Towns of

Ledyard ***North Stonington*** ***Preston***

February 21, 2002

Mr. Jonathan Tolman
Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Room B-377
Rayburn House Office Building
Independence Avenue & S. Capitol Street, SW
Washington, DC 20515

Re: Oversight Hearing on Tribal Acknowledgment Process, February 7, 2002

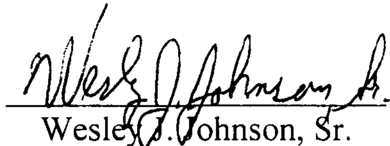
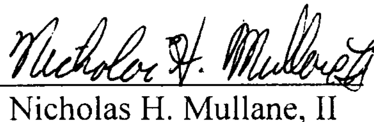
Dear Mr. Tolman:

Enclosed in connection with the noted hearing please find two copies of testimony submitted on behalf of the Towns of Ledyard, North Stonington and Preston, Connecticut.

This testimony highlights problems inherent in the current acknowledgment process and suggests reforms for same. It also provides the Towns' final position on the acknowledgment petitions of the Eastern and Paucatuck Eastern Pequot groups.

Thank you in advance for including our testimony with the hearing record for February 7, 2002.

Sincerely,

Wesley J. Johnson, Sr. Nicholas H. Mullane, II Robert M. Congdon

STATEMENT OF OPPOSITION OF TOWNS OF LEDYARD, NORTH STONINGTON AND PRESTON, CONNECTICUT TO EASTERN PEQUOT AND PAUCATUCK EASTERN PEQUOT TRIBAL ACKNOWLEDGMENT CLAIMS

AND

DISCUSSION OF PRINCIPLES FOR REFORM OF ACKNOWLEDGMENT PROCESS

Submitted to

the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the House Committee on Government Reform

FEBRUARY 21, 2002

"[F]or over 300 years, the Eastern Pequot Tribe has stood in a government-to-government relationship with the colony and state of Connecticut."

> ***-- Kathleen J. Bragdon and William S. Simons, eds., Eastern Pequot Petition for Acknowledgment, p. 3 (July 1998), setting forth Eastern Pequot's theory that State recognition serves as the basis for acknowledgment.***

"The historical Eastern Pequot tribe has maintained a continuous historical government-to-government relationship with the State of Connecticut since colonial times."

> ***-- BIA Proposed Finding, Summary Under the Criteria, p. 63, setting forth former Assistant Secretary Gover's basis for turning negative finding to positive finding.***

'The town's [sic] continued insistence on the importance of a "government-to-government" relationship, based on a single reference in the Summary under the Criteria (for which they do not provide a citation) is simply a red herring."'

> ***-- Kathleen J. Bragdon, Eastern Pequot Response to Interested Parties, pp. 3-4 (Sept. 4, 2001), reflecting Eastern Pequot subsequent effort to now diminish the importance of state recognition after receiving Towns' rebuttal.***

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I. INTRODUCTION

This report is issued by the Towns of Ledyard, North Stonington, and Preston for two purposes. First, it provides the Towns' final position on the acknowledgment petitions the Eastern Pequot ("EP") and Paucatuck Eastern Pequot ("PEP") groups. For the reasons discussed in this report, neither group qualifies for acknowledgment. The Towns therefore hereby announce their formal opposition to both petitions, and release their final analysis to the public.

Second, this report discusses problems inherent in the acknowledgment process. This perspective is derived from the Towns' experience as interested parties in the EP and PEP acknowledgment process. Recommendations for reform are included for consideration by Congress and the Executive Branch.

This report consists of seven sections. Following this introduction, the second section discusses the Towns' role as interested parties. The third section summarizes the Towns' opposition to the EP and PEP petitions. The fourth section summarizes key holdings from recent Bureau of Indian Affairs ("BIA") acknowledgment decisions that support negative findings for the EP and PEP petitions. The fifth section rebuts the claim that Connecticut petitioner groups should be granted a lower burden of proof to meet and provided an easier test for acknowledgment. This responds directly to the principle articulated in the EP/PEP proposed findings that improperly relies on upon the State's creation of an Eastern Pequot reservation and oversight of the individuals who lived there as evidence that can compensate for otherwise weak or insignificant evidence during various points in time. The sixth section responds to evidence submitted by petitioners in response to the Towns' last reports. It reveals the numerous deficiencies in the petitioners' evidence, including many misleading and incorrect statements and assertions made by petitioners in their recent submissions. It demonstrates why it is important to not allow petitioning groups, who are advocates for a particular outcome, to have the last word on acknowledgment petitions without comment and analysis by other parties. The final section discusses reforms to the acknowledgment process.

This report is submitted to the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs of the House Committee on Government Reform of the U.S. House of Representatives. It also is being released to the public. On February 7, 2002, the Subcommittee held an oversight hearing on the tribal acknowledgment process. The Subcommittee indicated it would be making recommendations to the House Committee on Resources regarding the acknowledgment process. This report is intended to assist the Subcommittee in that developing those recommendations.

II. ROLE OF THE TOWNS AS INTERESTED PARTIES

By letters of March 18 and July 1, 1998, the Town of North Stonington applied for interested party status in the review of the EP and PEP acknowledgment petitions. The Towns of Ledyard and Preston applied for that status on May 5 and June 29, respectively. The Bureau of Indian Affairs (BIA) granted those requests on July 14, 1998.

Beginning with their applications for interested party status, the Towns initiated a comprehensive review of the petitioners' claims. As repeatedly stated by the Towns, such action was necessary to ensure the development of a full, complete, and objective record. The Towns noted that any acknowledgment petition should not be left for the consideration of BIA based exclusively upon a record prepared by the petitioners themselves. Obviously, petitioning groups are self-interested in attaining tribal status; they are advocates for their own cause. As a result, the evidence they submit portrays only the reasons acknowledgment should be granted. This results in a one-sided and incomplete record.

This problem is augmented in circumstances such as those presented by the EP and PEP petitions, where wealthy and financially-motivated gaming and development interests seek to capitalize on tribal acknowledgment for personal gain. By entering into agreements with petitioning groups such as the EP and PEP to bankroll their acknowledgment claims, these investors seek a huge return on their investments by being able to develop and make money from the casinos that result if tribal status is attained. In Connecticut, the prospect for such gain is very, very significant, as evidenced by the fabulously successful Foxwoods and Mohegan Sun casinos, both which involved outside, non-Indian investors. These investors not only raise the stakes of acknowledgment by putting mega-casino resorts with their numerous negative economic, environmental, and social impacts on the line, but they also make it possible for petitioner groups to invest millions of dollars in lawyers, technical consultants, and public relations firms to develop their case for acknowledgment, regardless of the merits.

Absent the involvement of interested parties, BIA's Branch of Acknowledgment and Research ("BAR") would be left to its own efforts to review the records prepared by these petitioners and their teams. BAR, however, is seriously underfunded making it difficult to adequately review and research these petitions adequately to ensure their fairness, accuracy, credibility and completeness.

These difficulties are compounded by the fact that BAR has numerous complex petitions to consider. In Connecticut alone there are four such petitions under active review: EP, PEP, Schaghticoke, and Golden Hill Paugussett. In addition, the two

Nipmuc groups in Massachusetts are under active review, and they have expressed an intention to seek land in Connecticut. Each of these groups is supported by wealthy outside investors who want to cash in on the gaming that could result if acknowledgment is achieved. And, because time is money in the gaming business, these outside-financed petitioning groups bring legal and political pressure on BAR to expedite the review of the petitions.

The petitioning groups criticize the acknowledgment process for taking a long time to complete. Yet, those claims of unfairness and delay are not raised until the petitioners have themselves expended years, and million of dollars of their investors' money, to prepare the case for acknowledgment. For example, the PEP took nearly seven years to complete their petition. The EP took seventeen years. Only then, when the petitioners have prepared their case in detail -- the EP/PEP petitions together consist of over 50,000 pages of documents -- do the petitioners criticize BIA for the time it takes to complete the review.

These problems became even more severe under the administration of the acknowledgement process by former Assistant Secretary Kevin Gover. Clearly, Mr. Gover brought to BIA a pro-acknowledgment policy objective. The actions undertaken by him and his Deputy, Michael Anderson, have been reported in various newspaper articles. Together, they overruled BAR staff to reverse negative findings from BAR on six separate petitions (EP, PEP, Nipmuc, Duwamish, Little Stoll Chippewa, Golden Hill Paugussett) to produce either positive proposed or final determinations. While these officials are fond of saying that it was their job to make these findings, it is clear that they lack the expertise to do so. They may have the power, as agency heads, to override agency staff, but they lack the knowledge, the training, the familiarity with the facts, and the impartiality to render such decisions, especially when they are doing so by overturning the answers produced by trained experts who have spent years combing through the facts associated with each petition.

The motivation of these political appointees is clear. Mr. Gover, for example, is a former fundraiser in the Native American community for Clinton/Gore. In his private practice, he was an advocate for petitioner groups. One of these was the Golden Hill Paugussett group, which stands to benefit from the policies he sought to establish in overturning the negative EP/PEP findings (e.g., the view that mere recognition by the State of Connecticut suffices as grounds to fill gaps in evidence under the federal acknowledgment criteria). While it is understandable that Mr. Gover has heart-felt and strong commitments to Native American causes, those sentiments should not be allowed to affect the credibility and accuracy of acknowledgment decisions. Pro-tribe feelings and policies have no place in the acknowledgment process.

It is for all of these reasons that the Towns felt compelled to become involved in the review of the EP and PEP petitions. Through the Towns' involvement, an effort has been made to ensure that all of the facts are gathered for BIA's review. In addition, by playing this role, the Towns have enhanced their position in this proceeding. Should BIA reach a decision not justified by the record, the Towns are well-positioned to pursue appeals and litigation or to intervene in actions brought by the petitioners.

The importance of the Towns' involvement became even more apparent after former Assistant Secretary Gover unilaterally issued a directive on February 11, 2000, that dramatically altered the acknowledgment process in a manner that benefits well-funded petitioner groups, such as the EP and PEP. Mr. Gover issued this directive without any of the public review, as required by law and Department of the Interior policy. As Assistant Secretary McCaleb confirmed at the February 7 hearing, issuing such a directive without public comment was in error.

Under this directive, Mr. Gover issued an edict that the record of all acknowledgment requests would be closed prior to the critical proposed finding at the early date when a petition goes on active consideration. Typically, it is at this time when other parties only begin to get involved. Certainly, the petitioners continue to supplement the record up to this time, making it impossible for interested parties to even know what to comment on before active consideration begins. They also receive no advance notice of when active review is to begin. The effect of the Gover mandate is to allow well-funded petitioners to spend years and vast sums of money in developing their petitions, and then close the record before other parties can respond. His directive further skewed the review process in favor of those petitioners, especially those supported by outside investors, by preventing BAR from undertaking its own research. In effect, through this directive, Mr. Gover gave acknowledgment petitioners an advantage in the acknowledgment process.

Throughout this process, the Towns have been repeatedly subjected to attacks and threats of intimidation from both petitioners. While the Towns appreciate and respect the intensity of the EP and PEP groups' desire to be acknowledged, there is no place for such a tactic. Among the actions taken by one petitioner or the other at various times since the Towns joined as interested parties are: public protests and disruption of town meetings; outrageous and unfounded accusations of racism, genocide, and "Nazism" against Town officials; personal attacks on Town researchers whose identity the Towns sought to withhold to protect them from intimidation and to ensure their role as undisclosed witnesses in an adversarial proceeding; unsuccessful efforts to force the release of names and addresses of undisclosed Town researchers; unjustified and legally repudiated attacks on the ethics of the Town researchers;

refusal to provide documents to the Towns related to acknowledgment petitions; efforts to persuade BIA to withhold evidence from release to the Towns; and campaigns to defeat Town budget initiatives to pay for interested party participation. These actions by the petitioners are further evidence of the importance of the Towns' resolute and independent participation in the acknowledgment process.

With this report, the Towns complete their review of the evidence relevant to the petitions. All evidence submitted by the petitioners that is available to the Towns has been reviewed. The "rebuttal evidence" prepared by the petitioners and submitted to BIA in September has been analyzed. Prior to the completion of this review, the Towns declined to take a final position on the acknowledgment claims. Now that the Towns' independent research is complete and all of the petitioners' evidence has been studied, it is clear that neither group is entitled to acknowledgment. The Towns therefore are now opposed to the acknowledgment of the EP and PEP.

III. STATEMENT OF TOWNS IN OPPOSITION TO EP AND PEP ACKNOWLEDGMENT CLAIMS

Over a four-year period, the Towns have invested considerable effort in reviewing all of the evidence relevant to the EP and PEP acknowledgment claims. As part of that effort, the Towns have considered all documents submitted by the petitioners to BIA, but not withheld. This review includes the evidence and analysis submitted by the petitioners in response to the Towns/State submissions of August 4, 2001.[1]

In addition, this review has taken into account the Towns' independent evidence based upon the original research of a team of eight outside consultants, plus several Town employees and counsel. This research is reflected in the following reports submitted to BIA.

December 15, 1998	A Report on the Lineage Ancestry of the Eastern and Paucatuck Eastern Pequot Indians: An Independent Survey and Analysis
February 5, 1999	Updated Brushel Lineage
April 16, 1999	Genealogical Record of the Paucatuck Eastern Pequot Indians: An Independent Research Report of the Gardner Lineage

[1] Initially, the EP group refused to provide those documents to the Towns. Only recently were they made available by the EP, after the Towns and State had been forced to pursue those documents from BIA through the Freedom of Information Act.

May 1999	Press Release: Response of Towns to Attacks by Paucatuck Eastern Pequot Group on Towns' Consultants
May 20, 1999	Genealogical Record of the Eastern Pequot Indians: An Independent Research Report of the Sebastian (Brushel) Lineage
July 1, 1999	A Report on the Lineage Ancestry of the Eastern and Paucatuck Eastern Pequot Indians: An Independent Survey and Discussion of the Fagins Lineage
July 12, 1999	"Core Analysis" letter addressing the issue of whether the petitioners can show descent from the original Eastern Pequots
August 2, 1999	Towns' Response to Petitioners' Submissions
March 6, 2000	Report on the Eastern Pequot Petitioner and the Paucatuck Eastern Pequot Petitioner under Federal Acknowledgment Criteria 83.7(b) and (c)
August 2001	Towns' Comments on Proposed Findings

Based upon this extensive and painstaking effort, the Towns conclude that neither the EP or PEP petitioners qualify for acknowledgment. In addition, even if both petitioners were considered as a single entity -- something BIA lacks the power to do for two separate petitions and over the objections of the PEP -- the resulting unified group would not qualify.

By way of summary, the Towns base this opposition on the following considerations:

1) As an initial matter, it is clear that Congress has never delegated to the Secretary of the Interior the power to acknowledge Indian tribes. The basis for the Towns' conclusion in this regard is set forth in the letter of May 5, 2000 to Secretary Babbitt, included in the record of these petitions and set forth as Attachment 1. The Towns are participating in this proceeding because it is the only avenue available through which evidence can be offered and to ensure that the Towns' procedural rights are fully protected.

2) The evidence submitted by the EP and PEP petitioners does not meet the acceptable standards for community interaction (criterion 83.7(b)), political influence or authority (criterion 83.7(c)), and descent from an historical tribe (criterion 83.7(e)) established by the acknowledgment regulations and the precedents of prior BIA findings and determinations.

3) Other New England petitioners that have been acknowledged through the BIA process, including the Narragansett of Rhode Island, the Gay Head Wampanoag of Massachusetts, and the Mohegan of Connecticut have had significantly stronger evidence of community, political influence and authority, and descent from an historical tribe than does the Eastern Pequot and Paucatuck Eastern Pequot petitioners.

4) The evidence indicates that the positive proposed findings for these two petitioners were the result of a continuing pattern of political intervention by the administration of Assistant Secretary Kevin Gover to override the recommendations against acknowledgment of the Branch of Acknowledgement and Research and the Office of the Solicitor. The same political manipulation is also evident in the cases of the Little Shell Chippewa, Golden Hill Paugussett, Duwamish, and Nipmuc Nation petitioners.

5) The proposed findings for the EP and PEP have placed unprecedented and unjustified emphasis on the alleged continuous recognition of the petitioners by the government of Connecticut.

6) The description in the proposed findings of the relationship between the petitioners and Connecticut government as "a government-to-government relationship" is a legal and historical fiction, which is unprecedented in BIA acknowledgment findings and determinations.

7) The historical relationship between the petitioners and Connecticut government was not a relationship between sovereign entities, as the phrase "government to government" is commonly understood to mean, but was rather a relationship between a State welfare provider and its Indian and non-Indian recipients who resided on the Lantern Hill reservation. For most of its history, Connecticut did not recognize any tribal political entity or leaders on the Eastern Pequot reservation or consider that it had a bilateral political relationship with any tribal entity.

8) The phrase "government-to-government relationship" is a rather recent construct or term-of-art that was coined during the 1970s era of tribal self-determination to describe the trust relationship between the Federal Government and Indian tribal entities that are recognized by the United States. In using this concept for the first time to describe a state-to-tribe relationship, the BIA adopted language that was in fact suggested by the EP petitioner.

9) Applying this interpretation to the State of Connecticut goes beyond a mere description of the history and nature of governmental interaction with these tribal groups. It imposes a political concept on the State that assumes that its

government continuously considered Eastern Pequot tribal groups to be separate and/or equal sovereigns. This interpretation then takes the additional leap to allow that the State's relationship should be used to prove continuous tribal community and political influence or authority – matters of purely internal group affairs. Because any action taken by the State was a matter of external treatment of these individuals, there is no basis upon which it can be relied upon to show how the members of the petitioner group interacted among themselves.

11) In the BIA's prior acknowledgment determinations, State recognition has been viewed as positive evidence primarily for criterion 83.7(a), external identification as an American Indian tribe. It has only been interpreted as positive evidence for criterion 83.7(b), community, and/or criterion 83.7(c), political influence or authority, when actual political interaction between a state and a tribal group has been demonstrated.

12) In fact, the actual interactions between Connecticut governments and Eastern Pequot descendants as mutually acknowledged political entities have been rare and certainly not frequent enough to justify their characterization as a continuous government-to-government relationship or sufficient to be granted weight under criteria 83.7(b) and (c).

The problems with the use of State recognition and its relationship with the reservation residents is discussed in more detail in section V, infra.

13) Without question, the extraordinarily heavy reliance on State recognition in the EP and PEP proposed findings departs from decades of BIA pronouncements. The executive decision to impose such heavy emphasis on this factor in the context of these petitions is also without merit.

14) It is significant that in subsequent proposed findings issued after the departure of the administration of Assistant Secretary Kevin Gover and his deputy Michael Anderson, State recognition has not been given greater weight.

In the proposed findings of the Nipmuc Nation and the Webster/Dudley Band of Chaubunagungamaug Nipmuc Indians, published on October 1, 2001, it was found that Massachusetts set aside land for these groups, maintained guardians and trust funds for them, accepted petitions from them, and passed legislation on their behalf during various periods. However, the BIA did not describe this interaction as a "government-to-government relationship" that provided strong evidence for criterion 83.7(b) and 83.7(c). Rather, it concluded that the Commonwealth's relationship was not with a tribal entity but merely with specific individuals and families. Thus, the

BIA appears in these decisions to have gone back to its previous standards regarding the significance of State recognition.

15) In the absence of sufficient evidence of actual community interaction and political influence or authority for significant periods, the BIA gave greater weight to the petitioners for criterion 83.7(b), community, and 83.7(c), political influence or authority because of this alleged "government to government" relationship, There is no factual basis on which to assume that the alleged recognition by Connecticut government demonstrated "consistent interactions and significant social relationships" within the petitioners' membership, as required under the acknowledgment regulations (25 C.F.R. 83.1, definition of community).

16) Neither the EP nor the PEP have provided sufficient evidence of continuous community and political influence and authority and the alleged recognition by the State of Connecticut does not and cannot fill the evidentiary gaps.

17) The community of Indians that lived on or near the Eastern Pequot reservation did not consist of "the same people that came through time together," which is the BIA's basic definition of tribal community and descent from an historical tribe. The historic families found in the early documents from the 18th century had, for the most part, disappeared by the late 19th century.

18) By 1850, most of the historic Eastern Pequot tribe had migrated to Wisconsin with the Brothertown Indians and were no longer part of the Eastern Pequot community. The small remnant group that remained in Connecticut could not endure such departures and remain a viable political and social entity.

19) The lack of social and political continuity on the 19th century Eastern Pequot reservation is unprecedented in other acknowledgment cases and is especially striking in contrast to the histories of other New England petitioners, such as the Narragansett, Gay Head Wampanoag, and Mohegan.

20) In contrast to the proposed findings that concluded that the EP and PEP comprised a single tribal entity up to 1973, the evidence indicates that the petitioners have existed as separate entities and have had little social or political interaction since the early 20th century. The two petitioners do not meet criteria 83.7(b) or 83.7(c) as a single entity since that time, because of the lack of evidence of interaction. Neither do they meet criteria 83.7(b) or 83.7(c) as separate petitioners, because of significant gaps in their evidence for community interaction.

21) The social events and institutions claimed by the EP and PEP petitioners do not meet criterion 83.7(b), community, for a single tribal entity as a whole for the

20th century, because they were not inclusive of the overall tribal membership. Members of the main family lines of the PEP petitioner did not participate in the meetings and gatherings of the main family lines of the EP petitioner and vice versa. Thus, a substantial portion of the overall tribal membership was excluded from participation in social and political activities that were limited to members of distinct family lines.

22) The data presented by the EP petitioner of significant intermarriage within its family lines as evidence for criterion 83.7(b) is flawed because most of those ancestors marrying were not listed as being affiliated with the Eastern Pequot group at the time of their marriages. This evidence also fails to demonstrate evidence of community for a single EP tribal entity, because it does not show significant marriage patterns between the main family lines antecedent to both petitioners.

23) The EP petitioner's arguments for evidence for criterion 83.7(b), community, that its members belonged to a distinctly Eastern Pequot religious community or enclave, as indicated by their participation in specific churches, represents an attempt to interpret artificially the presence of an Eastern Pequot community through time. Rather than providing evidence of an overall tribal community, the petitioner has instead only depicted a community consisting of Sebastian family members.

24) The EP petitioner's arguments that a series of prayer gatherings known as "Fourth Sunday meetings" were also tribal social and political meetings that constituted evidence for criterion 83.7(b), community, and 83.7(c), political influence or authority, up to 1937 is not substantiated by the evidence. The documentation of these events, including the Susan Swan notebook, fails to show that these meetings involved the participation of a significant number of the overall Eastern Pequot membership, meaning the ancestors antecedent to both petitioners, or that there was a bilateral political relationship between the leaders of these meetings, such as Calvin Williams and Tamer Emeline Williams, and the overall tribal membership.

25) The Catherine Harris ledger book submitted by the EP petitioner as evidence of the informal leadership of Catherine Harris fails to provide evidence of either a tribal community or tribal political influence or authority. The focus of this partial text is on personal interaction primarily within the Sebastian family line and neither its authorship nor contents can be verified.

26) The EP petitioner's attempt to demonstrate community through an analysis of family distribution within core and peripheral areas radiating from the Lantern Hill reservation is flawed because the Federal census data on which it is based

cannot presume to be inclusive of all the tribal membership at any one time. Both the methodology and conclusions of this analysis are incorrect and misleading.

27) The Branch of Acknowledgement and Research (BAR) and the Office of the Solicitor concluded in their recommendations to the Assistant Secretary that the two Eastern Pequot petitioners did not meet criterion 83.7(b), community for the periods 1884 to 1928. The new evidence and interpretations provided by the petitioners in response to the proposed finding and the comments of interested parties have not been sufficient to fill these gaps. Based on the precedents of other Acknowledgment findings and determinations, the failure of the petitioners to meet this criterion for the forty-two year period from1884 to 1928 should, in and of itself, be fatal to their cases.

28) The BIA has yet to issue a proposed finding for the two petitioners for the period since 1973. However, the evidence for this period indicates that neither petitioners' social nor political activities have been inclusive of all family lines and are therefore not tribal in the broad sense. The EP petitioners have excluded the Hoxie/Jackson, Gardner/Williams and Gardner/Edwards descendants and the PEP petitioner has excluded the Sebastian and Fagins/Randall descendants.

29) The escalation of the membership of the EP petitioner since 1973 has been problematic for the maintenance of cohesive tribal relations. The evidence presented by the petitioner contains many examples that members do not know each other. The group has expanded from 69 members in 1975 to 995 members in 2000. Similar escalation in membership has been fatal to other petitioning groups.

30) The EP petitioner's claim that the listing of its primary progenitor Tamer Brushell on an 1873 petition is evidence that she and her family and the other persons listed were recognized as tribal members "with an active interest in tribal affairs" is not valid because this list contains the names of persons who were never previously on tribal lists or otherwise identified. Those persons listed are not consistent with the known persons identified as tribal members on other documents of the time, including Federal census records and a signed petition submitted just one year later, in 1874.

31) The reports of the reservation overseers, including those new records submitted by the EP petitioner for the period 1890-1905, do not contain any information that indicates social interaction on the reservation or that a tribal political authority was present among the Eastern Pequot.

32) The reports of the reservation overseers do not meet the standards of acceptable genealogical evidence because their lists of group members included

persons of no known Indian ancestry as well as deceased persons and those who no longer lived on or near the reservation.

33) Following the Pequot War of 1638, Connecticut no longer recognized the Pequot to exist as a tribal political entity. The Treaty of Hartford of 1638 specifically declared that the Pequot no longer existed as a tribe. The Colony placed the surviving individual Pequot tribal members initially under the control of other tribal governments and from 1654 to 1695 under specific governors designated by the General Assembly. The Colony dealt with the Pequot survivors primarily as individuals and treated them similarly to other poor inhabitants who required overseers.

34) The government of Connecticut did not specifically name or acknowledge an Indian political authority, tribal leader, or tribal governing body for the Eastern Pequot reservation following the death of its appointed governor Momoho in 1695. Neither did it appoint a government overseer, counselor, guardian or supervisor for the reservation residents for most of the 18th century.

35) Following the death of Momoho in 1695, a named leader of the Eastern Pequot did not appear again until the 1920s. There is no evidence in the record that the Eastern Pequot, including the two petitioners, had a tribal council, governing document, enrollment criteria, or membership list prior to the 1970s.

36) The government of Connecticut set aside land for the Pequot survivors and passed legislation providing for their rights and welfare not in recognition of tribal sovereignty, but rather because of its sense of benevolence.

37) The government of Connecticut accepted petitions from Eastern Pequot members not in recognition of tribal sovereignty, but based on its democratic principles that held that all inhabitants of the Connecticut had the right to petition government for the redress of grievances. If it had still considered the Pequot to be a sovereign political entity, it would have continued to deal with the tribe through the well-established instrument of treaty negotiations.

38) The EP petitioner's claim that Mohomo's widow succeeded him as an Eastern Pequot leader in 1695 is invalid because there is no corroborative evidence that she was designated a tribal leader or even that she had Pequot ancestry.

39) The creation of the Eastern Pequot reservation in 1683 was done not in recognition of a continuing tribal political entity, but rather out of a sense of governmental responsibility to provide for the welfare of Indian descendants who had lost their sovereignty. The reservation was not established by treaty, through

negotiation with a tribal entity, or on the basis of a perpetual trust relationship, as were Federal Indian reservations. Rather, it was established as a haven for the Pequot residents that might reduce the burden of local government in providing for the care of those Indians who had no other real property or dwelling place.

40) The Eastern Pequot reservation was not recorded to a Pequot tribal entity or to individual tribal members. Rather, it was set aside for the use and benefit of the remnant Pequot at the sole discretion of the Connecticut government because it felt strongly, as did most New Englanders of the time, that the Indians would either become integrated into the Euro-American culture or become extinct. Connecticut could at any time liquidate the reserve without tribal consent and did in fact sell a portion of the reservation without tribal consultation.

41) The BIA's interpretation in its proposed findings that the petitions of Eastern Pequot members to Connecticut government petitions constituted evidence of a "continuous government-to-government relationship" mistakenly ascribes to the petitioners a political status that they did not in fact have and to the Colony/State an intent that it never had prior to 1973; to acknowledge the existence of a Pequot tribal political entity.

42) The Eastern Pequot chose to petition Connecticut government only twelve times between 1638-2001, or an average of every thirty years. Notable gaps are apparent between 1638-1722, 1788-1839, and between 1883 and the present. None of these petitions listed the signatories as having a leadership title or as being members of any tribal political entity. In and of themselves, the petitions do not provide evidence of internal tribal processes because they fail to explain how they were developed or indicate to what extent the signers were truly representative of a tribal group.

43) The appointment of reservation overseers by Connecticut did not constitute a tacit acknowledgment of the existence of a political entity. Connecticut government also regularly appointed overseers of the poor. That did not mean that it regarded the indigent of the towns to be a political entity.

44) The Towns conclude that the appointment of overseers of the reservation was for the same purpose as the appointment of overseers of the poor; to provide government assistance to economically and socially disadvantaged inhabitants.

45) In contrast to the Federal relationship with reservation Indians, the Eastern Pequots had no distinct political rights based on treaties or statutes. Neither did they have named leaders or a tribal council until recently. While there is evidence

that the overseers sometimes consulted with reservation residents, as is common for welfare providers to do with their recipients, there was no legal requirement for them to do so, and they never sought tribal consent regarding the disposition of reservation lands or resources or tribal monies. There is in fact no evidence that the overseers of the Lantern Hill reservation dealt with a Pequot tribal political entity.

46) It has not been demonstrated that Calvin Williams, the purported leader of the Eastern Pequot from 1873 to 1913, had Pequot or other Indian ancestry. The preponderance of the evidence indicates that he was of African-American ancestry.

47) In a 1905 letter, Calvin Williams stated that there were only "2 or 3" tribal members residing on the reservation and that it would take him "2 or 3 weeks ... to see or communicate with all members." This is not indicative of a cohesive tribal community over which he may have had political influence.

48) It has not been proven that Tamer Emeline Sebastian Williams, the purported "informal" leader of the Eastern Pequot following the death of her husband Calvin Williams in 1913, had Pequot or other Indian ancestry or that she was the leader of an Eastern Pequot tribal entity as a whole, meaning the families antecedent to both petitioners. She was not listed in the overseers' records until 1918, 28 years after she became a reservation resident.

49) There is no credible evidence that indicates that the Fourth Sunday meetings held between 1890 and 1937 were also tribal political meetings. Rather, they were evangelical Baptist gatherings that were at the same time open to the public but not inclusive of all of the Eastern Pequots' main family lines.

50) It has not been demonstrated that Atwood I. Williams, Sr. (Chief Silver Star), the purported leader of the Eastern Pequot from the 1920s to the 1950s, but primarily of the families antecedent of the present PEP petitioner, had Pequot ancestry or that he was the leader of an Eastern Pequot tribal entity as a whole. His actions were often in opposition to the Sebastian family line that constitutes the majority of the membership of the EP petitioner.

51) It has not been shown that Catherine Harris, the purported informal leader and tribal historian of the Eastern Pequot up until the 1950s, had Pequot ancestry or that she was the leader and historian of an Eastern Pequot tribal entity as a whole, meaning the families antecedent to both petitioners.

52) It has not been demonstrated that Helen LeGault, who has been identified as a tribal leader by the PEP petitioner and as the leader of the PEP faction by the EP petitioner from the 1960s to the 1980s, had either Pequot ancestry or

political influence over an Eastern Pequot tribal entity as a whole, meaning the families antecedent to both petitioners.

53) The EP petitioner has failed to show that Alden Wilson, a purported informal leader during the 1950s and 1960s, had Pequot ancestry or had political influence over an Eastern Pequot tribal entity as a whole, meaning the families antecedent to both petitioners.

54) Neither the EP petitioner nor the PEP petitioner has been able to demonstrate that any of its leaders and most of its council members since 1973 have either Pequot ancestry or political influence over an EP tribal entity as a whole, meaning the families antecedent to both petitioners.

55) Neither the EP petitioner nor the PEP petitioner has been able to show that for most of the period since the end of the Pequot War of 1637-38 there have been tribal leaders, councils, or processes that have served to maintain political influence or authority over an Eastern Pequot tribal entity. Thus, the petitioners do not meet criterion 83.7(c).

56) The EP and PEP petitioners do not meet criterion 83.7(e), descent from an historical tribe, because their primary progenitors cannot be shown by a preponderance of the evidence[2] to be of Pequot ancestry.

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[2] To achieve acknowledgment, the Petitioner has the burden of proving that its members "descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity." 25 C.F.R. § 83.7(e). To satisfy its evidentiary burden under this criterion, the EP and PEP must proffer evidence that demonstrates a "reasonable likelihood of the validity of the facts" upon which they assert descent from an historical tribe. *Id.*, § 83.6(d). This burden of proof is exclusively on the petitioners. *Id.*

In its Golden Hill Paugussett Final Determination, BIA cites with approval the need to establish genealogical findings for criterion (e) under the "preponderance of the evidence" test. Golden Hill Paugussett Final Determination, at 9. This burden of proof is generally accepted in the field of genealogy. For example, the "preponderance of the evidence" test is relied upon by the Board for Certification of Genealogists in its Applications Guide under Specific Requirements for Certified American Indian Lineage Specialist, ¶ 9-C (Jan. 1995).

In addition, this standard is set forth in the professional texts recommended by BIA. At the January 23, 2002 formal technical assistance meeting for the Dudley/Webster band of Nipmuc Indians, Dr. Virginia DeMarce recommended two basic texts for conducting genealogical research for tribal acknowledgment petitions. Both of the texts set forth a preponderance of the evidence test.

The first text referred to by Dr. DeMarce is Genealogical Research Methods and Studies, issued by the American Society of Genealogists. In its discussion of the "standard of proof" required for genealogical research, this text states:

> First, it must be clear that genealogical facts, except in rare instances, cannot be proven to an *absolute certainty.* Therefore, if a pedigree cannot be proven to an *absolute certainty*, what standard is applied? In civil matters before the courts, the requirement is that, the party seeking to establish facts or prove the case must do so by a *preponderance of the evidence. Preponderance of the evidence* simply means proving a case by a greater weight of the evidence . . . .

American Society of Genealogists, Genealogical Research Methods and Sources, 38 (1960)(emphasis in original).

The second text relied upon Dr. DeMarce is Evidence! Citation and Analysis for the Family Historian by Elizabeth Shown Mills. Mills not only affirms the need to use the preponderance of the evidence test, but explains that, for genealogical purposes, this test is more rigorous than in judicial proceedings. As she states:

> Modern genealogy draws heavily from law in its handling of evidence. ***Yet genealogy requires a higher standard of proof than does most civil litigation, and attempts to define genealogical concepts by legal terms create confusion.*** Consider this comparison:
>
> - The justice system requires that a date be set for trial, that all known and valid evidence be considered at this time, and that a decision be made then and there on the basis of that evidence. To avoid clogging the court system, the law permits decisions to be made in the closest of cases—even when the evidence on one side barely outweighs that on the other. This is the legal standard of proof called *preponderence of the evidence.*
>
> - Genealogy rarely seeks an arbitrary time or deadline by which one must decide the parentage of a distant forebear. If clearly convincing evidence does not exist to accept or reject a point, the genealogist can—and should—simply delay a decision until suitable evidence is found.

Mills, Evidence! Citation for Analysis for the Family Historian 46-47 (1997) (***emphasis added***).

To meet this heavy burden, a proponent of a genealogical theory cannot merely rely upon an abundance of documents, as the EP and PEP do. As Mills states:

Each time we accept or reject a fact or a probability, that decision should be based upon careful consideration of where the *weight of the evidence lies.* That weight is based upon the *quality*

57) The Indian ancestry of Tamer Brushell, from whom 93 percent of the Eastern Pequot petitioner's membership descends, has not been established. Her father Moses was never identified as an Indian, and the identity of her mother is unknown.

58) No record has been found of the Brushell name in relation to the Eastern Pequot reservation prior to 1823 when Moses' name appeared in the overseers' records. This name appeared in the record following a time when the old, core proprietary families on the reservation had complained of trespassers "who have not any right." There is no record that the overseer ever addressed this complaint. It is entirely possible that Moses secured a right on the reservation by merely squatting on the land.

59) Tamer Brushell was absent from the reservation for the greater part of her lifetime. She was listed in the overseers' records as a young child and then not again until she returned to the reservation as an elderly woman. There is not sufficient evidence to indicate that she maintained tribal relations during the long period of her absence.

60) Tamer Brushell returned to the reservation in the 1890s, after separating from her husband Manuel Sebastian, to reside with her daughter Tamer Emeline Sebastian Williams and her non-Indian son-in-law Calvin Williams. Calvin Williams had gained entry to the reservation through his previous marriage to Amanda Ned, a member of one of the well-established Pequot families. Tamer Emeline Sebastian Williams was not identified on any record as being Indian prior to her marriage to Calvin Williams in 1890 and was not listed as being a tribal member in the overseers' records until 28 years later.

61) The circumstances of Moses Brushel, Tamer Brushell, Calvin Williams, and Tamer Emeline Sebastian Williams becoming associated with the Eastern Pequot reservation as indicated in the overseers' records provides strong evidence that the overseers were neither diligent enforcers of tribal rights not knowledgeable observers of membership entitlements. There are many known cases where individuals with no known Indian ancestry or prior connection to established reservation families managed to become the beneficiaries of the Eastern Pequot tribal funds.

62) The EP rely upon descendancy from Laura Fagins to claim Pequot ancestry. The Fagins family was prominent on the Western Pequot reservation and

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of the evidence, not upon the number of documents accumulated—although a reliable effort to determine the "truth" or likelihood requires us to consult all known sources. Id. at 46.

associated with the Eastern Pequot reservation as well, although the identity of Laura's parents has not been established. However, the descendants in this line constitute only 7 percent of the petitioner's membership, which is not a sufficient proportion to met criterion 83.7(e), descent from an historical tribe.

63) Interview evidence indicates that the descendants of the Abby Fagins Randall line, whose percentage of the present EP petitioner's membership was not quantified by the BIA in the proposed finding, have only recently become associated with the petitioner.

64) The interview evidence presented by the petitioner generally reflects a lack of recent familiarity or interaction on the part of the Sebastian family line with any other key family lines, including those other families antecedent to both petitioners.

65) Rachel Hoxie is a key ancestor claimed by the PEP petitioner. The identity of her parents is unknown. The only clue to her lineage is that her purported brother John Noyes Hoxie indicated in 1900 that his father was Narragansett and that his mother was Pequot (probably Western Pequot) and that both were born in Rhode Island. The Hoxie surname is well established among the Narragansett and there was no prior association of this surname with the Eastern Pequot reservation prior to 1849 when Rachel's name first appeared in the overseers' records.

66) The evidence indicates that the PEP petitioner cannot rely upon the Hoxie family, with its clear links to Narragansett and possibly Western Pequot, to demonstrate its descent from the historical Eastern Pequot tribe.

67) Marlbro Gardner is another key progenitor claimed by the PEP petitioner. His name first appeared on an 1873 petition requesting a new overseer for the Eastern Pequot reservation, along with the names of several other persons who had not previously been associated with the reservation. Marlbro stated in 1880 that his father was Narragansett. The identity of his mother has not been documented.

68) The names of Marlbro Gardner and his purported brother Dwight first appeared on the overseers' membership lists in 1889. No documentation has been found to validate that Marlbro and Dwight were brothers, as the PEP petitioner asserts. The existing record indicates that they had different parents. Thus, in common with the Rachel Hoxie line, the Marlbro Gardner connection fails to provide the PEP petitioner with a clear link to the historical EP tribe.

69) It is extremely significant that although Dwight Gardner died in Providence in 1886, his name continued to be listed on the EP overseers' lists for

sometime thereafter. This provides further evidence, in contrast to the assertions of the BIA and the two petitioners, that the Eastern Pequot overseers' records and lists do not constitute accurate or reliable documentation in regard to substantiating tribal membership and genealogy.

Taken together, these numerous deficiencies discussed above provide an overwhelming case against the acknowledgment of both petitioners. The deficiencies noted herein are of significant magnitude and have not been overcome by the petitioners' final submissions to BIA.

IV. ANALYSIS OF RECENT BIA DECISIONS

In recent months, BIA has issued several additional acknowledgment findings. These new findings establish important precedent directly adverse to the EP and PEP petitions. The relevant aspects of each of these decisions are discussed below.

A. Ohlone/Costanoan Muwekwa

On July 30, 2001, BIA issued a proposed negative finding on this petition. That decision includes the following conclusions relevant to EP/PEP:

1. "The petitioner is required to show that a predominant proportion of its members actually interact." BIA, Summary under the Criteria, pg. 21.

Both EP and PEP fail this test. The EP group submitted numerous reports in an attempt to show that their membership did interact. They were flawed, much as were the Muwekma, showing instead that interactions were among family members, not the entire membership. The majority of the EP interactions were between descendants of Tamer Brushell Sebastian, and then, not all of them. Likewise, the PEP failed to show interaction between members of its group. The descendants of Marlboro Gardner lived in Rhode Island, and no evidence has been presented that they had any interactions with other members of its group until late in their lives. Both EP/PEP fail the test of "a predominant proportion of its members actually interact."

2. A petitioner must "demonstrate that these activities were broadly based among the various families and incorporate the entire petitioning group in a community during the last decade." Id. at 26.

Again, the Muwekma finding illustrated the importance of broad-based and whole-community activities. Formal meetings that included more than just extended families did not meet the criteria. "The large extended families typical in this petitioner may contain members that interact extensively within the family, share

VII. PRINCIPLES FOR REFORM OF ACKNOWLEDGMENT PROCESS

As a result of years of experience with the tribal acknowledgment process, the Towns are uniquely situated to offer comments and recommendations on reforms that are needed in the process. All too often in the past, Congress has tended to view tribal acknowledgment as an issue only of concern to petitioning groups. The onset of Indian gaming and aggressive tribal trust land expansion efforts, however, has dramatically changed that equation. Today, tribal acknowledgment also is a matter of great concern to local governments, state governments, non-Indian businesses, and the general public. As a result, important changes are necessary to ensure the fairness, objectivity, openness, and accessibility of the acknowledgment process to all affected parties, not just the tribal petitioning groups.

Numerous proposals for reform have been introduced in Congress in the past. For example, H.R. 361 and S. 611. The problem with these bills is that they have been biased in favor of petitioning groups and promote a pro-acknowledgment agenda. Past testimony by our Towns on such legislation that expresses this concern is set forth in Attachment 2 to this report.

As a result of the new reality of tribal acknowledgment in the post-IGRA world, a much different approach is needed. Set forth below are the Towns' general recommendations in this regard.

There are five fundamental problems with the current acknowledgment process. First, and most fundamentally, is the fact that Congress has never delegated the power to the Executive Branch to acknowledge Indian tribes. As discussed in the Towns' letter to Secretary Babbitt of May 5, 2000, set forth as Attachment 1, the government's arguments as to how this power came to be vested in the Secretary of the Interior do not withstand scrutiny. Moreover, any proper delegation would have to contain meaningful standards, and clearly the very generic sources of legal authority relied upon by the Department of the Interior do not meet this test.

Congress therefore needs to take up this issue and specifically define the scope and limits of the power of the Executive Branch to acknowledge Indian tribes. Congress has plenary power over Indian affairs, and the Executive Branch has usurped that power through its acknowledgment process. Although it may ultimately be desirable to delegate aspects of tribal acknowledgment to the Secretary, Congress should not allow that to occur by default and without careful consideration, debate, and articulation of terms and conditions and standards that will control. This is too important an issue to avoid detailed Congressional scrutiny and legislation. The Towns therefore request that Congress enact comprehensive tribal acknowledgment

legislation that defines the limits of Executive Branch power and articulates standards that will ensure its fairness to all parties.

Second, if the Executive Branch is to have this power, it must be required to exercise that authority in an even-handed and objective manner. As discussed in this report, there is far too much room for political interference in the decisions. In addition, it must be questioned why BIA, an agency charged with serving an advocacy role for Indians and tribes, should be allowed to make these decisions. We are deeply concerned that, even when politics are removed from the process, there is an inherent tendency within BIA to rule in favor of petitioners. There is no room for pro-tribal bias in a process as significant to all affected parties as tribal acknowledgment.

The Towns therefore request that Congress enact legislation that builds checks and balances into the acknowledgment process. One approach would be to establish an independent commission that is equally balanced so as to address the many different interests who are affected by acknowledgment decisions. Another would be to require that any decision issued by BIA must also have judgment passed upon it by Congress, or some other entity that would be in a position to ensure the absence of political interference and bias.

Third, if BIA is to discharge this function, the federal government needs to be provided with the resources to conduct acknowledgment reviews in a fair, comprehensive, and timely manner. The Towns consider much of the criticism over the length of time it takes to complete acknowledgment reviews to be misplaced. These are important, complex decisions. They should not be rushed through the process. Doing so only tends to favor petitioners, who have had the benefit of years and years to prepare their petitions, and then start to complain once the active review begins.

Nonetheless, it is clear that BIA does not now have the resources it needs to do the job that needs to be done. There is no excuse for the failure to fund adequately BAR. Wherever this decision making power is to reside, that entity must be properly funded and fully staffed. This is especially important in this day and age of petitioners supported by ultra-rich gaming interests out to further enlarge their fortunes by linking them to petitioning groups. These petitioners, including the Pequot groups who are the subject of this report, can easily overwhelm BAR staff with paperwork and analysis. When this burden is added on top of the time constraints already imposed under the acknowledgment regulations, the need to respond to information request from interested parties, the many pending petitions, and the role that the courts are playing in imposing deadlines, it is apparent that a situation is developing where it may very well be impossible for BAR to do the job that needs to be done. The Towns

therefore request that Congress make the necessary funds available. If the Executive Branch continues to look the other way and decline to request such funds in its budget, then Congress will need to act accordingly and direct the appropriate level of funding.

Fourth, the process needs to be made more accessible and fair to interested parties. Unfortunately, it is clear from the Towns' experience that petitioning groups will often seek only to disparage and intimidate other parties from participating. One need only to read the EP's September 4 response to the comments submitted by interested parties to get a flavor for the mean spirited and vindictive attitude all too often directed against any party that seeks to play a role in tribal acknowledgment. Unfortunately, such practices were rampant throughout this acknowledgment process and directed against the Towns.

As a result, the federal government needs to confer the necessary rights to protect third parties' role in the process. These rights need to be conferred as a matter of law, and they need to place interested parties on an equal footing with the petitioners.

Petitioners have the right to feel passionately about their acknowledgment petitions. They involve the personal history and cultural heritage of the petitioner. No party can fault any petitioner for intense feelings and a strong drive to succeed. But the personal attacks and intimidation the Towns have been subjected to has no place in this, or any other, procedure.

The essential point is that other parties are dramatically affected by acknowledgment decisions as well. When Towns such as ours are confronted with the prospect of being the host to still another massive casino and Indian reservation on tax-exempt, regulatory-exempt land, then we too have a right to feel strongly about the outcome and to participate fully. Indeed, "counting their chickens before they are hatched," the EPA are already pouring over town land records in an effort to identify the land they will try to grab for their desired tribal purposes. They also invested huge sums to try to convince New London to sign over the State pier for their casino site. Setting aside the question of the wisdom of pursuing such steps when EP have a defective acknowledgment claim, these actions clearly indicate an intent by this group to have very significant impacts on local communities if they are acknowledged. Tribal acknowledgement is a two-way street. The future of our Towns is at stake too, and the acknowledgment process needs to accommodate that reality.

As a result, we request that Congress enact H.R. 3548 which we strongly support. This bill would help fund independent research by towns and eliminate some of the procedural bias against interested parties built into the current regulations. In fact, Congress could improve upon the bill by prohibiting the review of any

acknowledgment petition supported by outside financial partners, and then provide the same level of funding to petitioners and interested parties. This would truly level the playing field.

Also of critical importance is to avoid giving tribal petitioners the last word in the acknowledgment record. As this report itself proves, petitioners can take advantage of this opportunity to make assertions and arguments that are self-serving and incorrect, yet no party has an opportunity to address those deficiencies, no matter how serious they may be on the BIA record. This problem is enhanced by the February 11, 2000 directive of former Assistant Secretary Gover, who limited the ability of BIA to conduct independent research to get to the bottom of the evidence submitted. That directive must be withdrawn, or repealed by Congress.

Finally, the link between Indian gaming and acknowledgment needs to be broken. Many of the current problems are the direct result of big gaming interests having inserted themselves, and their millions of dollars, into the acknowledgment process. The best solution to this problem is to prohibit newly acknowledged tribes from being able to undertake gaming without an act of Congress. That would prevent the acknowledgment process from serving as a kind of franchising operation for the casino interests of financiers, resort operators, gaming companies, and real estate developers. It would return acknowledgment to what is what intended to be, a method to determine the merits of a group's claims to historical Indian tribal heritage. And it would vest in Congress the power to determine whether gaming should be allowed and under what circumstances. In this way, the interests of all other parties affected by the result of tribal acknowledgment would be able to be heard and play a role in constructing a reasonable and fair solution to gaming impacts that can be taken up by Congress.

When BIA developed the acknowledgment process, there was no Indian gaming. When Congress enacted IGRA, it made no reference to the possibility that the acknowledgment process would be hijacked by gaming interests and real estate developers. Indeed, Congress sought to preserve the status quo through section 20 of IGRA, which prohibited off-reservation gaming. While it allowed for gaming on initial reservations, it said nothing about how those reservations were to be established and how gaming was to be factored in. It is now time to answer that question, and Congress needs to step forward to put gaming back in its proper place -- which is not in the acknowledgment process, but instead as the outcome of a negotiated and fair process where the interests of all affected parties are adequately addressed.

These are significant issues, and they require sweeping action by Congress. The problems presented are deep and far-reaching. They are constantly growing, and

the resulting conflicts are undesirable and painful for all parties. To solve them, Congress needs to revisit the fundamental principles that underlie tribal acknowledgment and Indian gaming and develop a comprehensive solution that is fair to all affected parties. That effort should start now, with these petitions and the manner in which they are processed and decided.