SCHAGHTICOKE TRIBAL NATION

July 31, 2013 Consultation
Indian Island, Maine

Presented By:

Chief Richard L. Velky

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Deputy Assistant Secretary for Indian Affairs Larry Roberts, and representatives of the Office of the Assistant Secretary for Indian Affairs, I appreciate the opportunity to appear before you today and to present testimony on behalf of the Schaghticoke Tribal Nation on the Discussion Draft of Potential Changes to the Department's Code of Federal Regulations Part 83 Process for Acknowledging Certain Indian Groups as Federally-recognized tribes.

I would like to begin by saying that from the perspective of a tribal nation that has been through the Federal acknowledgment process, we support the direction that the Discussion Draft appears to be pursuing in terms of making the Federal acknowledgment process more transparent, more clear, more efficient, and more workable.

By way of background, the Schaghticoke Tribal Nation has been through the Federal acknowledgment process. We filed our petition in 1981, and in January of 2004, the Assistant Secretary for Indian Affairs issued a positive Final Determination on our petition.

However, that determination was met with a firestorm of political opposition from the State of Connecticut, Connecticut politicians, and Connecticut Towns. Every member of the Connecticut congressional delegation joined in publicly denouncing the Department's positive Final Determination of a tribal nation that has existed for more than four hundred years, and that has been recognized as an Indian tribe from colonial times to the present – first by the Colony of Connecticut when it sequestered lands for the Nation in the 1700's, and later by the State's establishment of a reservation for the Schaghticoke Tribal Nation.

But by 2005, a year after the positive Final Determination, the unrelenting political pressure on the Interior Department and the White House led to an unprecedented reversal of the positive Final Determination, and a "reconsidered" final determination was issued concluding that the Schaghticoke Tribal Nation was not entitled to a government-to-government relationship with the United States. The Schaghticoke Tribal Nation shares this unique status with just one other tribal group, also recognized by the State of Connecticut, the Historical Eastern Pequot.

In 2007, I testified before the U.S. House of Representatives Committee on Natural Resources on behalf of the Schaghticoke Tribal Nation, and in that testimony, I presented a number of recommendations which we are gratified to see reflected in the Discussion Draft. Because of its relevance to the consultations that are being held around the country on the Discussion Draft, I have attached the Nation's 2007 testimony to the written testimony I submit today on the Discussion Draft. [1]

State Recognition/State Reservation

Our experience in the process suggests to us that the Discussion Draft does not represent a dramatic departure from the standards that have been applied in the past, but it does take a more thoughtful approach to the

[1] See Appendix A.

relevance of state recognition and the probative value of a state's action in establishing a reservation for a tribe.

For instance, in discussing the evidentiary value of the State of Connecticut's relationship with the Historical Eastern Pequot Tribe, and addressing an argument advanced by the State of Connecticut and local Connecticut Towns that state recognition was relevant only to address the requirement of criterion (a) and could never be used for criterion (b) or (c), the Interior Board of Indian Appeals concluded:

> "As such, we disagree with the State and Towns' contention that a state relationship can ***never*** be used for criterion (b) or (c), because it is ***inherently*** nonprobative or ***necessarily*** different in type from the types of evidence allowed for (b) and (c). We conclude that neither the acknowledgment regulations, nor BIA's interpretation of those regulations through guidelines and other acknowledgment decisions, categorically precludes evidence of the relationship between a state and a petitioner from being considered for criteria (b) and (c). Instead, whether such evidence is relevant, reliable, or probative, and the proper weight to be afforded it, must be determined on a case- and fact-specific basis."[2]

We agreed with the Board's conclusion in the Historical Eastern Pequot decision on that issue, and we applaud the Discussion Draft's similar approach to according relevance and probative value to a State's establishment of a reservation for a tribal group and a State's recognition of that group as an Indian tribe as manifested by a long history of overt State actions affecting the members of that group and continuous State interactions with the tribal group. Chapter 824 of the Connecticut General Statutes clearly reflects this history in its detailed and comprehensive provisions addressing the State's relationships with the Indian tribes of Connecticut. [3]

Expedited Favorable Finding and Review

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[2] 41 IBIA 15-16.

[3] Connecticut General Statutes, Chapter 824, ***See*** Appendix B.

We commend the authors of the Discussion Draft in proposing expedited favorable criteria that would make the process more efficient in terms of the time entailed in the processing a petition, if the petitioner has either maintained a reservation recognized by the State since 1934 and continues to hold a reservation recognized by the State, or if the United States has held land for the group at any point in time since 1934.

We also believe that the proposed relationship between an expedited favorable finding and a finding that a group meets the mandatory criteria of paragraphs (d), (e), (f) and (g) of section 83.7, accords the appropriate weight, relevance and probative value to a State-established and State-recognized reservation in expediting the issuance of a final determination acknowledging the petitioner as an Indian tribe.

Elimination of Petition for Reconsideration and Re-petitioning

Our experience in the Federal acknowledgment process is a good case in point of why the Discussion Draft commendably eliminates that part of the process that allows for a petition for reconsideration.

When the Assistant Secretary for Indian Affairs issues a positive Final Determination, it is only after all of the evidence that has been submitted to the Department – both supportive and oppositional – has been carefully evaluated within the context of the evidentiary standards.

As the Deputy Secretary well knows, prior to the Assistant Secretary's issuance of a Final Determination, the burden is on the petitioner to prove that it meets all applicable mandatory criteria. Once the Assistant Secretary determines that the burden has been met, the resultant positive Final Determination should be the final agency action of the Department.

Thereafter, as in most other challenges of administrative final agency action, the burden of proving that the Assistant Secretary's positive Final Determination is arbitrary, capricious, or an abuse of the Secretary's

discretion - should rest with those who elect to litigate their opposition to the Assistant Secretary's determination.

In addition, as a tribal nation that received a positive Final Determination - which was later "reconsidered" and reversed, we firmly believe that there should be an opportunity for a petitioner to make the case, supported by a preponderance of the evidence, that a change from the previous version of the regulations to the current version warrants reversal of a negative final determination.

Conclusion

Many of those who are well-versed in the Federal acknowledgment process have suggested that the experience of the Schaghticoke Tribal Nation in the Federal acknowledgment process could reasonably be characterized as being the "poster child" for the need to reform the acknowledgment process.

It is true that there were numerous irregularities in the process we experienced. There was for instance the delegation to a newly-appointed Associate Deputy Secretary with no background or experience in Federal acknowledgment matters who was charged with fashioning a new determination.

Rejecting the prior Assistant Secretary for Indian Affairs' findings that "the State of Connecticut has since early colonial times continuously recognized the [Schaghticoke] as a distinct tribe with a separate land base provided by and maintained by the State"[4] and the later appointment of State overseers to manage most of the financial and property transactions for the Nation were relevant to whether the Nation had a continual existence as a tribal community and exercised political authority amongst tribal citizens, the Associate Deputy Secretary issued a "reconsidered" final determination that didn't even bother to defend the Department's positive final determination nor adequately address the matters for which the appeals board had sought clarification or further documentation.

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[4] January 29, 2004 Final Determination.

In issuing his negative final determination, the Associate Deputy Secretary acknowledged that this was his first acknowledgment decision, and that he essentially adopted the recommendation of the OFA Director and the OFA staff. [5]

But this was the same OFA staff that –

- developed the evidence and made recommendations to the Acting Assistant Secretary for Indian Affairs and the Secretary of the Interior that Federal recognition be extended to the Schaghticoke Tribal Nation in the January 29, 2004 Final Determination,

- and then apparently, according to the Associate Deputy Secretary's deposition testimony, [6] was the same OFA staff that again analyzed the body of information and recommended to the Associate Deputy Secretary that the Schaghticoke Tribal Nation should be denied Federally-recognized tribal status.

One might well conclude from these opposing recommendations of the Office of Federal Acknowledgment staff that there was either direction from officials to whom the OFA staff reports – direction that the evidence should be re-examined to support a different outcome – or that the process of applying the seven acknowledgment criteria to the facts is so malleable as to readily support a different result if the OFA staff is called upon to produce a different set of recommendations to decision-makers in the Department.

Either assumption finds support in the numerous references to "re-evaluation" in the reconsidered Final Determination which stated that the evidence that the Final Determination found strong enough to conclude that the Schaghticoke Tribal Nation was entitled to Federal recognition – had subsequently been "reevaluated" by the Associate Deputy Secretary and resolved against the Schaghticoke Tribal Nation.

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[5] Cason Deposition 129: 19-22.

[6] *Id.*, Cason Deposition.

As I stated at the outset of my testimony, to our knowledge there are only two tribal groups who have unfortunately experienced irregularities in the Federal acknowledgment process such as those we experienced. That is the good news.

We are heartened by the fact that the Discussion Draft demonstrates an understanding that there will be few petitioners who would seek the opportunity to prove by a preponderance of the evidence that the outcome would have been different under former regulations if new reformed regulations are put in place.

We very much appreciate all of the thoughtful approaches that the Assistant Secretary and the Deputy Assistant Secretary for Indian Affairs and the members of their advisory group have put in to the Discussion Draft, and we thank you for your hard work.

Reform of the Federal acknowledgment process has been a long time in coming and it is clear that you have thoroughly examined all that has gone before and responsibly taken into consideration recommendations for how the process can be made more clear, more efficient, more transparent, more accountable, more equitable, and more workable.

We are grateful for your effort and for your courage in taking on what has for too long been characterized as an intractable problem. In doing so, you have undoubtedly been guided by the wisdom of our elders when they taught us that nothing is impossible.

One such elder, one of Indian country's greatest advocates, the late Senator Daniel K. Inouye, commented on the two most controversial issues that have for years plagued the efforts to reform the Federal Acknowledgment Process in a May 2005 hearing before the U.S. Senate Committee on Indian Affairs, and summed it up this way:

"Should the fact that a State has recognized a tribe for over 200 years be a factor for consideration in the acknowledgment process? I would say definitely yes. How could it be otherwise?

"Don't most, if not all, of our States want the Federal government to recognize official actions of a State government, when most of our States want the Federal government to defer to the sovereign decisions and actions of those States over the course of their history? I think the answer to that question would be decidedly in the affirmative.

"So let's be clear about one thing. The Federal acknowledgment process is all about the recognition of the sovereignty of native nations that were here long before immigrants came to America's shores. It is not about gaming. "[7]

[7] May 11, 2005 Hearing before the U.S. Senate Committee on Indian Affairs.

SCHAGHTICOKE TRIBAL NATION

APPENDIX A

Testimony submitted to the House of Representatives Natural Resources Committee
Hearing on Federal Acknowledgment process October 3, 2007

SCHAGHTICOKE TRIBAL NATION

TESTIMONY SUBMITTED TO THE HOUSE OF REPRESENTATIVES NATURAL RESOURCES COMMITTEE HEARING ON FEDERAL ACKNOWLEDGMENT PROCESS OCTOBER 3, 2007

Many in Congress are spurning legislative recognition of tribes on the grounds that an administrative process exists through the Bureau of Indian Affairs (BIA) through which groups may achieve a government-to-government relationship with the United States. These legislators rest in a misguided belief that the administrative process produces the fairest, most reliable and least political determinations of whether a group constitutes a tribe deserving that relationship. The Schaghticoke Tribal Nation wishes it were so. Unfortunately, the Federal Acknowledgment Process (FAP) as it exists now suffers inherent problems that result in unfair outcomes. In our case, *for the first time in the entire history of the Bureau's Federal Acknowledgment Process*, the Bureau reversed its own published Final Determination acknowledging Schaghticoke Tribal Nation (Schaghticoke or STN) as a tribe and, bowing to intense political pressure, manipulated implementation of its criteria and standards to justify withdrawal of its acknowledgment. The injustices visited upon Schaghticoke can and should be legislatively corrected.

As it now exists, the federal acknowledgment process is governed by BIA's regulations, found at 25 C.F.R. Part 83. These regulations establish the administrative process for acknowledging groups as tribes as a prerequisite to engaging in a government-to-government relationship with the United States. The regulations require petitioners to satisfy all of the criteria at 25 C.F.R. 83.7. The seven mandatory criteria are:

> (a) The group has been identified as an American Indian entity continuously since 1900;
>
> (b) A predominant portion of the group has been a community from historical times to the present;
>
> (c) The group has maintained political influence over its members from historical times to the present;
>
> (d) The group has submitted a copy of its governing document, including membership criteria;
>
> (e) The group's membership consists of individuals who descend from a historical Indian tribe or a combination of tribes that functioned as an single entity;

(f) The group's membership is composed principally of people who are not members of other acknowledged tribes; and

(g) There is no law that expressly terminated or forbids a federal relationship with the group.

25 C.F.R. 83.7.

Schaghticoke, based upon its experience with the BIA's implementation of the Federal Acknowledgment Process, urges that Congress require changes to the FAP and its criteria that encompass the following in order to rectify inequities in the process. Changes we recommend include:

1. Long-standing occupation—that is, the use for tribal purposes—of a state-recognized reservation should under certain circumstances be considered as evidence that the petitioner historically has comprised a distinct community and that the petitioner historically has maintained political influence over its members.
2. Criteria (c), political influence, should be abandoned as unnecessary and redundant, and therefore unjustifiably adding to the petitioning tribe's already extreme document collection burden.
3. Policies and definitions adopted in a proposed finding should be maintained throughout the process; at a minimum, tribes should not be denied acknowledgment based on changes of policy by the Department of the Interior (DOI) made midway through review of a petition.
4. Petitioners whose petitions have been denied under the current administrative process should be allowed to resubmit petitions under certain circumstances.

Each of these recommendations is discussed in more detail below.

1. The decision-making body should allow long-standing occupation -- that is, the use for tribal purposes -- of a state-recognized reservation should be considered as evidence of community and political influence.

a. *Why this change is needed.*

By refusing to consider long-standing occupation of a state-recognized reservation in its acknowledgment process, the BIA arbitrarily rejects solid evidence of the continuity of the petitioner's existence as a tribe. Very few tribes can show long-standing occupation of a reservation but in instances where they can, that occupation is highly indicative that the group has survived since the creation of the reservation, and continued as a community. Nonetheless, BIA has chosen to ignore such evidence. We urge Congress to instruct BIA that long-standing occupation of a state-recognized reservation should be viewed as probative of continuous existence from the time the reservation was first occupied.

b. *Schaghticoke Tribal Nation's experience.*

In 2004, the BIA published a positive Final Determination by which it extended federal acknowledgment to the Schaghticoke Tribal Nation. Eighteen months later, for reasons driven by political pressure, Associate Deputy Secretary James Cason withdrew that acknowledgment. BIA accomplished this by adopting a strained, exaggerated reading of an Interior Board of Indian Appeals (IBIA) order remanding the Final Determination back to the BIA so that the BIA could more fully explain how it weighed Connecticut's long-standing relationship to Schaghticoke as evidence. Rather than following IBIA's remand, the BIA reversed itself and refused entirely to consider long-standing occupation on a state-recognized reservation as evidence of criteria (b), community, and (c), political influence. The BIA then based its reversal of its earlier published acknowledgment of the tribe on insufficient documentation.

In the case of Schaghticoke, the BIA's post-acknowledgment decision not to give any weight to the Tribe's state recognition has led to the wildly inequitable result of withdrawal of that recognition. Schaghticoke's relationship with what is now the State of Connecticut is continuous from the period pre-dating the creation of the State and the United States. Schaghticoke has had and maintained what has now been reduced to a 400-acre Reservation in Kent, Connecticut, since colonial times. The State has treated the tribe as a separate political entity, as evidenced by passing legislation determining oversight, protecting the Reservation, and exempting the Reservation from taxation. In fact, the State historically has played the role that is typically played by the federal government, administering funds and services for tribal members and their land, exercising oversight of the Reservation, and providing services to individuals based on their status as members of the tribe.

Schaghticoke's Federal Acknowledgment Process petition included direct evidence of both community and political influence from colonial times to the present. In its Final Determination acknowledging the Tribe, BIA relied on our continuing relationship with the State as evidence of community and political influence. This was helpful to us because, of course, it is difficult to collect large amounts of other documentary evidence for these criteria precisely because a government that often maintained policies trying to ruin Indian communities and political entities is not likely to have kept records that support tribal existence. Furthermore, for much of our history, tribal members were self sufficient on the reservation and tried to avoid unnecessary contact with outsiders. In other words, the extreme burden placed on petitioners by the document-intensive criteria set forth in the BIA's regulations could and should be alleviated to some degree where there is clear evidence of state recognition and of the tribe's use of a state reservation. Within that context, Schaghticoke's reliance on the tribe's relationship with the State, as was made in the positive Final Determination, was fair and appropriate. The law should make clear, as did the positive Final Determination, that "[c]ontinuous state recognition with a reservation provides additional evidence ... where specific evidence of community exists."

2. Criteria (c), political influence, should be abandoned as unnecessary and redundant.

a. *Why this change is needed.*

The BIA requires that tribes provide extensive documentation of both community (criterion (b)) and political influence (criterion (c)) continuously from historical times to the present. Presumably both of these criteria speak to the question of whether the petitioning tribe can

demonstrate a continuity of existence. Failure to document either one of these criteria allows BIA to decline to acknowledge a tribe.

This administrative rigidity leads to unreasonable results, in part because BIA's consideration of whether a tribe's production of documentation meets these two criteria is "adequate" is highly subjective. making production of direct evidence extremely difficult. It is an unconscionably difficult standard to meet, particularly given tribes' historical relationships with both the federal government, whose policies toward Indians has included extermination and assimilation, and state governments, who were similarly hostile to continued tribal existence, yet are relied upon to have kept tribal documentation in their archives.

More importantly, the requirement that both community and political influence be documented is redundant and overly burdensome. The kinds of evidence used to document community and political influence overlap. BIA itself recognizes this in its allowance of "cross-over" evidence, that is, allowing proof of political influence--through (1) allocation of group resources, (2) settlement of disputes among members on a regular basis, (3) exertion of strong influence on individual members' behavior, or (4) organizing economic subsistence among members-- to meet the community criterion and allowing "more than a minimal level" of community evidence to be used to meet the political influence criterion. 25 C.F.R. §83.7(b)(v), (c)(iv). Thus, the regulations themselves admit the interdependence of the criteria. Maintaining them as separate analyses is unnecessarily, sometimes impossibly, burdensome to tribes and not helpful in answering the ultimate question of whether a group has had continuous existence giving rise to the right to a government-to-government relationship with the United States. If a tribe has maintained its community, political leadership and influence can be assumed. Maintaining the regulations as they are thus serves only BIA's self-imposed needs and perpetuates a system that encourages and enables the agency's ever-widening, potentially endless paper chase for documentation.

b. *Schaghticoke Tribal Nation's experience.*

Schaghticoke's experience with criteria (b) and (c) shows that the BIA has become unreasonable in its approach to its criteria. STN's own odyssey in the FAP began 23 years ago, when in 1981 it filed its Letter of Intent. Schaghticoke filed tens of thousands of documents in support of recognition. The sheer number of documents submitted by the Tribe resulted in the petition being used by BIA to develop a new database for electronic access to the information, a database that is now used for other recognition petitions. In short, many years and resources -- both of STN and of the BIA -- have been expended in researching and evaluating documentation pertaining to both criteria (b) and (c), when ultimately the question of continuous existence can be answered by a combination of evidence supporting either. A separate evaluation of each of the criteria does not render Schaghticoke either more or less deserving of acknowledgment, but serves only BIA's interest in meeting its own artificial criteria.

3. Policies and definitions adopted in a proposed finding must be maintained throughout the process.

a. *Why this change is needed.*

To the detriment of tribes going through the process, the BIA has changed its policies and definitions in the middle of evaluating certain petitions. BIA has, for example, changed its policy on allowing state recognition to meet community and political criteria (see discussion above). It has changed its methodology for calculating whether at least 50 percent of marriages in the group are between members of the group, as set forth in the regulations on community at 25 C.F.R. §83.7(b)(2)(ii). Finally, it has changed its policy on whether unenrolled community members may be considered in determining whether the community criterion is met. While there may be instances where the agency, based on additional knowledge, needs to change its scientific methods, there is no fairness in changing its policies or approaches midway through an individual petitioner's evaluation (or in our case *after* our positive Final Determination had been published) and using that change as grounds for declining acknowledgment. At a minimum, a petitioner should be given the opportunity to comment on any proposed changes in BIA's methodology and be able to respond and submit additional evidence for the record.

b. *Schaghticoke Tribal Nation's experience.*

Ten years after it began examining STN's documentation, BIA issued its 2004 Final Determination finding that STN met all of the seven mandatory criteria, including community and political influence. It found sufficient evidence in the record to substantiate each criterion; as to criteria (b) and (c), BIA accepted both direct historical evidence of community and political influence and corroborating evidence based on the fact that the State of Connecticut had recognized the group as a tribe since colonial times and had established the group's reservation in 1736.

In Associate Deputy Secretary Cason's 2005 Reconsidered Final Determination withdrawing recognition, BIA abruptly reversed its acknowledgment of Schaghticoke based on criteria (b) and (c), community and political influence or authority. BIA rejected its previous use of continued state recognition as evidence for both criteria (see discussion above), thereby *creating* "gaps" in time periods which in its 2004 Final Decision BIA had found to be adequately covered. BIA rejected its own positive Final Determination's conclusion that STN had met the political influence criterion by showing that at least 50 percent of the marriages in the group were between members of the group (25 C.F.R. §83.7(c)(3)) for periods 1801 to 1820 and 1840 to 1870.[1] Unbelievably, the DOI Office of the Solicitor went so far as to prohibit the Office of Federal Acknowledgment staff from reading documentation that STN submitted to try to rebut this change in policy. The BIA also reversed its own positive Final Determination evaluation of community which used unenrolled members who could be enrolled in its calculations of community and political authority for the period after 1996. These changes in the method of evaluating community and political influence were used by the Department as justification for reversing Schaghticoke's acknowledgment. A fair process would not countenance such reversals.

[1] In the Final Determination, BIA had analyzed marriage rates by counting each individual tribal member's marriage in calculating the percentage of marriages in the group. The State of Connecticut argued that the calculation should be based only on the number of actual unions between tribal members. In the RFD the BIA adopted Connecticut's method of calculation, thus lowering the percentage calculated, and rendering the requirement of 50 percent unmet.

4. Petitioners whose petitions have been denied under the current administrative process should be allowed to resubmit petitions under the new rules.

a. *Why this change is needed.*

The criteria as they now exist and have been implemented by the BIA do not assure fair results. The BIA has declined to acknowledge tribes for failure to document each criterion to its satisfaction, including for those periods during which the federal government's policies were to destroy Indian community and political influence and during which State policies mirrored those of the federal government. In addition, petitions have been rejected as a result of BIA's changing policies regarding evidence and BIA's own changing definitions, sometimes with no notice to the petitioners and no opportunity to comment. In fairness, any tribe that has been denied recognition through FAP as it is now implemented should be allowed to re-submit its petition if any legislative amendments affect the merits of the petition. Because the goal of Federal Indian policy should be absolutely to ensure that all tribal groups meriting acknowledgment receive that acknowledgment, groups that have been denied fair consideration of their petitions should not be precluded from receiving fair re-consideration. Schaghticoke thus approves of Rep. Faleomavaega's concept, set out in H.R. 2837, which allows re-evaluation of applications whose outcomes might have been different if judged under more fair criteria.

b. *Schaghticoke Tribal Nation's experience.*

For most tribes, BIA's publishing a positive final determination represents the end of the very long Federal Acknowledgment Process. Not so for Schaghticoke. The State of Connecticut and its congressional delegation -- for political reasons, intent on fighting against an additional Indian casino in the State -- inserted themselves squarely in the process and DOI, inappropriately, responded to that pressure. On the very day the Final Determination was issued, Representative Christopher Shays (R-CT) issued a public statement excoriating the Department of the Interior for acknowledging Schaghticoke. In the statement, he made clear that his opposition was entirely driven by his desire to prevent STN from gaming rather than from a genuine concern about the propriety of BIA's acknowledgment of STN: "It is extremely disappointing the Bureau of Indian Affairs recognized the Schaghticokes as a federal tribe... This recognition may enable the Schaghticokes to build a casino, which I believe would be very detrimental to the state." He vowed to join forces with Connecticut's Attorney General Richard Blumenthal to assist in getting the Final Determination reversed. Thus began the final long, sustained attack, presumably on the expansion of Indian gaming, but carried out on the Department and the STN's petition for acknowledgment.

I am sorry to report that the Department bent to that political pressure. While we do not fully understand why the Department succumbed to political pressure, we know the result: summary rejection of the reasoned analysis of decades of research. The Department manipulated the FAP's criteria, particularly the community and political influence criteria, abruptly changing its policy after issuing the Final Determination, in order to accommodate political ends. Justice requires that petitions such as Schaghticoke's be given a second chance when Congress renders the process more fair and when justly considered evidence of a tribe's historic survival, not political pressure, may determine the outcome.

Conclusion

It is this great body, the Congress of the United States, which first extended federal recognition to tribal governments through the treaty making process. When the Department of the Interior unilaterally sought to create an administrative process to perform that same function, it did so without any statutory guidance from the Congress. We believe that it is highly appropriate for Congress to provide direction and guidance to the Department in these matters, and we appreciate this Committee's efforts to tackle these difficult issues.

I thank you for giving me this opportunity to express the deep frustrations of the Schaghticoke Tribal Nation, and I urge you to give us a reason to have continued hope for the future.

SCHAGHTICOKE TRIBAL NATION

APPENDIX B

Connecticut General Assembly Chapter 824
(Regulations Regarding Native American Affairs for the State of Connecticut)

CHAPTER 824*
INDIANS

*See Sec. 12-586f re administration of tribal-state compact.

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Secs. 47-57 and 47-58. Resident aliens and French citizens, rights re real estate. When nonresident aliens may hold real estate. Sections 47-57 and 47-58 are repealed.

(1949 Rev., S. 7166, 7167; P.A. 74-60; P.A. 85-211, S. 2.)

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Sec. 47-58a. Transferred to Chapter 821, Sec. 47-7a.

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Sec. 47-59. Overseer of Indians. Section 47-59 is repealed.

(1949 Rev., S. 7168; 1961, P.A. 304, S. 6.)

See Sec. 47-65 re management of reservations and reservation residents generally.

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Sec. 47-59a. Connecticut Indians; citizenship, civil rights, land rights. (a) It is hereby declared the policy of the state of Connecticut to recognize that all resident Indians of qualified Connecticut tribes are considered to be full citizens of the state and they are hereby granted all the rights and privileges afforded by law, that all of Connecticut's citizens enjoy. It is further recognized that said Indians have certain special rights to tribal lands as may have been set forth by treaty or other agreements.

(b) The state of Connecticut further recognizes that the indigenous tribes, the Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett are self-governing entities possessing powers and duties over tribal members and reservations. Such powers and duties include the power to: (1) Determine tribal membership and residency on reservation land; (2) determine the tribal form of government; (3) regulate trade and commerce on the reservation; (4) make contracts, and (5) determine tribal leadership in accordance with tribal practice and usage.

(P.A. 73-660, S. 1, 11; P.A. 89-368, S. 16.)

History: P.A. 89-368 added Subsec. (b) giving recognition of powers and duties of indigenous tribes over tribal members and reservations.

Cited. 176 C. 318. Cited. 180 C. 474. Cited. 217 C. 612. P.A. 89-368 cited. Id. Cited. 231 C. 563. Cited. 243 C. 115. Although section recognizes the right of tribes to select their own leaders, it does not provide that leadership disputes may be settled through means that violate state criminal statutes. 263 C. 602.

Cited. 18 CA 4. Cited. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-59b. Indian Affairs Council; composition, duties, executive director, regulations, report. (a) There shall continue to be an Indian Affairs Council, consisting of one representative from each of the following Indian tribes: The Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett; to be appointed by the respective tribes, and three persons appointed by the Governor who are electors within the state but not elected or appointive officials of the state or any of its political subdivisions and are not of Indian lineage. Appointments made under this section shall be for terms of three years. Each Indian tribe may designate from among its members an alternate representative who may serve from time to time in place of its appointive representative. Vacancies on said council shall be filled by the respective appointing authority for the unexpired balance of the term. The members of said council shall be compensated for their services thereon at the rate of twenty-five dollars per day and shall be reimbursed for their necessary expenses. Said council shall provide services to the Indian reservation community of the state and formulate programs suitable to its needs. The council may select an executive director who shall serve at no expense to the state but may be compensated with funds contributed by the tribes.

(b) The Indian Affairs Council shall review the regulations governing Indian affairs in the state of Connecticut and advise the Commissioner of Environmental Protection on promulgation of new regulations. The council shall report annually, no later than September first, to the Governor and the General Assembly on the activities of the council and the state of affairs of the Indian people in the state.

(P.A. 73-660, S. 2, 8, 10, 11; P.A. 74-168, S. 1, 2; P.A. 75-129, S. 1, 2; P.A. 81-375, S. 1, 4; P.A. 89-368, S. 20; P.A. 93-435, S. 16, 95.)

History: P.A. 74-168 continued existence of council, added representative from Golden Hill tribe and allowed compensation of twenty-five dollars per day where previously members received no compensation but were reimbursed for necessary expenses; P.A. 75-129 authorized tribes to designate alternate representatives; P.A. 81-375 amended Subsec. (a) to change names of tribes as of July 1, 1981; P.A. 89-368 amended Subsec. (a) by substituting "Paucatuck Eastern Pequot" for "Paucatuck Pequot" and by deleting an obsolete provision" concerning terms and deleted Subsec. (b) re qualifications necessary for a person's designation as an Indian and re eligibility for residing on reservation lands and relettered Subsec. (c) as Subsec. (b); P.A. 93-435 amended Subsec. (b) to make a technical change, effective June 28, 1993.

See Sec. 47-65 re management of reservations and reservation residents and re duties of Commissioner of Environmental Protection in connection with reservation management.

The Indian Affairs Council is an "agency" within the meaning of Sec. 4-166(1) and is subject to the provisions of the Uniform Administrative Procedure Act. 180 C. 474. Cited. 243 C. 115.

Cited. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

Subsec. (a):

Cited 18 CA 4.

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Sec. 47-60. Reservation land held in trust by state. Conveyances by Indians void. (a) Any reservation land held in trust by the state on October 1, 1989, shall continue to be held in trust in perpetuity to prevent alienation and to insure its availability for future generations of Indians. Except as otherwise expressly provided, all conveyances by any Indian of any land belonging to, or which has belonged to, the estate of any tribe shall be void.

(b) A tribe shall exercise on reservation land all rights incident to ownership except the power of alienation.

(1949 Rev., S. 7169; P.A. 89-368. S. 21.)

History: P.A. 89-368 amended Subsec. (a) specifying that reservation land held in trust by the state shall continue to be held in trust and added Subsec. (b) re exercise of rights to tribal reservation land.

A prescriptive right-of-way cannot exist over lands, the conveyance of which is forbidden by law. 51 C. 71. Cited. 180 C. 474.

Cited. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-61. No title by possession against an Indian. In any action brought by an Indian or Indians for the recovery of lands owned by Indians, or sequestered for their use by the General Assembly or by any town agreeably to law, the defendant shall not plead the statute of limitations, except as against an Indian or Indians authorized by law to convey Indian lands, or as against a town authorized by law to convey Indian lands.

(1949 Rev., S. 7170.)

Cited. 180 C. 474.

Cited. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-62. Taking wood from land of Indian. Section 47-62 is repealed.

(1949 Rev., S. 7171; 1961, P.A. 304, S. 6.)

See Sec. 47-66 authorizing Commissioner of Environmental Protection to maintain an action to recover property misappropriated from a reservation.

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Sec. 47-63. Definitions. The following terms as used in this chapter, shall have the following meanings: "Indian" means a person who is a member of any of the following tribes, Paucatuck Eastern Pequot, Mashantucket Pequot, Schaghticoke, Golden Hill Paugussett and Mohegan; "reservation" means the Paucatuck Eastern Pequot reservation in the town of North Stonington, assigned to the use of the Paucatuck Eastern Pequot tribe; the Golden Hill Paugussett reservations in the towns of Trumbull and Colchester, assigned to the Golden Hill Paugussett tribe; the Schaghticoke reservation in the town of Kent, assigned to the Schaghticoke tribe, and the Mashantucket Pequot reservation in the town of Ledyard, assigned to the Mashantucket Pequot tribe; "tribal funds" means the money held by the state for the use and benefit of a tribe as distinguished from legislative appropriations.

(1961, P.A. 304, S. 1; P.A. 73-660, S. 9, 11; P.A. 81-375, S. 2, 4; P.A. 89-368, S. 22.)

History: P.A. 73-660 redefined "Indian" to list specific tribes, replacing reference to persons of tribes "for whose use any reservation was set out"; P.A. 81-375 amended section to change names of tribes and to add reference to Colchester reservation as of July 1, 1981; P.A. 89-368 made technical changes.

Cited. 180 C. 474. State acquired jurisdiction over crimes committed on the Mashantucket Pequot Indian reservation by enactment of Sec. 1755 of title 25 of the U.S. Code; judgment of appellate court in *State v. Spears*, 36 CA 106, reversed. 234 C. 78. Cited. 243 C. 115.

Cited. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-64. Use of reservations; restriction of leases; escheats. (a) Each tribe shall determine who may live on reservation land provided any person lawfully residing on a reservation on October 1, 1989, may continue to reside on such reservation. Residents may be removed in accordance with rules filed under section 47-66j.

(b) Each tribe may lease reservation land for not more than twenty-five years.

(c) Notwithstanding any provision of the general statutes or any special act to the contrary, any Indian reservation property that escheats to the state shall be preserved as an Indian historical area, under the control of the Department of Environmental Protection.

(1961, P.A. 304, S. 2, 3; P.A. 73-660, S. 3, 6, 11; P.A. 89-368, S. 23.)

History: P.A. 73-660 changed applicable dates from July 1, 1961, to July 1, 1973, added provision in Subsec. (a) re reimbursement for spouse or children who no longer qualify to reside on reservation following death of their relative and deleted provisions which placed burden of proving residency eligibility on claimant and re welfare commissioner's regulation of times when Indians, descendants and guests may use reservation for recreational and social purposes, in Subsec. (b) replaced welfare commissioner with Indian Affairs Council and added Subsec. (c); P.A. 89-368 amended Subsec. (a) to authorize tribes to determine who may reside on reservation land and amended Subsec. (b) to delete prohibition against leasing and to authorize tribes to lease reservation land for not more than twenty-five years.

Cited. 180 C. 474.

Preempted and rendered invalid by federal law. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-65. Management of reservations and residents thereon. Adoption of regulations. Governor designated administrative agent. (a) The Commissioner of Environmental Protection with the advice of the Indian Affairs Council shall have the care and management of reservation lands. The commissioner and the council shall establish the boundaries of such reservations by land survey and shall file a map of the same in the land records of the appropriate towns.

(b) All reservation buildings not privately owned shall be subject to the care and management of the Commissioner of Environmental Protection. The commissioner with the advice of the Indian Affairs Council shall, upon the petition of the resident make major repairs and improvements to the exterior of any such building and its heating, water, electric, sewage disposal and plumbing systems as are necessary to insure habitable living conditions. The resident of any building shall assume responsibility for the interior maintenance of floors, walls

and ceilings and minor maintenance of the building and its heating, water, electric, sewage disposal and plumbing systems, provided the commissioner shall supply necessary materials for such systems.

(c) The council may, upon petition of an Indian resident without sufficient means to support himself, provide assistance in an amount necessary to maintain a standard of living in the home compatible with the well-being of the resident. The council shall provide other services as it deems necessary to insure the well-being of all persons residing on the reservations.

(d) The commissioner and the council may adopt and amend regulations pursuant to chapter 54 to carry out the provisions of subsections (a) and (b) of this section. The council shall adopt regulations which prescribe eligibility standards for assistance and services under subsection (c) of this section.

(e) The Governor is hereby designated the administrative agent of the state to apply for any funds or other aid, cooperate and enter into contracts and agreements with the federal government, the Indian Housing Authority or any other appropriate state or local agency for the purpose of providing necessary services to housing projects to be located on Indian reservations within the state of Connecticut or for any other purpose which the Congress of the United States or the General Assembly has authorized or may authorize for expenditures compatible with the services provided for in this chapter. The Governor is authorized in the name of the state to make all applications, sign all documents, give assurances and do all other things necessary to carry out the provisions of this chapter.

(1961, P.A. 304, S. 4; P.A. 73-660, S. 4, 11; P.A. 76-97, S. 1, 2; P.A. 78-40, S. 1, 2.)

History: P.A. 73-660 transferred duties of welfare commissioner re care of land, buildings, boundaries and regulations to insure health, safety and well-being to commissioner of environmental protection and Indian Affairs Council, deleting provisions re welfare commissioner's past duties to assist needy Indians, repair and improve buildings, to admit and evict residents, etc.; P.A. 76-97 limited duties of commissioner and council to reservation lands, abolishing their powers re "care and management" of persons, etc. and added Subsecs. (b) to (d) clarifying general statements of prior provisions; P.A. 78-40 added Subsec. (e) re governor's role in obtaining federal assistance for housing projects on reservations.

Cited. 180 C. 474. Cited. 217 C. 612.

Preempted and rendered invalid by federal law. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-65a. Hunting and fishing on reservations. Notwithstanding the provisions of section 26-27, any Indian may take, hunt or trap any wild bird or quadruped on, or take or assist in taking any fish or bait species in the waters of, the reservation of such Indian's tribe without a license therefor, subject to the regulations promulgated by the council and to such seasonal and bag limitations as may be provided by law. The Commissioner of Environmental Protection shall issue, without fee, a private land deer permit to any Indian for use only on the reservation of such Indian's tribe provided such reservation is not less than two hundred fifty acres in size and provided further no such Indian shall be issued more than one such permit per season. Such permit shall allow the use of a rifle, shotgun, muzzleloader or bow and arrow on such reservation land from November first until December thirty-first, inclusive, of each year.

(P.A. 73-660, S. 7, 11; P.A. 00-67, S. 1.)

History: P.A. 00-67 made technical changes and added requirement that the commissioner issue private land deer permits for reservations with limits on reservation size, number of permits issued, type of weapon and season.

Cited. 180 C. 474.

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Sec. 47-65b. State assumption of criminal and civil jurisdiction on reservation of the Mohegan Tribe of Indians. The state of Connecticut assumes criminal jurisdiction and civil regulatory jurisdiction pursuant to the May 17, 1994, Agreement and the May 17, 1994, Gaming Compact between the state of Connecticut and the Mohegan Tribe of Indians of Connecticut and Public Law 103-377.

(P.A. 96-142, S. 1, 4.)

History: P.A. 96-142 effective May 29, 1996.

Trial court did not have subject matter jurisdiction over court case brought against Indian tribe because Congress only extended criminal jurisdiction to state and tribe would have to consent to civil jurisdiction. 260 C. 46.

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Sec. 47-66. Tribal funds. Tribal funds shall be under the care and control of the Commissioner of Environmental Protection with the advice of the Indian Affairs Council and may be used for the purposes set forth in section 47-65. Said commissioner shall annually settle his accounts of the affairs of each tribe with the Comptroller, and his report to the Governor shall furnish, with respect to each tribe, a statement of the amount and condition of its fund, an

estimate of the value of its lands and the income annually received and the expenditures made by said commissioner from such fund. Said commissioner may maintain an action in his name to recover any property misappropriated from a reservation.

(1961, P.A. 304, S. 5; P.A. 73-660, S. 5, 11.)

History: P.A. 73-660 placed funds under control of environmental protection commissioner and Indian Affairs Council rather than under control of welfare commissioner.

Cited. 176 C. 318. Cited. 180 C. 474. Cited. 217 C. 612.

Preempted and rendered invalid by federal law. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-66a. Indian housing authorities. Creation and powers. There is created, with respect to each Indian tribe named in section 47-63, a public body corporate and politic, to be known as the "housing authority" of said Indian tribe possessing all powers, rights and functions specified for municipal authorities created pursuant to chapter 128, provided said Indian housing authority shall not transact any business nor exercise its powers hereunder until or unless the governing council of said tribe, by proper resolution declares that there is a need for an authority to function for said tribe. Except as otherwise provided in sections 47-66a to 47-66d, inclusive, all the provisions of law applicable to housing authorities created for municipalities and the commissioners of such authorities shall be applicable to Indian housing authorities and the commissioners thereof, unless a different meaning clearly appears from the context. The chief or other governing head and governing council of an Indian tribe are hereby authorized to exercise all appointing and other powers with respect to an Indian housing authority that are vested under part I of said chapter 128, in the chief executive officer and governing body of a municipality. The Indian housing authorities shall be operated in conformity with Title II of the Civil Rights Act of 1968.

(P.A. 76-377, S. 1.)

Cited. 180 C. 474.

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Sec. 47-66b. Commissioners. The chief or other governing head shall appoint five commissioners who shall be members of the tribe for which the authority is created. Holding of any tribal office shall not bar appointment of any such tribal member to a tribal housing

authority. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in a tribal housing project.

(P.A. 76-377, S. 2.)

Cited. 180 C. 474.

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Sec. 47-66c. Area of operation. The area of operation of a tribal housing authority shall be within the territorial boundaries of the reservation set aside for the tribe as specified in section 47-63.

(P.A. 76-377, S. 3.)

Cited. 180 C. 474.

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Sec. 47-66d. Lease of tribal property to housing authority. Notwithstanding the provisions of subsection (b) of section 47-64, any real property located on an Indian reservation, as defined in section 47-63, required by a tribal authority for use in its area of operation in providing housing shall be leased to the housing authority by the respective tribal governing body with the approval of the Commissioner of Environmental Protection, upon such lawful terms as shall be agreeable to the parties.

(P.A. 76-377, S. 4.)

History: (Revisor's note: In 1997 the words "the Department of" in the phrase "Commissioner of the Department of Environmental Protection" were deleted editorially by the Revisors for consistency with customary statutory usage).

Cited. 180 C. 474.

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Secs. 47-66e and 47-66f. Indian burial sites; inventory of state land. Excavation of Indian burial sites; notice, removal and reinterment of remains. Sections 47-66e and 47-66f are repealed.

(P.A. 81-242, S. 1-3; P.A. 89-368, S. 29, 30.)

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Sec. 47-66g. Management of Indian affairs. The Commissioner of Environmental Protection with the advice of the Indian Affairs Council shall manage the state's interest in Indian affairs not otherwise specified in this chapter, including but not limited to, maintaining state documents, providing information to tribal members and coordinating governmental grant programs.

(P.A. 82-178.)

Preempted and rendered invalid by federal law. 22 CA 229; judgment reversed and case remanded to appellate court with direction to remand it to trial court for further proceedings, see 217 C. 612.

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Sec. 47-66h. Trust agreements between Governor and willing indigenous tribes. (a) Effective October 1, 1990, the Governor shall enter into a trust agreement with each willing indigenous Indian tribe. Any such trust agreement shall define the powers and duties possessed by the tribe that is party to the agreement and shall be consistent with recommendations on trust agreements contained in the final report of the Indian Affairs Task Force made pursuant to special act 87-103.

(b) Nothing in this chapter shall be construed to confer tribal status under federal law on the indigenous tribes named in section 47-59a or to confer additional rights of ownership and title to such tribes to land in the state which was not held in trust for such tribes on June 1, 1989.

(P.A. 89-368, S. 17.)

Writ of mandamus will not issue to require governor to enter into trust agreement where task force does not issue final report containing trust agreement recommendations. 51 CA 552.

Subsec. (b):

Cited. 243 C. 115.

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

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

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

Cited. 231 C. 563.

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

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

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

Subsec. (b):

Cited. 243 C. 115.

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

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SCHAGHTICOKE TRIBAL NATION

APPENDIX C

Connecticut Department of Environmental Protection Regulations

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Organization and Rules of Practice of the Indian Affairs Council, Membership in Connecticut Indian Tribes, and Eligibility to Reside on Indian Reservations

ARTICLE I

DESCRIPTION OF ORGANIZATION

Part I

Introduction

Sec. 47-59b-1. Creation and authority

The Council was established by, and derives its authority from Sections 47-59a to 47-66, Connecticut General Statutes, revised to January, 1975, as amended by P.A. 75-129.

(Effective June 1, 1976)

Sec. 47-59b-2. Location of principal office

The principal office of the Council is located at Hartford, Connecticut. All communications should be addressed to the Connecticut Indian Affairs Council, State Office Building, Room 248, 165 Capitol Avenue, Hartford, Connecticut 06115, unless otherwise specifically directed.

(Effective June 1, 1976)

Sec. 47-59b-3. General duties and responsibilities

The Council, in conjunction with the Commissioner of Environmental Protection, is charged with administering legislation concerning Connecticut Indians and their reservations. The Council is specifically charged with the following duties: To provide services to the Indian reservation community and formulate programs suitable to its needs; to determine the qualifications of individuals entitled to be designated as Indians for the purposes of administering Sections 47-59a to 47-66 of the General Statutes, as amended by P.A. 75-129, and to decide who is eligible to reside on reservation lands pursuant to the said Statutes; to promulgate hunting and fishing regulations applicable to the reservations; to advise the Commissioner of Environmental Protection concerning the general health, safety, and well-being of persons residing on reservations; to advise the Commissioner of Environmental Protection concerning the care and management of reservation lands and buildings thereon; to advise the Commissioner of Environmental Protection concerning the care and control of tribal funds; in conjunction with the Commissioner of Environmental Protection to survey and map the reservations.

(Effective June 1, 1976)

Sec. 47-59b-4. Composition of council

The Council consists of one representative of each of the following Indian Tribes: Scllaghticoke, Eastern Pequot, Western Pequot, Mohegan and Golden Hill; and three persons appointed by the Governor who are electors within the State but not elective or appointive officials of the State or any of its political subdivisions and are not of Indian lineage. Tribal representatives are appointed by the respective tribes, which may also designate an alternate to observe Council meetings and act in the absence of the tribal representative. All appointments are for terms of three years, beginning October 1, 1973, except that the first representative from the Golden Hill shall serve from the date of his appointment to September 30, 1976. Tribal

representatives may be recalled at any time by their respective appointing authorities, with or without cause.

(Effective June 1, 1976)

Sec. 47-59b-5. Seating of representatives

Each tribal organization seeking representation on the Council shall file a description of the organization, its membership, and the procedure for selecting a representative to the Council. Prior to being seated, the tribal representative shall file with the Council a certificate of the appropriate tribal official stating that the representative was duly selected in accordance with tribal practice and usage. If satisfied that the tribal organization is representative of the tribe, and that the tribe's representative to the Council has been properly selected in compliance with the practice and usage of the tribe, the Council shall seat the tribal representative.

(Effective June 1, 1976)

Sec. 47-59b-6. Same; challenges

At the time a representative of a tribal organization requests to be seated at the Council, or any time thereafter, a member of the tribe for which the representative was selected, or any person aggrieved by an action of this Council, may challenge the authority of the tribal organization seeking to be seated to represent the tribe, or the validity of the process by which the representative of the tribe was selected. Upon receipt of such a challenge, the Council shall set a date for a hearing to be held and conducted in the same manner as hearings on contested applications for recognition of Indian status under these regulations. No representative shall take part in proceedings of the Council while under challenge. The burden of proof shall be on the challenger. If the Council determines that the tribal organization represents the tribe and that the challenged representative has been properly selected by the tribal organization, the Council will not entertain further challenges to the tribal organization or its representative except on a showing of substantial evidence different from that heard by the Council at the first challenge hearing. The burden shall be upon the challenging party to show, by affidavit or document any evidence, that new evidence warrants a hearing on any subsequent challenge.

The Commissioner of Environmental Protection may, and in the event that more than one member are challenged simultaneously shall, designate one or more additional persons, who shall be Indians within the meaning of Sections 47-59a to 47-66 of the General Statutes, as amended, and not members of the tribal organization under challenge, to sit on the Council for purposes of hearing and determining the challenges. The panel shall consist of not less than seven persons, including the Council members whose credentials have not been challenged.

(Effective June 1, 1976)

Part II

Public Information

Sec. 47-59b-7. Policy

The policy of the Council is to make available for public inspection all files, records, documents and other materials within its possession, unless prohibited by law.

Geneological information shall be available only to parties in contested cases and when required for adjudication of a case before the Council.

(Effective June 1, 1976)

Sec. 47-59b-8. Complaints and requests for information

Complaints and requests for information should be addressed to the Council, at the address set forth in 47-59b-2 of these regulations.

(Effective June 1, 1976)

ARTICLE II

RULES OF PRACTICE

Part I

General Provisions

Sec. 47-59b-9. Procedure governed

These rules govern practice and procedure before the Council under the applicable laws of the State of Connecticut and except where by statute otherwise provided. Decisions of the Commissioner of Environmental Protection, acting on the advice of the Council as required by Sections 47-59a to 47-66 of the General Statutes, as amended, shall be governed by the regulations applicable to decisions of the Commissioner.

(Effective June 1, 1976)

Sec. 47-59b-10. Definitions

(a) ''Council'' means Connecticut Indian Affairs Council.

(b) ''Tribe,'' except where otherwise indicated, means the Schaghticoke, Eastern Pequot, Western Pequot, Mohegan, or Golden Hill Tribes of Indians.

(Effective June 1, 1976)

Sec. 47-59b-11. Procedure for issuance, amendment or repeal of a regulation

(a) Proceedings for the issuance, amendment, or repeal of regulation may be commenced by the Council on its own initiative or pursuant to a petition submitted by an interested person.

(b) Notice of the proposed issuance, amendment, or repeal of a regulation will appear in the Connecticut Law Journal at least twenty days prior to the proposed action. The notice will contain: (i) a statement of the purpose of the proposed action; (ii) a statement of the time, date and place of the public hearing or other opportunity for the presentation of views; (iii) reference to the statutory authority under which the Council is acting; and (iv) a statement of the terms or substance of the intended action.

(c) Adequate publicity will be provided by the Council to assure that all interested parties have notice of the time, date and place of the public hearing or other opportunity for the presentation of views. The purpose is to afford an opportunity for all interested parties to participate in the proceedings through the submission of written or oral data, views, arguments, or suggestions.

(d) The action of the Council concerning issuance, amendment or repeal of regulations will be forwarded to the Commissioner for adoption, and then to the Attorney General and to the legislative Review Committee of the General Assembly for approval, as required under Sections 4-169 and 4-170 of the General Statutes.

(e) The new regulation or the amendment or repeal of an existing regulation will become final following approval by the Attorney General and the Legislative Review Committee and certification thereof to the Secretary of State.

(f) When the Council finds that an imminent peril to the public health, safety, or welfare so requires, it may adopt emergency regulations, as provided in Section 4-168 (b) of the General Statutes.
(Effective June 1, 1976)

Sec. 47 59b-12. Computation of time

Computation of any period of time referred to in these rules begins with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Council is closed, in which event the period shall run until the end of the following business day.
(Effective June 1, 1976)

Sec. 47-59b-13. Extensions of time

At the discretion of the Council, for good cause shown, any time limit prescribed or allowed by these rules may be extended insofar as such extension is not precluded by statute. All requests for extension should be made before the expiration of the period originally prescribed or as previously extended. The Council shall notify all parties of the department's action upon such motion.
(Effective June 1, 1976)

Sec. 47-59b-14. Consolidation

Proceedings involving related questions of law or fact may be consolidated at the discretion of the Council.
(Effective June 1, 1976)

Sec. 47-59b-15. Return for incompleteness

Any application or petition may be rejected by the Council if it is incomplete or otherwise inadequate to permit processing or disposition thereof. Action under this section is without prejudice and is not a final decision by the Council. Nothing in this section shall restrict the Council from requiring additional information from an applicant or petitioner if his application or petition is accepted
(Effective June 1, 1976)

Part II

Formal Requirements

Sec. 47-59b-16. Office

The principal offices of the Council is in the State Office Building, Room 248, 165 Capitol Avenue, Hartford, Connecticut 06115. The offices of the Council are open from 8:30 a.m. to 4:30 p.m. each weekday except Saturdays, Sundays and legal holidays.
(Effective June 1, 1976)

Sec. 47-59b-17. Date of filing

All orders, decisions, findings of fact, correspondence, motions, petitions, applications and any other documents governed by these rules, shall be deemed to have been filed or received on the date on which they are issued or received by the Council at its principal offices.
(Effective June 1, 1976)

Sec. 47-59b-18. Identification of communications

Communications should embrace only one matter, should contain the name and address of the communicator and the subject of the communication.

(Effective June 1, 1976)

Sec. 47-59b-19. Signatures

Every application, notice, motion, petition, complaint, brief and memorandum shall be signed by the filing person or by one or more attorneys in their individual names on behalf of the filing person.

(Effective June 1, 1976)

Sec. 47-59b-20. Formal requirements as to documents and other papers filed in proceedings

(a) **Copies.** Except as may be otherwise required by these rules or by any other rules or regulations of the Council or ordered or expressly requested by the Council, at the time motions, petitions, applications, documents or other papers are filed with the Council, there shall be furnished to the Council an original of such papers. In addition to the original there shall also be filed one copy unless a greater or lesser number of copies is expressly requested by the Council.

(b) **Form.** Except for such forms as may from time to time be provided by the council and used where appropriate, motions, petitions, applications, documents or other papers filed for the purpose of proceeding before the Council shall be printed or typewritten and, where possible, on paper cut or folded to either letter or legal size, 8 to 8½ inches wide. The impression shall be on only one side of the papers, unless printed, and shall be double spaced, except that quotations in excess of five (5) typewritten lines shall be single spaced and indented. Mimeographed, multigraphed, photoduplicated or the like copies will be accepted as typewritten, provided all copies are clear and permanently legible.

(c) **Filing.** All papers relating to matters requiring action by the Council shall be filed with the Council, State Office Building, Room 248, 165 Capitol Avenue, Hartford, Connecticut 06115.

(Effective June 1, 1976)

ARTICLE III

MEMBERSHIP IN TRIBES

Sec. 47-59b-21. Standards for determining membership

Membership determinations shall be made in accordance with the practice and usage of the tribe in which membership is claimed, and except as otherwise provided in these regulations persons whose names appear on the tribal rolls of the following tribes shall be considered Indians for purposes of Sections 47-59a to 47-66 of the General Statutes, as amended.

Eastern Pequot
Western Pequot
Schaghticoke
Golden Hill
Mohegan

Tribal representatives shall file certified copies of the following documents with the Council:

(1) The official membership roll of the Tribe;

(2) The practice and usage of the tribe concerning membership, including a description of procedures and the kinds of evidence admissible to prove membership in the Tribe.

These documents shall be kept on file in the office of the Council and shall be made available to persons seeking recognition as Indians under Sections 47-59a to 47-66 of the General Statutes, as amended.

(Effective June 1, 1976)

Sec. 47-59b-22. Application for recognition of Indian status: contents

All applications for recognition of Indian status under the Statute shall set forth the tribe in which the applicant claims membership. If an application is supported by affidavits, the same shall be made under oath and penalty of perjury, shall be on personal knowledge, shall set forth the qualifications and competency of the affiant to testify on matters of tribal membership, and shall fairly summarize the testimony which the affiant is prepared to give in support of the application.

(Effective June 1, 1976)

Sec. 47-59b-23. Same: decision of tribe: certification by council

The application shall be referred to the appropriate tribe for consideration in accordance with the standards and procedures on file with the Council. If the applicant appears and testifies before the tribe in support of his application, or if witnesses are heard for or against the application, the tribe shall make a tape recording of the proceedings before it. The decision of the tribe concerning application for membership shall be in writing, shall set forth the reasons therefore, and shall be lodged with the Council. Upon receipt of the tribe's decision the Council shall promptly notify the applicant, supply him with a copy of the tribe's determination and advise him that unless the decision of the tribe is protested within thirty days from receipt of the notice, the decision of the tribe shall be certified by the Council. Upon certification, the decision of the tribe shall be final and binding upon all parties.

(Effective June 1, 1976)

Sec. 47-59b-24. Same: objection to certification

Any person who would be aggrieved by certification of a decision of a tribe respecting his membership may protest the tribe's decision to the Council and request a hearing to be scheduled for the next regular meeting of the Council, or at such time as shall be stipulated to by the applicant and the tribal council whose decision is protested. The Council shall promptly notify the tribe, which shall certify the record of the proceedings before it. The record shall consist of the decision of the tribe, all affidavits and documentary evidence submitted in support of the application, and a tape recording of the proceedings, if any before the tribe.

(Effective June 1, 1976)

Sec. 47-59b-25. Certification hearing; procedure

At the hearing, both the applicant and the tribe whose decision is protested may be represented by counsel employed at their own expense. The Chairman of the Council shall preside at the hearing unless the Chairman is a member of the tribe whose decision is protested, in which case the Vice-Chairman shall preside. Members of the Council may ask questions of the parties and may examine all evidence. A member of the tribe whose decision is challenged may examine the parties and the evidence, but shall disqualify himself from voting.

(Effective June 1, 1976)

Sec. 47-59b-26. Same; scope of review

Consideration by the Council shall be based on the record submitted to the tribe, and evidence not submitted to the tribe shall not be considered by the Council, except that if the decision is challenged on the ground that the person or persons making the membership determination does not represent the tribe, the proceeding shall be treated in the same manner as a challenge to the tribal representative under 47-59b-6 of these regulations and the Council may hear all evidence relevant to the authority of the tribal organization to represent the tribe.

For good cause shown, the Council may remand an application to the tribe for consideration of new evidence.

(Effective June 1, 1976)

Sec. 47-59b-27. Same; burden of proof

The burden shall be upon the applicant to establish by a preponderance of the evidence that he is entitled to membership in the tribe under the practice and usage of the tribe. Upon such a showing the Council, by majority vote, shall direct the tribe to add the applicant's name to the rolls of the tribe.

If the applicant establishes by a preponderance of the evidence that the tribe excluded evidence, or failed to follow appropriate procedures, the dispute shall be remanded to the tribe for further proceedings consistent with the findings of the Council.

(Effective June 1, 1976)

Sec. 47-59b-28. Certification in the absence of protest

Any member of the Council may challenge any decision made by a tribe concerning membership. Upon such a challenge, the Council shall designate one or more of its members to act as a committee to examine the record of the proceedings before the tribe and report back to the Council. The Council shall act upon the recommendation of the committee, and may either certify the decision of the tribe or set a date for a hearing to be held in accordance with these regulations.

(Effective June 1, 1976)

ARTICLE III

ELIGIBILITY TO RESIDE ON INDIAN RESERVATIONS

Sec. 47-59b-29. Residence on reservation

Any member of the Eastern Pequot, Western Pequot, Mohegan Schaghticoke or Golden Hill Tribe is eligible to reside on the reservation assigned to the use of his respective tribe. The tribe to whom a reservation is assigned shall decide which of its members may reside on the reservation of the tribe, and the decision of the tribe shall not be reviewable by the Council.

(Effective June 1, 1976)

Sec. 47-59b-30. Intrusion by non-members

No person who is not a member or the spouse or child of a member of a tribe for which a reservation is set apart may take up residence or go upon the reservation without the written permission of the tribe.

(Effective June 1, 1976)

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Indians and Indian Reservations

Sec. 47-65-1. Residence on a reservation

An Indian, as defined by statute, desiring to reside on his tribal reservation shall make application in writing to the welfare commissioner. He shall not take up residence on such reservation until written approval of the commissioner has been granted. Any Indian granted written permission to reside permanently or seasonally on a tribal reservation who fails to live on such reservation for at least two months of any calendar year without good cause shall be deemed to have abandoned his residency thereon at the end of any such calendar year, and may not return thereafter to live on such reservation without further written approval of the welfare commissioner.

(See 1961 Supp. § 47-63.)

Sec. 47-65-2. Building on a reservation

No tribal member shall erect, or cause any building to be erected, upon a reservation without written approval of the welfare commissioner. Any tribal member desiring to erect a building upon his tribal reservation shall make application in writing to the welfare commissioner and shall furnish suitable plans and specifications, as well as evidence of financial ability to complete such building. The site on which any building is to be erected will be set out and approved by the welfare commissioner. Any building erected on a reservation without written approval of the commissioner, or on any site which has not been approved by the commissioner, shall be subject to removal at the builder's expense at the discretion and direction of the welfare commissioner, or by the state upon the refusal or failure of the owner to remove it within sixty days of notice. If the state is required to remove such building, the builder shall be liable to the state for the cost of removal.

Sec. 47-65-3. Repairs and improvements to existing buildings

No person shall make any repairs or improvements to an existing building without the written approval of the welfare commissioner. Any person desiring to repair or improve an existing building shall make application in writing to the welfare commissioner and shall furnish suitable plans and specifications, as well as evidence of financial ability to complete such project.

Sec. 47-65-4. Buildings become part of tribal reservations

All buildings erected upon a tribal reservation by a tribal member shall be subject to the care, control and management of the welfare commissioner and, unless authority for future removal has been given by the welfare commissioner at the time of erection, shall be considered affixed to and a part of the reservation.

Sec. 47-65-5. Assistance to needy tribal members

To be eligible to receive assistance from the tribal fund or from the "Aid to Indians" appropriation, a person must be (1) a tribal member; (2) a bona fide fulltime resident of a tribal reservation; (3) without sufficient means to support himself on a reasonable standard of health and decency and with no spouse, child or children able to support him; (4) ineligible to receive public assistance.

Sec. 47-65-6. Use of Indian reservation

The Indian reservations shall be held for the use of tribal members only. Indians residing on the reservations shall maintain their homes and land adjacent to them in a sanitary and clean condition. The accumulation of rubbish, junk, garbage and

other refuse in or around the premises occupied by them or on the reservation itself is prohibited. All such waste material shall be removed by the occupants of the various premises. No resident may cut timber or wood on the reservation except that needed by the tribal member for his own use in heating or cooking. No Indian shall commit a nuisance or illegal act on any reservation.

Sec. 47-65-7. Eviction for cause

Any Indian entering upon a reservation or building thereon without written permission of the welfare commissioner, or any Indian discarding or permitting refuse, rubbish or junk to accumulate around his premises after warning, or who uses the premises or reservation for any illegal act, shall be evicted from the reservation.

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Common Interest Community Conversion

Sec. 47-295-1. Definitions

(a) "Commissioner" means the Commissioner of Housing.

(b) "Common Interest Community" means real property described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for (1) real property taxes on, (2) insurance premiums on, (3) maintenance of, or (4) improvement of, any other real property other than that unit described in the declaration.

(c) "Conversion notice" means the information given a tenant as required pursuant to Section 47-284 of the General Statutes.

(d) "Declarant" means any person or group of persons acting in concert who (1) as part of a common promotional plan, offers to dispose of his interest in a unit not previously disposed of, or (2) reserves or succeeds to any special declarant right.

(e) "Department" means the Department of Housing.

(f) "Dwelling Unit" means any house or building or portion thereof which is occupied or is rented, leased or hired out to be occupied, as a home or residence of one or more persons.

(g) The definitions in Section 47-283 of the General Statutes apply to Sections 1 through 4 herein of the Regulations of Connecticut State Agencies.

(Effective May 23, 1988)

Sec. 47-295-2. Program description

(a) The Commissioner shall implement and administer a program monitoring the conversion of properties into common interest communities. If a declarant is planning to convert into a condominium or other common interest community any building which contains a unit last occupied as a rental dwelling unit, then before the common interest community is created, the declarant shall pay a $50 registration fee per unit being converted and file with the Department such information regarding the conversion property and its tenants as is required herein. No person shall offer to sell, sell or otherwise dispose of any unit in a common interest community until such registration is duly filed and the fees are paid.

(b) The Commissioner is authorized to receive complaints of any violations of Sections 47-282 through 47-293, inclusive, of the General Statutes, and any other law concerning the conversion of dwelling units into common interest communities. The Commission shall cause investigations of such violations to be made and shall make every effort to ensure compliance with such laws. If the Commissioner believes such laws are being violated, he shall refer the matter to the Attorney General for further enforcement.

(Effective May 23, 1988)

Sec. 47-295-3. Filing requirements for common interest community conversions

(a) Registration forms, as prescribed by the Commissioner, shall be used by the declarant for the purpose of registering the conversion. The Commissioner may from time to time modify these forms, as needed to carry out the intent of the act.

(b) The required registration form shall include, but is not limited to the following information:

1. Name and address of property;
2. Date of conversion;
3. Number of units last occupied as dwelling units;

4. Number of dwelling units in conversion property as of date of the conversion notice;
5. Number of non-dwelling units in conversion property as of the date of the conversion notice;
6. Total number of units in conversion property, as of the date of the conversion notice;
7. Number of dwelling units occupied at any time during the preceding twelve months;
8. Number of tenants in all dwelling units as of the date of the conversion notice;
9. Registration fee of $50 per unit;
10. A copy of the Public Offering Statement;
11. A copy of the Conversion Notice; and
12. Name, address and telephone number of the declarant or his representative.

(c) Six months after the delivery date of the conversion notice, the declarant shall submit to the Commissioner the information listed below:
1. Name and address of property;
2. Date of conversion notice;
3. Number of tenants that purchased their dwelling units;
4. Number of tenants that stayed in their dwelling units and did not purchase;
5. The number of tenants that moved;
6. Number, name and new address of moving tenants that received a relocation payment under Section 47-287 of the General Statutes, and the amount of each relocation payment;
7. Number of tenants against who summary process proceedings were begun; and
8. A statement of the declarant, certified as true under the penalty of false statement, that, to the best of his knowledge and belief, all tenants entitled to a relocation payment under Section 47-287 of the General Statutes received such payment. If any tenant entitled to a relocation payment did not receive it, provide a statement explaining why the payment was not made.

(d) Nine months after the delivery of the conversion notice, the declarant shall submit to the Commissioner the information indicated below:
1. Name and address of property;
2. Date of conversion notice;
3. Number of tenants that purchased their dwelling units;
4. Number of tenants that stayed in their dwelling units and did not purchase;
5. The number of tenants that moved;
6. Number, name and new address of moving tenants that received a relocation payment under Section 47-287 of the General Statutes, and the amount of each relocation payment;
7. Number of tenants against whom summary process proceedings were begun; and
8. A statement of the declarant, certified as true under the penalty of false statement, that, to the best of his knowledge and belief, all tenants entitled to a relocation payment under Section 47-287 of the General Statutes received such payment. If any tenant entitled to a relocation payment did not receive it, provide a statement explaining why the payment was not made.

(Effective May 23, 1988)

Sec. 47-295-4. Investigation of complaints

(a) The Commissioner shall investigate any complaints filed with the Department alleging violations of Sections 47-282 to 47-293, inclusive, and Section 47a-23c of

the General Statutes, as it applies to the conversion of dwelling units into common interest communities, and any other law concerning the conversion of dwelling units into a common interest community.

(b) The Commissioner may receive complaints orally, by telephone, in writing or on a form provided for that purpose.

(c) After reviewing the complaint, the Commissioner may require from the parties all information and/or documentation he deems necessary to effectively conduct his investigation.

(d) If, in the opinion of the Commissioner, there has been a violation of the laws, he shall make every effort to ensure compliance with such laws. If he cannot obtain compliance, he shall refer the matter to the Attorney General.

(Effective May 23, 1988)