one of the men and two of the women from Golden Hill, John Sherman, Eunice Shoran, and Sarah Shoran, went to the Assembly with a grievance. A non-Indian, Thomas Sherman of Fairfield, Connecticut, was chosen as their guardian.

No documentation has been offered to rebut the Proposed Finding's data that by 1765 the Golden Hill Paugussett had been reduced to one family, in fact, to one woman whose father had been sachem of the once numerous Golden Hill Paugussett. The remainder of the tribe were scattered from New York to Connecticut. The Brothertown petition, the Collections of the Massachusetts Historical Society documents, and the researchers for the GHP agree with that conclusion:

Indeed a few tribal members dispersed and eventually assimilated in the American mainstream. One family left and settled near the little band of the Paugussett proper in Woodbridge, where they acquired a little piece of land with their share of the proceeds of Golden Hill reservation . . . Most of the members of this community died in an epidemic disease in 1833, and the few survivors dispersed before 1850 (Wojciechowski 1992, 72)

*Petitioner's Response II Part B, Point 2.b.* "Sporadic land base" (Response 1995b, i). The petitioner stated that:

the evidence actually shows that the Golden Hill Paugussetts were continuous on their original Golden Hill reservation lands from 1639 to 1802. See Supplement 3 at 3 (Response 1995b, i).

Documentation provided was a hand drawn chart including Bridgeport, Trumbull, Orange, Seymour, Derby, Woodbridge and Ansonia. No documentation was submitted to accompany the chart.

The Department's response to II.B, point 2.b:

A land base is not a consideration under criterion 83.7(e). Nonetheless, the Proposed Finding concluded that the Golden Hill Paugussett were without land as early as 1802. This is consistent with the petitioner's statement, which pertains to the period between 1629 and 1802. Though other Paugussett Indians may have had some land in other places, the Golden Hill group sold their land in 1802. Individual Indians had the overseer use some of the funds for their benefit. After 1802, neither Golden Hill land or funds were used for the entire Paugussett tribal entity. This evidence further supports the BIA's conclusion that there was no tribe at Golden Hill after 1765.

*Petitioner's Response, PART III. GENEALOGIES.*

*Petitioner's Response Part III Part A: William Sherman's Indian Genealogy (Response 1995b, I).* The Response did not submit any new documentation concerning William Sherman.

The Department's response to III.A:

The Response made no convincing arguments that would rebut the conclusions of the Proposed Finding. BIA researchers located additional evidence that casts doubt on the petitioner's claim that William Sherman was of Golden Hill descent (see discussion under Henry Pease, Appendix D of this report). The parentage of William Sherman remains undemonstrated as Indian, and no new evidence or arguments were presented to alter the Proposed Finding.

*Petitioner's Response Part III Part B: The Sherman Genealogy and Orcutt (Response 1995b, I).*

[1.] The Tribe has submitted herewith as Appendix D a revised and extended genealogy of William Sherman, the source for which is Orcutt and all evidence submitted to date. This new genealogy includes the Molly Hatchet-Joseph Richardson-Ruby Sherman-Nancy Sharpe connection. This is a logical and supportable lineage. The new genealogy also reconstructs the life and times of Ruby Sherman Richardson aka Mansfield and her mother Eunice Mack.

The Department's response to III.B [1]:

As noted above, an 1871 document of the Superior Court listed Molly Hatchet's descendants (Superior Court document 1871 in Siefer). William Sherman was not included in the list of her descendants.

The petitioner has undertaken research to document persons who may have been in the area, who were identified as Indian, and attempts to connect them with William Sherman. However, the BIA evaluation of the documentation, using acceptable genealogical methodology, does not support the statements made by the petitioner.

For example, the petitioner stated that Joseph Richardson, born 1786, was the son of Molly Hatchet, who was born about 1738. That would be very unlikely, because Molly Hatchet, who died January 17, 1829, would have been approximately 48 years old at Joseph's birth, nearly past normal child bearing years. In any case, the petitioner shows no connection between William Sherman and Joseph Richardson.

The petitioner asserts, without documentation, that a woman named Ruby Sherman married a Richardson. The BIA researchers did not locate any document that connects a Ruby in Connecticut with anyone by the name of Richardson. Accepted genealogical methodology does not endorse attempts to fit a name that has never been associated with a particular family into that family because a secondary source has listed it as a family name connected with an Indian. The Federal regulations for acknowledgment of an Indian tribe do not permit reliance on undocumented assumptions such as the "Molly Hatchet-Joseph Richardson-Ruby Sherman-Nancy Sharpe connection. This is a logical and supportable lineage" (Response

1995b, 30). The BIA researchers found no support for this linkage in any documentation.

*Petitioner's Response Part III Part B: The Sherman Genealogy and Orcutt (Response 1995b, I).*

[2.] The Sherman genealogy of the eighteenth and nineteenth centuries comes in part from the genealogy that appears on pages 42 through 44 of Samuel Orcutt's History of the Old Town of Stratford and the City of Bridgeport, published in 1886. The BIA attempts to discredit Orcutt's genealogy in three ways: (1) by pointing out two errors of fact and two errors of omission; (2) by pointing out instances in which no corroborating evidence for individuals in the genealogy has been found; and (3) by propounding what it admits to be an unsubstantiated hypothesis that Orcutt fabricated the genealogy based on information contained in D. Hamilton Hurd's 1881 History of Fairfield County and other sources

The Department's response to III.B [2]:

County histories of the era in which Orcutt wrote are notorious for their genealogical mistakes. As one writer on genealogical methodology has stated:

An important feature of many local histories is a biographical section (sometimes in a separate volume) with short biographical sketches of prominent citizens and early settlers in the locality. Some of these are quite authentic because the families provided the information, and others contain many errors for the same<sup>11</sup> reason. Those books which specialized in biographical sketches accompanied with pictures of the persons named therein are often referred to by book dealers and

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<sup>11</sup> "Orcutt (1886:46), who supplies an abstract of this deed, mistakenly gives the year of the deed as being 1656" (Wojciechowski 1992, 164).

"According to Orcutt & Beardsley (1880:35) this tract contained about 500 acres. Orcutt (1882a:18) mistakenly refers to the deed as being dated May 18, 1671" (Wojciechowski 1992, 202).

"The only other author that mentions this deed is Orcutt (1882a:198), but he drew for information exclusively on DeForest, and therefore provides no new data on the subject" (Wojciechowski 1992, 253).

genealogists as "mug books: because anyone could get his 'mug' in one if he paid the fee, and no one could if he didn't" (Greenwood 1990, 134).

Orcutt's works must be analyzed in light of the potential for errors. Accurate genealogical research requires going beyond the secondary resource to examine original sources. Thus, city and county histories such as those Orcutt compiled, which were popular in the late 1800's, produced a wonderful resource of secondary materials from which to get clues for further research, but they are not considered the final authority in determining ancestry. They are widely recognized as being of varying reliability and never constitute primary genealogical documentation. As a standard manual on research methodology stated:

LOCAL HISTORIES.- Printed histories of states, counties, and localities often contain much genealogical information. But here a word of caution again must be given, for they, too, vary in quality. Many local histories indulge in eulogies of the families discussed, and errors are frequently made with respect to early generations. Local histories published prior to 1885 are generally accurate for the family history of the Revolutionary and post-Revolutionary periods; they are based, for the most part, on statements made by members of the family who had knowledge of the persons and events of the periods (Rubincam 1980, 119-20).

In 1958 the National Society Daughters of the American Revolution put out a manual, Is That Lineage Right? (DAR 1958). It stated:

In evaluating a genealogy, certain criteria may be considered: (1) the author's reputation as a careful and critical genealogist, and (2) the attention paid by the compiler to source materials, at least for the early generations (Is That Lineage Right? in Rubincam 1980, 119).

In evaluating the Golden Hill petition, the BIA researchers would have been derelict in their responsibilities if they merely accepted what Orcutt provided in the way of a genealogy for William Sherman, especially in light of the fact that there were obvious errors (see Proposed Finding, 33-34).

The petitioner submitted the only set of Orcutt letters available. The Hurd papers have not been located. From Orcutt's letters submitted, the BIA researchers have made a chronology of events depicting Orcutt's life:

- 1824..... birth of Samuel Orcutt in Albany, NY
- 1850..... Preacher for Methodist Episcopal Church in Tioga County, New York
- 1865..... Last appointment as Methodist Preacher, all of which were in New York
- 1874..... While a preacher for the Congregational Church in Litchfield County, Connecticut, prepared history of town.
- 1875..... removed to Torrington, Connecticut where he wrote another history of town.
- 1880..... Published s history of Derby in conjunction with Ambrose Beardsley, M.D.
- 1882..... Published a history of the Indians of the Housatonic valley and of western Connecticut.
- 1884..... Letter from Fairfield County Historical Society commenting on Orcutt's proposal to do a History of Stratfield, Bridgeport and Trumbull, Connecticut.
- 1884..... Moved to Bridgeport, Connecticut
- 1886..... Published A History of the Old Town of Stratford and the City of Bridgeport, Connecticut
- 1891..... Published Tomlinsons in America.
- 1893..... Hit by a train and died

The following description of Orcutt's life provides insight into his credibility as a genealogical researcher:

Mr. Orcutt left a wife (with whom he had not lived for a number of years) a son, Edward S. Orcutt, residing in Providence, R.I., a son William H., and a daughter with husband and five children in Crescent City, California (Bridgeport Daily Standard 1893 in Response to the Proposed Finding, Second Submission, Orcutt).

According to Orcutt's notes on Russell Tomlinson, who served as Overseer of the Poor and as overseer of the Golden Hill funds during the later lifetime of William Sherman:

He [Russell Tomlinson] was elected Town Auditor in 1857, and a member of the Board of Relief in 1858, in both of which he did much service, being a member of the Board of Relief at the time of his death. He often served as moderator of town meetings. On the resignation of Hon. Dwight Morris, in 1860, he was appointed, by the State, trustee of the fund for the benefit of the remnant of the Golden Hill Indians, which he retained to the time of his decease (Response to the Proposed Finding, Second Submission Orcutt, 13).

In 1887 from Union, New York, Orcutt directed R.B. Lacey, as his agent, to sell:

all the books now in your office belonging to me, under the title of Stratford and Bridgeport Histories, bound or unbound, also Stratford genealogies or any or all part and parcels of them, as you shall see most advantageous for the payment of the claims of the printers and binders of the same, and all copies of the same in the hands of Mr. Jones the binder (Response to the Proposed Finding, Second Submission Orcutt, 16).

Orcutt's letters to Lacey told of bills run up for the books and ways to dispose of the books. The letters also told of Orcutt's not being able to return to Connecticut because:

my so called wife would make trouble for me by the most outrageous falsehoods as she had heretofore done. But for this I should have never ceased to be a pastor, except by failure of health. Heretofore [sic] I could not leave my children. Now I can (Response to the Proposed Finding, Second Submission Orcutt, 20).

The letters to Orcutt included the late 1870's period when he was preparing the material for the Derby book. Many of the letters corrected his material,<sup>12</sup> while others praised

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<sup>12</sup> From Charles W. Baird, Rye, New York, in September, 1879: "You mention Nicholas Bowan of Rye? Is this a slip of the pen for Nathaniel? The Rye minister, afterwards of Newark, N.J. was Nathaniel, not Nicholas" (Response to the Proposed Finding, Second Submission, Orcutt).

From W. Teller, Ridgefield, Connecticut, in February, 1879:

his work. Others added information on families or historical events.

The most pertinent letters were from the years of 1884 to 1886. None of them mentioned Indians or indicated where he may have gleaned his information on William Sherman, but they did provide data concerning how Orcutt did genealogy. Many letters indicated that he did not necessarily obtain information from personal interviews, but relied on other people's work. Examples of other persons' submissions to him include:

I have already substantially a complete record of the descendants of my grandfather Ebenezer Birdseye of Cornwall, Ct, and very nearly the same for the descendants of Joseph and John, and a partial statement of those of Ezra. Of Thaddeus, I seem to have little or nothing. I expect to receive soon a full list of the descendants of Sarah, the young daughter who married Rev. Payson Williston. Of the family of the other daughters, I have apparently very little prospect of obtaining particulars (Lucien Birdseye letter in Response to the Proposed Finding, Second Submission Orcutt, 220).

If this John and Ebenezer were sons of Thomas (there can be little doubt of it) you will have grandchildren of Thomas, by his sons, Thomas, Francis, Richard & John - While Ebenezer probably had no children - as if he had, the Legislature would not be from time to time ordering his property sold for his support. I thought I would submit the two points herein contained for your consideration (T. D. Rogers letter in Response to the Proposed Finding, Second Submission Orcutt, 145).

My fathers name was Nathaniel, his fathers Israel, and his fathers Azariah, who removed from Milford, the place of my grandfathers birth, to New Milford

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"I had no desire to criticize Mr. Barber's statement - but only to wipe out a blot on the personal character of Gen. Putname. Mr. Barber evidently wrote what he believed to be true - but I am equally honest in saying that he wrote what I do not believe to be true. I did not make this correction thoughtlessly . . . ." (Response to the Proposed Finding, Second Submission, Orcutt).



between 1730 & 1740. My paternal grandmother was a Sacket. My mother was a Hawley, the third generation from Capt. Jehiel Hawley, who came here from Newtown at about the same time that my grandfather settled here (E. H. Canfield letter in Response to the Proposed Finding, Second Submission Orcutt, 149).

I send you herewith a rough genealogy of the first three generations of Sherwoods, which I am sure will enable you to straighten out all the Sherwoods that were at Stratford and Fairfield at an early day, and I would that you if you ever find an entry on any records which cannot be made to agree perfectly with this genealogy. Of course I have left out pages of information tending to prove my entries, but I leave it to anyone to disprove this manner of entry (W. L. Sherwood letter in Response to the Proposed Finding, Second Submission Orcutt, 228).

The letters continued until almost the time of Orcutt's death in 1893. At his death, a collection of money was taken for his funeral expenses. A list of contributors was submitted by the petitioner.

Orcutt's letters illustrate his desire to earn money by his writing. His research methodology lacked acceptable genealogical documentation. Other researchers, in addition to the BIA staff, have found errors in the works of Orcutt. One was Frans Wojciechowski, the researcher who worked on the initial GHP petition and whose book was submitted as part of the documented petition (Wojciechowski 1992). He devoted pages 27-31 of his book, Ethnohistory of the Paugussett Tribes, to Orcutt. He finalized his discussion with:

In conclusion it must be said that, unfortunately, Orcutt, who of all the authors to be reviewed, had consulted the widest range and largest amount of documentary source material, lacked the gift of synthesis: He simply was not able to integrate all the bits of information he had obtained into a consistent and accurate picture of the lower Housatonic River tribes.

What disturbs me more, however, is that none of the authors who in the past 100 years have consulted and cited Orcutt's "Indians of the Housato-

nic and Naugatuck Valleys" have noticed the many inconsistencies in this work . . . (Wojciechowski 1992, 31).

Orcutt's historical or genealogical conclusions cannot be accepted unless documented with other materials. Orcutt's statements concerning the genealogy of William Sherman were not documented and could not be verified by BIA researchers. Adequate backup documentation was neither submitted by the petitioner nor located by BIA researchers.

*Petitioner's Response, Part III, Part C: The Howd(e) Genealogy: New Evidence of Ancestry (Response 1995b, I).*

The petitioner stated that the heirs of John Howd(e), an Indian, were Philip, Moses, Hester, Frank and Mary Seymour in 1810. The Response goes on to state that:

two or three generations later, in 1871, the same property as described in the 1813 deed ("known as the Turkey Hill Indian Lands, located at a place called Turkey Hill, in said town of Derby") was transferred by Blakelee, overseer of the Turkey Hill Indians, on the petition of several Turkey Hill Indians, including Eliza Franklin and Elizabeth and Georgiana Moses, "members of said tribe" (Response 1995, 35).

The petitioner goes on to state that Eliza Franklin was Andrew Allen's sister, whose descendant, two generations later married Charles Tinney.<sup>13</sup> Though some of the documentation would suggest a linkage, the petitioner stated that it needed to be documented further.

The Department's response to III.C, Howde Line:

Even if the generational ties could be documented for the Tinney line, it would not change the final outcome of this determination. One marriage in the present century to an undocumented Indian would not enable the petitioner's membership as a whole to meet the Federal regulations requiring descent from a historical tribe.

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<sup>13</sup> The granddaughter of William Sherman married a Tinney, though no documented connection was submitted to show descent to this Charles Tinney.

*Petitioner's Response, Part III, Part C: Cam Family.*

The petitioner also researched John Cam, a semi-frequent entry in the diary/account book of William Sherman. John Cam married a daughter of William Sherman. In an effort to document John Cam as Indian, the petitioner submitted a page from A Pictorial History, Shelton, Connecticut. It listed Coram Avenue, and then stated:

The road to Coram Hill was the present Myrtle Street, earlier known as Cam Road because a family by the name of Cam lived where Keen and Myrtle Streets merge. The Cams were descendants of slaves of the Shelton family on Long Hill (A Pictorial History, Shelton, Connecticut in Response 1995 Appendix 3).

The Department's response to III.C, Cam Family:

The documentation presented by the petitioner contains no indication that the Cam slaves of the Shelton family were Indian. It shows that John Cam, 56, b[lack], from Huntington (second marriage) married Huldah H. Sherman, 20, b[lack], from Trumbull in 1888 (record of marriages, Town of Huntington in Response to the Proposed Finding, schedule 2). According to other documents submitted by the petitioner in the Response to the Proposed Finding, Acha Cam, John Cam's first wife, died July 4, 1887. Two other persons named John Cam died January 24, 1860 (an adult man) and April 7, 1872 (a child; see burial records discussed below). The latter entries were submitted on an index from something whose source was not identified.

The petitioner stated that William Sherman went to Mary Cam's funeral on May 13, 1871. It is to be assumed that Mary Cam and Mary Camp were the same person. The date was May 13, 1877, and Sherman's diary/account book listed that fact (see reference to her tombstone, below).

Other GHP Response submissions pertaining to the Cam family were identified as Long Hill Cemetery lists of burials. No information was offered as to the source of the lists. They were not in alphabetical order, so the BIA researchers

assumed they were listed as plots, going up and down a row.<sup>14</sup>

From the cemetery records submitted, there were obviously two adult John Cams. They married two different women, each named Acha. One John Cam died December 26, 1860 at age 65. His wife, Acha, had died July 8, 1838 at age 38. John and Acha Cam (the elder) apparently had at least one son, John L. Cam, born September 1, 1831. John L. Cam, age 48 in 1880, married to Acha, age 45 in 1880, his father born in New York, was enumerated on the 1880 census of Huntington, Fairfield County, Connecticut. Both were listed as "Mu" (Response 1995b, Appendix 4, 28). John L. Cam's first wife, Acha, was born January 5, 1835, and died July 4, 1887. It would be this John and Acha Cam who were listed in William Sherman's diary/account book. They were Sunday visitors, and William Sherman went to see them on Sundays.

Buried next to the Cam plot of the later John and Acha Cam were Julius S. *Camp* and Mary E. *Camp*, wife of Julius and two children. Mary *Camp* died May 10, 1877, at age 23 years. Julius S. *Camp* died June 27, 1874 at age 37. There are two *Camp* children listed with them, both infants who died in 1873 and 1874.

The children of the younger John L. and Acha Cam were buried in a different plot, with the older John and Acha Cam, permitting researchers to assume a relationship between the two Cam families.

Cam, William Sherman, son of John L. & Acha, died  
Oct 3 1869 age 4 years.  
Cam, John Lewis, son of John L. & Acha, died Apr.  
1872 age 4 yrs 6 mos. (broken stone)  
Cam, Fanny E. daughter of John L. & Acha, died  
Apr. 29, 1864 age 4 yrs 2 mos  
Cam, Acha, wife of John, did July 8, 1838 age 38  
Cam, John, died Dec. 26, 1860 age 65 (Response to  
the Proposed Finding, Second Submission, 26).

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<sup>14</sup> There are two areas in which Cams are buried, and on one document it stated, "(broken stone)" which lead the BIA researchers to deduce that the lists of persons buried as submitted in the Response to the Proposed Finding may be an inventory of the cemetery as it was found on a particular date. With no further identification of the lists, the BIA researchers accepted them as the hand written identification of Long Hill Cemetery indicated, with page references.

Harriet Huldah Sherman, daughter of William, married a John Cam in 1888. It was his second marriage. He was the correct age to be the John Cam whose wife Acha had died in 1887. He was buried in Long Hill Cemetery in 1899. The age of Harriet Huldah would be the correct age of the entry for the daughter of William Sherman. The records submitted to identify John Cam and Harriet Huldah Sherman were sufficient to conclude that the John Cam and Acha, his first wife, were the John Cam listed in the Sherman Diary/Account book. The Probate record submitted containing the will of Harriet Huldah (Sherman) Cam Robinson was acceptable documentation that John Cam was a descendant of Kate Cam.

John Cam was not identified on any record as Indian, nor was Harriet Huldah Sherman. Kate Cam, from whom John Cam descended, was not identified as Indian. Therefore, the Cam family data provided by the GHP Response had no bearing on the tribal ancestry of William Sherman.

*Petitioner's Response, Part III, Part C: Cam family cover sheet in the petitioner's response to the Proposed Finding.*

A. Inventory from Daniel Shelton's estate showing an Indian slave. Shelton was the purchaser of part of the Coram Hill Reservation.

B. Deed to property bounded in part by Cam Road which was proximate to Old Shelton estate and near the Old Coram Hill Reservation. Note that Huldah Robinson is William Sherman's daughter who married John Cam and inherited all his property.

C. Death of William Sherman Cam son of John L. Cam from Sherman diary.

The Department's response to III.C, Cam family cover sheet:

A. The inventory indicates that Shelton's Indian slave was named "Dick" and thus has no bearing on this case.

B. The deed is discussed above, and only shows that Harriet Huldah (Sherman) Cam Robinson did inherit the land that was once owned by Kate Cam. The connection would have to be made that Kate Cam was the same person as an Indian woman elsewhere identified as "Kate Pann" to have Indian relevance. That connection is neither documented nor assumed.

C. The death of William Sherman Cam was in fact documented from the cemetery list as discussed above. It was not from the Sherman diary.

Though the records submitted show that William Sherman had an in-law relationship to John L. Cam, no documents support a theory that John L. Cam was Indian. In any event, John L. Cam and Harriet Huldah (Sherman) Cam Robinson have no descendants in the present GHP membership.

Petitioner's Response PART V.<sup>15</sup> *CONTINUITY OF COMMUNITY AND POLITICAL INFLUENCE (LEADERSHIP)*. The petitioner stated:

The BIA relied heavily on the issues of continuity of community and land base in the Technical Report and the Proposed Finding (Response 1995, 40).

The Department's response to PART V:

In the Proposed Finding, the BIA focussed on the issue of descent from a historic tribe. In the Final Determination, the BIA also relies on criterion 83.7(e), descent from a historic tribe, and finds that no new documentation under the heading of Continuity of Community and Political Influence (Leadership) impacts that finding under criterion 83.7(e).

**INTERESTED AND INFORMED THIRD PARTY COMMENTS**

During the 180-day comment period (June 8, 1995-December 5, 1995) after the Proposed Finding was issued, interested and informed third parties submitted comments. Three categories of comments were received.

(1) The first category included letters stating opinions on the case which were relevant to criterion 83.7(e), but containing no documentation to support those opinions.

(2) The second category included letters containing arguments and evidence which were meant to support or to rebut the Proposed Finding under criterion 83.7(e).

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<sup>15</sup> There was no petitioner's response PART IV.

(3) The third category included other undocumented letters submitted by third parties, either opposed to or in support of Federal acknowledgment of the GHP, which did not address criterion 83.7(e).

Because the third group of letters did not address the Proposed Finding under criterion 83.7(e), they were not relevant in the evaluation of the evidence and preparation of the Final Determination and are not addressed herein. An example of the third category of submissions, among the comments rebutting the Proposed Finding was a letter from Mr. Grant Felldin, a GHP member who related his concerns about the tribal leadership controversy that has existed throughout the petitioning process. He expressed his disappointment concerning the proposed negative finding and requested a re-examination of the facts. He submitted no new information on the group to support a re-examination, enclosed no documentation, and did not address criterion 83.7(e).

**Documented Comments with Arguments or Evidence against the Proposed Finding.**

**MR. WES TAUKCHIRAY**

Mr. Wes Taukchiray, an independent researcher, submitted materials in opposition to the Proposed Finding. They are discussed in the order they were received by the BIA.

*Taukchiray's first submission, dated August 1, 1995:*

The first Taukchiray letter discussed "problems with the tribal ancestry claimed" (Taukchiray 1995a). He said that D. Hamilton Hurd based his book, History of Fairfield County, Connecticut on many primary sources including both the Connecticut Indian Papers and documents that are lost and no longer available. While Taukchiray's letter agreed with the Proposed Finding that Hurd had not attempted to create a documented genealogy of William Sherman, he used information found in Hurd's book and information from the Proposed Finding as a basis for the creation of three pedigree charts in which Taukchiray:

summarize[d] the presently available family tree data on William Sherman (1825-1886) himself; on his nephew, Henry Pease (born 1844), with whom Sherman associated; and on Sherman's mother's [Nancy] stepfather, Jim Mack (1800-1850 ff.

[sic]), called Mansfield. Based on the text of the Technical Report, this is what I [Taukchiray] think actually happened. My hypothesis stands open to both addition and correction (Taukchiray 1995a).

His hypotheses were illustrated on the pedigree charts, which differed one with another (see Appendix A).

The Department's response to Taukchiray's first submission:

In Chart 1, Taukchiray used the Proposed Finding and Hurd to support an alternative theory that Jim Mack, son of Eunice Sherman who married a Mack, married his first cousin, Ruby Sherman. Chart 2 theorized that Ruby Sherman, alleged parent of "Nancy Sherman," was married to Joseph Richardson, and alleged that Joseph Richardson was the son of Molly Hatchet, a known Paugussett Indian descendant who died in 1829. Taukchiray's third chart theorized ancestry for Henry Pease, who was described by Hurd as a claimant to the Golden Hill funds, and added another marriage partner to "Nancy Sherman."

None of Taukchiray's hypotheses were supported with documentation other than the Proposed Finding and Hurd. The BIA evaluated the hypotheses and found that Molly Hatchet (1738-1829) would have been approximately 48 years old when Joseph Richardson was born. Though unlikely, it would not have been impossible that she was his mother. However, consultation of the Records of the Congregational Church of Orange, Connecticut (Formerly North Milford), illustrated that Joseph Richardson, who was listed under the heading of "Families of Africans and Descendants of the Native Indians", would not necessarily have been her son, but might well have been her grandson. No documentation has been submitted, or found by BIA researchers, to connect Joseph Richardson to "Nancy Sherman." In addition, no documentation has been submitted or found that would connect a Nancy with the name of Sherman, other than Nancy (Hopkins) Sherman, the wife of William Sherman.

*Taukchiray's second submission, dated August 9, 1995:*

The second letter by Taukchiray requested a copy of a bibliographic citation in the Proposed Finding to the History of Orange, Connecticut. Enclosed with his letter was a pedigree chart, changing the parentage of "Nancy Sherman Sharp" as well as changing her marriage partner from



the chart he submitted on August 1, 1995. His letter stated:

The attached chart is like the 3 Paugussett charts I sent you on August 1st; what I think actually happened based on the text of the Paugussett technical reports (Taukchiray 1995b) [emphasis added].

The Department's response to Taukchiray's second submission:

The second submission was a letter by Taukchiray adding another spouse to "Nancy Sherman Sharpe," namely Renseller Peas. He diagrammed their alleged daughter, Mary Olive (Peas) Jackson, with her alleged spouse, Hamilton Jackson. No acceptable documentation was attached or enclosed to support the contentions that Mary Olive (Peas) Jackson's parents were Nancy Sherman Sharp and Renseller Peas, or that Mary Olive was married to Hamilton Jackson.

The two submissions contradicted each other, as did the three pedigree charts in the first submission. Neither the August 1, 1995, nor the August 9, 1995, comments were supported by new documentation, or by the data in the GHP Proposed Finding (Proposed Finding 1995, 29-35). Taukchiray presented several hypothetical reinterpretations of the data in the Government's Proposed Finding, perhaps intended as guides to new data or analyses that would support the GHP's genealogical claims to Indian ancestry.

The BIA evaluated these submissions and found that the hypotheses were clearly contradicted by specific evidence. No specific documents showed that any of these people were related to William Sherman, or to each other, as Taukchiray asserted. Taukchiray's methodology was flawed because he based his hypothetical reconstructions on undocumented assumptions.

*Taukchiray's third submission, dated September 29, 1995:*

The third Taukchiray submission revised the previous four pedigree charts based solely on:

the attached page, which comes, as nearly as I can presently tell, from Frank G. Speck's Decorative Art of the Indians of Connecticut, which is Volume 75 (published in 1915), of: Memoirs of the Canada

Department of Mines, Geological Survey (Taukchiray 1995c).

The enclosure was entitled "Paugussett," and did not include a title page. The document Taukchiray enclosed cited secondary sources, including published articles and books written by DeForest, Orcutt and Beardsley, and Curtis, but did not refer to any original sources or documents.

The Department's response to Taukchiray's third submission:

The documentation submitted entitled "Paugussett" discussed Molly Hatchet and the Mack Family, two well documented Paugussett families. The article's footnotes referenced the original works the BIA had consulted during the research for the Proposed Finding.

Based on this new article, Taukchiray revised the previously submitted pedigree charts by adding Molly Hatchet's Indian name, correcting the marriage date for William Sherman (based on the marriage record quoted in the Proposed Finding), and indicating Nancy Hopkins Sherman's birthplace as Norwich (based on a marriage record, contradicted by Federal Censuses). Taukchiray gave no new documentation for the changes in the pedigree charts other than the 1915 article that provided the Indian name of Molly Hatchet.

Although his letter did not indicate other changes to the pedigree charts previously submitted, he added handwritten notes to the pedigree charts. For example, on the chart showing Henry Pease as child of Nancy Sharp and Levi Peas, Taukchiray added:

[Peas] lost his hand by the accidental discharge of a gun, setting in motion a chain of events that began in 1876 & led, in 1933, to the establishment of a quarter-acre Paugussett Indian reservation at Trumbull (Taukchiray 1995c).

Taukchiray did not elaborate on the "chain of events," or specify how the accident led to later events. Taukchiray's various interpretations of the materials contained in the Proposed Finding were hypotheses. However, none of Taukchiray's hypotheses were supported by the documents.

*Taukchiray's fourth submission, dated October 19, 1995:*

In the fourth and final Taukchiray letter (Taukchiray 1995d), he wrote that Hurd, writing in 1881:

no doubt based his statements on common reputation and unanimous assurances of those who possessed a living memory of these events. Probably Ruby Sherman age 36 and her daughter Nancy Sherman age 14 or 15, were visiting the city of Poughkeepsie, New York in May of 1825 when Nancy gave birth to William Sherman. One wonders if Dr. Hurd did not know about the descendants in Orange, Connecticut, of Sarah Sherman Roberts, who had been a 14 year old wife and mother in 1790 (Taukchiray 1995d).

Taukchiray also observed that the word "heir" in the Proposed Finding was used inappropriately; he said "claimant" would be correct. Taukchiray also enclosed a pedigree chart for Levi Roberts whose ancestors Taukchiray described as:

A Paugussett family whose members had "assimilated into non-Indian society" by 1886, at which time though still living in Orange, Connecticut, they were not claimants on the Indian funds of Stratford (Taukchiray 1995d).

The Department's response to Taukchiray's fourth submission:

Taukchiray submitted no documentation for his theories on why, where, when, with whom, and how Ruby Sherman and Nancy, whom he assumes to have been Ruby's daughter, visited in Poughkeepsie, if they did. The BIA researchers searched the Poughkeepsie records and found nothing.

In the cited passage from the Proposed Finding using "heir" rather than "claimant," the BIA was merely using the wording found in the original documents.

Taukchiray submitted no information to document that the Levi Roberts family were not claimants to the Indian funds at Stratford, or why he thought that they "assimilated." Finally Taukchiray submitted no documentation to show Levi Roberts' familial connections to the Paugussett Roberts family who were discussed in the Proposed Finding (Proposed Finding 1995, 46).

Taukchiray's analysis was a reworking of the data found in the documents cited in the proposed finding, with the exception of the 1915 article included in his third letter.

Taukchiray apparently relied on Hurd's book because the Proposed Finding stated that "Hurd used primary sources for much of the material in his narrative" (Proposed Finding 1995, 32). However, Hurd also may have based his narrative on local knowledge and gossip. His statements that the William Sherman family was a survivor of the tribe, and that Henry Pease was his nephew, have not been verified by original documents. The primacy of original documents over secondary sources is basic to how the BIA has weighed evidence in the past and in this case.

Taukchiray submitted no new documentation with his comments, and sometimes he based his analysis on undocumented sources, such as the information presented in his third submission. The BIA evaluated these comments and attempted to verify his positions with all of the data at hand, including that submitted by the petitioner and interested and informed parties or found by the Government's researchers. The BIA, in its evaluation, found his analysis forced, and not supported by any of the documents.

MS. KATELEEN GRASSO ANDERSON

Ms. Kathleen Grasso Anderson, Director, Rainy Mountain Society of Indigenous Peoples, submitted comments against the GHP Proposed Finding to the Secretary of the Interior in a letter dated September 18, 1995. She enclosed letters she had written to Senator Daniel Inouye and Congressmen George Miller and Eni Faleomavaega. In Anderson's letter to Senator Inouye, she stated that she was:

struck by the ruling that a Tribe's current descendants could not qualify as a Tribe, if they were descended from one family and if they could not state what Tribe (Anderson 1995, 1).

Anderson expressed her opinion that the finding was unfair, and she stated that the decision would have a negative impact on the economic development of the GHP. She enclosed other letters and newspapers clippings from 1995 to support

her position.<sup>16</sup> These clippings primarily concerned the ongoing GHP leadership struggles, and did not address the issue of political pressure on the BIA. However, Anderson made allegations that political pressure on the BIA influenced the decision. She stated:

It would appear, that the opposition of the Connecticut Homeowners who fear conflicts over land, has influenced the Branch of Acknowledgment [sic] Research to create a new criteria for Golden Hill Paugeesukqs (Anderson 1995, 3) [emphasis added].

The Department's response to Anderson's comments:

Anderson misstated the Proposed Finding's conclusion that Indian ancestry had not been demonstrated for the GHP petitioner, and that without demonstrated Indian ancestry, tribal descent was a moot point.

Anderson submitted no evidence to support her allegation of political bias or influence, nor was any political bias or influence exerted on the BIA in connection with the GHP Proposed Finding. In addition, no "new criteria" were imposed on the petitioner. Rather, the BIA applied the consistent requirement that the membership of a petitioning group must descend from a historic American Indian tribe (criterion 83.7(e)).

The Government based the Proposed Finding on evidence submitted by the petitioner and interested parties, and on the BIA's own research into the historical records. The finding was not based on political concerns. The evidence clearly showed that the GHP membership descended from one man, William Sherman, whose Indian ancestry was not demonstrated, and who did not live in tribal relations with other Paugussett Indians or with any other Indians (Proposed Finding 1995, 53). Finally, Anderson's concerns about economic development are irrelevant to the acknowledgment criteria and were not considered during evaluation of the evidence for the Final Determination.

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<sup>16</sup> These clippings were headlined:  
MoonFace Bear back in court (The Day, June 17, 1995);  
Tribe says evidence backs Moonface (Norwich Bulletin, June 20, 1995).

SENATOR DANIEL K. INOUYE

On August 10, 1995, Senator Daniel K. Inouye (D-HI), the ranking Democratic member of the Senate Committee on Indian Affairs, wrote to the AS-IA, Ada E. Deer. In Inouye's letter, he stated that the BIA had raised the acknowledgment standard in the GHP case when it required that:

- (1) the persons claimed as Indian ancestors were of Indian descent from a particular tribe; and
- (2) Indian descent must be derived from more than one Indian person (Inouye 1995, 1).

He expressed concern that the BIA "applies new and unwritten criteria to suit the specific factual circumstances of any particular petition" (Inouye 1995, 2).

The Department's response to Senator Inouye's letter:

The AS-IA replied on October 18, 1995 (see Appendix B2), explaining that "descent from an historical tribe [was] an express requirement of criterion 83.7(e)" (AS-IA 1995a, 1) which had a long legal history supporting it. Furthermore:

The requirement of tribal ancestry which is written in criterion 83.7(e), however, was not applied to the Golden Hill petitioner because they did not pass the threshold test of having Indian ancestry (AS-IA 1995a, 2).

Ancestry from a single Indian individual does not meet the requirement of criterion 83.7(e) because the section specifically requires descent from "a historical Indian tribe." The plain language of the regulation requires tribal descent, not merely Indian descent (AS-IS 1995a, 2).

The letter went on to state:

Similarly, this Department does not have the authority to extend acknowledgment to groups which are the descendants of a single Indian individual. Rather, the Department has the authority to extend acknowledgment only to political successors. The interpretation of the federal acknowledgment regulations criterion 83.7(e) as requiring descent from a tribe, a political entity, avoids the Fifth

Amendment issues raised in the DOJ letter to you<sup>17</sup> (AS-IA 1995a, 3).

The AS-IA's letter recited legal precedents for this position and concluded with three paragraphs relating directly to Proposed Findings and Final Determinations:

We also would like to make it clear that 25 C.F.R. §83.10(e) does not provide a means for expediting the petition process based on satisfying only criteria 83.7(e), (f), and (g). Rather, §83.10(e) provides that if a petitioner fails to satisfy any one of these criteria, the Assistant Secretary - Indian Affairs may decline to acknowledge that the petitioner is an Indian tribe without fully evaluating all seven of the mandatory criteria.

The Department applies the regulations consistently across a variety of cases which differ enormously from each other. We have addressed with other petitioners the charge of inconsistent application of the regulations. These petitioners have mistakenly treated different situations as comparable in order to suggest that we are being inconsistent and arbitrary.

In the case of the Golden Hill, the petitioners had ample opportunity to supplement their petition; there will be opportunity to comment now during the comment period; and the petitioners may seek reconsideration of any negative decision in a hearing before the Interior Board of Indian Appeals. These procedures ensure that there is not denial of "due process" (AS-IA 1995a, 5).<sup>18</sup>

REPRESENTATIVES GEORGE MILLER AND ENI FALEOMAVAEGA

On August 10, 1995, House of Representatives members George Miller (D-CA) and Eni Faleomavaega (D-American Samoa) co-signed a letter to Secretary of the Interior Bruce Babbitt questioning what they called, "two clearly and erroneous interpretations of Section 83.7(e)" (Miller/Faleomavaega

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<sup>17</sup> This references a letter written to Senator Inouye in 1992 on the same subject (see Appendix B1).

<sup>18</sup> For the full text of letter, see Appendix B2.

1995, 1). They stated their interpretations of the acknowledgment regulations:

The wording of 25 CFR.83.7(e) presents a strictly genealogical issue of whether or not all of the individuals in a petitioning group can document their ancestry back to a member or members of [a] historic tribe (Miller/Faleomavaega 1995, 1).

And further:

Nowhere in past or present law, regulations, or court decisions pertaining to the federal recognition of Indian tribes is there any wording to the effect that "Indian descent must be derived through more than one person." The language of the regulations is clear - it refers to the individual descent of the petitioners. There is no reference to a multiple family requirement with respect to the genealogy of the petitioners (Miller/Faleomavaega 1995, 2).

The Department's response to the Miller/Faleomavaega comment:

Since 1978, the regulations have never been applied as characterized in the Congressmen's letter. Criterion 83.7(e) establishes the standard for the descent of the petitioner's membership as a group, not the descent of individual members. On October 18, 1995, the AS-IA responded to the Miller/Faleomavaega letter, explaining the GHP Proposed Finding and quoting the regulations:

after extensive research, [the Proposed Finding found] that the current members of the petitioning group were not proven to descend either from the historical Paugussett tribe or from any other Indian tribe. Descent from a historical tribe is an express requirement of criterion 83.7(e), which provides in part:

The petitioner's membership consists of individuals who descend from a historical tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. [emphasis added] (AS - IA 1995b, 1).



The AS-IA letter continued:

Ancestry from a single Indian individual does not meet the requirement of criterion 83.7(e) because the section specifically requires descent from "a historical Indian tribe." The plain language of the regulation requires tribal descent, not merely Indian descent (AS - IA 1995b, 2).

Because the petitioner cannot demonstrate Indian ancestry with evidence acceptable to the Secretary, the Congressmen's comments supporting recognition of petitioners who trace to a single Indian ancestor do not apply in this specific case. Nevertheless, the AS-IA's letter reaffirmed the application of the regulations in this case and the position taken in the Proposed Finding that criterion 83.7(e) requires tribal ancestry, not individual Indian ancestry.

MR. ROGER JOSLYN

On October 23, 1995, Roger D. Joslyn submitted a comment on the GHP case. He is a professional genealogist who was the contract genealogist for the Ramapough petitioner.<sup>19</sup> His comment covered three separate issues: (1) the possibility of identification as "Indian" on Federal censuses prior to 1870; (2) the number of copies made of the 1870 Federal census; and (3) the ethnic identification of William Sherman on the 1870 census.

*Joslyn's first issue:*

Joslyn addressed the discussion of William Sherman's treatment on the Federal censuses in the GHP Proposed Finding:

In the second paragraph of page 47, it is explained that William Sherman "was not identified as Indian until 1870," citing the 1870 Federal Census [for Trumbull, Fairfield County, Connecticut]. It is not mentioned here that the 1870 Federal Census was the first in which the designation Indian could be used in the column concerning "color" (the other designations the enumerators could use were White, Black, Mulatto, or Chinese;

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<sup>19</sup> At the time Joslyn submitted his comments, the Ramapough petitioner was being evaluated for a Final Determination. The Final Determination was published February 5, 1996.

for the 1850 and 1860 censuses, the only choices were White, Black, or Mulatto, and earlier censuses showed only how many whites, "free persons of color," or "slaves" were in a household) (Joslyn 1995, 1).

The Department's response to Joslyn's first issue:

Contrary to Joslyn's assertion, Federal censuses prior to 1870 identified certain individuals as Indian.<sup>20</sup> One of the secondary resources used by BIA researchers is Twenty Censuses, Populations and Housing Questions 1790-1980, published in 1979 by the Bureau of the Census. The preface of this publication states:

This report is aimed not only at the data user but also the social researcher, historian, genealogist, or interested member of the public who may wish to know not only how the populations and housing inquiries evolved over the years, but also what instructions led to the entries on the basic records they are using . . . . There were no specific instruction issued to census takers until 1820; these, and the ones for later censuses, are reproduced as found in the basic history for the period . . . or the enumerator's manuals (Twenty Censuses 1979, Preface).

In the 1850 and 1860 censuses, the instructions to the marshals and assistant marshals regarding "Indians and Color" read:

Indians not taxed are not to be enumerated in this or any other schedule . . . . Under heading 6, entitled "Color," in all cases where the person is white, leave the space blank; in all cases where the person is black, insert the letter B; if mulatto, insert M. It is very desirable that these particulars be carefully regarded (Twenty Censuses 1979, 14).

These instructions contained no prohibitions on enumerating persons and families as Indians, if they were taxed, and no prohibitions on listing color as other than "B" or "M" or

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<sup>20</sup> See, for example, the 1850 census of Allegan County, Michigan and the 1860 census of Terrebonne Parish, Louisiana.

leaving it blank. In fact, the 1860 Federal Census listed 16 Indians in Connecticut (Kennedy 1963, 61). The BIA researchers studied the 16 persons listed as "Indian" in 1860. Some were identified "Ind", and others "I" in the "color" column. This research also revealed that almost all of the Indians listed were either born in another state or were living away from Connecticut's usual "tribal" territories.<sup>21</sup>

In 1850, Leonard Uncas was shown living in Columbia, Tolland County, Connecticut. According to the instructions to the 1850 Assistant Marshall Dell Bull, he could list persons as blank if they were white, black if they were black, or mulatto if they were mulatto. However, although he listed Leonard Uncas as "M" for mulatto, in the column that required occupation or profession, he wrote "Last of Mohegans" (U.S. Census 1850b, 353, Dwelling #78; Household #80). In 1860, Leonard Uncas was one of the 16 persons in the State of Connecticut listed as "Ind" (U.S. Census 1860d 391, Dwelling #33; Household #32).

Research in the actual census records in Connecticut showed that some Indians who were taxed and living outside of tribal relations were enumerated as "Ind" or "I". The Indians identified on the 1860 census in Connecticut were living in four counties and were enumerated as Indians by six different enumerators. Many of the Indians in Connecticut were not taxed because they lived on state reservations and were not listed on the 1860 census at all. However, the residents of state reservations were easily traced using the

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<sup>21</sup> Examples of 1860 Federal Census returns of Connecticut:

Lucy Proffit, 55, Ind, Laborer, 300,	born: RI
Moses " , 14, m, Ind,	born: Conn
Sarah " , 14, f, Ind,	born: "
(U.S. Census 1860c 727, Dwelling #1622; Family #1638)	
Annett Davis, 24, f, I, Domestic,	born: Conn
(U. S. Census, 1860d 201, Dwelling #157; Family #151)	
Charlotte Lewis, 18, f, Ind, Servant, born: Conn	
(U.S. Census, 1860d 673, Dwelling #1939; Family #2157)	
John Skickett, 37, m, Ind, Basket Maker,	born: NY
Laura A. " , 36, f, Ind	born: do
Dwight R. " , 12, m, Ind	born: do
Catherine " , 7, f, Ind	born: do
Cosina " , 6, f, Ind	born: Conn
Julius " , 4, m, Ind	born: do
Helen " , 1, f, Ind	born: do
(U.S. Census 1860a 505, Dwelling #490; Family #491)	
Catherine Weston, 40, f, F.B., Servant	born: Conn
(U.S. Census 1860a 72, Dwelling #340; Family #558).	

Connecticut overseers' reports. In other words, the vast majority of Connecticut's Indians were not on the 1860 census at all.

Clearly, Joslyn's comment, "[i]t is not mentioned here that the 1870 Federal Census was the first in which the designation Indian **could be used** in the column concerning 'color'" [emphasis added] was in error. In 1850 and 1860, William Sherman was listed on the Federal census, but not as an Indian.

*Joslyn's second issue:* Joslyn cited The History and Growth of the United States Census found in the 56th Congressional Senate Documents, Vol. 14, concerning the requirement for producing multiple copies of pages for the 1850 Federal census. The requirements also applied to the 1850, 1860 and 1870 censuses. Joslyn added:

The matter does not end here, however, for apparently the BAR staff is unaware that for the 1850, 1860, and 1870 Federal censuses, three copies were prepared (see Carroll D. Wright and William C. Hunt, The History and Growth of the United States Census [Washington, D.C., 1900]). One copy remained in the county, the second went to the state, and the third to the Federal government (Joslyn 1995, 2)..

Joslyn also stated:

County copies of the Federal Census for 1870 are not known to be extant for Connecticut, but the state copy is, located in the state library in Hartford (Joslyn 1995, 2).

The Department's response to Joslyn's second issue:

BIA researchers consulted the actual Senate Report. Appendix E of the Senate report cited by Joslyn details the Census Acts of 1790, 1840, 1850, 1880, 1890 and 1900. No acts concerning the census were passed between the 1850 Act and 1880. The 1870 census was thus included within the scope of the Act of 1850. Directions for transmittal of the census returns are detailed in that Act as follows:

Sec. 5. *And be it further enacted*, That each marshal . . . shall carefully examine whether the return of each assistant marshal be made in con-

formity with the terms of this act, and, where discrepancies are detected, require the same to be corrected. He shall dispose of the **two** sets of the returns required from the assistant marshals as hereinafter provided for as follows: **One set he shall transmit forthwith to the Secretary of the Interior; and the other copy thereof he shall transmit to the office of the secretary of the state or territory to which his district belongs** (Wright and Hunt 1900, 932) [emphasis added].

Thus, two, not three, copies were produced in 1870.

In 1870, the enumeration marshals' districts were separated into subdivisions, not to include more than 20,000 inhabitants. Each subdivision required an assistant to be appointed who was a resident of the subdivision. Though the assistant marshal for the subdivision was not necessarily the actual enumerator, the assistant was directed by the marshal:

Any marshal could appoint a deputy or deputies to act in his behalf, if not inconsistent with the duties of his assistants, and such deputies could collect the social statistics, if so desired; but the marshal was made responsible for their acts in all cases . . . Each assistant, having received his commission and taken the oath or affirmation prescribed by the act and forwarded a copy thereof, duly authenticated, to the marshal of his district, was required to perform the service required of him by a personal visit to each dwelling house, and to each family in the subdivision assigned to him, and to ascertain, by inquiries made of some member of each family, if anyone can be found capable of giving the information, but if not, then of the agent of such family, the name, age, place of birth, and all other particulars required concerning each member thereof . . . and to obtain all such information from the best and most reliable sources; and when, in either case, said information had been obtained and entered on the schedules, it was to be immediately read to the person or persons furnishing the facts, to correct errors and supply omissions, wherever necessary (Wright and Hunt 1900, 42).

Also, there were specific instructions on how to use the schedules to insure accuracy:

After enumerating a family, farm, shop, etc. the entries made should be read over to the party giving the information, that all mistakes may be corrected on the spot, at that time. This is a requirement of law (Wright and Hunt 1900, 155).

Enumerators were compensated for a fully returned page, farm, or establishment.

Although specific instructions were given to enumerators, there are many examples to prove the enumerators used their own judgment in reporting the population. The instructions to the marshals in 1870 included:

Each assistant will provide himself with a secure portable inkstand, good ink, and a sufficient number of pens. All entries will be carefully dried with the blotting paper which accompanies each portfolio. Each page of schedules will be numbered in exact order as filled, and when filled . . . . Use the greatest care to preserve your blanks from unnecessary exposure, and your schedules, when filled, from loss. Let no one meddle with your papers. Carry as little finished work as possible, and as few schedules at a time as will answer your purpose. Always carry the full pamphlet of instructions (Wright and Hunt 1900, 155).

As far as possible, assistant marshals will have the first copy of the returns made from the sheets as they are completed, so that the full returns may be sent to the marshal at the earliest practicable moment after the enumeration closes. Great pains will be taken in comparing the copy intended for the census office with the originals, point by point. The second copy required by law will be forwarded to the marshall when completed. At the end of each set of returns, the assistant marshall will certify that they were made according to law and instructions (Wright and Hunt 1900, 156).

The instructions for the "Color" column were specifically different in 1870 than they had been in 1850. In the 1870

instructions, ". . . an extension was made in the inquiry respecting "color" so as to distinguish the Chinese and Indians among the general population" (Wright and Hunt 1900, 54). The category of "mulatto" was defined quite specifically:

*Color.*- It must not be assumed that, where nothing is written in this column, "White" is to be understood. The column is always to be filled. Be particularly careful in reporting the class *Mulatto*. The word here is generic, and includes quadroons, octoroons, and all persons having any perceptible trace of African blood. Important scientific results depend upon the correct determination of this class in schedules 1 and 2 (Wright and Hunt 1900, 157).

Though Indians with Black ancestry might not be listed as Indian in 1870 because of this instruction to census enumerators, this instruction is useful in evaluating William Sherman's designation on the 1870 Federal Census. However, since he was listed on the 1850 Federal Census as "B" and on the 1860 Federal Census as "Mu", no assumption of Indian ancestry can be made, while the designations do make clear that the census takers regarded him as being of at least partially African ancestry.

In 1870, the instructions to the assistant marshals included:

*Indians.*- "Indians not taxed" are not to be enumerated on schedule 1. Indians out of their tribal relations, and exercising the rights of citizens under State or Territorial laws, will be included. In all cases write "Ind," in the column for "Color." Although no provision is made for the enumeration of "Indians not taxed," it is highly desirable, for statistical purposes, that the number of such persons not living upon reservations should be known. Assistant marshals are therefore requested, where such persons are found within their subdivisions, to make a separate memorandum of names, with sex and age, and embody the same in a special report to the census office (Twenty Censuses 1979, 19).

The enumerators for the 1870 census returns from North Stonington, Connecticut were diligent in keeping instruc-

tions by enumerating the "Indians in North Stonington" and listing the families. The same was true for the Mohegan Tribe of Connecticut (recognized through 25 C.F.R. 83, 5/14/1994) and included:

Indians of the Mohegan Tribe residing on their Reservation in the Town of Montville, County of New London, State of Connecticut. Enumerated on the 19th day of July 1870 (U.S. Census, 1870b).

The enumerator went on to add:

The above enumeration is I believe according to instructions page 12 Pamphlet of Instruction. These 59 are living on lands of the reservation said lands divided among the families and without the provision of right of sale. They are not taxed and don't exercise rights of Citizenship. Some do a little farming and it is in a small way, they prefer to get their living by fishing or laboring for others.

There are more belonging to the tribe that are scattered in other places. I believe all are more or less mixed with white and negro blood (U.S. Census 1870b):

*Joslyn's third issue:*

Joslyn pointed out that on the Federal copy of the 1870 census, both parents' "color designation had been altered" (Joslyn 1995, 1). Joslyn submitted a photocopy of the 1870 census return housed in the Connecticut State Archives. Although he emphasized that the entry under "color" on this copy of the census return for William Sherman was indecipherable and altered, he pointed out that the ethnicity of Nancy Sherman was clearly listed as "I."

Joslyn closed his comment by stating:

Whether and to what extent the Indian identity of Sherman family members in the 1870 Federal Census changes the evaluation of evidence regarding criterion (e) of the Golden Hill Paugussett Tribe's federal acknowledgment petition remains to be determined. I bring the above to BAR's attention, however, because it behooves the branch to diligently and accurately describe and interpret



the data used in its decision making (Joslyn 1995, 2).

The Department's response to Joslyn's third issue:

Joslyn's comment misstated the BIA's interpretation in the Proposed Finding of the entry for the William Sherman family on the 1870 census of Trumbull, Fairfield County, Connecticut, and then proceeded to argue against the misrepresentation he created.

The fact that in the 1870 Federal census entry for William Sherman's household, both adults' "color designation had been altered" (Joslyn 1995, 1), was discussed on pages 47-48 of the Proposed Finding. It was this very alteration, and inability to determine what the enumerator was trying to signify from the microfilm copy of the 1870 Federal copy of the census, that led the BIA researcher to examine for the Proposed Finding the bound census volume in the National Archives, presumably the "copy" that was provided to the Secretary of the Interior as instructed.

As demonstrated above, it is unlikely that three copies of the 1870 Federal census ever existed. According to Wright and Hunt, two copies were made, one sent to the Secretary of the Interior who had charge of the 1870 Census, and the other to the Office of the Secretary of the State of Connecticut (Wright and Hunt 1900, 932). In fact, only two copies have been located. One is in the Connecticut State Archives. The other is in the National Archives, Washington, DC.

The alterations for William Sherman on both copies of the 1870 census overwrite one indecipherable ethnic designation with another indecipherable ethnic designation, and smudge the result. Who made the alterations on both the Federal and Connecticut copies of the 1870 census, and when they were made, is unclear. The instructions to the marshals allowed correction at several points. The Proposed Finding gave some credence to the speculation that William Sherman may have been identified as Indian on the 1870 Federal census returns (Proposed Finding 1995, 47).

As the Proposed Finding stated, even if the smudged entries in William Sherman's "Color" column on the 1870 Census were "I," whether this change had been made only on the Federal copy of the census utilized for the Proposed Finding or whether the BIA researcher had also used the equivalent

entry on the copy in the Connecticut State Archives, the entry would not have provided sufficient evidence for the petitioner to have met criterion 83.7(e).

The GHP petitioner does not claim Indian ancestry through Nancy (Hopkins) Sherman. The BIA researchers found no other indication of Indian ethnicity for Nancy (Hopkins) Sherman.

BIA researchers generally consider census returns as secondary sources. They are only indicators of ethnicity, because ascriptions for the same family or individual often vary from one decennial census to another. Census returns are good evidence for familial relationships and geographic communities, because the census taker documented where people were living and with whom they lived. In 1850, 1860, and 1870, the census did not state familial relationships of household members, however, so these are only presumptive.

The censuses are considered as a secondary source for the ethnicity of a person or family enumerated. When the census records consistently identify a family or an individual by the same ethnic or racial designation from one decade to another, the evidence is stronger than when the ethnic designation varies from one census to another. In this case the designation of "I" for an individual or a family on the 1870 census was of limited value as evidence of tribal descent. No tribe was named. No other persons living nearby were listed as "I". Other censuses provided varying designations for the same persons

The comments submitted by Mr. Joslyn were evaluated and because they were inaccurate, found to have little, if any, significance in the evaluation for the Final Determination. The genealogical issues before the BIA researchers in evaluating the evidence for the Final Determination remained those of determining: (1) who were the parents of William Sherman and, if it proved to be relevant, his wife, Nancy Hopkins; and (2) what was the American Indian tribe, if any, from which they descended? The petitioner and interested parties did not submit and the BIA researchers did not locate any primary source documentation on either William Sherman's or Nancy Hopkins's parents.

#### GOLDEN HILL PAUGESUKO

The original GHP letter of intent to petition was filed by Aurelius Piper, Sr. (aka Chief Big Eagle) on April 13, 1982. Documents submitted with the petition show that Mr. Piper,

Sr. designated his son, Aurelius Piper, Jr. (aka Chief Quiet Hawk) as the person responsible for the petition in a resolution submitted to the BIA on February 12, 1993. Documents in the petition and the BIA's administrative files supported the view that Aurelius Piper, Jr. was the leader for petitioning purposes. On August 23, 1993, only days after the GHP received its first technical assistance letter, the BIA received a letter from Kenny Piper (aka MocnFace Bear) outlining negative concerns about the group's leadership (Paugeesukq Meeting Minutes 1993, 1).

A division appeared within the current membership. Aurelius Piper, Jr. claimed to represent the GHP and Kenny Piper claimed to represent the same tribe, but as early as July 1993, the group represented by Kenny Piper had changed its name to "Golden Hill Paugeesukq Nation" (Paugeesukq). Both groups submitted identical membership lists. In January of 1995, the Paugeesukq group removed Aurelius Piper, Jr. from their membership list. The leadership split had no impact on the Proposed Finding and has no impact on the Final Determination under criterion 83.7(e) because the individuals on both membership lists have the same genealogies.

*The Paugeesukq comments:*

The Paugeesukq group submitted several documents in opposition to the proposed negative finding. On the last day of the comment period, February 5, 1996, Kenny Piper, claiming to represent the Golden Hill Paugeesukqs, requested that the BIA extend the time period for preparation of the GHP Final Determination. The request was denied because Kenny Piper was not on record as the spokesperson of the original petition.

The Department's Response to the Paugeesukq's comments:

Representatives of the Paugeesukq group met with the BIA staff several times, both before and after the Proposed Finding. During these meetings, the BIA staff responded to questions and provided information about the petitioning process and how the BIA evaluated evidence. The Paugeesukq group had ample opportunity to comment during the comment period. The BIA researchers had supplied them with copies of all submissions, comments and the GHP Response to the Technical Assistance Review. The BIA researchers supplied both the GHP and the Paugeesukq with documents found by the BIA researchers. Only documents protected by the privacy laws were withheld from the Paugeesukq group.

The Paugeesukq submitted documents, but none of the documents were new. All had already been submitted and had been taken into consideration for the Proposed Finding. The Paugeesukq did not provide any analysis with these documents. Therefore, this submission did not have an impact on the Final Determination.

The Paugeesukq argued that they had not been permitted time to review the materials from the GHP petitioner (Aurelius Piper, Jr.), materials from the commenters, and materials that the BIA had obtained from the State of Connecticut under Freedom of Information Act (FOIA) request. The Paugeesukq claimed that they could not participate in a meaningful way in the proceedings without copies of these documents. As mentioned previously, the Paugeesukq group was supplied with materials from the GHP and commenters as quickly as the BIA received them.

On May 4, 1995, the BIA requested records from the State of Connecticut under FOIA. This FOIA request pertained to all Indians in Connecticut. The state has sent to the BIA three separate mailings of fewer than 50 pages each. The accompanying letters were dated February 1, February 6, and February 15, 1996. None of the documents were new to the BIA researchers. These materials received from the State have not been used in this Final Determination primarily because no new GHP materials were contained in the partial FOIA response which the BIA received after the GHP response period had closed. Any other materials sent by the state on the FOIA request will not be opened until the Final Determination is published. If the petitioner believes new evidence is found, they can request a hearing before the Interior Board of Indian Appeals under Section 83.11 of the acknowledgment regulation.

Documented Comments in Support of the Proposed Finding:

CONNECTICUT HOMEOWNERS HELD HOSTAGE (CHHH), submitted by Kenneth E. Lenz for the CHHH.

JAMES LYNCH:

On December 4, 1995, the BIA received Supplemental Points of Contention to William Shermans [sic] Identity as a Member Descendent of the Golden Hill Indians, written by James Lynch, historian for the CHHH. The submission included documentation, some new to BIA researchers. The four points of contention were:

1. The Golden Hill fund [sic] received by William Sherman from Russell Tomlinson on 13 January 1876 were in fact a standard mortgage promissory note to a non-Indian. It was a legal, common practice of the Golden Hill Overseers since 1831 to engage in such activities in order to maintain the solvency of the fund. The properties involved in all these conveyances were in no manner considered to be 'Indian lands'.

2. William Sherman's purchase, ownership and use of the quarter [acre] of land in Trumbull had all the indices of non-Indian ownership such as obtaining a mortgage, paying taxes on his estate, paying taxes on personal property, as well as a voting poll tax.

3. That prior to his death in 1886 William Sherman quitclaimed his mortgage back to the mortgage holder in a manner consistent with other non-Indians who, in the past had utilized these funds.

4. That if William Sherman was an Indian as claimed by the Petitioners he would have had to have petitioned the Connecticut General Assembly with Russell Tomlinson in order to gain approval for the use of the funds to purchase the quarter acre. It was illegal for an Indian to enter into any contract (except rental agreements) such as a mortgage covenant (Lynch 1995b).

The documents presented were:

1) An affidavit from Robert R. Goldberger, an attorney who was counsel to George Sherman, son of William Sherman (Goldberger in Lynch 1995b).

2) Examples of quit claim deeds dated about the same time period as that of William Sherman's quit claim deed (Sherwood, Walker 1884 in Lynch 1995b).

3) Quit claim deed of William Sherman to Rowland B. Lacey (Sherman deed 1886 in Lynch 1995b).

4) The Public Statute Laws of the State of Connecticut, May 1821.

5) Public Acts Passed by the State of Connecticut in the Year of 1876.

6) A document labeled "Addendum A, Golden Hill Land Claim".

7) Original maps of Bridgeport, Connecticut circa 1890.

8) Tax Assessment Lists of 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, and 1889.

9) Previously submitted documents included pages from Supplements A and B submitted by CHHH in June 1994 and on December 21, 1994.

The CHHH comments as submitted will be answered in order.

*Lynch's first comment:*

Lynch's comments addressed the historical background and legal issues relating to the tax and voting status of Indians in Connecticut, among other things. He attached copies of the documents cited. From the evidence presented, Lynch concluded that William Sherman was not living as an Indian, that laws applying to other Indians did not apply to him, and that the money in the bank from the sale of Golden Hill lands was being lent as mortgage moneys in order to increase the funds for the use of Indians.

The Department's response to Lynch's first comment:

Indians attached to tribal lands were not voting citizens of Connecticut during William Sherman's lifetime. However, persons of Indian descent who lived in the non-Indian community often did vote. William Sherman voted and paid taxes on the land he owned. The BIA researchers do not find that paying taxes in itself is evidence that William Sherman was not Indian. However, it is consistent with the majority of records on William Sherman, which treated him in a way more typical of non-Indians than Indians.

After 1849, there are records of overseers acting as trustees of proceeds from the sale of land that in 1842 had been used for a home for Nancy Sharpe, alias Pease, and Ruby Mansfield (see Proposed Finding, 35). There are records of mortgage transfers and quit claim deeds involving funds. No Indian persons are identified on these records, only lands bought and sold. The only difference between these mortgag-

es and quit claims, and other transactions which took place between non-Indians, was that the persons executing the deeds signed their names with the title "overseer", or in the case of Lafayette Sherwood, as "administrator" (Sherwood Deed 1875 in Lynch 1995). Other deeds from 1849-1876 did not relate to the Golden Hill funds. These deeds listed only the name of the persons involved, including in one case the administrators of an estate. The 1854 to 1886 deeds that included wording "Overseer of the Golden Hill" showed that administrators sometimes controlled the Golden Hill funds.

William Sherman and Russell Tomlinson entered into a mortgage covenant in 1876. According to Orcutt's letters:

He [Tomlinson] was elected Town Auditor in 1857, and a member of the Board of Relief in 1858, in both of which he did much service, being a member of the Board of Relief at the time of his death. He often served as moderator of town meetings. On the resignation of Hon. Dwight Morris, in 1860, he was appointed, but the State trustee of the fund for the benefit of the remnant of the Golden Hill Indians, which he retained to the time of his decease. He was Representative to the Legislature, Senator from the Fourteenth District, director and President of the Naugatuck Railroad Company, director in the Bridgeport Bank, also in the First National Bank and the Mountain Grove Cemetery Association (Orcutt's Letters in Response Appendix 8, 159).

The mortgage covenant between Sherman and Tomlinson differed in no way from comparable deeds of estate managed funds in Connecticut (see Proposed Finding 1995, 47). William Sherman's 1876 mortgage did not list him as an Indian, or as an Indian claimant to the funds he borrowed. There was no record of Tomlinson's requesting authority to use the Golden Hill funds that belonged to the State for the welfare of the Golden Hill descendants. In his capacity as president of the bank, as overseer of the poor, or as overseer of the Golden Hill funds, Tomlinson lent Golden Hill moneys to William Sherman who mortgaged his property as collateral.

In like manner, there are no explanations as to why in 1886, Sherman quit claimed the land to Mr. Lacey, an overseer of the Golden Hill funds. If it were Indian land, owned by the State, Sherman could not have owned it, and therefore, could

not have quit claimed the property to Lacey without action from the State Assembly. Although the Indian overseers had a great deal of latitude in their dealings with the Indians in their charge, and the investment of the moneys they administered, Lynch points out that:

it was well within the parameters of authority granted to the overseers to engage in such investment activities for the benefit and welfare of those under their care (Lynch 1995b, 1.2).

These documents concerning the land transactions by themselves did not provide evidence either that William Sherman was a Paugussett Indian or that he was not. They showed clearly that William Sherman was not living in a tribe or on tribal lands. Instead, they support the Proposed Finding, which found that the petitioner, whose members all claim Indian descent through, William Sherman, cannot show descent from a historical tribe.

*Lynch's second comment:*

Lynch provided documents showing William Sherman was paying taxes and was assessed a poll tax for voting privileges during the years 1873 to 1885.

The Department's response to Lynch's second comment:

During the same time William Sherman paid taxes and voted, Hurd in 1882 and Orcutt in 1886 claimed that Sherman was of Indian descent. Taxation and voting privileges would not necessarily make Sherman a non-Indian. In many other states Indians who paid taxes, voted. The fact that Sherman paid taxes and voted only reinforces what was already known about him: that he did not live on untaxed Indian lands in the 1870's and 1880's and that he lived among non-Indians. The documents further support the Proposed Finding's position that Sherman was not in a tribe in the 1870's.

These records do not provide data on William Sherman's ancestry or indicate whether or not he was Indian. They show only that he was not in tribal relations during the 1870's and 1880's.

*Lynch's third comment:*

Lynch said that the petitioner's interpretation of William Sherman's quit claim in 1886, discussed previously, left



many questions unanswered. For example, if Mr. Lacey, as Indian agent, retained title to the land after the death of William Sherman, why was George Sherman, William's son, being assessed for the land (Lynch 1995b, Assessment 1889)? The petitioner's claim that the land had been reservation land since 1886 does not conform with the fact that the land was taxed.

The Department's response to Lynch's third comment:

Under criterion 83.7(e), the question of tax status has some relevance. Criterion 83.7(e) requires descent from a historic tribe. Information on the tax status helps answer the question: was the GHP land a reservation or viewed as Indian land held in trust by the State? If the land were held in trust by the State, it would not be taxable. Since the land was taxed, it clearly was not "Indian Country."

In comparison, the reservation lands of Connecticut's Mohegan tribe were not taxed prior to their being privatized. The tribe petitioned the State Assembly for privatization, leaving a clear paper trail.

*Lynch's fourth comment:*

Tomlinson, as overseer to the Golden Hill Indians would have had to request permission of the State Assembly to purchase land for an Indian (Public Acts of Connecticut 1876). If he had purchased land, it would have remained in the overseer's name and would not have been taxed. However, if Tomlinson had used his discretionary powers to mortgage the funds, he would not have been required to request the Assembly's permission.

The Department's response to Lynch's fourth comment:

Other than in identifying Tomlinson as overseer, the Sherman-Tomlinson deed was quite ordinary and was similar to other mortgages made by the president of the bank to other non-Indians in this period. Therefore, the 1876 transaction between Tomlinson and Sherman and 1886 transactions between Lacey and Sherman do not indicate that William Sherman was dealt with differently from any non-Indian mortgagor.

Many points in the CHHH submissions by Lynch did not directly pertain to criterion 83.7(e). Others added to the overall picture of the legal and historical context in which William Sherman lived and in which these documents were

created. The comments and documents supported the GHP Proposed Finding's conclusion that William Sherman was not an Indian and did not live in a tribe.

**PETITIONER'S RESPONSE TO JAMES LYNCH'S SUPPLEMENTAL POINTS OF CONTENTION**

The petitioner's response to Mr. Lynch's comments (hereafter referred to as Response to Lynch) re-examined the written accounts in the county histories written by Orcutt and Hurd, and submitted other documents to support the theories that these authors had espoused. Only one of the documents had not been previously submitted. It was a list of Senators and Representatives of Connecticut in 1875, and was used to validate the character of Dr. Samuel Beardsley of Trumbull, and to show that he was a Representative to the State Assembly in 1875.

The Response to Lynch extensively examined William Sherman's obituary, whose author remains unknown. The petitioner's Response to Lynch speculated as to the obituary's author and the timing of the article:

Since "the death was sudden" on May 18, 1886, ask yourself how so much material for an obituary published the following day could have been obtained so quickly. The newspaper must have had a file on the Tribe and on William Sherman. When you read the obituary ask yourself if there is any doubt in the mind of the writer of the authenticity of the information reported. In fact, when you read the obituary don't you get the feeling that this was well known material and that Sherman was a well known public figure (Comments to Lynch, on Bridgeport Standard Obituary May 19, 1886).

The obituary stated:

He [Sherman] has for many years been the leading and almost the sole representative of the remnant of the once famous Golden Hill tribe of Indians. He was fifth in descent from Tom Sherman; the last owner of the Golden Hill reservation . . . The sale of that reservation in 1802 created a fund which has been held and managed by the following persons successively as overseers, vis . . . (Comments to Lynch, Bridgeport Standard Obituary May 19, 1886).

The obituary continued:

The fund was divided a few years since - the town of Trumbull taking charge of a part of it for the benefit of a few persons by the name of Sharp. The other part was mostly invested in a small place in Nichols Farms as a home for William where he spent his last days (Comments to Lynch, Bridgeport Standard Obituary, May 19, 1886) [emphasis added].

In the Comments to Lynch, the petitioner stated:

Wherever the reporter got this information he or she clearly understood that the intention was to create a Tribal homestead. The writer uses the words "invested for" William Sherman. The reporter does not use the words purchased by William Sherman.

The Department's response to petitioner's comments to Lynch and Lynch's comments:

The BIA examined the obituary for the Proposed Finding, but did not cite it in the report. The obituary listed Sherman's death date and age. Unlike most obituaries, it did not list his next of kin. It did not list relatives or parents either dead or alive.

Much of the information in the obituary could have been taken directly out of Orcutt. That the author of the obituary knew the authenticity of the material is pure conjecture. Nothing in the obituary states how or if the writer had verified the contents or that William Sherman was a well-known public figure. Obituaries are secondary sources at best and are frequently riddled with inaccurate statements so as to put the deceased in the best light. William Sherman, as caretaker of the cemetery, may have been well-known to the public.

The Proposed Finding discussed the fund and the overseers of that fund. The emphasized portion of the obituary illustrated that the land was an investment for the fund over which the overseers were appointed.

The reporter of the obituary did not use the words, "invested for" as claimed by the petitioner. The obituary reads "invested in a small place . . . as a home for . . . ."

Nothing in this quote would lead a reader to think the purpose of the investment was "to create a Tribal homestead" as the petitioner's Response to Lynch says. Analysis of the William Sherman obituary found that it did not support the petitioner's contention that William Sherman was Indian. The analysis supported the Proposed Finding's conclusion that the GHP was not descended from a tribe.

No new documentation was submitted that had not been previously reviewed by the BIA researchers. The obituary contains no new information. Sherman's diary/account book listed the names of many well-known public figures around Trumbull, Connecticut. He did odd jobs for them. However, no other newspaper articles were submitted or found about William Sherman; no other mention is made of him in contemporary histories, except Hurd and Orcutt.

The remaining Comments to Lynch revisited arguments that had been rejected in the Proposed Finding about the Pease, Sharpe, Sherman family, and no new documentation was submitted. These comments in the Response to Lynch were not used in the Final Determination.

MS. KATHLEEN SIEFER FOR CHHH, submitted by Kenneth E. Lenz.

On December 5, 1995, the BIA received Supplement C to the Genealogical Points of Contention to the Petition by the Golden Hill Paugussett Indians for Federal Tribal Acknowledgment, written by a genealogist, Kathleen Siefer, on behalf of CHHH, supporting the GHP Proposed Finding. Siefer's comments spoke principally to the historical context in which the 19th Century documents had been created. Specifically, she compared the language of documents created at the same time for the Turkey Hill Paugussetts and the Golden Hill ancestors and found the language to differ in significant ways. She also looked for documented social interaction between the two groups that would have indicated that the GHP ancestors [William Sherman and his family and cohorts] participated in a larger Indian community in their immediate vicinity.

*Siefer's comments.* Siefer argued that:

- 1) [I]t would be highly unusual for two parts of the same tribe, i.e. the Golden Hill and the Turkey Hill Paugussetts, to have no interaction for an entire generation even though located only ten miles apart;

2) Turkey Hill had continuous overseers, while the Golden Hill did not, concluding that the Golden Hill ceased to function as a tribe (Siefer 1995, 4).

Siefer quoted Orcutt's book, The History of the Old Town of Derby, Connecticut, stating that Molly Hatchet was a typical Turkey Hill Indian. Based on her reading of Orcutt, Siefer said that Molly Hatchet had lived at Turkey Hill and:

some members of this group still remained in the area at least until 1871 when they petitioned to have land sold. This would have made them contemporaries of William Sherman, yet he never mentioned having any contact with them in his diary (Siefer 1995, 4-5).

Siefer also documented the families of some of the descendants of Molly Hatchet with the Turkey Hill Overseer Reports, 1829-34, the Connecticut General Assembly actions, 1818 and 1825, the Federal census returns of 1850 and 1880, and Superior Court, New Haven County documents, 1871.

In total the documents described a small group of Indians called the "Turkey Hill Indians." They lived on 100 acres of land that had been granted to them by the General Assembly in 1680. Non-Indians had encroached on the land. In 1818, this 100 acres lay in the town of Milford, Connecticut. Some 15 people lived there in three houses (General Assembly document 1818 in Siefer 1995). Leman Stone was overseer. He requested that the land not be sold in 1818, for there would not be funds enough to care for the wants of twenty persons without homes. Stone stated:

Besides these [15] your committee have been able to find only five others who are resident in different places & have occasionally received assistance from the Overseers of the Indians. They are all descendants of those for whose benefit & lands were sequestered, but all, excepting a single instance, thro [sic] intermarriages with those who were not the objects of the original grant (General Assembly document 1818 in Siefer 1995).

In 1825, Overseer Leman Stone reported to the General Assembly of the sale of all but eight acres of the land upon which the Turkey Hill Indians resided. The money was placed

in an account for the use and benefit of the Turkey Hill Indians. In 1835, Turkey Hill overseer David Johnson reported to the Superior Court that from 1832-1835, he had paid expenses for David Hatchet, Joseph Hatchet and Garry Homus (Turkey Hill Overseer Reports in Siefer 1995).

Siefer submitted a copy of the 1850 Federal Census return of Derby, New Haven County, which showed that Elizabeth Hatchet was living with a Colburn family, age 17 (1850 Federal Census in Siefer 1995), illustrating that the Hatchet family was still in Derby.

Siefer included an 1871 document from the New Haven Superior Court in which Roswell Moses, Elizabeth Moses, Georgianna Moses, Eliza Franklin and Lavenia Breckenridge claimed:

that they respectively belong to and are descendants and members of the tribe of Indians formerly located in the town of Derby, and known as the Turkey Hill Indians - That said tribe own a certain piece of land located in said town of Derby as a place called Turkey Hill and in quantity about seven acres, which said land lies in and is enclosed by land known as the Whitney farm and now owned by Sidney S. Downs of said Derby (Superior Court document 1871 in Siefer, 1).

The document continued by stating that no one was residing there and none had lived on the land for twenty years, and the only use for it was to rent it for agricultural purposes. The Turkey Hill tribal members requested that it be sold so that the interest would yield a much larger annual income to the owners. They requested the moneys from the sale of the land be divided between the members of the tribe. The law firm of Watrous C. Wakelee was the overseer of the tribe. The court found:

the allegations in said petition proved and [sic] true, and that said petitioners are the sole survivors of said tribe entitled to any portion of said land known to said overseer and that they all have an equal interest in the same (Superior Court document 1871 in Siefer, 3).

The court finding continued by stating that the overseer could:

invest the avails of such sale or any part thereof for the benefit of those entitled to the same or to deposit the whole or any part thereof not re-invested in real estate in some savings bank of this state and to apply the use interest and income arising therefrom for the comfort and support of said tribe in proportion that the individual members thereof shall be entitled to and if from necessitous circumstances of any one or more of said tribe any portion of the principal to which such needy member shall be entitled shall be required to support and sustain him or her, then said overseer shall be authorized and empowered to use such part of the principal sum of said needy members as shall be necessary [sic] to relieve his her or their necessities (Superior Court document 1871 in Siefer 1995, 5).

The overseer was instructed to make an accounting of what took place. Mr. Watrous C. Wakelee reported in September 1871 that he had sold the land to Sydney A. Downs for \$1,000. The expense of the sale was \$40, leaving \$960. Of the remaining funds, \$720 were put in the Derby Savings bank in Birmingham in Derby, and \$240 was invested in real estate in the city of New Haven:

said investment in real estate being the purchase of an unencumbered lot of land situated as aforesaid by warranty deed duly recorded on the Land records of said town of New Haven (Superior Court document 1871, in Siefer 1995, 6).

The Department's response to Siefer's comments:

These documents show that the New Haven Superior Court in 1871 identified a group of Indians descending from the Paugussetts living in the Orange/Derby/Ansonia area. These three towns fall within approximately a five-mile radius of each other, and are about 10 miles from Trumbull:

The GHP claimed to descend both from the Paugussetts and from Molly Hatchet. The documents submitted by Siefer show that there was another group of Paugussett Indians in 1810 through 1871, living in the Orange/Derby/Ansonia area. The surname of Hatchet in the early 1830's documents would indicate, but not prove, that they were either descended from Molly Hatchet or were her collateral descendants. The 1871 Superior Court document clearly identified descendants

of the Turkey Hill tribe. The documents did not list William Sherman as one of them.

In addition, the Superior Court document also clearly identified the authority of an overseer to invest the funds of an Indian tribe in land with a mortgage to non-Indians. Although the BIA reviewed many documents concerning the Golden Hill funds, there were no clear statements in those documents comparable to these. These documents provide further context to understanding the documents and transactions naming William Sherman, and generally support the conclusions reached in the Proposed Finding that William Sherman did not receive lands and Golden Hill funds because he was an Indian. In addition, the absence of documented interaction between William Sherman and these well-documented Indian persons who may have descended from Molly Hatchet adds further to our understanding of Connecticut Indians and William Sherman's apparent lack of relationship to them.

#### PETITIONER'S RESPONSE TO KATHLEEN SIEFER'S COMMENTS

In general, the petitioner's response to Siefer's comments (hereafter referred to as Response to Siefer) repeated undocumented social relationships asserted in the original petition and already rejected by the BIA. The Response to Siefer attempted to disprove Siefer's contention that William Sherman was not part of Connecticut's Indian Community. For example, the GHP attempted to connect William Sherman to Henry Pan, who they claim was Indian:

Pan. Pan is Henry Harris Pan who comes to visit William Sherman as per his diary. The Pans originate from the Corum Hill reservation which was led by a chief by the name of Pannee. The Pans are discussed briefly in the Tribe's submission of June 20, 1995. After the Corum Hill reservation was sold the Pans migrated into Huntington, Newtown and Monroe. Henry Pan who was living in Monroe married Sarah Mauwee (Harris) and apparently migrated to Scatacook after 1850 (Response to Siefer, 8).

The Response to Siefer also attempted to connect William Sherman to the Oviatt family in Orange, New Haven County, Connecticut:

On February 27, 1853 in Orange a child by the name of William Alfred was born to Patty Oviatt of



Orange and Beecher Sharpe of Huntington. By all accounts Beecher Sharp, half-brother of William Sherman, would be too young to be this Beecher Sharp. He may be John Sharp, father of Beecher. Note that according to footnote #11 on page 22 of the Technical Report that a Benjamin Roberts had a child named Patty Sharp and also note that in the photograph adjoining page 12 of the History of Orange Billy Sharp is listed as the grandson of Aunt Icey who was the wife of Brien Oviatt. Therefore, William Alfred Sharpe is Billy Sharp (Response to Siefer, 9)..

The GHP submitted no documentation as evidence for the examples listed.

The Department's response to petitioner's Response to Siefer's comments:

No documentation submitted by the petitioner or found by the BIA researchers substantiates the assumed connections made by the Response to Siefer. The footnote in the Technical Report did not show that Benjamin Roberts had a child named Patty Sharp. The quoted passage from the History of Orange, under the heading, "Families of Africans and Descendants of the native Indians," implied a family connection between Benjamin Roberts and Patty Sharp, but no relationship was stated (Proposed Finding 1995, 22 n11). The petitioner submitted no evidence to show that the "Patty Sharp" whose name followed that of Benjamin Roberts in the cited passage was the same person as the Patty Oviatt who had a child by Beecher Sharp in 1853. The wide disparity in age (Benjamin Roberts died in 1850, age 79) makes a direct parent-child relationship between Benjamin Roberts and Patty Oviatt questionable.

In at least one instance, the Response to Siefer eliminates a possible connection unnecessarily. While the BIA does not accept the phrase, "Beecher Sharp, half-brother of William Sherman," as constituting a documented relationship, there is no reason to assume that the Beecher Sharpe, named by Orcutt as a son of Nancy Sharpe, alias Pease (Orcutt 1886, 43), would have been too young to have fathered a child in 1853. Beecher Sharpe was not located on the 1850 census. However, the 1853 residence of the father of Patty Oviatt's child in Huntington, Fairfield County, Connecticut, might imply a connection to the Charles Sharp who lived in Trumbull in 1850. The sequencing of the names (Beecher, Nancy,

Charles) by Orcutt (Orcutt 1886, 43) at least implies that he believed Beecher Sharpe to be the eldest of the three Sharpe siblings. If the tentative identification of Nancy Peas [Sharpe?], age 19, and Charles Sharp, age 17, in the household of Levi Peas in 1850 is correct (U.S. Census 1850a, 320, Dwelling #5, Household #5), it is possible that Beecher Sharpe, named by Orcutt as the son of Nancy Sharpe, alias Pease, would have been aged about 21 in 1850, and easily old enough to father a child in 1853. However, the petitioner presented no documentation to showing the parentage of the Beecher Sharp from Huntington, Connecticut, who fathered a child in 1853, nor any documentation linking him to William Sherman, the GHP ancestor. William Sherman's diary/account book never mentioned Beecher Sharpe (Sherman Diary/Account Book).

No documents show that Pan was Henry Harris Pan, or that Henry Harris Pan was the same as Pannee. The diary/account book of William Sherman contains one entry that may show one visit from a "Henry Pan," but it is so difficult to decipher that it may say "Henry Peas," a known associate (Sherman Diary/Account Book, December 8, 1876).

The assumptions made by the petitioner that Billy Sharp, who appears to be a young man in the 1900 picture of Aunt Icey's 100th birthday in the History of Orange, was the same person as William Alfred Sharp, born in 1853 (who would have been middle-aged at the time the photograph was taken) are undocumented. Though William Alfred Sharp could possibly be the Billy Sharp in the picture listed, the petitioner submitted no documents that connect William Alfred Sharp to William Sherman.

The overseers assigned to Indian groups in Connecticut were, at best, inconsistent and idiosyncratic in their reporting practices. From a present perspective, the quantity and quality of surviving records varies from overseer to overseer over time and from place to place. However, the documentation submitted by Siefer illustrates that the Turkey Hill overseer in the 19th century actually did invest Indian funds in real estate in the city of New Haven for the benefit of a group of people clearly and continuously identified as Indians. The GHP comments did not provide documentation or arguments to explain why, if William Sherman and the Turkey Hill Indians were both descended from the Paugussett tribe and from Molly Hatchet, they were treated so differently in the records. Even considering the variations of reporting by overseers, the arguments put

forth by the petitioner lacked credibility in the face of the documentation submitted by Siefer and all the other documents received by the BIA which supported the Proposed Finding.

CONNECTICUT ATTORNEY GENERAL

On December 4, 1996, the Branch of Acknowledgment received a documented Response of State of Connecticut in Support of Proposed Findings Against Federal Acknowledgment of Golden Hill Paugussetts. The State of Connecticut (hereafter referred to as the State) reviewed the regulations under which the Proposed Finding was issued and summarized the Proposed Finding and the petitioner's claims. The State then addressed the conclusions reached in the Proposed Finding.

The most pertinent portion of the State's comments were identified under section I as "Lack of Documentation as to William Sherman's Alleged Indian Tribal Ancestry" (State of Connecticut Comments, 6). The State argued that the records available for William Sherman did not support the petitioner's claims that he was an Indian or a Paugussett Indian. Basing their conclusions on documents available for the Proposed Finding, the State summarized what it considered to be negative evidence:

1. William Sherman's seaman's records did not identify him as Indian, even though the same records identified other seamen as Indian;
2. William Sherman's marriage record did not identify him as Indian, his marriage was not to another Indian, and he was not married by Indian custom;
3. William Sherman did not associate with other Indians;
4. William Sherman was seldom referred to as Indian prior to 1870. Later identifications of William Sherman as Indian were inconsistent;
5. The State is unaware of any documentation of Indian ancestry of William Sherman prior to a county history in 1882 citation as "claimant" to Golden Hill funds;

6. There is no birth record to document William Sherman's parentage; and

7. The parentage of Nancy Sharp, alias Pease, alleged by the petitioner to be William Sherman's mother, is not documented; therefore descent from a tribe cannot be claimed through the woman reputed to be the mother of William Sherman.

The State submitted three documents: Exhibit A, an article written by Lewis H. Morgan in 1881; Exhibit B, a letter written by a staff attorney for the Indian Legal Services Inc. of the Pine Tree Legal Assistance, Inc. to Mr. Brenden Kellaheer in 1974; and Exhibit C, a copy of a United States Presidential memorandum on "Government-to-Government relations with Native American Tribal Governments" (State of Connecticut Comments 1995, Appendices A, B, and C).

Exhibit A: The State cited Lewis H. Morgan's Contributions to American Ethnology, as evidence that the Proposed Finding was supported by established ethnological practices.

Exhibit B: Letter dated November 1, 1974 from David Crosby, attorney of Pine Tree Legal Assistance, Inc., Indian Legal Services Division, Machias, Maine (hereafter referred to as Pine Tree) to Brenden Kellaheer, Natural Resource Department of the Connecticut Department of Environmental Protection. Statements in the 1974 letter that the Government found pertinent to the finding include the following:

a claim based on violations of the federal Nonintercourse Act would probably founder on the issue of tribal existence . . . . .

In the case of the Golden Hill, for example, it appears that the overseer failed to comply with mandatory reporting requirements. The scanty evidence I have seen suggests that tribal funds were lent on unsecured notes, and that interest was either not demanded or was never paid. A case in point is the "sale" of the 19 3/4 acre Trumbull Reserve in 1854. The consideration was for \$350 (the property had been bought with tribal funds in 1842 for \$600), but the purchaser gave a purchase money mortgage for the entire amount. The mortgage was discharged three years later, but it does not appear that any interest was demanded or collected . . . . .

From 1821-1855 reports were to be filed with the County Court for the county in which the Tribe resided. From 1855-1935 reports were to be filed with the Superior Court for the county. After 1866 copies were to be filed with the appropriate town, and after 1881 a copy was also to be filed with the Secretary of the State . . . (Pine Tree Letter in State of Connecticut Comments, Appendix B).

Exhibit C: Presidential Documents, dated April 29, 1994, and produced in the FEDERAL REGISTER May 4, 1994.

The Department's response to the Attorney General comments:

The State's interpretation of the parentage of William Sherman, Nancy Sharpe, *alias* Pease, and Ruby Mansfield was not documented. The State's arguments generally were meant to support the conclusions of the Proposed Finding.

It is irrelevant whether or not William Sherman and his wife were married by Indian custom. By the 19th century, the great majority of Connecticut's Indians married according to the laws of the state.

Except for quoting a footnote in Orcutt's 1886 history that was not cited in the Proposed Finding, the State did not document its conclusions that William Sherman was not demonstrated to be descended from a historic tribe, relying on the Proposed Finding's conclusions on this matter. The State noted that the footnote indicated that Orcutt, himself, had doubts about the accuracy of his local history, a point not made in the Proposed Finding:

Furthermore, Orcutt regretted that he could not devote an additional year's work to his 1886 book, "by which a degree of completeness, somewhat satisfactory, might be attained." Orcutt, 1886, Preface 1st page. This was especially true of the genealogies, he stated (State of Connecticut Comments, 8n).

For more information on the discussion of Orcutt's history, see this report, pages 42-48.

State of Connecticut's Exhibit A: The government researchers did not find this material pertinent in evaluating the evidence for the Final Determination, in that the State of

Connecticut's Exhibit A was not relevant to criterion 83.7(e).

State of Connecticut's Exhibit B: The State did not submit any background information or other correspondence with the Pine Tree letter. The State referenced the letter in the narrative portion of its comments under tribal identity. The Pine Tree letter mentions an enclosed report which was not submitted as part of the documentation. Both background information and the enclosure report would have been helpful to better evaluate the letter's importance.

During the 1970's, Pine Tree Legal Assistance Native American division represented the Penobscot in Maine in their land claims. During this time, the Native American division of Pine Tree Legal Assistance investigated many of the New England entities. The issues decided in that case are part of the legal precedent for the establishment of the Federal Acknowledgment Process 1978. The Penobscot case concerned tribal identity. David Crosby, a staff attorney for Pine Tree Legal Assistance, Inc., researched many of the Connecticut groups.

Funding for Pine Tree included funds appropriated by Congress. Its cases were sometimes administrated through the Native American Rights Fund, and sometimes through the Pine Tree Native American division of Pine Tree Legal Services.

David Crosby was an informed individual who apparently either based his statements on a study of, or himself studied, the Golden Hill fund records and found numerous irregularities in their administration. His conclusions did not differ from the government's conclusions in the Proposed Finding concerning the use of the same funds. Unfortunately, without the report referred to in the letter, we have no way to evaluate how Crosby arrived at his conclusions and the specific evidence he based them on.

State of Connecticut's Exhibit C: This record instructs Executive Departments and Agencies how to deal with federally recognized tribes. This exhibit was not pertinent to criterion 83.7(e) and was not utilized in evaluation of the evidence for the GHP Final Determination.

Petitioner's Response to the Connecticut Attorney General's Comments:

The petitioner's response to the Connecticut Attorney General's (hereafter Response to AG) comments were delineated in four major groups:

1. The Attorney General Comments go to issues beyond the expedited, limited review of § 83.10(e) by asserting a "continuous tribal existence" requirement is [sic] a "fundamental prerequisite" to federal recognition and a proper factor considered in the BIA" denial. The Attorney General Comments use this erroneous argument as a basis to discuss evidence relating to mandatory criteria (a), (b), and (c) regarding tribal identity and existence, community relations, and political authority, respectively.

The petitioner's Response to the AG's first point also argued that:

The 1994 revisions reversed the order of the mandatory criteria, so that the "most fundamental" requirements are stated first. 59 Fed. Reg. 9280, 9288 (1994). Hence, criteria (a) through (g) are fundamental to federal acknowledgment and require the element of continuity; criterion (e) does not. In fact, under the regulations, modern-day records identifying present members or their ancestors as descendants of a historic tribe are "acceptable" evidence of criterion (e). 25 C.F.R. § 83.7(e)(1). Continuous documentation tracing the ancestry of the current members dating to the earliest history of the group is not required. 59 Fed. Reg. at 9288.

The prioritization of the seven mandatory criteria enumerated in § 83.7, with the most fundamental criteria listed first, also is consistent with the addition of § 83.10(e), which permits a preliminary denial of a petition upon an expedited evaluation limited to criteria (e) through (g), where the evidence "clearly establishes" the petitioner does not meet one of the least fundamental criteria. See 25 C.F.R. § 83.10(e). The Proposed Finding and the Attorney General Comments fail to discuss this issue.

2. The Attorney General Comments erroneously evaluate the Tribe's evidence under the recognition regulations, arguing for denial of the Golden Hill Petition based upon the absence of certain types of documents under the "little or no evidence/clearly demonstrate applicable to a § 83.10(e) review."

3. The Attorney General comments erroneously assert that Golden Hill has not presented acceptable evidence establishing the descent requirement, relying completely and entirely on the findings and conclusions of the Proposed Finding in detail, countering with specific facts and evidence in the Golden Hill Comments. Further, the current position of the Attorney General directly contradicts prior determinations by the State of Connecticut and the Attorney General recognizing Golden Hill as an indigenous Connecticut Tribe, and recognizing the current members, and ancestors, including William Sherman, as descendants from the historic Paugussett Indian Nation.

4. The Attorney General Comments rely upon erroneous facts and unpersuasive, irrelevant authorities to support the argument that Golden Hill's evidence fails to establish continuous tribal existence. This evidence is irrelevant and premature to the Proposed Finding issued pursuant to an expedited, limited review under § 83.10(e) (Response to AG 1996, 3).

The Department's response to the GHP Response to the Attorney General's comments:

The arguments made in the first point of the GHP Response to the AG are addressed in Appendix C. To recap the points which the BIA made in that locus, a conscientious genealogist must understand the context in which records were created. The genealogy of a group must include a broader look at its community, especially when discrepancies arise in documentation, or lack of documentation discourages a firm conclusion.

The reason the Proposed Finding did not discuss the issue of importance of criterion 83.7(e) is that the petitioner's



statements concerning the relative importance of criterion (e) are incorrect. All seven criteria are mandatory. The order of the criteria, 83.7(a) through 83.7(g), remained the same in the 1994 revision as had been the case in the 1978 regulations (25 CFR Part 83). No changes in prioritization among the seven mandatory criteria were introduced by the 1994 revision.

In addition, descent from an Indian tribe is fundamental to continuous existence. Without tribal descent, continuous existence as a tribe can not occur. However, not all petitioners who can show tribal descent, can also show continuous existence.

The petitioner references 59 FEDERAL REGISTER 9280 and 59 FEDERAL REGISTER 9288 for its contention that criterion 83.7(e) (descent from a tribe or tribes which have amalgamated) is no longer important since the regulations were revised in 1994.

The 59 FEDERAL REGISTER 9280 passage states:

Changes are made to clarify requirements for acknowledgment and define more clearly the standards of evidence (59 FEDERAL REGISTER 1994, 9280 (1994)).

The explanation of the revisions of the language in criterion 83.7(e) states:

Section 83.7(e)

Revisions: The order in which the requirements are presented has been reversed, in order to state the most fundamental requirement first. The paragraphs describing evidence which may be used to demonstrate ancestry have been revised to be consistent with each other and to state clearly that they should provide evidence demonstrating that the present membership of a petitioner is descended from a historic tribe (59 FEDERAL REGISTER 1994, 9288 (1994)).

Nothing in either of these statements refers to changes in the relative importance of the criteria. The standards of application, not the criteria, were clarified, not changed. Elsewhere in the revised regulations, it clearly states:

These regulations have no preemptive or retroactive effect. A major purpose of the revisions has been to address the clarity of language and general draftsmanship of the regulations (59 FEDERAL REGISTER 1994, 9292 (1994)).

The Federal Government's response to the public comments on the proposed, revised regulations immediately preceding the final revised regulations in the FEDERAL REGISTER states:

The regulations have not been interpreted to require tracing ancestry to the earliest history of a group. For most groups, ancestry need only be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historic tribe. Unfortunately such rolls and/or documents may not exist for some groups or where they do, they may not be identified as Indians. In such instance the petitioner's task is more difficult as they must find other reliable evidence to establish the necessary link to the historic tribe.

Weight is given to oral history, but it should be substantiated by documentary evidence wherever possible. Past decisions have utilized oral history extensively, often using it to point the way to critical documents. Tribal records are also given weight. In fact all available materials and sources are used and their importance weighed by taking into account the context in which they were created (59 FEDERAL REGISTER 9288-9289 (1994)).

To reiterate, the 1994 revisions changed the order of the *types of evidence listed within 83.7(e)*, not the order of all of the criteria. All seven criteria were and are mandatory.

In addition, the Federal Government's response to the public comments on the 1994 revised 25 CFR Part 83 regulations quoted above clearly states that a petitioner's present-day membership need only trace back to the point *when their ancestors can be identified clearly as affiliated with the historic tribe*. For the Golden Hill, that point would be when Ruby Mansfield and Nancy Sharpe, *alias* Pease lived in Bridgeport on land purchased for them as Golden Hill claimants in the 1840's. They have failed to do so.

The petitioner's second point raised by the petitioner in the Response to the AG concerns how the absence of evidence is treated in the evaluation of acknowledgment cases. This point has been fully discussed on pages 17-18 of this report.

The petitioner's third point to rebut the State AG discusses the State of Connecticut's recognition of the Golden Hill as a "state indigenous people" (Response to AG 1996, 24), in contrast to the Federal government's denial in the Proposed Finding. The Federal government's regulations for Federal acknowledgment consider state recognition under criterion 83.7(a), but do not treat it as dispositive in Federal acknowledgment cases. The Federal government has a responsibility to acknowledge Indian tribes with continuous existence. Requirements for recognition of Indian tribes established by individual states at any given time vary widely and are not binding upon the Federal government. Additionally, the issue of state recognition is not pertinent to criterion 83.7(e).

#### CONCLUSIONS

The purpose of the Federal acknowledgment regulations is "to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes" (25 CFR 83.2). The "Standards of Evidence" section of the regulations explains further that:

The purpose of the acknowledgment process is to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians (25 CFR Part 83, "Standards of Evidence and Stringency of Requirements," 59 FEDERAL REGISTER 9281 (1994)).

The BIA researchers have the responsibility to ensure that groups acknowledged under 25 CFR Part 83 meet the mandatory criteria. In the case of the Golden Hill Paugussett petitioner, the BIA clearly established that the GHP failed to meet mandatory criterion 83.7(e), descent from a historic Indian tribe.

Section 83.10(e) was added to the revised regulations in 1994 to allow expedited processing of petitions that could clearly not meet criteria 83.7(e), 83.7(f), or 83.7(g). The

acceptable evidence that can be used for criterion 83.7(e) includes:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes.

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

In the case of the petitioner:

i) The Secretary never prepared rolls for the GHP.

ii) The Federal and State governments had census and overseer reports. William Sherman was never listed on them as descended from a historic tribe. He was on one of the four Federal census reports as Indian, and was possibly listed as Indian on a second of the four Federal census reports, but the census does not show tribal descent. There were many Indians of many kinds in Connecticut at the same time period. He was never listed on an overseer report as being descended from any tribe, only as having borrowed money, for which the provided collateral, from the fund established to benefit the Golden Hill remnants.

iii) There were no contemporary church, school, or other enrollments that listed William Sherman as a member of or descendant of a tribe. The church record of his death specifically referenced Orcutt, a local historian, as a source for its information.

iv) The GHP documentation concerning William Sherman contained no affidavits of other tribal leaders made during William Sherman's lifetime. No other Indian documents from the State of Connecticut ever mentioned William Sherman as an Indian of any kind.

v) The least acceptable form of documentation, two county histories, described William Sherman as a remnant of the Golden Hill tribe, but provided internally inconsistent genealogical information.

With no other contemporary documentation, the BIA concluded in the Proposed Finding that the two county histories, the least acceptable forms of genealogical documentation, coupled with two census returns that did not list a tribe, and a church death record that referred to one of the county histories, were not sufficient evidence acceptable to the Secretary to establish tribal ancestry for William Sherman. When these documents were weighed in combination with all the other records: vital records, other census returns, and an absence of overseer documentation of Indian interaction or listing of William Sherman, there remained little or no evidence to indicate tribal descent for the petitioner.

The petitioner failed to document, using acceptable genealogical methods, that William Sherman and his descendants were descended from a historic tribe, or tribes that combined and functioned as a single autonomous political entity. Acceptable genealogical methodology requires that links must be made generationally to connect persons to their ancestry. The BIA researchers attempted to link the present-day membership of the Golden Hill to an Indian tribe. The marriage of a Tinney, who has not been documented as a Golden Hill or any other kind of Indian, to the granddaughter of William Sherman, only applied to some six members of the present-day group. The Tinney-Sherman connection does not affect the outcome of the Final Determination, because no tribal ancestry was shown in that instance.

One of the arguments used by the petitioner in the Response to the Proposed Finding was that the BIA was incorrect to

limit the Paugussett tribal entity to just the Connecticut records of the two families that migrated to Golden Hill. The BIA research for the Proposed Finding was not limited to the people who were called remnants of the Golden Hill. The BIA researchers did extensive research attempting to find the Paugussett Tribe, if it existed in the time period of William Sherman's adult life (see Proposed Finding, Technical Report 17-18, 22, 26, 27, 30-31).

No new evidence has been submitted by the petitioner or by third parties, or located by BIA researchers, to clarify who William Sherman's parents were, or who his grandparents were. There remains no documented Paugussett Indian ancestry, or any other kind of documented Indian ancestry for William Sherman, and thus, none through him for the present-day members of the Golden Hill Paugussett Tribe, the petitioner.

APPENDIX A

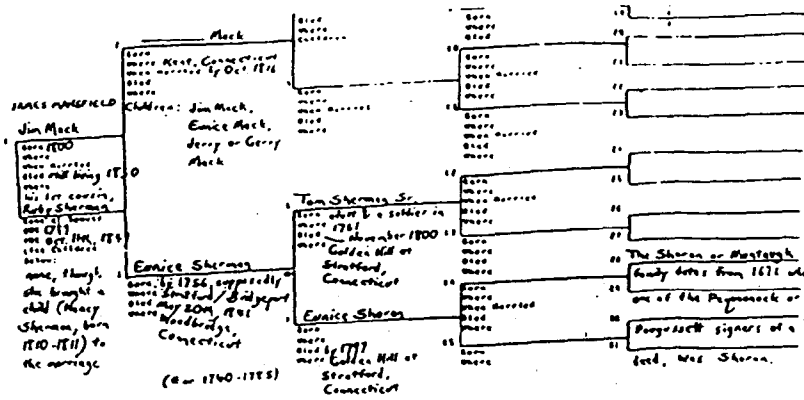


CHART 1

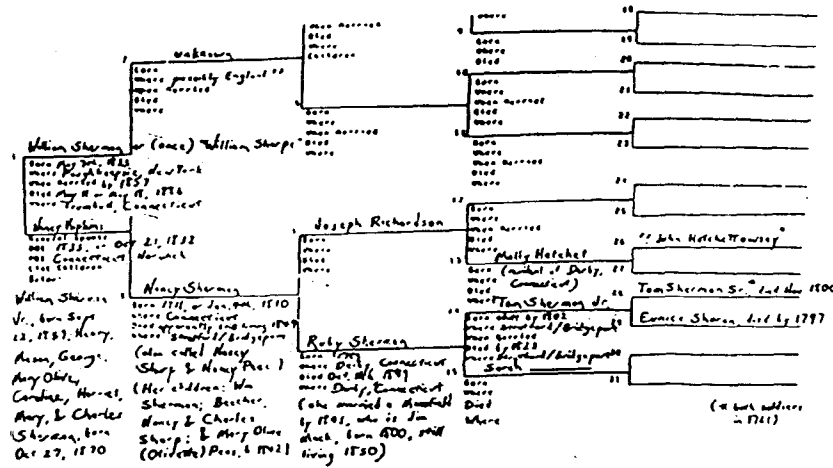


CHART 2

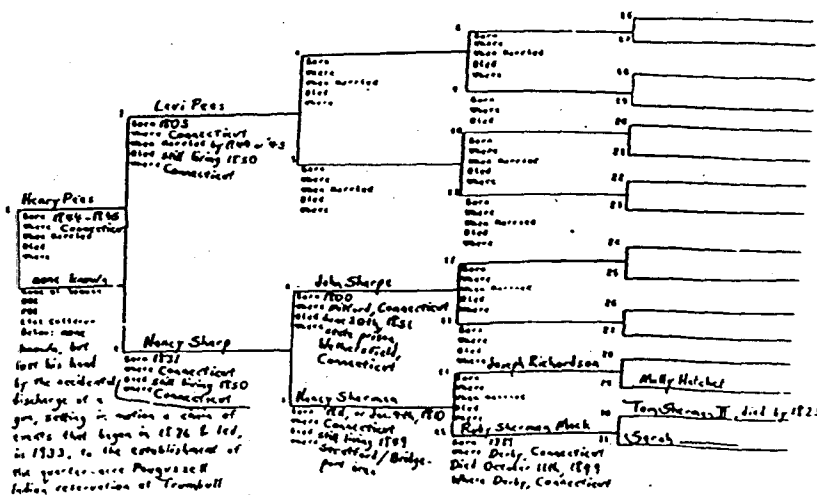


CHART 3



Office of the Assistant Attorney General

Washington, D.C. 20530

January 30, 1989

Honorable Daniel K. Inouye  
Chairman  
Select Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing in response to your letter of November 29, 1988, to Douglas W. Kniec, Assistant Attorney General for the Office of Legal Counsel (OLC). Your letter requested copies of all documents that OLC has prepared concerning the Indian preference provisions in Public Law 100-297 (the Act). The only document that is responsive to your request is a memorandum, dated November 9, 1988, from Mr. Kniec to Diane Weinstein, Acting General Counsel, Department of Education (the OLC Opinion).<sup>1</sup> The OLC Opinion provides legal advice on the constitutionality of the preferences contained in the Act.

It is the established policy and practice of the Department of Justice that its legal advice to clients within the executive branch is generally confidential. The Department's established method for communicating to Congress its opinion on legal issues is to provide a letter or testimony setting forth the Department's legal position.

With that in mind, and without waiving the confidentiality of the advice contained in the OLC Opinion, on November 30, 1988, a representative of OLC briefed a member of your staff on the Department's position on the constitutionality of the preferences contained in the Act. As a further effort to accommodate your

<sup>1</sup> We do not read your request for documents prepared by the Office of Legal Counsel to include drafts prepared by staff attorneys, since these have no official force or standing. Nor do we read your request to include documents prepared at the comment stage, since your letter referred only to implementation of Public Law 100-297.



oversight interest. We now offer the following written statement of the Department's position.

We believe that the preference granted by the Act to those who are actual members of an Indian tribe is constitutional under Morton v. Mancari, 417 U.S. 535 (1974). Those preferences for Indians, however, that do not depend, even in part, upon membership in an Indian tribe, but rather depend solely upon being a person of the Indian racial group, are not justified under that decision, and accordingly must be examined under Supreme Court precedent governing the use of racial classifications.

Section 5341(c) of the Act provides that the Secretary of Education "shall give a preference to Indians in all personnel actions" within the OIE. Section 5351(4) in turn defines "Indian" for purposes of the Act as including any individual who is:

- (A) a member of an Indian tribe, band, or other organized group of Indians (as defined by the Indian tribe, band or other organized group), including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside,
- (B) a descendant, in the first or second degree, of an individual described in subparagraph (A),
- (C) considered by the Secretary of the Interior to be an Indian for any purpose,
- (D) an Eskimo, Aleut, or other Alaska Native, or
- (E) is determined to be an Indian under regulations promulgated by the Secretary [of Education] after consultation with the National Advisory Council on Indian Education.

The inclusion in subsection (C) of any individual who is "considered by the Secretary of the Interior to be an Indian for any purpose" in effect incorporates into Section 5351 the definition of "Indian" contained in 25 C.F.R. 5.1 (1988):

- (a) Members of any recognized Indian tribe now under Federal Jurisdiction;
- (b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;
- (c) All others of one-half or more Indian blood of tribes indigenous to the United States;

- (d) Eskimos and other aboriginal people of Alaska; and
- (e) For two (2) years or until the Osage Tribe has formally organized, whichever comes first, effective September 15, 1986, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an Act of Congress.

Thus, the Act includes within the definition of "Indian" three classifications that are purely racial: "a descendant, in the first or second degree," of members of organized Indian groups (evidently without regard to their continued membership in an organized Indian group), "Eskimo, Aleut, or other Alaska Native," and, through the incorporated Interior regulations, persons "of one-half or more Indian blood."<sup>2</sup> Section 5351(4)(B) and (D); 25 C.F.R. 5.1(b), (c) and (d).<sup>3</sup>

Racial classifications are constitutionally suspect. Personnel Adm'n of Mass. v. Feeney, 442 U.S. 256, 272 (1979) ("A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification."); Rollins v. Sharrig, 147 U.S. 497, 499 (1954). Although Indians enjoy a special position under the law, the Supreme Court has consistently emphasized that racially-based legislation is not automatically exempt from constitutional prohibitions on racial discrimination simply

<sup>2</sup> In an effort to give the incorporated regulations a constitutional construction, we considered whether the reference in 25 C.F.R. 5.1(c) to "tribes indigenous to the United States" could be construed as a tribal, rather than a racial, classification. We concluded that it could not: it is, rather, a mere limitation on the racial classification of those persons of "one-half or more Indian blood," not a separate requirement of tribal membership. Any other reading would make the "membership" language of 25 C.F.R. 5.1(a) mere surplusage. X

<sup>3</sup> We note that the incorporation of the Interior regulations into Section 5351 results in the inclusion of two categories of "descendants," each defined in slightly different terms. Compare Section 5351(4)(B) and 25 C.F.R. 5.1(b). Similarly, there are two slightly different Eskimo categories defined in Section 5351(4)(D) and 25 C.F.R. 5.1(d). For purposes of this opinion, we treat the duplicate definitions as functionally equivalent: all, moreover, constitute racial classifications.

In particular, 25 C.F.R. 5.1(b) is not saved by its reference to residence "within the present boundaries of any Indian reservation;" that reference is to residence as of 1934, and does not impose any requirement that current beneficiaries of the preference reside on an Indian reservation.

\* *Handwritten note:* KPS are like KRS... which would mean KPS are like KRS... of the other

because the legislation involves or benefits Indians. E.g., Washington v. Yakima Indian Nation, 439 U.S. 463, 500-01 (1978); Craig v. Boren, 429 U.S. 190, 209 n.22 (1975) (laws which discriminate with respect to Indians on racial grounds are of "questionable constitutionality").

In Morison v. Mancari, 417 U.S. 535 (1974), the Supreme Court upheld the Indian preference contained in the Indian Reorganization Act of 1934 against a limited constitutional challenge. In contrast to the definition of "Indian" at issue here, the regulations in Mancari defined eligibility for the preference as follows:

To be eligible for preference in appointment, promotion, and training, an individual must be one-fourth or more degree Indian blood and be a member of a Federally-recognized tribe.

417 U.S. at 553 n.24, quoting 44 BIA 335, 3.1 (emphasis supplied). The Court explicitly relied on this definition to uphold the preference against the claim that it was racially discriminatory:

The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities . . . .

The preference is not directed towards a "racial" group consisting of "Indians"; instead, it applies only to members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as Indians. In this sense, the preference is political rather than racial in nature.

417 U.S. at 554 and 553 n.24 (emphasis supplied).<sup>4</sup> Moreover, it is significant that throughout its constitutional discussion the Court refers to those Indians receiving benefits as "tribal Indians."<sup>5</sup> E.g., id. at 552-55.

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<sup>4</sup> Thus, although the classification contained a racial element (the "Indian blood" requirement), the Court held that the classification's further requirement of tribal membership was sufficient to save the preference.

<sup>5</sup> The Supreme Court also noted that the preference only applied to employment in the Indian service and therefore was reasonably and directly related to a legitimate, nonracially (continued...)

The Supreme Court has repeatedly relied upon this distinction between tribal and racial classifications in upholding Indian preferences against attack on racial discrimination grounds. E.g., Washington v. Yakima Indian Nation, supra, 439 U.S. at 500-01 ("It is settled that 'the unique legal status of Indian tribes under federal law' permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive," quoting Mancari); United States v. Antelope, 430 U.S. 641, 646 (1977) ("Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; it is not to be viewed as legislation of a 'racial' group consisting of 'Indians' . . .," quoting Mancari); Mos v. Salish and Kootenai Tribes, 425 U.S. 461, 480 (1976) ("statutes . . . according special treatment to Indian tribes and reservations" are "neither 'invidious' nor 'racial,'" citing Mancari); Eisher v. District Court, 424 U.S. 382, 390 (1976) (statute granting exclusive jurisdiction over certain claims to the Cheyenne Tribal Court, challenged as "impermissible racial discrimination," upheld on grounds that jurisdiction "does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law.").

As noted above, however, certain of the classifications contained in the Act and incorporated regulations are by their terms not tribal, but rather are "directed towards a 'racial' group consisting of Indians," and include Indians and Eskimos as members of "discrete racial groups." Unlike the situation in Mancari, an individual could be a member of one of the classifications included or incorporated in the Act solely on the basis of racial characteristics, without regard to membership in a tribe or other organized Indian group. Those classifications are thus outside the holding in Mancari, and are subject to the

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<sup>5</sup>(...continued)  
based goal -- that of furthering the cause of Indian self-government. Id. at 554. We do not believe that by adducing this additional distinction the Court implied that Indian preferences based on racial as opposed to tribal classifications would be constitutional if confined to positions that relate to Indian self-government. First, the Court made this additional distinction in the course of observing that even the tribal preference at issue would raise more difficult questions if applied to all government positions. Second, a broad racial preference in favor of Indians would not promote self-government because some non-tribal Indians evidently do not participate in tribal self-government. Third, the Court, in decisions since Mancari, has repeatedly invoked the racial/tribal distinction in considering challenges to Indian preferences.

scrutiny given to racial classifications in other, non-Indian contexts.

Granting preferences by means of these purely racial classifications would raise serious constitutional problems under the equal protection component of the Fifth Amendment. Although the Supreme Court has yet to speak with one voice on this issue, a plurality of the Court has held that express racial classifications may be employed only to further a compelling governmental interest, and must also be "narrowly tailored" to further that interest. Wygant v. Jackson Bd. of Education, 476 U.S. 267, 274 (1986) (plurality opinion). See also id. at 285-87 (O'Connor, J., concurring); Fullilove v. Klutznick, 448 U.S. 448, 480 (1980); University of California Bd. of Regents v. Bakke, 438 U.S. 265, 305 (1978) (opinion of Powell, J.).

The Wygant plurality identified only rectification of prior discrimination by the government unit involved as a governmental interest that is clearly sufficiently compelling to justify reliance on racial classifications. Wygant, supra, 476 U.S. at 274. In this regard, the "Court never has held that societal discrimination alone is sufficient to justify a racial classification." Id. Thus, under the Wygant plurality's standard, the purely racial classifications present in the Act could be justified only if the OIE had historically discriminated against Indians. However, even assuming such discrimination had occurred, and thus that the purely racial classifications furthered a compelling state interest, the classifications are not narrowly tailored to remedying past discrimination, and are thus unconstitutional.<sup>6</sup>

The Supreme Court has indicated that, in determining whether a remedy is narrowly tailored, a number of factors are relevant: among them, the necessity for the relief and the efficacy of alternative remedies; the relationship of any numerical requirements to available minority members in the relevant market; the availability of meaningful waiver provisions (particularly where members of the preferred group have not been actual victims of discrimination); the extent to which the remedy trammels the interests of innocent third parties; and the planned duration of the remedy. E.g., Fullilove, supra, 448 U.S. at 481-82; Local 28, Sheet Metal Workers Int'l Ass'n v. EEOC, 478 U.S. 421, 477-79

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<sup>6</sup> We note that, after the OLC opinion was prepared, the Supreme Court decided Richmond v. Croson Co., No. 87-998 (Jan. 23, 1988). That decision emphasized that only those racial classifications that are designed to remedy prior discrimination, and are narrowly tailored to that end, will withstand strict constitutional scrutiny. The Croson decision thus provides further support for the OLC opinion.

(1986) (Plurality opinion): Id. at 484-86 (Powell, J., concurring).

No consideration seems to have been given to whether non-racial alternatives would have achieved the evidently desired result. Moreover, the purely racial classifications create a broad "overinclusive" racial preference that can apply in absolutely every case, to benefit every otherwise qualified applicant who fits within the racial classifications, and to disadvantage every otherwise qualified applicant who does not satisfy the racial criteria.<sup>7</sup> The classifications, moreover, operate to benefit many distinct groups, without reference to whether any individual within a specific statutory racial category (Aleuts, for example) ever suffered from any of the (assumed) historical discrimination. Such a broad brush approach is by definition not narrowly tailored, particularly in the absence of waiver provisions. See WYGANT, supra, 476 U.S. at 284 n.13 (criticizing affirmative action plan for its "undifferentiated nature"); Fullilove, supra, 448 U.S. at 486-87 (facial challenge to "overinclusive" racial preference rejected on ground that "limit[ing]" waiver and exemption provisions cured over-inclusiveness).<sup>8</sup> The preference by its terms is permanent, and

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<sup>7</sup> Indeed, the sweeping and mandatory nature of the purely racial preference further distinguishes it from the use of race as a "plus" factor, sanctioned in Bakke, supra. See, e.g., 438 U.S. at 317 (opinion of Powell, J.).

<sup>8</sup> Section 5341(c) also provides that the preference is to be "implemented in the same fashion" as the veterans' preference established by 5 U.S.C. 2108(j). We are informed by the Department of Education that in the vast majority of cases, application of the veterans' preference results in qualified veterans being chosen over equally qualified non-veterans. In certain cases, however, the Department of Education evidently reserves the ability not to select a qualified veteran, due to supervening management concerns. It is perhaps arguable that the Indian preference in the Act could be implemented in such a way as to preserve some administrative flexibility. However, given the totality of the factors employed by the Supreme Court in determining whether a remedy is narrowly tailored, we do not believe that this limited flexibility, standing alone, is sufficient to render the purely racial classifications constitutional.

Furthermore, the Court sanctioned the waiver provisions in Fullilove because they provided "a reasonable assurance that application of racial or ethnic criteria will be limited to accomplishing the remedial objectives of Congress . . . ." 448 U.S. at 487. The Department of Education's administrative

(continued...)

will continue to operate indefinitely into the future, long after the effects of the (assumed) historical discrimination have been remedied. The preference also appears to trammel the rights of innocent third parties. Each of these characteristics of the Act indicates that the Act's racial classifications transgress constitutional requirements as enunciated by the Supreme Court.<sup>9</sup>

Accordingly, we believe that the racial classifications contained in the Act and in the incorporated regulations are unconstitutional under Supreme Court precedent, even assuming a history of discrimination against Indians by the OIE. The OIE may nonetheless implement Section 5351(4)(A) and 25 C.F.R. 5.1(a), constituting those portions of Section 5351 and the incorporated regulations that do not contain purely racial classifications, and thus are not constitutionally suspect.<sup>10</sup> Further, the Secretary of Education is free to adopt additional regulations defining "Indian" for purposes of the preference.

<sup>8</sup> (...continued)

Flexibility under the Act, however, appears designed to recognize more general management concerns, rather than in any way serving to insure that racially-based classifications are only employed to remedy actual instances of discrimination. That flexibility, therefore, cannot be viewed as serving to render the preferences contained in the Act more "narrowly tailored" for constitutional purposes.

<sup>9</sup> Even assuming that in a given case the Act could be applied in accordance with the Constitution, that alone is not sufficient to rebut a constitutional challenge. E.g., as the Court indicated in Pullilove, a statute that is challenged as being overbroad on its face "cannot pass muster" unless the Court is able to conclude that the overbroad statute will be limited in its application to accomplishing proper remedial objectives. 448 U.S. at 486-87.

<sup>10</sup> The Act also grants a one-time preference to individuals who "are not Indians," "are serving within the Office of Indian Education on the date of enactment of this Act," and "desire to take another position in the Department of Education which is not within the Office of Indian Education and for which there is a vacancy." Section 5141(c)(2). Although this provision appears to be intended, in part, to compensate for the effects of the Indian preference, this one-time preference is also constitutionally suspect, but may be sustainable if extended to include all non-tribal Indians as well and if it is limited to creating openings for the constitutionally legitimate tribal preferences. We have no evidence, however, to indicate that Congress intended the non-Indian preference to also include non-tribal Indians.

pursuant to Section 5351(4)(E), so long as those regulations are not otherwise contrary to law and do not offend the Constitution.

We hope that the November 30 briefing and the foregoing statement of the Department's position on the constitutionality of the preferences contained in the Act are sufficient to satisfy your oversight interest. If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Thomas M. Boyd  
Assistant Attorney General



APPENDIX B2



United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



OCT 18 1995

Honorable Daniel K. Inouye  
Vice-Chairman, Committee on Indian Affairs  
United States Senate  
Washington, D.C. 2051J-6450

Dear Senator Inouye:

Thank you for your letter of August 10, 1995, concerning the requirements for tribal ancestry under 25 C.F.R. Part 83. You question whether a position taken by Ms. Holly Reckord, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, during our testimony of July 13, 1995, is consistent with the June 8, 1995, proposed finding against Federal acknowledgment of the Golden Hill Paugussett Tribe (Golden Hill). We believe that they are consistent.

During the testimony you asked whether a tribe can qualify for Federal acknowledgment if its contemporary members trace their ancestry to one tribal member. Ms. Reckord replied in the negative, referencing criteria 83.7(b) and (c), that the petitioner must live in a community and exercise political authority, which cannot occur with only one individual.

This exchange is consistent with the proposed finding on the Golden Hill, even though that finding was based on criterion 83.7(e), not criteria (b) and (c). That expedited finding was based on the lack of evidence that the Golden Hill descend from an historical Indian tribe.

Descent from an historical tribe is an express requirement of criterion 83.7(e), which provides in part:

The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. (emphasis added).

Based on the record before the Department of the Interior (Department), the Assistant Secretary - Indian Affairs concluded in the proposed finding that the Golden Hill did not meet this requirement. The current members are the descendants of a single family, that of William Sherman and his wife Nancy Hopkins. Their parentage is unknown. The petitioners did not provide documents, nor was the Branch of Acknowledgment and Research (BAR) able to find any documents, concerning the ancestry of their parents. Rather, available evidence indicates they were not proven to

descend from the historical Paugussett Indian Tribe or any other Indian tribe.

Our advice to the petitioner, that ancestry from a single Indian individual would not meet the requirements of criterion 83.7(e), was included to advise the petitioner of the need under the regulations to demonstrate tribal ancestry. This advice was provided partly because the petitioner focused only on tracing ancestry from this one family. This guidance was given at this point in the process so petitioners could have ample opportunity to respond during the comment period prior to the final determination. The requirement of tribal ancestry which is written in criterion 83.7(e), however, was not applied to the Golden Hill petitioner because they did not pass the threshold test of having Indian ancestry.

Ancestry from a single Indian individual does not meet the requirement of criterion 83.7(e) because the section specifically requires descent from "a historical Indian tribe." The plain language of the regulation requires tribal descent, not merely Indian descent. Also, various definitions in the regulations, such as "member of an Indian tribe," include the basic premise that a "tribe" includes more than one individual. Where the asserted Indian ancestry of the membership is from only one individual Indian, this does not qualify as ancestry from "a single autonomous political entity" as required by 25 C.F.R. § 83.7(e).

It is not the intent of the relevant laws and past court decisions that the descendants of a single person can constitute a tribe. An Indian who is not in tribal relations cannot be treated differently from any other individual. The Supreme Court has clarified this distinction stating that a classification based on maintaining a bilateral political relationship is a political classification, not a racial one which would otherwise violate the Constitution. Morton v. Mancari, 417 U.S. 535, 553 (1974). Accord, United States v. Antelope, 430 U.S. 641, 646 (1977). ("Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; it is not to be viewed as legislation of a 'racial' group consisting of 'Indians' . . .").

This Supreme Court distinction between making a political classification and a racial classification is reflected in 25 C.F.R. Part 83. A political relationship requires more than one person. This political, as opposed to racial, distinction is basic to the government-to-government relationship between the United States and tribes as well as our relationship to Indians.

As you may remember, this constitutional issue was at the heart of the concerns expressed by the Department of Justice (DOJ) in a letter to you of January 30, 1989, concerning the Indian preference provisions in the amendments to the Elementary and Secondary Education Act of 1965, Pub. L. No. 100-297, 102 Stat. 131 (1988).

DOJ concluded that certain classifications contained in the Act and incorporated into the regulations were based on racial characteristics without regard to membership in a tribe. DOJ noted that these classifications raised serious problems under the equal protection component of the Fifth Amendment and were therefore unconstitutional.

Similarly, this Department does not have the authority to extend acknowledgment to groups which are the descendants of a single Indian individual. Rather, the Department has the authority to extend acknowledgment only to political successors. The interpretation of the federal acknowledgment regulations criterion 83.7(e) as requiring descent from a tribe, a political entity, avoids the Fifth Amendment issues raised in the DOJ letter to you.

The focus on tribal ancestry, as opposed to individual ancestry, is consistent as well with the source of Federal power over Indian matters. As stated in McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 172 n.7: "The source of federal authority over Indian matters has been the subject of some confusion, but it is now generally recognized that the power derives from Federal responsibility for regulating commerce with Indian tribes and for treaty making" (citations omitted). The Indian Commerce Clause of the Constitution is the only grant of power over Indian matters. U.S. Const. art. I, § 8. This clause references tribes, not individual Indians, and authorizes Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The focus on "tribes" in the Indian Commerce Clause is consistent with the Supreme Court analysis in Morton v. Mancari. Only by focusing on political entities, can the Fifth Amendment and the Indian Commerce Clause be read consistently with each other. The Department's interpretation of criterion 83.7(e) as requiring ancestry from a tribe, not ancestry from only one individual, is consistent with both of these constitutional provisions.

In Felix Cohen's Handbook of Federal Indian Law, (U.S. Dept. of Int., 1942), five considerations are summarized as those relied upon in reaching the conclusion that a group constitutes a "tribe" or "band." These considerations are:

- (1) That the group has had treaty relations with the United States.
- (2) That the group has been denominated a tribe by act of Congress or Executive Order.
- (3) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.

- (4) That the group has been treated as a tribe or band by other Indian tribes.
- (5) That the group has exercised political authority over its members, through a tribal council or other governmental forms.

Each consideration is based on being a "group." None would qualify an individual Indian as a "tribe."

During the 1970's, the pervasive land title disruptions in the eastern United States caused by the tribal land claims documented the importance of accurate tribal status determinations. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649, 656-58, aff'd 528 F.2d 370 (1st Cir. 1975). Also, the petition to intervene filed by five Indian groups in United States v. Washington, 476 F. Supp. 1101 (W.D. Wash. 1979), aff'd, 641 F.2d 1368 (9th Cir. 1981), cert. denied, 454 U.S. 1143 (1982), highlighted the treaty implications of tribal status. In both types of cases, land claims and treaty rights, tribal status was a prerequisite to a subsequent determination on the merits of the tribal claim. These cases were contemporaneous with the promulgation of the regulations and were a significant part of the legal backdrop to the regulations.

These court decisions made the distinction between Indians in tribal relations or "bona fide tribes" and groups of Indian descendants. These cases focused also on the collective nature of rights held by tribes, rights which could not be asserted by single individuals. Cf. James v. Watt, 716 F.2d 71 (1st Cir. 1983) (Indian individuals could not assert Indian Nonintercourse Act rights on their own behalf); Epps v. Andrus, 611 F.2d 915 (1st Cir. 1979) (Indian descendants of one Chappaquiddick family could not raise tribal claim).

Judge Boldt, in the "five intervenors" decision, reaffirms that a "tribe" includes "members of Indian ancestry . . . who live in a community," with "governmental control" over their lives, with "historical continuity." A sole individual or family does not meet the requirements affirmed in United States v. Washington, nor does descent from one individual or family. Further, in the Mashpee land claim case, the First Circuit affirmed that "[i]f all or nearly all members of a tribe chose to abandon the tribe, then, it follows, the tribe would disappear." Mashpee Tribe v. New Seabury Corp., 592 F.2d 575, 587 (1st Cir. 1979).

---

Judge Boldt noted also that groups of half-bloods could organize under the Indian Reorganization Act (IRA). Id. at 1103-1104.

Thus, the Constitution and relevant case law support the proposition that the regulations are not based on descent from an individual, but rather are based on tribal descent. Otherwise, the regulations would violate the Fifth Amendment. To interpret 25 C.F.R. § 83.7(e) as requiring tribal descent, as the Department does, subsuming the requirement that this descent be from more than one individual, addresses the constitutional concerns and is fully consistent with the language in the regulations, the statutory framework, and case law.

We also would like to make it clear that 25 C.F.R. § 83.10(e) does not provide a means for expediting the petition process based on satisfying only criteria 83.7(e), (f), and (g). Rather, § 83.10(e) provides that if a petitioner fails to satisfy any one of these criteria, the Assistant Secretary - Indian Affairs may decline to acknowledge that the petitioner is an Indian tribe without fully evaluating all seven of the mandatory criteria.

The Department applies the regulations consistently across a variety of cases which differ enormously from each other. We have addressed with other petitioners the charge of inconsistent application of the regulations. These petitioners have mistakenly treated different situations as comparable in order to suggest that we are being inconsistent and arbitrary.

In the case of the Golden Hill, the petitioners had ample opportunity to supplement their petition; there will be opportunity to comment now during the comment period; and the petitioners may seek reconsideration of any negative decision in a hearing before the Interior Board of Indian Appeals. These procedures ensure that there is no denial of "due process."

Thank you for the opportunity to respond to your inquiry.

Sincerely,

/s/ Ada E. Deer

Ada E. Deer  
Assistant Secretary - Indian Affairs

APPENDIX C

This appendix consists of four parts.

Each multi-page letter is listed separately, as beginning on pages:

Appendix C1, Stetson to Deer, April 9, 1996 (two pages)	104a
Appendix C2, Anderson to Stetson, May 21, 1996 (12 pages)	104b
Appendix C3, Stetson to Anderson, July 3, 1996 (five pages)	104c
Appendix C4, Anderson to Stetson, August 16, 1996 (six pages)	104d

APPENDIX C1  
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\*\* ADMITTED IN NY, PA, VA AND NH  
\*\*\* ADMITTED IN MN

April 9, 1996

VIA FAX TRANSMISSION

The Honorable Ada Deer  
Assistant Secretary of Indian Affairs  
Bureau of Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: Prior Federal Actions "Acknowledging" Golden Hill Paugussetts as a Recognized Indian tribe.

Dear Assistant Secretary Deer:

Last week we sent you some important materials relevant to the Petition for Acknowledgement of the Golden Hill Tribe of the Paugussett Nation. These materials contain evidence showing that the federal government has previously acknowledged and identified the Golden Hill Paugussetts as an existing Indian tribe.

Specifically, the federal government "acknowledged" Golden Hill as an Indian tribe by issuing two grants in 1978 to the Golden Hill Tribe pursuant to a 1976 request by Connecticut Governor Ella Grasso. Governor Grasso certified to the Federal Office of Revenue Sharing that the Golden Hill Tribe, as well as several other Connecticut tribes, had recognized governing bodies exercising substantial governmental functions, thereby qualifying for Federal Revenue Sharing Funds. This prior federal action "acknowledging" the Golden Hill Tribe as a recognized Indian tribe is succinctly described by Peter Taylor on page three of his Summary Report we sent to you last week.

In addition, we sent you an analysis by historian Guy Fringer, who described a 1952 report by the House Interior and Insular Affairs Committee (House Report No. 2503, 82d Congress, 2d Session) in which the federal government identified the Golden Hill Paugussetts as a known Indian tribe and described the Paugussetts' location. See page two of Guy Fringer's Report. This report demonstrates that the federal government was aware of the Paugussetts as a tribal entity.

The Honorable Aja Deer  
April 9, 1996  
Page 2

The BIA's Proposed Finding regarding Golden Hill's Petition for Acknowledgement, and the BAR's analysis of the evidence to date, contradicts the federal government's previous findings on the Golden Hill Paugussetts as an identifiable historic Indian tribe. We ask that you give proper weight to this evidence of previous federal identification of the Golden Hill Paugussett Tribe as a historic Indian tribe and sovereign government.

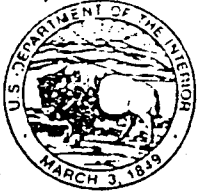
Cordially,

GOVER, STETSON & WILLIAMS, P.C.

By   
\_\_\_\_\_  
Catherine Baker Stetson

CBS:ja





APPENDIX C 2  
United States Department of the Interior

OFFICE OF THE SOLICITOR

MAY 21 1996

In reply, please address to:  
Room 6456, Main Interior

Catherine Baker Stetson, Esq.  
Gover, Stetson & Williams, P.C.  
2501 Rio Grande Boulevard, N.W.  
Albuquerque, NM 87104-3223

Dear Ms. Stetson:

I am responding to the legal issues you raised in the Golden Hill Petitioner's Arguments and Evidence in Response to BIA Proposed Finding (Petitioner's Response), submitted on December 5, 1995, and in your letter of April 9, 1996, which was directed to me. Your April 9 letter referenced other materials which you sent to me on March 27, 1996. Most of these materials appear to be Comments on the Proposed Finding, and the comment period for this matter closed on February 5, 1995. Under the federal acknowledgment regulations, 25 C.F.R. § 83.10(1)(1), unsolicited comments received after the close of the response period will not be considered in the preparation of a final determination. Materials received after the comment period closed will be made available to the Interior Board of Indian Appeals (IBIA), if the petitioner requests an independent review by that body of the government's actions. This letter addresses only the legal issues you raised.

The Proposed Finding contains the evaluation of the petition by the Branch of Acknowledgment and Research (BAR) based on principles of genealogical, historical, and anthropological research. This reply letter deals only with the legal aspects of how the acknowledgment regulations of 25 C.F.R. Part 83 were applied in the present matter.

This letter addresses the five assertions made in the Petitioner's Response, listed below verbatim, as well as a sixth legal matter you raised in the April 9 letter. Your assertions are as follows:

1. Preliminary dismissal under § 83.10 was not proper because the BIA noticed the Tribe's Petition for active consideration.

2. Preliminary dismissal was not proper because the BIA failed to "clearly establish" that the Tribe cannot meet the required criteria.

104 b

3. Golden Hill met the low burden of proof and liberal evidentiary standards imposed by Part 83 during the preliminary review stage.

4. A petitioner need not establish all seven mandatory criteria in a preliminary review.

5. The BIA has cited no proper authority for its new tribal requirements under 83.7, which are a radical departure from the common law and the regulations, and in violation of due process.

6. The federal government previously "acknowledged" Golden Hill as an Indian tribe (paraphrased from April 9 letter).

#### CHRONOLOGY OF THE PETITIONING PROCESS

As a preliminary matter, it must be noted that the acknowledgment regulations at 25 C.F.R. Part 83 offer every petitioner, including the Golden Hill, the opportunity to be heard thoroughly, to present a complete and effective case, and to know the basis of the decision on acknowledgment. A review of the chronology in the current matter demonstrates that the Golden Hill petitioner had many opportunities to supplement their petition, and did so, and that they determined when the petition was completed to their satisfaction, notwithstanding indications from the BIA that deficiencies remained.

The Golden Hill petitioner first sent a letter of intent to petition for acknowledgment in 1982. On April 12, 1993, the group submitted a documented petition for acknowledgment. The BIA made a formal technical assistance review of this documented petition, and on August 26, 1993, the BIA sent the first obvious deficiency (CD) letter to the petitioner. This letter, which was required by the acknowledgment regulations, permitted the petitioner to revise and augment their petition before it was evaluated on its merits. The purpose of the OD letter is to prevent a negative finding based on technicalities or failure to develop fully the available evidence. The first Golden Hill OD letter clearly discussed the petition's deficiencies in meeting criteria 83.7 (a), (b), and (c). Concerning criterion 83.7(e), this letter put the petitioner on notice that descent from a historical tribe was at issue:

Criterion (e) requires that the membership of a petitioning group consist of individuals who can show descent "from a tribe which existed historically" or from historical tribes which combined as a single entity. You need to provide evidence to establish the lineal descent of William Sherman and George Sherman

from the historical Paugussett tribe. Ruby Mansfield Sharpe's descent from a specific tribe rather than from the grouping of "Golden Hill Indians" needs clarification as well.

Letter from Carol A. Bacon, Director of Tribal Services, to Aurelius H. Piper, Jr. of 8/26/93.

The petitioner responded to this first OD letter on April 1, 1994. On October 19, 1994, the Bureau of Indian Affairs (BIA) sent the petitioner a second technical assistance review, under the revised regulations, 25 C.F.R. Part 83, published February 25, 1994. The October 1994 letter listed many obvious problems the case had in meeting criteria (a), (b), and (c). It discussed criterion 83.7(e) again and asked explicitly for documentary evidence of William Sherman's parentage:

Criterion (e) requires that the membership of a petitioning group consist of individuals who can show descent "from a historical Indian tribe. . . ." The new data you submitted have answered many of the BAR's questions about your genealogy. However, if you have documentary evidence identifying the parents of William Sherman, the ancestor who provided the descendance for the entire group, we encourage you to submit it now.

Letter from Jim Thomas, Acting Director of Tribal Services, to Aurelius H. Piper, Jr. of 10/19/94.

The revised regulations, under which the Golden Hill petition was processed, contain provisions which permit expedited decisions based on a single criterion:

Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicate that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.

25 C.F.R. § 83.10.<sup>1</sup>

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<sup>1</sup> The Golden Hill expedited decision is not the first issued under this provision. The BIA had issued one expedited negative decision based on § 83.10(e) before the Golden Hill proposed determination. The MOWA petitioner received an expedited negative proposed finding on January 5, 1995, six months before publication of the Golden Hill expedited decision.

Expedited decisions may be done only after the petition is considered complete by both the petitioner and the government and before active consideration begins, and "will only occur after the petitioner has had the opportunity to respond to the technical assistance review." 59 Fed. Reg. 9290 (1994).

By requesting documentary evidence of William Sherman's parents in the October 1994 technical review letter, the BIA researchers focused on Indian ancestry as a threshold requirement for meeting criterion 83.7(e). Without documented demonstration of Indian ancestry, the question of tribal ancestry is never reached. This is exactly the kind of case that the expedited process contained in the new regulations at § 83.10 was designed to resolve.

The BIA also indicated in the October 1994 technical review letter that a conclusion that the evaluators have enough information to make a decision does not mean that the decision will be positive.

The acknowledgment regulations provide a technical assistance review to ensure that a petitioner will be able to present its best possible case and that a petition will be considered on its merits. This review does not mean that the BAR has reached or will reach a positive or negative conclusion on the Golden Hill Paugussett petition, or on the portions of the petition not discussed in this letter.

Letter from Jim Thomas, Acting Director of Tribal Services, to Aurelius H. Fiper, Jr. of 10/19/94.

The petitioner chose to continue with the petition as it had been submitted, and on November 10, 1994, they instructed the BIA to place the petition on active consideration. On November 21, 1994, the BIA assigned the petitioner place number six on the "Ready, Waiting for Active Consideration" List (emphasis added) and informed the petitioner that genealogical work would begin.

It is in this time period, after the petition is completed and before the active consideration phase begins, that the BIA genealogist begins entering genealogical data into a data base. In performing this task, the genealogist is often the first BIA researcher to discover that significant problems may exist for a case, particularly in criterion 87.3(e).

The Proposed Finding under the expedited process was issued on June 8, 1995. After the initial review in which the Department found little or no evidence to establish that the Golden Hill petitioner could satisfy mandatory criterion 83.7(e) -- descent from a historical American Indian tribe or tribes which combined and function as a single political entity -- the Department

determined that the evidence clearly established the petitioner's failure to meet this criterion. Since the release of the Proposed Finding, the petitioner had many opportunities to question the BIA staff members. There have been many discussions among the BIA researchers and branch chief, and the petitioner's members, researchers, and attorneys. The BIA's detailed technical reports were provided to the petitioner and were made available to the public. The petitioner had full access to all of the BIA's historical documentation and interview materials and any materials that have been submitted by third parties. This type of open communication and continual interchange is how the BIA normally works with petitioners. Through continual technical assistance and availability of the government's researchers, the BIA provides due process to petitioners. The comment period closed December 5, 1995. The Department will issue the Final Determination shortly.

#### DISCUSSION OF THE LEGAL POINTS

1. Because the BIA never noticed the petitioner for active consideration, an expedited negative Proposed Finding under § 83.10 was proper if such a finding was otherwise warranted.

The BIA never noticed the petitioner for active consideration, despite the petitioner's claim that the "preliminary dismissal under § 83.10 was not proper because the BIA noticed the Tribe's Petition for active consideration." On November 21, 1994, Branch Chief Holly Reckord wrote to Mr. Aurelius Piper as follows: "This letter is to notify you that the Golden Hill Paugussett Tribe has been assigned number six on the 'Ready, Waiting for Active Consideration' list." (emphasis added) The word "Waiting" is emphasized because it demonstrates that the Golden Hill petitioner was not yet on active consideration on November 21. Their petition was only considered ready to be evaluated, based on the group's indication that they considered the petition complete, and the government's acquiescence in their decision. This separate category of petition status is necessary if a BIA team is not immediately available to evaluate a petition. This is the process the BIA has followed from the outset of the acknowledgement process, and this list is provided for at 25 C.F.R. § 83.10(d). Hence, the Golden Hill petition was not immediately placed on active consideration on November 21 but was put in sixth place on the "Ready" list.

As noted in the chronology detailed above, the standard procedure is for the genealogical work to commence when the petition is complete, but before it is placed on active consideration. In the second paragraph of the November 21 letter, the BIA clearly described this standard procedure to the petitioner: "In connection with your newly acquired status, BIA genealogical researchers will begin putting the Golden Hill membership into

database form, as well as actively evaluating the family history charts, and other genealogical information." This procedure comports with 25 C.F.R. § 83.10.

In addition, other language in the November 21 letter indicated that the Golden Hill petitioner was not immediately placed on active consideration. The language used by the BIA to indicate active consideration status differs greatly from the language used in the November 21 letter to the Golden Hill petitioner. Compare the wording in the November 21 letter to the Golden Hill petitioner and the February 16, 1994, letter to the Chinook petitioner signed by the Director of the Office of Tribal Services, notifying the Chinook that they were being placed on active consideration: "This is to notify you that the Branch of Acknowledgment and Research (BAR) had begun active consideration of the petition requesting Federal acknowledgment of the Chinook Indian Tribe, Inc. (Chinook) as of January 28, 1994." The letter cites § 83.9(f) of the acknowledgment regulations concerning the regulatory deadline for a proposed finding and other specific language that indicates the Chinook will be placed on active consideration on January 28, 1994. In addition, indicative of the greater significance of the Chinook letter, it was signed by the Office Director, two levels above the branch chief who signed the Golden Hill letter.

2. An expedited negative proposed finding was proper because the Department clearly established that the petitioner could not meet one of the mandatory criteria.

An expedited proposed finding was proper because the petitioner clearly did not meet criterion 83.7(e). Hence, the BIA researchers did not need to consider the other six criteria, despite petitioner's claims that "preliminary dismissal under § 83.10 was not proper because the BIA failed clearly to establish that the Tribe cannot meet the required criteria." Full consideration of all criteria is not necessary when the BIA determines that the evidence clearly demonstrates that a group did not meet one of the mandatory criteria. The regulation describing this process is as follows:

Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.

(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a