

**(6) Final Determination Documents**

**- October 14, 1998**

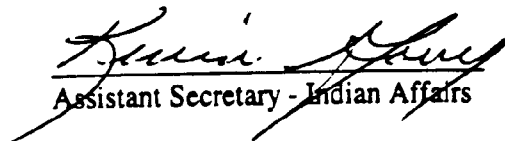
Summary Under the Criteria and Evidence for  
Final Determination for Federal Acknowledgment

of the

Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan

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

Approved: OCT 14 1998  
(date)

  
Assistant Secretary - Indian Affairs

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## INTRODUCTION

### Administrative History

*Administrative History of the Proposed Finding.* The Introduction to the Summary under the Criteria and Evidence for Proposed Finding, Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan (MBPI), provided a detailed administrative history of the petition to the date of the Proposed Finding (MBPI Summ. Crit. Intro., 4-6).<sup>1</sup> The Assistant Secretary - Indian Affairs (AS-IA) signed the Proposed Finding on June 12, 1997; the Federal Register notice of the Proposed Finding was published July 16, 1997 (62 FEDERAL REGISTER 136, 38113-38115).

*Administrative History Since the Proposed Finding.* The 180-day period for receipt of the petitioner's response to the proposed finding and public (third party) comments under 25 CFR Part 83 closed on Monday, January 12, 1998.

*Petitioner's Response to Proposed Finding.* MBPI did not submit a response to the proposed finding, either in the form of a narrative or in the form of additional documentation, with the exception of the updated membership list as noted below.

*Request for Extension of Comment Period.* On Thursday, January 8, 1998,<sup>2</sup> Dennis J. Whittlesey submitted a letter on behalf of the City of Detroit requesting, "an extension of the comment period of 30 days so that it may complete its analysis and comments on the Petition and your staff's

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<sup>1</sup>The letter of intent to petition was submitted on June 24, 1992. On September 11, 1992, the Bureau of Indian Affairs (BIA) assigned the petition #9A. MBPI submitted a documented petition on May 14, 1994; supplementary material on October 24, 1994; November 27, 1994; and December 7, 1994. The BIA held a technical assistance (TA) meeting with the petitioner in January 1995 and issued a formal TA letter on May 5, 1995. However, the MBPI had, on the basis of the TA meeting, anticipated the formal TA letter and submitted its TA Response on April 28, 1995. The petition was determined ready for active consideration on April 28, 1995. It was placed on active consideration December 24, 1996.

<sup>2</sup>A facsimile transmission auto-headed "JAN 08 '98 03:32PM " was sent from an office in Oregon to the Branch of Acknowledgment and Research (BAR) office in the BIA. As this transmission was made under Pacific time, after the close of business in Washington, DC, it was not received until Friday, January 9, 1998, two working days before the close of the comment period. The transmission consisted of a letter from Dennis J. Whittlesey addressed to the BAR Branch Chief, "Re: Gun Lake Band of Michigan" (Whittlesey to Reckord 1/8/1998).

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proposed positive determination" (Whittlesey to Reckord, 1/8/1998, [1]).<sup>3</sup> Its late submission did not allow time for normal decision-making to occur before the public comment period closed by operation of the regulations. A waiver of the regulations would have been required to reopen it. On September 10, 1998, the Bureau of Indian Affairs (BIA) informed the City of Detroit that it had informed party status, not interested party status, under the regulations (Maddox to Whittlesey 9/10/1998).

*Third Party Comments.* On January 12, 1998, Dennis J. Whittlesey Esq. submitted comments on behalf of the City of Detroit (Whittlesey to Reckord 1/12/1998). Whittlesey's comments consisted of a letter listing six points, stating that "the following thoughts are emphasized for the Branch of Acknowledgment and Research's consideration" (Whittlesey to Reckord 1/8/1998, [2]). Dr. James M. McClurken's "Preliminary Comments Regarding the Branch of Acknowledgment and Research Proposed Finding for Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan," dated January 12, 1998, were with the letter.<sup>4</sup>

*Petitioner's Response to Third Party Comments.* The 60-day regulatory period for the petitioner to respond to third party comments closed March 13, 1998. On February 2, 1998, Bill [William L.] Church, Secretary of State, Match-e-be-nash-she-wish Band, sent Branch of Acknowledgment and Research (BAR) a four-page letter concerning the City of Detroit submissions (Church to Reckord 2/2/1998). On March 12, 1998, the petitioner submitted a formal response to the comments submitted on behalf of the City of Detroit (MBPI Response 1998) and a final membership list (MBPI List 3/12/1998). These submissions were timely.

*Preparation of Final Determination.* BAR began preparation of the technical report for the final determination on April 7, 1998. The BIA notified David K. Sprague, chairman of the petitioning

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<sup>3</sup>Prior to January 8, 1998, the City of Detroit had not requested to be either an interested party or an informed party concerning the MBPI petition, or participated in any way in the MBPI acknowledgment process. This letter (Whittlesey to Reckord 1/8/1998) did not establish good cause for an extension under 83.10(i). On January 9, 1998, the City of Detroit requested copies of petition materials (Whittlesey to Reckord 1/9/1998). On March 26, 1998, the BIA informed the City of Detroit's counsel that the material would be provided upon receipt of a statement of "willingness to pay the fees" (Jemison to Whittlesey 3/26/1998). As of September 30, 1998, the City of Detroit has not picked up the materials.

<sup>4</sup>The third party comments were not arranged according to the mandatory criteria for Federal acknowledgment. They are discussed below under the criterion to which they appeared to be most applicable. Comments which did not pertain to the mandatory criteria for Federal acknowledgment under 25 CFR Part 83 were summarized and discussed in the Technical Report to this Final Determination, but are not included in the Summary Under the Criteria.

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group, of this action by telephone. Under 25 CFR 83 a 60-day period began for issuance of the final determination (25 CFR 83.10(l)(2)).<sup>5</sup>

### Overview of the Proposed Finding

*Prior Federal Acknowledgment under 25 CFR 83.8.* The AS-IA determined in the Proposed Finding that the petitioner had previous unambiguous Federal acknowledgment through the date of the 1855 Treaty of Detroit, to which the historic band's chief was a signatory. The date of the band's final annuity payment under this treaty, 1870, was used as the date of last unambiguous prior Federal acknowledgment. This determination enabled the petitioner to proceed under criteria 83.7(a-g) as modified by the provisions of 83.8. This was not an official finding that Federal acknowledgment ceased in 1870, but is the date used solely for acknowledgment purposes.

Whittlesey challenged the BIA's determination of previous unambiguous Federal acknowledgment as used in the proposed finding:

6. Finally, we note that Dr. McClurken has raised the question of whether the 1855 treaty signatory Sagana was the Pottawatomí son of Match-e-be-nash-she-wish (who lived far from the site of the treaty council) or an Ottawa with the same name (who lived very near the council site). This is a matter of great concern to any observer since the 1955 [*sic*] treaty signing is cited by BAR as evidence of prior recognition for the Gun Lake Band of Pottawatomí Indians. It just may be that Mr. Church was correct in 1993 (and prior thereto) when he repeated [*sic*] identified the group as the Gun Lake Band of Ottawa. Certainly, BAR should revisit this matter since it is one of the pivotal points on which the modern group's claims is [*sic*] based (Whittlesey to Reckord 1/12/1998, [3]).

Mr. Whittlesey's comment was based on a mistaken reading of the data presented by Dr. McClurken. First, the historical and genealogical technical reports to the proposed finding never identified any treaty signatory named "Sagana" as either the son of Match-e-be-nash-she-wish or as the leader of the petitioning group at the time it joined in the 1855 Treaty of Detroit.

Second, whether or not the 1855 treaty signatory "Sagana" listed as head of the Gun Lake Village Band in 1839 was a Potawatomi from Prairie Ronde or was an Ottawa is not significant, because the

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<sup>5</sup>The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension (25 CFR 83.10(l)(3)). On August 26, 1998, the AS - IA informed the petitioner that the time for completion of the final determination had been extended 30 days from receipt of the letter (Gover to Sprague 8/26/1998). The informed party was notified of this extension (Maddox to Whittlesey 9/10/98).

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determination of prior unambiguous Federal acknowledgment was not based either on his leadership role or his signature. There is no question that Match-e-be-nash-she-wish and his band were also residing at Gun Lake (the Griswold Colony), since he and his son were listed as heads of families (MBPI PF, Genealogical Technical Report 54; name spelled as Mudge-a-pen-a-cee-wish). The son of Match-e-be-nash-she-wish who succeeded him as leader of the Allegan County, Michigan, settlement was named Penassee. He died prior to the 1855 treaty. The 1855 treaty was signed by Penassee's son Shop-quo-ung, aka Moses Foster, who survived until after 1900 and continued as leader throughout that period. Both Moses Foster's ancestry and his career are well documented (MBPI PF, Historical Technical Report 60, 73, 88, 114).

This third party comment does not warrant a change in the conclusion that the petitioner evolved from the band headed successively by Match-e-be-nash-she-wish, Penassee, and Shop-quo-ung, and that 1870 could be established as a date at which that band had prior unambiguous Federal acknowledgment.

*Conclusions under the Mandatory Criteria.* The AS-IA found that the MBPI did meet all seven criteria required for Federal acknowledgment (MBPI PF, Summ. Crit. 1).

Under criterion 83.7(a) as modified by 83.8(d)(1), the petitioner had been identified as an American Indian entity and as the same group as the one previously federally acknowledged on a substantially continuous basis since 1870. Such identifications existed in Federal records, including identifications by the BIA, by the Methodist Church, by local historians, and by local newspapers (MBPI PF, Summ. Crit., 5).

Under criterion 83.7(b) as modified by 83.8(d)(2), the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present (MBPI PF, Summ. Crit., 10). In addition, the petitioner demonstrated that it had been a distinct community historically as provided by 83.7(b) from the date of last unambiguous prior Federal acknowledgment until the modern period (MBPI PF, Summ. Crit. 6).

Under criterion 83.7 (c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of leadership identified by knowledgeable sources for part of the period from 1870 to the present. During the periods when the group did not maintain a formal governing structure,<sup>6</sup> a significant level of bilateral political influence or authority within the community was maintained by indigenous ordained and lay ministers through the Methodist Indian mission at Bradley, Michigan (MBPI PF, Summ. Crit. 11-12). Additionally, under the provisions of interaction between criterion 83.7(b)(2) and 83.7(c)(3), and 83.7(c)(1)(iv) and 83.7(b), there was sufficient evidence that MBPI met 83.7(c) (MBPI PF, Summ. Crit., 12-13).

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<sup>6</sup>That is, did not have a formally designated chief, chairman, president, council business committee, board of directors, etc. specifically described as a tribal governing body.

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Under criterion 83.7(d), the petitioner submitted copies of its governing document, thus meeting the criterion (MBPI PF, Summ. Crit. 17).

Under criterion 83.7(e), the BIA determined that all of the petitioner's members on the membership list dated October 20, 1994, were of American Indian ancestry, of Michigan Potawatomi ancestry, and descended from persons listed on the 1904 Taggart Roll (MBPI PF, Summ. Crit. 18-19).

Under criterion 83.7(f), after an extensive analysis of the relationship of MBPI enrollment to that of Huron Potawatomi, Inc. (HPI), the membership of the petitioner was found to be composed principally of persons who were not members of any acknowledged North American Indian tribe (MBPI PF, Summ. Crit., 19).

Under criterion 83.7(g), neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (MBPI PF, Summ. Crit. 21).

#### Bases for the Final Determination

This final determination is based upon all materials utilized for preparation of the proposed finding, third party comments submitted, the petitioner's response to the third-party comments and final membership list, and research by BIA staff.

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Abbreviations and/or Acronyms Used in the Final Determination and Technical Report

AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs
BIA	Bureau of Indian Affairs
COLA	Commissioner of Indian Affairs
Doc.	Documentary Exhibit Submitted by the Petitioner
FD	Final Determination
FR	FEDERAL REGISTER
HPI	Huron Potawatomi, Inc.
MBPI	Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
OIA	Office of Indian Affairs, 19 <sup>th</sup> -century title of the Bureau of Indian Affairs
PF	Proposed Finding
Summ. Crit.	Summary under the Criteria.

Standardized Spellings

When discussing Indian tribes and bands in the body of the narrative, the technical reports for the Proposed Finding and the technical report for the Final Determination use the current standardized spellings, for example, "Potawatomi." Where specific historical documents are quoted within the technical report, these names are spelled as found in the original.

## SUMMARY CONCLUSIONS UNDER THE CRITERIA

### 83.7(a-g) and 83.8(a-d)

**83.7(a)** The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met . . . .

**83.8(d)** To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that: (1) The group meets the requirements of the criterion in 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment until the present.

Under criterion 83.7(a) as modified by 83.8(d)(1), the proposed finding concluded that the petitioner had been identified as an American Indian entity and as the same group as the one previously federally acknowledged on a substantially continuous basis since 1870, the date of last unambiguous prior Federal acknowledgment used by the proposed finding. Such identifications existed in Federal records, where they had been made by the BIA, and in census records. Similar identifications had been made by the Methodist Church, by local and regional historians, and by local newspapers (MBPI PF, Summ. Crit., 5).

Few of the third party comments received appeared to be directed at criterion 83.7(a). Some of the comments which mentioned the "identity" of the petitioner referred to the petitioner's own self-identification (Whittlesey to Reckord 1/12/1998, [2]), not to identification by external sources under

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83.7(a). One phrase used by a commenter in this context was the, "absence of tribal identification by these people" (Whittlesey to Reckord 1/12/1998, [3]). Other portions of the comment were directed to the fact that the petitioner had not specifically been identified as a tribe, such as ". . . the Bradley church congregation has been identified for years as Indian. However, there is no suggestion that the members have been identified as members of any tribe . . ." (Whittlesey to Reckord 1/12/1998, [3]). Identification as a "tribe" is not required under criterion 83.7(a), which specifies only identification as an "entity." If this portion of the comment (Whittlesey to Reckord 1/12/1998, [3]) was intended to pertain to the issue of whether or not the MBPI members descend from a historical tribe, it applies to criterion 83.7(e) rather than criterion 83.7(a) and is discussed below under that criterion.

The technical reports to the Proposed Finding clearly tied the early mission church at Bradley and its daughter church at Salem to a continuously existing Indian entity. The entity was a community of long standing, whether called the Bradley Indians, the Allegan Indians, or by other names, having existed since the late 1830's. The technical reports also showed that the Indian church at Bradley, which originated as the Griswold Mission, was connected through a chain of historical evidence to its members' Potawatomi and Ottawa antecedents in specific bands (MBPI PF, Historical Technical Report 38-44, 49-60).

The comments concerning the acceptability of leadership exercised through the churches in the MBPI communities are discussed below under criterion 83.7(c).

No new evidence pertaining to criterion 83.7(a) was submitted by either the commenters or the petitioner.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(a) as modified by 83.8(d) is affirmed.

**83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.**

**83.8(d)(2) The group meets the requirements of the criterion in section 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.**

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Under criterion 83.7(b) as modified by 83.8(d)(2), the proposed finding concluded that the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present (MBPI PF, Summ. Crit., 10). The proposed finding also concluded that MBPI provided sufficient evidence of historical community as well (MBPI PF, Summ Crit., 6).

The third party comments made only one reference, with no specific citation, to the material presented in the Anthropological Technical Report to the proposed finding, which specifically covered the issue of modern community. The comments mingled discussions of modern community under criterion 83.7(b) with discussions of dual enrollment under criterion 83.7(f). One comment stated:

1. The group has publicly declared its intention to seek "initial reservation" status for land in the Detroit suburbs so as to conduct *[sic]* gaming under the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. Section 2701, *et seq.* ("IGRA"). Such brings into serious question whether the current membership has any relation to the historic tribe; this is underscored by the Petitioner's reliance on the group *[sic]* purported close ties to the Bradley church, tied *[sic]* its leadership apparently are prepared to sever in the interests of gaming revenues (Whittlesey to Reckord 1/12/1998, [2]).

The issue of the possible location of future trust land, to be utilized for gaming or any other purpose, is not relevant to the 25 CFR Part 83 regulations governing the criteria and process for Federal acknowledgment of petitioners. Even if the commenter's assertions constituted evidence that the petitioner was planning to request trust land outside the Allegan County, Michigan, area, this would not constitute evidence that the petitioner does not have modern community under 83.7(b) as modified by 83.8(d)(2).<sup>7</sup>

It is not axiomatic that "legitimate tribal groups are inextricably wedded to their historic lands" (Whittlesey to Reckord 1/12/1998, [2]). Many federally acknowledged tribes have been removed from their historic lands. A number of federally acknowledged tribes have begun initiatives to obtain trust land in areas that are not contiguous with or in proximity to their current reservations or trust territories. Additionally, there is no evidence in the record other than Mr. Whittlesey's letter that MBPI leadership has any intention of severing its ties to the Bradley church or of abandoning the group's traditional territory near Bradley in Allegan County, Michigan where it has been located since the late 1830's. The possibility that the group might seek additional trust territory elsewhere

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<sup>7</sup>The other question raised in this comment, that a request for trust land in the Detroit area would raise doubts whether the modern petitioner "has any relation to the historic tribe" (Whittlesey to Reckord 1/12/1998, [2]) is not specifically relevant to criterion 83.7(b) as modified by 83.8(d)(2) and is discussed elsewhere in this final determination, under criterion 83.7(e). Generally, however, policy decisions taken by a modern group do not alter its genealogical origins.

does not automatically imply such an abandonment. It is noted that the Federal acknowledgment regulations do not require a territorial basis (59 FR 9280, 9286-9287).

The third party comments also stated:

3. The June 23 finding identifies 148 members, of which 140 were enrolled Huron Potawatomi until sometime in 1992.<sup>8</sup> This means that approximately 95 percent of the tribal membership had no identification as Gun Lake Ottawa or Gun Lake Pottawatomi until only a few years ago, leaving eight individuals as the "long term" members of the petitioning group. Such does not make for a tribe and fails to satisfy Criteria [sic] 83.7(b) (Whittlesey to Reckord 1/12/1998, [2]) [footnote added].

Enrollment evidence may be pertinent to criterion 83.7(b), but it is not dispositive. The third party comments presented an argument that if a current MBPI member has in the past appeared on the membership list of another tribe or, in the case of HPI, of another unacknowledged Indian entity, this indicates that the individual was not a member of the community at Bradley/Salem. The third party comments also presented a related argument that if people from the Bradley/Salem Indian community were enrolled elsewhere, this indicated that no Indian community or Indian tribe existed at Bradley/Salem in Allegan County, Michigan. However, community involves much more than a membership list. The regulations define "community" for the purposes of 83.7(b) as follows:

*Community* means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group (25 CFR 83.1).

Individuals who are eligible for enrollment in more than one entity make choices for a variety of reasons--the availability of health benefits and other services through a federally acknowledged tribe, for example. The inclusion of their names on the membership list of one tribe does not automatically or necessarily mean that they are not participating in the activities of their own Indian community.<sup>9</sup> It does not mean that the second Indian community has had no separate existence. The proposed

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<sup>8</sup>These numbers were not correctly quoted. There were not 148 names on the October 20, 1994, MBPI membership list, but only 140 (MBPI Genealogical Technical Report, 28).

Dual enrollment *per se* does not fall under criterion 83.7(b), modern community, but rather under criterion 83.7(f), enrollment in another federally acknowledged tribe. The mandatory criteria do not prohibit dual enrollment in other unacknowledged Indian groups--specifically, in this instance, HPI prior to 1994. The dual enrollment aspect of this comment is discussed below under criterion 83.7(f).

<sup>9</sup>The forms of evidence which a petitioner may use to demonstrate the existence of community, both historically and currently, are listed under 83.7(b).

finding concluded that the petitioner had demonstrated the existence of an Indian community at Bradley/Salem in Allegan County, Michigan, from 1870, the date of prior unambiguous Federal acknowledgment used for the proposed finding, until the present. This conclusion is affirmed by the final determination.

The direct and collateral ancestors of today's MBPI members had, as amply documented, been associated with the settlement near Bradley in Allegan County, Michigan, throughout the period since its settlement. This association was noted in the third party comments:

Evidence in the genealogical technical report demonstrates that most of the people who attended the Bradley and Salem churches were Indians and that they descended from the Shaboquong [*sic*] and his band. The historical and anthropological reports show that these Indians did not lose their Indian identity, intermarried, and had regular interactions with one another (McClurken 1998, 7).

Presumably, the comments' reference to "recruiting members from another tribe as though they [*sic*] entities were social clubs and not Indian tribes" (Whittlesey to Reckord 1/12/1998, [2]) was directed at criterion 83.7(b), modern community.<sup>10</sup> The appearance of the names of current MBPI members on prior HPI membership lists, under circumstances explained in the HPI and MBPI Proposed Findings, was not significant evidence as to the identification of these individuals or their affiliation with a tribe other than the Allegan County community at Bradley and Salem. In the proposed finding, the BIA provided an extensive discussion of the enrollment history of the petitioner, from the preparation of the Taggart Roll for the purpose of Potawatomi claims in 1904 through the claims activities of Huron Potawatomi, Inc. (HPI) from the 1950's through the 1970's (MBPI PF, Summ. Crit., 18-20; MBPI PF, Genealogical Technical Report, 12-33). The Anthropological Technical Report to the proposed finding provided extensive discussion of the nature of the MBPI community in the 20<sup>th</sup> century (see also MBPI PF, Summ Crit., 6-10).

Another comment, in the course of discussing the political relationship between the leaders of MBPI and HPI, referenced the relationship between the two communities (HPI centered at Pine Creek in Calhoun County, Michigan, and MBPI centered around Bradley and Salem in Allegan County, Michigan) rather than simply the interaction between the two leadership groups. He did not address

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<sup>10</sup>For clarification in relationship to the discussion under 83.7(b), modern community, from 1988 through 1992, a period when the Bradley settlement members joined in the HPI petition for Federal acknowledgment, their names were, as mentioned by Whittlesey, on the HPI membership lists. However, this did not constitute membership in any other federally acknowledged tribe as mentioned in criterion 83.7(f), because HPI itself was not, at that time, federally acknowledged. MBPI withdrew as a group from the HPI petitioner before the issuance of the HPI proposed finding. The BIA had on hand a formal MBPI membership list, with relinquishments, before the HPI proposed finding was issued in 1994. The HPI membership list used for purposes of the proposed finding did not include the MBPI members. MBPI members were not HPI members at the time HPI received Federal acknowledgment.

the AS-IA's findings in the Summary under the Criteria, but rather one of the technical reports, stating:

The BAR historian who analyzed the separation of the Matche-be-nash-she-wish [sic] Band of Pottawatomi Indians from the Huron Potawatomi tribe claimed that the separation reflected the distinct divisions between the two historically distinct communities. Instead of analyzing the events from the perspective of a factional fight in a single political community as facts cited in the report imply, the BAR historian chose to treat these events as a clash of two separate communities . . . . Given the demonstrated political actions [sic] between these two supposedly distinct communities, the large degree of intermarriage that created kinship ties crossing 150-year-old band identities, and the continued sustained interaction between church ministries, the BAR historian's position is a strange one (McClurken 1998, 8-9).

The proposed finding concluded that HPI and MBPI were two political systems, not two factions of one system. The regulations do not utilize a specific concept of "political community" (McClurken 1998, 8), although criteria 83.7(b) and 83.7(c), taken together, provide a description of the petitioner's political community. McClurken did not challenge the evidence for existence of a modern community in the Allegan County settlements that was presented by the BIA anthropologist. In his discussion of the relationship between HPI and MBPI, he failed to distinguish between tribal organization and intertribal cooperation among groups of treaty descendants for the purpose of pursuing claims. From the 1950's through the 1970's, Huron Potawatomi, Inc. existed as an umbrella organization for claims work,<sup>11</sup> as well as a tribal government for the Pine Creek reservation community in Calhoun County, Michigan (HPI PF, Historical Technical Report 136-137). Earlier claims activities by members of the Indian settlements Allegan County (the MBPI organization's historical antecedents) in the 1950's were undertaken in cooperation not only with HPI, but also in cooperation with the Pokagon Potawatomi and with the Northern Michigan Ottawa Association. The claims activities did not determine internal leadership within the participating communities or the format of their tribal governments (MBPI Historical Report, 147-152).

There is no question that the great majority of the residents and descendants of the Bradley settlement in Allegan County, Michigan, participated in the modern claims activities from the 1950's through the 1970's under the umbrella of the HPI organization. However, by their very nature, descendancy rolls compiled for claims purposes are not in themselves dispositive for issues of tribal enrollment or for issues of community affiliation.

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<sup>11</sup>"The 1978 HPI membership list was compiled specifically in connection with the claims payments, although it also was to be used for election purposes, since it distinguished between the HPI voting membership and lineal descendants (MBPI PF, Genealogical Technical Report 21, 22n8), showing the distinction between the Pine Creek (HPI) community and other Taggart Roll descendants.

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The BIA sent the names and birth dates of the 49 persons on the MBPI 1994 membership list (MBPI List 10/20/1994) who were not on the MBPI 1998 membership list (MBPI List 1998) to the Michigan Agency for verification of the allegations in the third-party comments that "scores" of MBPI members were enrolling with the Little River Band of Ottawa Indians. The Michigan Agency indicated that there was one duplicate entry, three persons in one tribe, three persons not enrolled elsewhere, six persons in a second tribe, 11 persons in a third tribe, and 25 persons currently enrolled with the Little River Band of Ottawa Indians.

The regulations provide that the historical context of events is to be taken into account in the evaluation. The data did not indicate that persons formerly enrolled with MBPI were, as a group, choosing to join any other single tribe according to a pattern. Rather, they were individual choices based on a variety of factors, including being listed on a base roll of another tribe in order to maximize choices for themselves and their future generations, or to obtain health benefits. The context was analyzed in light of the out marriage patterns in Michigan tribes, fact that base rolls are being compiled for several Michigan tribes simultaneously, the eligibility of individuals for membership in a number of tribes, and the fluidity of Michigan membership patterns. MBPI families as a whole were not leaving the petitioner. Allowing for the duplicate entry, the analysis of the 48 persons who disenrolled from MBPI between 1994 and 1998 indicated that their disaffiliation had minimal relevance for the MBPI's modern community and the disenrollments did not change the character of the group.

No new evidence pertaining to criterion 83.7(b) was presented by either the third party comments or the petitioner.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(b) as modified by 83.8(d)(2) is affirmed.

**83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present . . . .**

**83.8(d)(3) The group meets the requirements of the criterion in section 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in section 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise**

**political influence or authority, with demonstration of one form of evidence listed in section 83.7(c).**

**(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment until the present.**

Under criterion 83.7 (c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of leadership identified by knowledgeable external sources for part of the period from 1870 to the present. During the periods when the group did not maintain a formally designated tribal governing structure, a significant level of bilateral political influence or authority was maintained within the community by indigenous ordained and lay ministers through the Methodist Indian missions at Bradley and Salem, Michigan (MBPI PF, Summ. Crit. 11-12). Additionally, under the provisions of interaction between criterion 83.7(b)(2) and 83.7(c), there was sufficient evidence until 1957 and further substantiating evidence after 1957 (MBPI PF, Summ. Crit., 12-13).

The third party comments argued that:

2. Church activities do not constitute the type of “political influence” which BAR traditionally has demanded of petitioning groups. This matter is discussed by Dr. McClurken,<sup>12</sup> but we strongly reject the tenuousness of this analysis for determining continuing tribal existence (Whittlesey to Reckord 1/12/1998, [2]) [footnote added].

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<sup>12</sup>McClurken stated that the proposed finding’s conclusion that political influence or authority under criterion 83.7(c) continued through the Indian mission churches at Bradley and Salem was, “among the weakest parts of the findings” (McClurken 1998, 6). He asserted that:

The evidences given for the “political authority/ and or influence” [sic] show preachers taking care of churches, not running communities or tribes. They raised enough money to build or repair churches. They maintained committees in the church whose responsibilities included providing emergency help to needy people in their congregations, counseling troubled congregation members and their extended families, and sent delegates to Methodist Church meetings in other places (McClurken 1998, 6-7).

The above quoted part of Whittlesey's Point 2 appeared to be addressed to criterion 83.7(c). Whittlesey provided no citations for his statement that, "Church activities do not constitute the type of 'political influence' which BAR traditionally has demanded of petitioning groups" (Whittlesey to Reckord 1/12/1998, [2]). The BIA is willing to look at a wide variety of forms by which leadership may have been exercised in a petitioning group.<sup>13</sup> In the case of several other petitions, such as Narragansett, Poarch Creek, Mohegan, and Huron Potawatomi, Inc., the AS-IA has accepted church activities as demonstrating the existence of political influence or authority within the petitioning group and providing a focus of leadership (see specific quotations in the technical report to this final determination). The AS-IA has also accepted forms of leadership other than council-type structures in prior positive acknowledgment decisions (Poarch Creek FD, 49 FR 5, January 9, 1984, 1141). In preparing the 1994 revised regulations, the Department specifically rejected more stringent requirements of formal political organization for petitioners (59 FR 38, February 25, 1994, 9288).

Leadership exercised through a church, by indigenous ministers, can provide evidence under several categories mentioned in criterion 83.7(c), such as 83.7(c)(1)(i), "The group is able to mobilize significant numbers of members and significant resources from its members for group purposes," or under 83.7(c)(2)(iii) to show that "group leaders and/or other mechanisms exist or existed which . . . exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior." Indeed, a church located within the residential neighborhood of group members with regular services and a resident minister may serve as a vehicle for exerting considerable influence over the members. The proposed finding concluded that the influence of the ministers extended to the community as a whole (MBPI PF, Summ. Crit., 12).

Another comment stated that, "[h]ad the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians been required to meet all of the criteria in 25 CFR 83.7 in its unmodified form, they could not have been federally acknowledged. Criteria [*sic*] 83.7(c) would have disqualified them" (McClurken 1998, 5). As his justification for this assertion, McClurken stated that, "The historical technical report indicates that the political influence and leadership generally associated with a tribe 'lapsed' with the death of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians' last traditional chief in 1903" (McClurken 1998, 5; citing MBPI Historical Technical Report 115). He quoted 83.8(d)(3) in full (McClurken 1998, 6) and summarized his understanding of its meaning by saying:

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<sup>13</sup>The definition in the regulations is as follows:

*Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects . . . . This process is to be understood in the context of the history, culture, and social organization of the group (25 CFR 83.1).*

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Under this revised criteria [sic], the Matche-be-nash-she-wish [sic] Band of Pottawatomis Indians only have to evidence [sic] that they continued to exist, that the form the entity existed in had leaders of some kind, and that these leaders maintained political influence or authority over its members from 1870 to the present (McClurken 1998, 6).

Based on this definition of "political authority or influence," McClurken commented that, "The BAR proposed findings [sic] forgave a sixty-year lapse of political continuity" (McClurken 1998, 6; citing MBPI Summ. Crit., 11-12). He then quoted the MBPI proposed finding's Summary Under the Criteria when it stated that this church leadership and occasional identifications of secular leaders was not sufficient to meet the procedure possible under 83.8(d)(3) (MBPI Summ. Crit. 12-13), concluding from the fact that MBPI did not utilize 83.8(d)(3) that:

Despite this failure to demonstrate political leadership, the BAR accepted a succession of Indian preachers Bradley Indian Church activities [sic] as a reasonable evidence "authority" [sic] within the Matche-be-nash-she-wish [sic] Band of Pottawatomis Indian [sic] entity. They did so even though they found no evidence of any attempt at secular government until the years 1987-and 1991 [sic]. In effect, the BAR is recommending that federal [sic] acknowledgment be extended to churches because of their continual identification as an Indian entity (McClurken 1998, 7).

The 25 CFR Part 83 regulations do not make any requirement that a petitioner have a "secular government" (McClurken 1998, 7), but rather, under 25 CFR 83.7, that the leadership of a petitioner have political influence or authority over the group's members in a bilateral relationship.

The modifications of criterion 83.7(c) by 83.8(d)(3) do not modify the substantive criteria, but rather streamline the evidentiary requirements for those petitioners that can demonstrate unambiguous prior Federal acknowledgment.<sup>14</sup> These changes are an integral part of the Federal acknowledgment

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<sup>14</sup>The "Comments" section introducing the 1994 regulations as published in the FEDERAL REGISTER stated:

None of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations. Neither will the changes result in the denial of petitioners which would have been acknowledged under the previous regulations (59 FR 38, February 25, 1994, 9280).

In so far as objections to 25 CFR 83.8 were advanced during the public comment period before the 1994 revised regulations were published, the objections advanced were that the provisions were still too stringent for groups which could demonstrate prior unambiguous Federal acknowledgment (59 FR 38, February 25, 1994, 9282). The BIA pointed out that:

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process, and have been applied in several other proposed findings, such as those for Huron Potawatomi, Inc., Cowlitz, and in the final determination for the Snoqualmie Tribal Organization (62 Federal Register 45864, August 29, 1997).

In the case of MBPI, lacking the specific forms of evidence concerning political influence for the streamlined evidentiary procedure enumerated under 83.8(d)(3), the petitioner used the alternative under 83.8(d)(5): MBPI demonstrated that they met the standards for criterion 83.7(c) in the unmodified form, using the types of evidence presented by petitioners who are not eligible to proceed under 83.8. By Dr. McClurken's own argument therefore, the AS-IA concluded in the proposed finding that MBPI met what the commenter regards as the more stringent, unmodified, evidentiary standards of criterion 83.7(c), including some material available through crossover provisions from 83.7(b)(2) under 83.7(c)(3) and 83.7(c)(1)(iv). There was no 60-year lapse in political influence or authority (MBPI PF, Summ Crit., 12-17).

McClurken also argued:

The criteria the Matche-be-nash-she-wish [*sic*] Band of Pottawatomis Indians were judged by did not demand that the petitioning group continue to function as a tribe from 1870 to the present. Tribal political leaders not only facilitate decision-making processes within a tribe, but also represent the tribe in dealings with outsiders. Most Michigan tribes can demonstrate a long and continuous dealing with the U.S. over treaty issues and their continuing sovereignty. The historical evidence presented in the Match-e-be-nash-she-wish Band of Pottawatomis Indians' proposed findings [*sic*] and reports give no indication that the entity had political leaders represented [*sic*] the treaty-based interests of the tribe with the U.S. [*sic, no comma*] the state [*sic*] of Michigan or any other political non-Indian political entity after 1903 (McClurken 1998, 6).

The regulations do not require that a group's leaders "represent the tribe in dealings with outsiders" (McClurken 1998, 6), although this is one possible form of evidence that a petitioner may use to

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The changes reduce the burden of evidence for previously acknowledged tribes to demonstrate continued tribal existence. The revisions, however, still maintain the same requirements regarding the character of the petitioner. For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight. Such groups, therefore, require only a streamlined demonstration of criterion (c). Although these changes have been made, the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations (59 FR 38, February 25, 1994, 9282).

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show the existence of political authority or influence. While leaders may “represent the tribe in dealings with outsiders,” this is not mandatory under 83.7(c).<sup>15</sup>

Neither the commenters nor the petitioner submitted new evidence pertaining to criterion 83.7(c).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(c) as modified by 83.8(d)(3) and 83.8(d)(5) is affirmed.

**83.7(d) A copy of the group's present governing document, including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.**

Under criterion 83.7(d), the proposed finding concluded that petitioner had submitted a copy of its present governing document, thus meeting the criterion.

No comments were received or new evidence submitted in connection with criterion 83.7(d).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(d) is affirmed.

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

Under criterion 83.7(e), the proposed finding concluded that all of the petitioner's members on the membership list dated October 20, 1994, were of American Indian ancestry, of Michigan Potawatomi ancestry, and descended from persons listed on the 1870 annuity payroll for Chau-be-quong's Band (MBPI PF, Genealogical Technical Report 30-31, 35) or the 1904 Taggart Roll, which was prepared by the BIA to determine eligibility for Potawatomi claims payment (MBPI PF, Summ. Crit. 18-19; MBPI PF, Genealogical Technical Report 31-32).

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<sup>15</sup>The reference to external representation is in the definition of political authority or influence as “a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence” (25 CFR 83.1) [emphasis added].

One comment argued that, “. . . the entire Potawatomi identity of the historic bands who comprise the modern Indian entity may be called into question by research in documents prior to the 1839 payroll that the BAR historian and genealogist used as a base for the current report” (McClurken 1998, 3). This comment reflected a misunderstanding of the procedure for evaluating petitions from groups which are determined to have prior unambiguous Federal acknowledgment. As noted above, the effective date of unambiguous prior Federal acknowledgment for MBPI utilized for the Proposed Finding under 25 CFR 83.8 was 1870. The proposed finding dealt with the band as it existed from 1870 to the present and was not required to consider its composition prior to that time.

The proposed finding demonstrated that MBPI evolved from the entity that was previously acknowledged. As stated in the proposed finding, acknowledgment decisions allow for movement of families between bands and tribes, as well as the formal or informal merger of bands and tribes (MBPI PF, Summ. Crit., 18). For acknowledgment purposes, inclusion on the 1870 annuity payroll or 1904 Taggart Roll superseded any differing tribal ascriptions that may have existed in documents prepared before 1839.

The BIA was aware at the time of the proposed finding that individual families of the Bradley and Salem communities also had Ottawa ancestry (MBPI PF, Genealogical Technical Report, 32-33). All persons on the membership list submitted by the petitioner for the final determination (MBPI List 1998) descend from the same families analyzed by the BIA for the proposed finding. The third party comment does not merit revision of this analysis.

Neither the commenters nor the petitioner submitted new evidence in relation to criterion 83.7(e).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(e) is affirmed.

**83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.**

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After an extensive analysis of the relationship of MBPI enrollment to that of another petitioner, Huron Potawatomi, Inc. (HPI), under criterion 83.7(f), the proposed finding found that the membership of the petitioner was composed principally of persons who were not members of any acknowledged North American Indian tribe (MBPI PF, Summ. Crit., 19).<sup>16</sup> The adult members had provided written confirmation of their membership in the petitioning group, on behalf of themselves and on behalf of the minors for whom they had legal custody (MBPI PF, Genealogical Technical Report 28).

The third party comments referred extensively to the fact that many of the members of MBPI had previously been carried on the membership lists of Huron Potawatomi, Inc. (HPI) from 1978 through 1994 (Whittlesey to Reckord 1/12/1998, [2]-[3]; McClurken 1998, 8). At the time these lists were prepared, HPI was not an acknowledged tribe. The MBPI members as a group relinquished their membership in HPI before HPI received Federal acknowledgment (MBPI PF, Genealogical Technical Report 28). Former membership in other unacknowledged Indian groups is not prohibited by criterion 83.7(f).

The comments also stated that many MBPI members were leaving MBPI and enrolling elsewhere, specifically with the Little River Band of Ottawa Indians (Whittlesey to Reckord 1/12/1998, [3]; McClurken 1998, 8). The BIA reviewed this comment for its relevance to issues of community under criterion 83.7(b) above. However, because the persons who had disenrolled with MBPI since 1994 are no longer on the current MBPI membership list, by definition their status does not impact the analysis under criterion 83.7(f), which concerns membership in the petitioner.

The BIA sent a copy of the membership list submitted by MBPI for the final determination (MBPI List 1998), which contained 143 names, to the Michigan Agency for verification and comparison purposes. On June 4, 1998, the Michigan Agency reported that, "[a]fter completing this review it was found that 25 individuals are listed with other tribes. Two of these individuals are deceased. This is 17% of the MBPI membership" (BIA Michigan Agency, Bolton to Reckord 6/4/1998).

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<sup>16</sup> Under 83.3 Scope, the regulations state:

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe (25 CFR 83.3(d)).

While this part provides some perspective on the Department's view of the relationships among tribal groups, it does not pertain directly to the case at issue, as the petitioner is not separating from a currently acknowledged tribe.

Summary under the Criteria, Final Determination, Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan

The report from the Michigan Agency indicated that of the current MBPI members found to be dually enrolled, nine living and two deceased persons were enrolled with HPI, while 14 individuals were enrolled with the Little River Band of Ottawa Indians and three were enrolled with the Pokagon Band of Potawatomi Indians (BIA Michigan Agency, Bolton to Reckord 6/4/1998). These totals indicated not 25, but 28 persons, of whom two were deceased. It indicated that a predominant portion of the petitioner's current membership was not enrolled in any other federally acknowledged tribe.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(f) is affirmed.

**83.7(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.**

Under criterion 83.7(g), the Proposed Finding concluded that neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (MBPI PF, Summ. Crit. 21).

No comments were received or new evidence submitted in connection with criterion 83.7(g).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(g) is affirmed.

#### **AFFIRMATION OF PROPOSED FINDING**

Therefore, the proposed finding is affirmed.

**FINAL DETERMINATION**

**MATCH-E-BE-NASH-SHE-WISH BAND OF  
POTTAWATOMI INDIANS OF MICHIGAN**

**October 14, 1998**

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

**(202) 208-3592**

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## INTRODUCTION

### Administrative History

*Administrative History of the Proposed Finding.* The Introduction to the Summary under the Criteria and Evidence for Proposed Finding, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (MBPI), provided a detailed administrative history of the petition to the date of the Proposed Finding (MBPI Summ. Crit. Intro., 4-6).<sup>1</sup> The Assistant Secretary - Indian Affairs (AS-IA) signed the Proposed Finding on June 12, 1997; the Federal Register notice of the Proposed Finding was published July 16, 1997 (62 FEDERAL REGISTER 136, 38113-38115).

*Administrative History Since the Proposed Finding.* The 180-day period for receipt of the petitioner's response to the Proposed Finding and public (third party) comments under 25 CFR Part 83 closed on Monday, January 12, 1998.

On Thursday, January 8, 1998, a facsimile transmission auto-headed "JAN 08 '98 03:32PM" was sent from an office in Oregon to the Branch of Acknowledgment and Research (BAR) office in the Bureau of Indian Affairs (BIA). As this transmission was made under Pacific time, after the close of business in Washington, D.C., it was not received until Friday, January 9, 1998. The transmission consisted of a letter from Dennis J. Whittlesey addressed to the BAR Branch Chief, "Re: Gun Lake Band of Michigan" (Whittlesey to Reckord 1/8/1998) stating:

The City of Detroit requests an extension of the comment period of 30 days so that it may complete its analysis and comments on the Petition and your staff's proposed positive determination (Whittlesey to Reckord, 1/8/1998, [1]).

The Branch of Acknowledgment & Research ("BAR") has accepted the role in the acknowledgment process of what is known as an "interested

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<sup>1</sup>The letter of intent to petition was submitted on June 24, 1992. On September 11, 1992, the Bureau of Indian Affairs (BIA) assigned the petition #9A. MBPI submitted a documented petition on May 14, 1994; supplementary material on October 24, 1994; November 27, 1994; and December 7, 1994. The BIA held a technical assistance (TA) meeting with the petitioner in January 1995 and issued a formal TA letter on May 5, 1995. However, the MBPI had, on the basis of the TA meeting, anticipated the formal TA letter and submitted its TA Response on April 28, 1995. The petition was determined ready for active consideration on April 28, 1995. It was placed on active consideration December 24, 1996.

party” and we believe that the City of Detroit clearly falls within that category, as recognized by BAR (Whittlesey to Reckord, 1/8/1998, [1]).

The definition of “interested party” under 25 CFR 83 follows:

*Interested party* means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. “Interested party” includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination (25 CFR 83.1).

Prior to January 8, 1998, the City of Detroit had not requested to be either an interested party or an informed party concerning the MBPI petition, or participated in any way in the MBPI acknowledgment process. Whittlesey’s letter stated:

The concerns of the City arise from the recently-disclosed fact that the Gun Lake Band intends to seek lands for gaming in the Detroit area, despite the fact that its traditional lands were identified in its Petition materials and by BAR in the proposed determination [emphasis in original] as being far to the north. Because of the geographical distance between the Tribe and the City, Detroit was unconcerned with the proposed determination; however, given the Gun Lake’s current plans to assert rights to lands in the Detroit area, the City clearly will be affected by a final positive determination and seeks time in which to assess the merits of the Petition and the validity of the proposed findings in favor of federal [sic] acknowledgment (Whittlesey to Reckord, 1/8/1998, [1-2]).

This request for an extension was submitted by Whittlesey on behalf of a client which had not expressed any prior interest in the petition or in becoming an interested party. It was submitted only two full working days before the expiration of the regulatory 180-day comment period. Its submission did not allow time for normal decision-making to occur before the public comment period closed by operation of the regulations, and a waiver of the regulations would have been required to reopen it. It did not document the progress of its research, or present arguments to establish good cause under 83.10. By letter dated September 10, 1998, the BIA determined that the City of Detroit was not an interested party within the meaning of 25 CFR Part 83 (Maddox to Whittlesey 9/10/1998).

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On January 9, 1998, Dennis J. Whittlesey submitted a comprehensive Freedom of Information Act (FOIA) request for the MBPI petition files on behalf of the City of Detroit (Whittlesey to Reckord 1/9/1998). On March 26, 1998, Nancy Jemison, Acting Director, Office of Management and Administration, requested some further definition of the FOIA and informed Whittlesey that the material would be provided upon receipt of a statement of "willingness to pay the fees" (Jemison to Whittlesey 3/26/1998). BAR prepared the FOIA materials in order to have them ready to present as expeditiously as possible. As of September 30, 1998, the City of Detroit had not indicated a willingness to pay the fees and has not picked up the materials.

On January 12, 1998, Dennis J. Whittlesey Esq. submitted comments on behalf of the City of Detroit (Whittlesey to Reckord 1/12/1998).

The 60-day regulatory period for the petitioner to respond to third-party comments closed March 13, 1998. The petitioner submitted a response to the third party comment of the City of Detroit (MBPI Response 1998) and a final membership list (MBPI List 1998). These submissions were timely.

BAR began preparation of the technical report for the final determination on April 7, 1998. The BIA notified David K. Sprague, chairman of the petitioning group, of this action by telephone. Under 25 CFR Part 83 this began a 60-day period for issuance of the final determination (25 CFR 83.10(l)(2)).<sup>2</sup>

### **Overview of the Proposed Finding.**

*Introduction: Relationship of the Summary under the Criteria to the Technical Reports.* The Summary Under the Criteria and Evidence for Proposed Finding, Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan, signed by Assistant Secretary - Indian Affairs (AS-IA) Ada E. Deer on June 23, 1997, is the Proposed Finding under the 25 CFR Part 83 regulations for Federal acknowledgment of Indian tribes. The notice of this Proposed Finding was published in the Federal Register on July 16, 1997 (62 FEDERAL REGISTER 136, 38113-38115).

Both the third party comments and the MBPI response that will be discussed in this technical report attributed the Proposed Finding to BAR. The third party comments

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<sup>2</sup>The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension (25 CFR 83.10(l)(3)). By letter dated August 26, 1998, the AS - IA extended the time in which to prepare the final determination for 30 days from receipt of the letter (Gover to Sprague 8/26/1998).

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implied that every item quoted or cited in the technical reports was “relied upon” by the proposed finding. Because of these misunderstandings, the following clarification is necessary.

Decisions on Federal acknowledgment of Indian tribes are not made by the Branch of Acknowledgment and Research (BAR), which is located within the Office of Tribal Services (OTS) of the Bureau of Indian Affairs (BIA). Decisions are made by the Assistant Secretary - Indian Affairs (AS-IA), Department of the Interior.

The Summary Under the Criteria and Evidence for Proposed Finding signed by the AS-IA was accompanied by three technical reports prepared by BIA researchers. The function of these technical reports is to present the facts on the petitioner for the AS-IA in order that he may reach a decision. The technical reports do not, however, constitute the decision making document. The reports analyze and discuss the supporting documentation and are much more extensive than the Summary under the Criteria.

The Summary Under the Criteria, which is the decision-making document, describes the primary evidence which the AS-IA relied upon for a decision. In most cases a decision is based on a substantial body of evidence, derived from a variety of sources, rather than a single document. The Summary Under the Criteria does not specifically describe every piece of evidence that was relied upon.

The fact that a particular document is cited, discussed, or described in a technical report shows that it was evidence which was considered but does not mean that it was evidence relied upon in making the decision. A finding must consider a broad variety of evidence that is presented in a petition. The BIA reviews and considers all materials submitted by the petitioner and by third parties, as well as material obtained by BIA researchers. The administrative record of a case includes all of the materials considered in reaching a determination, whether specifically cited in a technical report or decision or not, and whether relied upon or not.

Similarly, the listing of an item, whether an original, primary document or a secondary source, in the bibliography or “List of Sources” that accompanies a Proposed Finding does not necessarily mean that the AS-IA “relied upon” that item. The “List of Sources” provides citations for all items considered or reviewed in the technical reports, whether or not they were utilized for the Summary Under the Criteria and whether or not the assertions made in the item were accepted by the AS-IA. The appearance of a book title or document in any bibliography does not mean that the author “relied upon” that document or book, but only that the author considered some portion of that document or book. Every item discussed in the technical reports is included in the “List of Sources,” even if the item was specifically repudiated in the finding.

*Prior Federal Acknowledgment under 25 CFR 83.8.* The AS-IA determined in the Proposed Finding that the petitioner had previous unambiguous Federal acknowledgment through the date of the 1855 Treaty of Detroit, to which the band's chief, Shop-quo-ung aka Moses Foster, was a signatory. The date of the band's final annuity payment under this treaty, 1870, was used as the date of last unambiguous prior Federal acknowledgment, which enabled the petitioner to proceed under criteria 83.7(a-g) as modified by the provisions of 83.8. This was not an official finding that Federal acknowledgment ceased in 1870, but is the date used solely for acknowledgment purposes.

*Conclusions under the Mandatory Criteria.* The AS-IA found that the MBPI did meet all seven criteria required for Federal acknowledgment (MBPI PF, Simm. Crit. 1).

Under criterion 83.7(a) as modified by 83.8(d)(1), the petitioner had been identified as an American Indian entity and as the same group as the one previously federally acknowledged on a substantially continuous basis since 1870. Such identifications existed in Federal records, by the BIA, by the Methodist Church, by local historians, and by local newspapers (MBPI PF, Summ. Crit., 5).

Under criterion 83.7(b) as modified by 83.8(d)(2), the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present (MBPI PF, Summ. Crit., 10). In addition, the petitioner demonstrated that it had been a distinct community historically from the date of last prior unambiguous Federal acknowledgment until the modern period (MBPI PF, Summ. Crit., 6).

Under criterion 83.7(c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of leadership identified by knowledgeable sources, along with at least one other form of evidence, for part of the period from 1870 to the present (MBPI PF, Simm. Crit., 11). During the periods when the group did not maintain a formal governing structure,<sup>3</sup> a significant level of bilateral political influence or authority within the community was maintained by indigenous ordained and lay ministers through the Methodist Indian mission at Bradley, Michigan (MBPI PF, Summ. Crit. 11-12). Additionally, under the provisions of interaction between criterion 83.7(b) and 83.7(c), there was further substantiating evidence (MBPI PF, Summ. Crit., 12-13).

Under criterion 83.7(d), the petitioner submitted copies of its governing document, thus meeting the criterion (MBPI PF, Summ. Crit. 17).

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<sup>3</sup>That is, did not have a formally designated chief, chairman, president, council, business committee, board of directors, etc. specifically described as a tribal governing body.

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Under criterion 83.7(e), the BIA determined that all of the petitioner's members on the membership list dated October 20, 1994, were of American Indian ancestry, of Michigan Potawatomi ancestry, and descended from persons listed on the 1904 Taggart Roll (MBPI PF, Summ. Crit. 18-19).

Under criterion 83.7(f), after an extensive analysis of the relationship of MBPI enrollment to that of another petitioner, Huron Potawatomi, Inc. (HPI), the membership of the petitioner was found to be composed principally of persons who were not members of any acknowledged North American Indian tribe (MBPI PF, Summ. Crit., 19).

Under criterion 83.7(g), neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (MBPI PF, Summ. Crit. 21).

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

MBPI did not submit a response to the Proposed Finding, either in the form of a narrative or in the form of additional documentation, with the exception of the updated membership list as noted above.

### **THIRD PARTY COMMENTS**

The BIA received only one set of third-party comments concerning the MBPI petition for Federal acknowledgment. These were divided into two substantive sections, the third comprising a *curriculum vitae* of the author of one of the sections.

On January 12, 1998, Dennis J. Whittlesey, Esq., 1090 Vermont Avenue, N.W., Suite 800, Washington, D.C. 20005, submitted a letter on behalf of his client, the City of Detroit (Whittlesey to Reckord 1/8/1998b), listing six points, stating that "the following thoughts are emphasized for the BAR's consideration" (Whittlesey to Reckord 1/8/1998b, [2]). With the letter were Dr. James M. McClurken's "Preliminary Comments Regarding the Branch of Acknowledgment and Research Proposed Finding for Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan," dated January 12, 1998.

## PETITIONER'S RESPONSE TO THIRD PARTY COMMENTS

On February 2, 1998, Bill [William L.] Church, Secretary of State, Match-e-be-nash-she-wish Band, sent BAR a four-page letter concerning the City of Detroit submissions (Church to Reckord 2/2/1998). On March 12, 1998, the petitioner submitted a formal response to the comments submitted on behalf of the City of Detroit (MBPI Response 1998) and a final membership list (MBPI List 3/12/1998).

The petitioner stated that it, "remains our position that the Whittlesey letter does not constitute comment as it was submitted out of compliance with the regulations and the time frames published in the Federal Register" (MBPI Response, 1). This referred to the several objections raised by the petitioner to not having received copies of the comments by the close of the 180-day regulatory period. The petitioner also asserted that, "the Whittlesey Letter does not represent the comments of an 'interested party' as defined in the regulations" (MBPI Response 1998, 1).<sup>4</sup>

## ITEM BY ITEM ANALYSIS OF COMMENTS AND RESPONSE

Neither the petitioner nor third parties submitted new evidence for consideration in the Final Determination, with the exception of the petitioner's submission of a final membership list, which is discussed below in the section on enrollment issues.

**Presentation in the Technical Report.** The technical report for the Final Determination will handle the comments submitted pertaining to the Proposed Finding and the MBPI Response as follows.

*Third Party Comments.* In the first section, the technical report will present Dennis J. Whittlesey's comments on behalf of the City of Detroit. Each of Whittlesey's main points will be quoted in full, followed by the MBPI response to the point.

In a second subsection, the technical report will discuss Dr. James McClurken's comments on behalf of the City of Detroit. MBPI did not submit a specific response to McClurken's comments, although they were occasionally referenced in the response to Whittlesey. As McClurken's report comprised a narrative rather than a list of points, the structure of this portion of the technical report will necessarily be less formal than the discussion of Whittlesey's points.

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<sup>4</sup>By letter dated September 10, 1998, the BIA determined that the City of Detroit was not an interested party within the meaning of 25 CFR Part 83 (Maddox to Whittlesey 9/10/1998).

*MBPI Response to Whittlesey's Comments on Behalf of the City of Detroit.* On March 12, 1998, MBPI submitted an eight-page document titled, "Match-e-be-nash-she-wish Band of Pottawatomi Indians response [sic] to Whittlesey Letter" (MBPI Response 1998). As the MBPI response was more extensive than the Whittlesey letter, the replies to each point are quoted only in part below, with the remainder summarized. Where relevant, the MBPI response to the point will include statements from Bill Church's February 2, 1998, letter (Church to Reckord 2/2/1998).

*BIA Analysis.* In the section covering Whittlesey's comments, the MBPI response to the City of Detroit will be followed by the BIA analysis of the relevance of both the Whittlesey comments and MBPI response to the Federal acknowledgment criteria. In the section covering McClurken's comments, the summary of their contents will be followed by the BIA analysis of their relevance to the Federal acknowledgment criteria.

**Dennis J. Whittlesey's Comments on Behalf of the City of Detroit.** Dennis J. Whittlesey headed a letter dated January 12, 1998, "Re: Gun Lake Band of Pottawatomi Indians of Michigan." He stated that the letter was "in response to the proposed positive determination of the Branch of Acknowledgment & Research ("BAR") on the Petition for Federal Acknowledgment of the referenced group" (Whittlesey to Reckord 1/12/1998, [1]). Whittlesey stated that "[t]he McClurken critique speaks for itself, but the following thoughts are emphasized for the BAR's consideration" (Whittlesey to Reckord 1/12/1998, [2]). The Whittlesey letter then made six major points, numbered by the writer. Each of these is quoted in full below.

***Whittlesey's Point 1.***

1. The group has publicly declared its intention to seek "initial reservation" status for land in the Detroit suburbs so as to conduct [sic] gaming under the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. Section 2701, et seq. ("IGRA"). Such brings into serious question whether the current membership has any relation to the historic tribe; this is underscored by the Petition's reliance on the group [sic] purported close ties to the Bradley church, tied [sic] its leadership apparently are prepared to sever in the interests of gaming revenues.

In this writer's experience, legitimate tribal groups are inextricably wedded to their historic lands and the current gaming proposals are directly contrary to this notion (Whittlesey to Reckord 1/12/1998, [2]).

*MBPI Response to Whittlesey's Point 1.*

Although the following section of the MBPI response was not specifically noted as pertaining to Point 1, its position in the document and internal content indicates that it was so intended. The petitioner asserted:

Whittlesey's principal concern is speculation on the creation of an initial reservation in Detroit because of supposed gaming issues. This stated concern is totally irrelevant to the investigation and determination required under Part 83 of the CFR. The Tribe cannot be responsible for speculation by either the press or Mr. Whittlesey [*sic*] and nowhere in Part 83 is there any reference to or authority for determining "initial reservations" through the BAR process (MBPI Response 1998, 1).

The response then summarized and restated the land claims which the MBPI had asserted in its petition (MBPI Response, 1-2) and asserted, "The Whittlesey mention of IGRA has nothing to do with the BAR process. Land taken into Trust [*sic*] should not now become part of the basis for a decision on our Tribe's already proposed positive determination" (MBPI Response 1998, 2).

*BIA Analysis of Whittlesey's Point 1.*

The issue of the possible location of future trust land, to be utilized for gaming or any other purpose, is not relevant to the 25 CFR Part 83 regulations governing the criteria and process for Federal acknowledgment of petitioners.

Acknowledgment decisions also do not determine whether a petitioner has a meritorious land claim (MBPI Historical Technical Report, 16-17). The resolution of a land claim normally involves different if overlapping historical and legal issues and may draw on different evidence or ask different questions of the same evidence than does a decision on acknowledgment. A land claim is generally concerned with precise descriptions of territory and its use by a claimant, and others, over a period of time. It may involve legal and factual issues concerning that usage which are not pertinent to an acknowledgment decision, which is concerned with demonstrating continuous tribal existence. Because of this difference in purpose, a finding for purposes of Federal acknowledgment usually does not consider the identical body of evidence as would a judgment on a land claim. No regulatory process currently exists to resolve land claims. Such claims must be litigated or resolved by legislation.

None of the seven mandatory criteria for acknowledgment would be affected even if Mr. Whittlesey's assertions had evidenced that the petitioner was planning to request trust

land outside the Allegan County, Michigan, area. The taking of land into trust becomes an issue only after a tribe is federally acknowledged, and is governed by a wide variety of regulations and policy decisions, none of which pertain to the 25 CFR 83.7 criteria.

Additionally, there is no evidence in the record other than Mr. Whittlesey's letter that MBPI has any intention of abandoning the group's traditional territory near Bradley in Allegan County, Michigan. The possibility that the group might seek additional trust territory elsewhere does not automatically imply such an action. Numerous federally acknowledged tribes have begun initiatives to obtain trust land in areas that are not contiguous with or in proximity to their current reservation trust territories. The acknowledgment regulations do not require a territorial basis (59 FR 1980, 9286-9287).

***Whittlesey's Point 2.***

2. Church activities do not constitute the type of "political influence" which BAR traditionally has demanded of petitioning groups. This matter is discussed by Dr. McClurken, but we strongly reject the tenuousness of this analysis for determining continuing tribal existence. Our questions are buttressed by the group's changing identification of its historical antecedent, moving from Ottawa to Pottawatomi, and recruiting members from another tribe as though they [sic] entities were social clubs and not Indian tribes.

Again, we see gaming revenue as lying at the heart of this group [sic] current existence, for they seem willing to trade land ties and tribal affiliations for little apparent reason other than the current economic opportunity represented by the Sungold casino venture (Whittlesey to Reckord 1/12/1998, [2]).

***MBPI Response to Whittlesey's Point 2.***

The petitioner's comments under Point 2 addressed not only the specific statement made by Mr. Whittlesey, but also some of the comments made by Dr. McClurken (MBPI Response 1998, 2). They stated:

The activities and organization of the Tribe, including church related activities, particularly when viewed in the context of Michigan Indian Policy, and the Gun Lake Tribe experience clearly support the determination made by BAR. The Indian Mission as a Tribal activity was created by the policy of the United States War Department which was in charge of Indian Affairs. As such the Missions were implanted within the

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Michigan Tribes as part of **Congressional intent** and as a overt part of United States Indian Policy (MBPI Response 1998, 2) [capitalization and emphasis sic].

The petitioner then described the establishment of similar missions within other federally acknowledged Michigan tribes and summarized the history of the Bradley mission (MBPI Response 1998, 2-3). Continuing, the response states that:

Mr. Whittlesey incorrectly speculates about various names given historically to the Tribe. These names appear in the United States records as it provided services to the Tribe. The variety of names used by the United States were also due to the personal unfamiliarity of the many Indian Agents who followed Henry Schoolcraft . . . (MBPI Response 1998, 3).<sup>5</sup>

The response asserted that, "Mr. Whittlesey's comments about Sungold are irrelevant. His personal attack on Mr. Church is uncalled for and wrong" (MBPI Response 1998, 3).<sup>6</sup>

*BIA Analysis of Whittlesey's Point 2.*

Part of Whittlesey's Point 2 appears to be addressed to criterion 83.7(c). Whittlesey provided no citations for his statement that, "Church activities do not constitute the type of 'political influence' which BAR traditionally has demanded of petitioning groups" (Whittlesey to Reckord 1/12/1998, [2]). The BIA is willing to look at a wide variety of forms by which leadership may have been exercised in a petitioning group. The definition in the regulations is as follows:

*Political influence or authority* means a tribal council, leadership, internal process or other mechanism which the group has used as a means of

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<sup>5</sup>The MBPI response's statement that, "The role of the Mission Church and the records from the War Department and the Bureau of Indian Affairs support the Tribe's demonstration of a continuously identifiable specific Indian Tribe from Treaty times to the present" (MBPI Response 1998, 3), is not pertinent to the argument concerning criterion 83.7(c) advanced by Whittlesey in Point 2, but appears to apply to Whittlesey's mention of the use of both Ottawa and Potawatomi as historic identifications of the petitioner. The development of the petitioner during the 19th century was extensively discussed in both the historical technical report and the genealogical technical report to the proposed finding. Both historically and genealogically, the Bradley settlement in Allegan County, Michigan, had ties to both of the above historic tribes.

<sup>6</sup>Whittlesey did not mention Mr. Church in Point 2. This apparently refers to the McClurken comments and will be reviewed there.

influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture, and social organization of the group (25 CFR 83.1).

In the case of several other petitions, such as Narragansett, Poarch Creek, Mohegan, and Huron Potawatomi, Inc., the BIA has accepted church activities as demonstrating the existence of political influence or authority within the petitioning group and providing a focus of leadership (Narragansett FD, 48 FR 29, February 10, 1983, 6177;<sup>7</sup> Poarch Creek FD, Summary under the Criteria 5<sup>8</sup>; HPI FD, 60 FR 104, May 31, 1995, 28427<sup>9</sup>). Such leadership is particularly important as evidence if these activities extend beyond the church membership to incorporate the tribe's membership (Mohegan FD, 59 FR 50, March 15, 1994, 12140<sup>10</sup>), as they do in MBPI (MBPI PF, Summ. Crit., 12).

The AS-IA has accepted forms of leadership other than council-type structures in prior positive acknowledgment decisions. The final determination for Poarch Creek stated, "[f]rom the late 1800's through 1950, leadership was clear but informal" (Poarch Creek FD, 49 FR 5, January 9, 1984, 1141).

Leadership exercised through a church, by indigenous ministers, can provide evidence under several categories mentioned in criterion 83.7(c), such as 83.7(c)(1)(i), "The group is able to mobilize significant numbers of members and significant resources from its

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<sup>7</sup>In discussing the era after 1800, "The Narragansett Church organization was an important focus of community organization in this period" (Narragansett FD, 48 FR 29, February 10, 1983, 6177).

<sup>8</sup>"These Leaders . . . organized community efforts such as church and school building in the settlements, . . . were religious church leaders, and fulfilled other functions" (Poarch Creek FD, Summary under the Criteria, 5).

<sup>9</sup>"From 1934 through 1970, the leadership was by a committee closely associated with the Methodist Indian mission on the Pine Creek reservation" (HPI FD, 60 FR 104, May 31, 1995, 28427); after the death of Samuel Mandoka in 1934, "administration of tribal affairs was publicly assumed by a three-man committee which, until 1948, doubled as the Board of Elders of the Pine Creek Methodist church . . . The church committee continued to function until the establishment of a formal tribal government with officers and council in 1970 (HPI PF, Summ Crit. 14).

<sup>10</sup>"Extensive new information was supplied about the importance of the Mohegan Congregational Church as a focus of tribal activity and community in the modern period. This evidence demonstrated that . . . the restoration and reopening had the support of the wider Mohegan community, including members who belonged to other religious faiths" (Mohegan FD, 59 FR 50, March 15, 1994, 12140).

members for group purposes,” or under 83.7(c)(2)(iii) to show that “group leaders and/or other mechanisms exist or existed which . . . exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior.” Indeed, a church located within the residential neighborhood of group members with regular services and a resident minister may serve as a vehicle for exerting considerable influence over the members.

It was not clear whether the following statement by Whittlesey, “Our questions are buttressed by the group’s changing identification of its historical antecedent, moving from Ottawa to Pottawatomí, and recruiting members from another tribe as though they [sic] entities were social clubs and not Indian tribes” (Whittlesey to Reckord 1/12/1998, [2]) was directed at criterion 83.7(a), identification of an Indian entity; criterion 83.7(b), community; or 83.7(f), dual enrollment. Criterion 83.7(a) is directed to identification of a group by others, not at changes of name by the group itself. Enrollment issues and their relation to community are discussed more extensively below, under Whittlesey’s Point 3. The mention of “land ties” (Whittlesey to Reckord 1/12/1998, [2]) has already been discussed above under Whittlesey’s Point 1.

***Whittlesey’s Point 3.***

3. The June 23 finding identifies 148 members, of which 140 were enrolled Huron Potawatomi until sometime in 1992.<sup>11</sup> This means that approximately 95 percent of the tribal membership had no identification as Gun Lake Ottawa or Gun Lake Pottawatomi until only a few years ago, leaving eight individuals as the “long term” members of the petitioning group. Such does not make for a tribe<sup>12</sup> and fails to satisfy Criteria [sic] 83.7(b) (Whittlesey to Reckord 1/12/1998, [2]) [footnotes added].

***MBPI Response to Whittlesey’s Point 3.***

The petitioner responded:

From 1988 to 1991 the two distinct Tribal communities (the Huron Potawatomi Tribe and the Match-e-be-nash-she-wish Tribe) attempted to

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<sup>11</sup>For the errors involved in these numbers and dates, see the discussion below under the McClurken report, as Whittlesey derived the statistics from McClurken’s summary.

<sup>12</sup>It is not entirely clear whether Mr. Whittlesey was arguing that eight persons do not constitute a tribe, or whether the recent transfer of formal membership from HPI into MBPI by the majority of the current members does not constitute a tribe.

work together for the purpose of successfully completing the Federal Acknowledgment Process. These two Tribes had previously cooperated in a Supreme Court action and as a result had a distinct Roll prepared (the Taggart Roll of 1904) by the United States . . . .

Prior efforts at cooperation of these two tribes had earlier ended in bitter controversy in 1979. After years of being stalled as a petitioner, Gun Lake leaders sought to reestablish a form of cooperation. An attempt was made in 1988 by both Tribes to formalize relations between the two tribes and to form a Tribal Council representation of the two tribes. Like the 1979 attempt, the effort ended in utter failure in 1991. The Tribes realized that cooperation was impossible and they continued their efforts alone (MBPI Response 1998, 3-4).

The response then continued by summarizing the subsequent development of the two petitions for Federal acknowledgment, HPI and MBPI, after 1992 (MBPI Response 1998, 4).

*BIA Analysis of Whittlesey's Point 3.*

Dual enrollment *per se* does not fall under criterion 83.7(b), community, as cited by Whittlesey, but rather under criterion 83.7(f), enrollment in another federally acknowledged tribe--specifically, in this instance, HPI. Enrollment evidence may be pertinent to criterion 83.7(b), but it is not dispositive. Under 83.3 Scope, the regulations state:

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe (25 CFR 83.3(d)).<sup>13</sup>

The third party comments present the argument that if an individual appeared on the membership list of another tribe or, in the case of HPI, of another unacknowledged Indian entity, this indicates that the individual had no ties to the petitioning group. They also

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<sup>13</sup>Cf. particularly the findings concerning San Juan Southern Paiute.

present the related argument that if members of an Indian community enroll elsewhere, this indicates that no Indian community exists.

However, individuals who are eligible for enrollment in more than one entity make choices for a variety of reasons--the availability of health benefits and other services through a federally acknowledged tribe, for example. The inclusion of their names on the membership list of another organization does not automatically or necessarily mean that they are not participating in the activities of the petitioning group (see 25 CFR 83.7(f)). It does not mean that the petitioning group has had no separate identity as a community under 25 CFR 83.7(b).<sup>14</sup>

The appearance of the names of current MBPI members on prior HPI membership lists, under circumstances explained in the HPI and MBPI Proposed Findings, is not significant evidence as to the identification of these individuals or their affiliation with the Allegan County community. In the proposed finding, the BIA provided an extensive discussion of the enrollment history of the petitioner, from the preparation of the Taggart Roll for the purpose of Potawatomi claims in 1904<sup>15</sup> through the activities of Huron Potawatomi, Inc. (HPI) beginning in the 1970's (MBPI PF, Summ. Crit., 18-20; MBPI PF, Genealogical Technical Report, 12-33). There is no question that the great majority of the residents and descendants of the Bradley settlement in Allegan County, Michigan, participated in the modern claims activities under the umbrella of the HPI organization. However, by their very nature, descendency rolls are not dispositive of issues of tribal enrollment or of community.

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<sup>14</sup>The regulations define "community" for the purposes of 83.7(b) as follows:

*Community* means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group (25 CFR 83.1).

The forms of evidence which a petitioner may use to demonstrate the existence of community, both historically and currently, are listed under 83.7(b).

<sup>15</sup>The Taggart Roll was prepared by the BIA for the purpose of the distribution of Michigan Potawatomi claims payments. It excluded the Pokagon Potawatomi, who were covered by a separate descendency roll. It included the members of the Pine Creek community in Calhoun County, the members of the settlement in Allegan County, and numerous other Michigan Potawatomi descendants throughout the state. Both HPI and MBPI require listing of an ancestor on the Taggart Roll as a prerequisite for membership. However, neither accepts for membership descendants of all persons listed on the Taggart Roll.

From 1988 through 1992, a period when the Bradley settlement members joined in the HPI petition for Federal acknowledgment, their names were, as mentioned by Whittlesey, on the HPI membership lists. However, this did not constitute membership in any other federally acknowledged tribe as mentioned in criterion 83.7(f), because HPI itself was not, at that time, federally acknowledged. MBPI withdrew as a group from the HPI petitioner before the issuance of the HPI proposed finding. The BIA had on hand a formal MBPI membership, with relinquishments, before the HPI final determination was issued. The HPI membership list used for purposes of the final determination did not include the MBPI members. MBPI members were not HPI members at the time HPI received Federal acknowledgment. MBPI members had, as amply documented, been associated with the settlement near Bradley in Allegan County, Michigan, throughout historical times to the modern period.

*Whittlesey's Point 4.*

4. The group's petitioning leader [*sic*] is William Church, and he was identifying the group as the Gun Lake Band of Ottawa as recently as 1993. Again, we must question whether this group traces to the treaty-signing Potawatomi of 1855.

As you know, a "tribe" is more than individuals who are Indians and have ancestors who were in the Gun Lake Band of Ottawa or Gun Lake Band of Pottawatomi. The absence of tribal identification by these people is dramatized by two elements:

- i) the 95 percent of Gun Lakes who were enrolled at Huron Potawatomi, and
- ii) the current attempts by scores of Gun Lake "members" who are re-enrolling elsewhere, as is reported by Dr. McClurken (Whittlesey to Reckord 1/12/1998, [3]).

*MBPI Response to Whittlesey's Point 4.*

In connection with the fluctuating identification between Ottawa and Potawatomi, the MBPI response commented under its own point 7:

The official reference to our Tribe as Pottawatomi Indians which we requested in 1995 comes directly from United States Supreme Court action from 1890-1902, where the Supreme Court took up the issue of which tribes should be paid for Pottawatomi claims. The Match-e-be-nash-she-

wish Band was then identified as one of those tribes whose members the courts agreed should be paid and whose names are also enumerated on the Taggart Roll. Since the Taggart Roll is noted as a "Pottawatomi" Indian Annuity Roll the Tribe determined to designate itself as Pottawatomi (MBPI Response 1998, 8).

Under its point 4, MBPI replied that, "Whittlesey incorrectly states that Mr. Bill Church is the Tribe's leader" (MBPI Response 1998, 4).<sup>16</sup> It then summarizes the usage of the term "Gun Lake Village Band" by Henry Schoolcraft under the Compact of June 5, 1838, reiterating that, "This Compact allowed the Tribe to be paid at Grand Rapids and to be known as the Gun Lake Village Band, along with the Ottawa Bands from the Grand River region, . . ." (MBPI Response 1998, 5). After further historical summary, the response states:

It is incorrect for Mr. Whittlesey, without benefit of the Tribe's extensive research, to suggest that the Tribe is made up of "individuals who were merely a group of Indians". He totally misconstrues [*sic*] the name changes of the Tribe which have already passed the intensive study and genealogical review steps required by BAR under 25 CFR 83.

The Tribe has documented that it is not only the ancestors [*sic*]<sup>17</sup> of the Griswold Colony as it existed from 1839 to 1855, but also are descended directly from the Match-e-be-nash-she-wish Band from the 1821 Treaty (MBPI Response 1998, 6) [capitalization and punctuation *sic*; footnote added].

*BIA Analysis of Whittlesey's Point 4.*

The proposed finding provided an extensive discussion of the issue of the various names used by the petitioning group. Not only did the group identify itself as Gun Lake in 1993, but it also still uses that description colloquially. The name utilized does not affect the reality of the existence of a continuously existing particular Indian entity near Bradley in

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<sup>16</sup>Whittlesey stated "petitioning" leader (Whittlesey to Reckord 1/12/1998, [3]). This would be correct in the sense that Church was the primary author of the petition, and designated as the MBPI primary contact with the BIA for petition purposes.

<sup>17</sup>The word "ancestors" was apparently meant to be "descendants."

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Allegan County, Michigan,<sup>18</sup> which can be identified from an abundance of historical sources from the late 1830's to the present, even if under a wide variety of descriptors. Neither do the fluctuating names used by the petitioner's formal organization negate the clear genealogical descent of the current MBPI membership from the "treaty-signing Potawatomi of 1855" mentioned by the commenter (Whittlesey to Reckord 1/12/1998, [3]).

Whittlesey's Point 4.i is a repetition of an argument he had already made in Point 3. This issue has been analyzed above under Point 3.

Whittlesey's Point 4.ii that "scores of Gun Lake 'members'" were "re-enrolling elsewhere" (Whittlesey to Reckord 1/12/1998, [3]) depended upon an assertion in the McClurken report that:

twenty-five Matche-be-nash-she-wish [sic] Band of Pottawatomi Indians community members have enrolled with the Little River Band of Ottawa Indians, and that tribe is still receiving applications for membership [footnote 17, citing "Phone Conversation with Little River Band Tribal Enrollment Officer, January 12, 1998"].

The BIA sent the names and birthdates of the 49 persons on the MBPI 1994 membership list (MBPI List 10/20/1994) who were not on the MBPI 1998 membership list (MBPI List 1998) to the Michigan Agency for verification. The Michigan Agency indicated that there was one duplicate entry, three persons in one tribe, three persons not enrolled elsewhere, six persons in a second tribe, 11 persons in a third tribe, and 25 persons currently enrolled with the Little River Band of Ottawa Indians.

The regulations provide that the historical context of events is to be taken into account in the evaluation. The data did not indicate that persons formerly enrolled with MBPI were, as a group, choosing to join any other single tribe according to a pattern. Rather, they were individual choices based on a variety of factors, including being listed on a base roll of another tribe in order to maximize choices for themselves and their future generations, or to obtain health benefits. The context was analyzed in light of the out marriage patterns in Michigan tribes, fact that base rolls are being compiled for several Michigan tribes simultaneously, the eligibility of individuals for membership in a number of tribes, and the fluidity of Michigan membership patterns. MBPI families as a whole were not leaving the petitioner. Allowing for the duplicate entry, the analysis of the 48 persons

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<sup>18</sup> The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name (25 CFR 83.7(b)(viii)).

who disenrolled from MBPI between 1994 and 1998 indicated that their disaffiliation had minimal relevance for the MBPI's modern community and the disenrollments did not change the character of the group.

McClurken's information is discussed below in the section on the McClurken Report. See also the extensive discussion below, in the section on enrollment issues, of the relationship of the MBPI membership list containing 143 members provided for BIA use in preparation of the final determination (MBPI List 1998) to the membership lists of March 1994 (MBPI List 1994, Pet. Doc. 406) and October 1994 (containing 140 members) (MBPI List 10/20/1994). The October 1994 list was used by the proposed finding for purposes of current enrollment issues.

*Whittlesey's Point 5.*

5. The June 23 findings note that the Bradley church congregation has been identified for years as Indian. However, there is no suggestion that the members have been identified as members of any tribe, and it is a matter of regulation that the mere possession of Indian blood by members of the group does not transform them into a tribe meriting federal acknowledgment.<sup>19</sup> Yet, Indian blood seems to be the only common ingredient BAR can identify for the Gun Lake membership, since they have not been members of this group for more than a few years, they seem to have no identification with the claimed ancestral lands and they are leaving the Gun Lake Band in droves as this is being written (Whittlesey to Reckord 1/12/1998, [3]) [footnote added].

*MBPI Response to Whittlesey's Point 5.*

The petitioner responded that:

Mr. Whittlesey makes an unsupported assertion that "scores of members are enrolling elsewhere." This Tribe has always had a strong and supportive significant core membership. It has been difficult for our members to forego health and other federal benefits while the Tribe seeks acknowledgment (MBPI Response 1998, 6).

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<sup>19</sup>Mr. Whittlesey was presumably referring to the preamble to the Acknowledgment regulations as published in 1978, which stated that "groups of descendants will not be acknowledged solely on a racial basis. Maintenance of tribal relations—a political relationship—is essential" (Bureau of Indian Affairs 1978).

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MBPI made a notation as its point 6, "On the subject of the Bradley Church, and allegation that members are not identified as from a specific Tribe, . . . has been adequately addressed by our responses to 1-5" (MBPI Response 1998, 6).

*BIA Analysis of Whittlesey's Point 5.*

Whittlesey stated that, "The June 23 findings note that the Bradley church congregation has been identified for years as Indian. However, there is no suggestion that the members have been identified as members of any tribe, . . ." (Whittlesey to Reckord 1/12/1998, [3]).<sup>20</sup> This is incorrect. The technical reports to the Proposed Finding clearly tied the mission church at Bradley to a continuously existing Indian entity. The entity was a community of long standing, whether called the Bradley Indians, the Allegan Indians, or other names. The regulations require that the identification be of an "entity." The identification need not say "tribe" (83.7(a)). The technical reports also showed that the mission church at Bradley was connected through a chain of historical evidence to its members' Potawatomi and Ottawa antecedents in specific bands (MBPI PF, Historical Technical Report 38-44, 49-60) pertinent to the analysis under 83.7(b), 83.7(c), and 83.7(e). In fact, another portion of the comments submitted on behalf of the City of Detroit, the McClurken Report, stated:

Evidence in the genealogical technical report demonstrates that most of the people who attended the Bradley and Salem churches were Indians and that they descended from the Shaboquong [*sic*] and his band. The historical and anthropological reports show that these Indians did not lose their Indian identity, intermarried, and had regular interactions with one another (McClurken 1998, 7).

There is no indication whatsoever in the record that the mission at Bradley, either in its beginnings as the "Griswold Colony" or subsequently, was equivalent to a modern urban pan-Indian mission intended to service individuals from a wide variety of tribal and geographical origins. Rather, it served a specific Indian community.

Whittlesey stated that, ". . . Indian blood seems to be the only common ingredient BAR can identify for the Gun Lake membership, since they have not been members of this group for more than a few years, . . ." (Whittlesey to Reckord 1/12/1998, [3]). Whittlesey here was apparently asserting the point of view that only inclusion on a formal membership list specified as being that of MBPI would indicate membership in the petitioning group and participation in its community. This is not the standard under the

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<sup>20</sup>Whittlesey did not cite to any specific reference in the proposed finding.

25 CFR 83 regulations. The technical reports to the proposed finding indicated clearly that the Indian settlement near Bradley in Allegan County, Michigan, under whatever name, had existed as an identifiable entity since the late 1830's, and that the direct and collateral ancestors of the members of the MBPI petitioner had been documented as part of that entity. See also the discussion in the proposed finding under 83.7(b) which discussed the common ties among the MBPI members (MBPI PF, Summ Crit., 6-10).

The introductory "Comments" section to the publication of the revised 1994 25 CFR Part 83 regulations in the FEDERAL REGISTER provides perspective on the issue of the MBPI members' descent from both Potawatomi and Ottawa:

*Comment:* Two commenters questioned the adequacy of the language allowing ancestry to be derived from historic tribes which combined into one autonomous political entity. They interpreted it as requiring a formal union, even though tribal mergers more often occur informally. They also thought allowance should be made for the movement of families among tribes.

*Response:* The present language does not require a formal union, and past acknowledgment decisions have not required it. The previous decisions have also allowed for the movement of families between tribes . . . (59 FR 38, February 25, 1994, 9288).

If Whittlesey, by his statement that, "they have not been members of this group for more than a few years" (Whittlesey to Reckord 1/12/1998, [3]), was referring to earlier MBPI enrollment with HPI (see his Point 3 and his Point 4.1), the issue has been discussed above under Point 3. If he was referring by this phrase to the 1992 incorporation of MBPI for purposes of presenting a petition for Federal acknowledgment, the regulations provide that a change in form does not preclude acknowledgment. As stated under the scope of the regulations (83.3):

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in 83.7(a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision (25 CFR 83.3(c)).

One assertion made by Whittlesey under Point 5 is technically accurate, but incomplete. He states: "it is a matter of regulation that the mere possession of Indian blood by members of the group does not transform them into a tribe meriting federal acknowledgment" (Whittlesey 1/12/1998, [3]). The 25 CFR regulations do not consider a

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group of Indian descendants, comparable to the Daughters of the American Revolution or other hereditary societies, whose members have only descent from a defined ancestral group in common, to be an acknowledgeable organization. However, since the proposed finding concluded that the MBPI petitioner met not only the genealogical standard of descent as defined in criterion 83.7(e), but also the remainder of criteria 83.7(a-g) as modified by 83.8, it did not fall into this category.

Whittlesey's statement that, "they seem to have no identification with the claimed ancestral lands" (Whittlesey to Reckord 1/12/1998, [3]) has been addressed above under Point 1.

There is no indication that the group's members, as claimed by Whittlesey, "are leaving the Gun Lake Band in droves as this is being written" (Whittlesey to Reckord 1/12/1998, [3]). The Genealogical Technical Report for the MBPI proposed finding indicated that because of traditional marriage patterns among Michigan Indians, many members of the Bradley settlement had, through another parent or grandparent, eligibility to enroll in one or more of the recently acknowledged Michigan tribes, such as Pokagon Potawatomi, HPI, or Little River Ottawa (MBPI PF, Historical Technical Report 102; MBPI PF, Genealogical Technical Report 27-29, 45, 51). Such eligibility is not a disqualification for Federal acknowledgment under 25 CFR 83.7(e), and in this case, the possibility of re-enrollment with MBPI exists under its 1996 constitution (see discussion in the section on enrollment issues, below; see also the discussion under Whittlesey's Point 4, above).

***Whittlesey's Point 6.***

6. Finally, we note that Dr. McClurken has raised the question of whether the 1855 treaty signatory Sagana was the Pottawatomi son of Match-e-be-nash-she-wish (who lived far from the site of the treaty council) or an Ottawa with the same name (who lived very near the council site). This is a matter of great concern to any observer since the 1955 [*sic*] treaty signing is cited by BAR as evidence of prior recognition for the Gun Lake Band of Pottawatomi Indians. It just may be that Mr. Church was correct in 1993 (and prior thereto) when he repeated [*sic*] identified the group as the Gun Lake Band of Ottawa. Certainly, BAR should revisit this matter since it is one of the pivotal points on which the modern group's claims is [*sic*] based (Whittlesey to Reckord 1/12/1998, [3]).

*MBPI Response to Whittlesey's Point 6.*

MBPI responded to Whittlesey's Point 6 under the response's Point 7 (MBPI Response 1998, 7). The response analyzed three different chiefs with similar names, pointing out that the Potawatomi Chief Sah-ge-naw, formerly from Prairie Ronde, mentioned in 1838 as head of the Gun Lake Village Band, died in 1843, and therefore could not have been the treaty signer in 1855 named Sagana (MBPI Response 1998, 7). It concluded:

Thus the Tribe under Match-e-be-nash-she-wish, then later under Penasee, then later under Shape-quong (Moses Foster) was also the Tribe which the United States Supreme Court agreed was to also be paid under an existing "Pottawatomí" Tribe Claims docket. Thus this Supreme Court recognized that the Tribe is properly named the Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan (MBPI Response 1998, 8) [spelling and emphasis *sic*].

*BIA Analysis of Whittlesey's Point 6.*

Mr. Whittlesey's comment was based on a mistaken reading of the data presented by Dr. McClurken. First, the historical and genealogical technical reports to the proposed finding never identified any treaty signatory named "Sagana" as either the son of Match-e-be-nash-she-wish or as the leader of the petitioning group at the time it joined in the 1855 Treaty of Detroit.

Second, whether or not the 1855 treaty signatory "Sagana" listed as head of the Gun Lake Village Band in 1839 was a Potawatomi from Prairie Ronde or was an Ottawa is not significant, because the determination of prior unambiguous Federal acknowledgment was not based either on his leadership role or his signature. There is no question that Match-e-be-nash-she-wish and his band were also residing at Gun Lake (the Griswold Colony), since he and his son were listed as heads of families (MBPI PF, Genealogical Technical Report 54; name spelled as Mudge-a-pen-a-see-wish). The son of Match-e-be-nash-she-wish who succeeded him as leader of the Allegan County, Michigan, settlement was named Penasee. He died prior to the 1855 treaty. The 1855 treaty was signed by Penasee's son Shop-quo-ung, aka Moses Foster, who survived until after 1900 and continued as leader throughout that period. Both Moses Foster's ancestry and his career are well documented (MBPI PF, Historical Technical Report 60, 73, 88, 114).

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McClurken's "Preliminary Comments Regarding the Branch of Acknowledgment and Research Proposed Finding for Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan," Submitted on Behalf of the City of Detroit. Dr. McClurken's "Preliminary Comments" (McClurken 1998) consisted of 11 typewritten pages. The report contained an introductory section headed "Scope of the Review" (McClurken 1998, 1-2) and three analytical sections, headed, respectively: "Territoriality and Claims" (McClurken 1998, 2-4), "The Acknowledgment Criteria and Findings" (McClurken 1998, 5-9), and, "The Petitioner and the Casino" (McClurken 1998, 9-11).

*McClurken's Section Headed "Scope of the Review"* (McClurken 1998, 1-2).

In the introductory section headed "Scope of the Review," McClurken stated:

Legal Counsel for the City of Detroit, on January 7, 1997 [*sic*],<sup>21</sup> asked me to examine the Bureau of Indian Affairs, Branch of Acknowledgment and Research (BAR), "Proposed Finding for the Federal Acknowledgment of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians of Michigan." The City of Detroit's interest in the findings arose from an announcement<sup>22</sup> that this federally unacknowledged Indian group and Sungold Gaming International of Vancouver, B.C., intend to build a new casino [*sic*] in the Detroit area. Legal Counsel requested that I examine the proposed findings [*sic*] with two questions in mind (McClurken 1998, 1). [footnotes added]

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<sup>21</sup>Internal evidence in McClurken's report indicates that Dr. McClurken was, in fact, requested to make this examination on January 7, 1998, not on January 7, 1997, and that he therefore had only five days in which to complete the review. He stated:

It is impossible to read this historical data carefully, let alone critique the documentation and analysis thoroughly, in the time remaining for public comment. It is also impossible to gather additional historical information that might refute the findings. The following discussion is based on one [*sic*] reading of "Summary under the Criteria and Evidence for Proposed finding Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan" [capitalization and omitted words *sic*] approved by Assistant Secretary-Indian Affairs Ada Deer on June 23, 1997 and its component parts -- Historical Technical Report, Anthropological Technical Report, and Genealogical Technical Report (McClurken 1998, 1-2).

<sup>22</sup>McClurken did not, at this point, indicate the source of the "announcement" of the casino plans. Later in the report, he mentioned newspaper coverage and data available from the Sungold website on the internet.

McClurken defined the issues as follows:

The first question deals with the historic political interests of the Indian entity discussed in the BAR findings. Counsel asked whether or not the proposed findings define a territorial range for this group that would justify federal acquisition of reservation land in the Detroit area? Second, Counsel asked me to critique the BAR findings [*sic*] and the historical, anthropological, and genealogical reports that accompany the proposed findings, to determine if, in my opinion, the Indian entity discussed in them adequately meets the seven mandatory criteria for federal [*sic*] acknowledgment under 25 CFR 83 (McClurken 1998, 1).

He footnoted his statement concerning “documents that are not currently available for inspection” by saying:

The documents provided for my examination<sup>23</sup> do not have accurate citations. Citations in this critique that cite BAR reports and findings are necessarily incomplete. They refer the reader only to individual documents that I have received, giving titles of the individual documents pages [*sic*] of documents in my possession without stating where the originals can be found (McClurken 1998, 1n1) [footnote added].

In order to avoid any possible misunderstandings that might arise from McClurken’s statements as quoted above, we note that the proposed finding with its accompanying technical reports had been available since June 1997; the material was distributed widely to libraries in Michigan, and was placed on the BIA website on the internet.

Neither the BIA nor BAR, as part of the BIA, had refused to provide or delayed in presenting documentation requested for Dr. McClurken’s use in the preparation of his report for the City of Detroit. No such request had been received. BAR first received an indication of the City of Detroit’s interest in the petition in a letter from Dennis J. Whittlesey dated January 8, 1998, the day after he asked Dr. McClurken to review the material. Whittlesey’s letter was received by BAR on January 9, 1998 (Whittlesey to Reckord 1/8/1998). Whittlesey submitted a Freedom of Information Act (FOIA) request for the MBPI record to BAR in a letter dated January 9, 1998 (Whittlesey to Reckord 1/9/1998), three days before the third party comments were submitted. Therefore, the limited amount of material that was in the possession of Dr. McClurken for review in January 1998 was not in any way attributable to non-cooperation on the part of the BIA.

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<sup>23</sup>The BIA does not know what documents were provided for Dr. McClurken’s examination, or by whom.

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On March 26, 1998, the BIA notified Mr. Whittlesey that the documentation requested under FOIA would be made available, subject to the restraints of the Privacy Act, upon a statement of "willingness to pay the fees" by the City of Detroit (Jemison to Whittlesey 3/26/1998). As of September 30, 1998, the City of Detroit has neither made such a statement nor picked up the petition material.

McClurken concluded his "Scope of the Review" by stating:

The following discussion is based on one reading [*sic*] of "Summary under the Criteria and Evidence for Proposed finding [*sic*] Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan" approved by Assistant Secretary-Indian Affairs [*sic*] Ada Deer on June 23, 1997, and its component parts -- Historical Technical Report, Anthropological Technical Report, and Genealogical Technical Report. The following discussion should not be mistaken for a final critique of the issues defined above. More time and labor will have to be invested if the City of Detroit and Legal Counsel decide to oppose federal acknowledgment of Match-e-be-nash-she-wish Band of Pottawatomi Indians (McClurken 1998, 1-2).

*BIA Analysis of McClurken's Section Headed "Scope of the Review."*

Of the two questions posed by Legal Counsel for the City of Detroit to Dr. McClurken, the first, concerning whether or not the proposed finding defined a territorial range for MBPI "that would justify federal acquisition of reservation land in the Detroit area" (McClurken 1998, 1) was not addressed in the Proposed Finding, because it does not pertain to Federal acknowledgment. Territorial range is tangential to the issue of continuous tribal existence, which is the focus of the 25 CFR Part 83 regulations. Many federally acknowledged tribes have been removed from the territories they occupied at the time of first sustained contact with non-Indian settlers.

Federal acknowledgment under 25 CFR Part 83 is entirely separate from matters of trust land: the BIA takes land into trust only for federally acknowledged tribes. The possibility that a successful petitioner may seek trust status for future acquisitions of land is irrelevant to the evaluation under the mandatory criteria.<sup>24</sup>

The questions concerning the mandatory criteria raised by Dr. McClurken are analyzed below.

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<sup>24</sup>Acceptance of land into trust is not the same thing as making a land claim.

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*McClurken's Section Headed "Territoriality and Claims"* (McClurken 1998, 2-4).<sup>25</sup>

The only portion of the "Territoriality and Claims" section which addresses an issue which might arise under 25 CFR 83.7 is the following section:

The [historical technical] report traces the origin of the modern Match-e-be-nash-she-wish Band of Pottawatomi Indians to two early nineteenth century Indian bands, that of Matchepenashewish who occupied a three mile square reservation at modern-day Kalamazoo and of Sagana who lived at Prairie Ronde, near the groups' current territory<sup>26</sup> [citing Historical Technical Report, pp. 1, 9, 11, 28]. The findings determine that although the constituent bands had Ottawa members, the ethnic identity of the modern entity's ancestry is Potawatomi (McClurken 1998, 3) [footnote added].

BAR findings concerning the ethnic identity of the Match-e-be-nash-she-wish Band of Pottawatomi Indians may be incorrect. The historical and genealogical reports may be incorrect about the pre-migration identity of Sagana. A second man of that name (Sha-qua-non, Sogemaw) who is clearly identified as Ottawa also maintained his village near the modern-day location of the Match-e-be-nash-she-wish Band of Pottawatomi Indians. His band, not that of the Potawatomi Chief Sagana, may have provided the base community discussed in the report. The historian did not examine annuity payrolls for the 1821 treaty that established the location and identity of this second chief and seems to have made an arbitrary finding to establish a predominantly Potawatomi identity [citing Receipt for Annuity for 1835, Ottawas of Grand River for 1700 dollars. Record Group 217, Entry 523, Box 157, Matchepenashewish National Archives [sic], Washington D.C.; Annuity Schedule for the year 1837 and

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<sup>25</sup>By "claims," McClurken apparently means the acquisition of trust land. This issue has been discussed under "Scope of the Review." The majority of the discussion in this section of McClurken's report had no relevance to the issue of whether or not the MBPI petitioner meets the mandatory criteria of 25 CFR 83.7(a-g) as modified by 83.8 and has therefore not been analyzed by the BIA for the final determination.

Additionally, Federal acknowledgment is not contingent upon land claims that may be prosecuted by a petitioner nor is Federal acknowledgment determinative on the merits of any land claims that may be brought by a petitioner. The separability of acknowledgment from claims was specifically stated in the historical technical report to the Proposed Finding (MBPI PF, Historical Technical Report 16-17), in a passage which is directly quoted by McClurken (McClurken 1998, 2).

<sup>26</sup>The Prairie Ronde where the Potawatomi chief Sagana resided was not near Bradley in Allegan County, Michigan.

1838, Record Group 279, Docket 18-E, Box 268, National Archives, Washington, D.C.] Indeed, the entire Potawatomi identity of the historic bands who comprise the modern Indian entity may be called into question by research in documents prior to the 1839 payroll that the BAR historian and genealogist used as a base<sup>27</sup> for the current report (McClurken 1998, 3) [footnote added].

*BIA Analysis of the Issues Raised in McClurken's "Territoriality and Claims" Section.*

The issue of why the identity of Sagana was irrelevant has been discussed above, under Whittlesey's Point 6.

Essentially, McClurken ignored two items. First, there was no need to examine the more distant tribal genealogical origins of the individuals comprising the entity which existed before 1870, the latest date of prior unambiguous Federal acknowledgment (25 CFR 83.6(f)), or to establish whether the majority of the families had been in Sagana's band or Match-e-be-nash-she-wish's band over 30 years before that date. Neither was it relevant to the issue of acknowledgment whether or not the petitioner's distant ancestors had a "predominantly Potawatomi identity." The effective date of unambiguous prior Federal acknowledgment utilized for the Proposed Finding under 25 CFR 83.8 was 1870, at which time a BIA-prepared annuity payroll existed for Shaw-be-quo-ung's band (MBPI PF, Genealogical Technical Report 30-31, 65) and the petitioner was determined to descend from the band as represented by the 1870 annuity payroll.<sup>28</sup>

Second, one criterion of eligibility for membership in the petitioning group, MBPI, is determined by the inclusion of an ancestor on the 1904 Taggart Roll (MBPI 1993, Doc. 406). The Taggart Roll, prepared by the BIA, determined eligibility for Potawatomi claims payments (MBPI PF, Genealogical Technical Report 31-32). For acknowledgment purposes, inclusion on the 1870 annuity payroll or 1904 Taggart Roll superseded, for purposes of 25 CFR 83.7(e), any possible tribal ascriptions that may have existed in documents (none of which McClurken specified in this passage) prepared almost three quarters of a century earlier.

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<sup>27</sup>This report is presuming that Dr. McClurken was here using the word "base" as signifying "basis," rather than asserting that the Proposed Finding utilized the 1839 payment roll as a base roll for MBPI.

<sup>28</sup>The earlier genealogical study undertaken by the technical reports was contributory to understanding the group's history and development, but was not required for purposes of establishing the tribal ethnicity of individuals or families who comprised the band as of 1870. The regulations did not require examination of the annuity payroll for the 1821 treaty, or, for that matter, the 1839 payroll: evaluation of the petitioner under 25 CFR 83.7 as modified by 25 CFR 83.8 began with the latest date of prior Federal acknowledgment determined for use in the proposed finding, which was 1870.

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In the Comments section preliminary to the 1994 revised 25 CFR 83 regulations, one finds:

*Comment:* Comments generally supported the requirement of demonstrating tribal ancestry, but questioned whether it needed to be traced as far back as is currently required. They also questioned whether standards of proof were too strict and whether insufficient weight was given to oral history and tribal records, as opposed to governmental records (59 FR 38, February 25, 1994, 9288).

The BIA responded:

*Response:* The regulations have not been interpreted to require tracing ancestry to the earliest history of a group. For most groups, ancestry need only to be traced to rolls and/or other documents created when their ancestors can be identified clearly as affiliated with the historical tribe (59 FR 38, February 25, 1994, 9288).

The 1839 payment list (MBPI PF, Genealogical Technical Report 54, Appendix 1) was not used as a sole "base for the current report" (McClurken 1998, 3). It was one of an extensive series of documents analyzed in the process of preparation of the historical and genealogical technical reports. The identification of the "Sagana" at the Griswold Colony with the Prairie Ronde chief, who was Potawatomi, was not "arbitrary," as claimed by McClurken, but rather was made on the basis of extensive testimony taken in the 1890's during the preparation of the Taggart Roll, for purposes of establishing the eligibility of descendants of that group to participate in Potawatomi claims. In addition to the Court of Claims data obtained from the National Archives, there was data concerning the former Kalamazoo and Prairie Ronde descendants in the papers of D.K. Foster, brother of Shau-be-quo-ung aka Moses Foster, the chief of the Bradley settlement (MBPI PF, Historical Technical Report, 102-103).

Additionally, whether or not the "Sagana" mentioned as head of the Gun Lake Village Band in 1839 was from Prairie Ronde or was an Ottawa, there is no question that the Match-e-be-nash-she-wish Band was also residing there, since he and his son were listed as heads of families (MBPI PF, Genealogical Technical Report 54), as McClurken acknowledged elsewhere in the report (McClurken 1998, 7). There is also no question that its leaders were identified in numerous documents throughout the remainder of the 19th century. The acknowledged ability of MBPI is not contingent upon the description of the group's ancestry in pre-1839 documents. Whether the Indians who settled at the Griswold Colony following the 1838 Compact were, individually, of Ottawa or of Potawatomi, or of combined Ottawa-Potawatomi ancestry, is irrelevant to the subsequent

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development of the Bradley settlement itself.<sup>29</sup> The current evaluation began with 1870, the latest date of previous unambiguous Federal acknowledgment, by which time all the MBPI ancestral families had long been established around Bradley in Allegan County, Michigan.

*McClurken's Section Headed, "The Acknowledgment Criteria and Findings"* (McClurken 1998, 5-9).

This was the longest section of the McClurken report. Because of its length and because it addressed three items which, analytically, are distinct, it is here divided into three subsections.

Subsection 1. Political authority or influence under 83.7(c) as modified by 83.7(d)(3). McClurken summarized the MBPI proposed finding which was issued under the 25 CFR 83.7 criteria as modified by section 83.8 on prior federal acknowledgment. He then stated:

Had the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians been required to meet all of the criteria in 25 CFR 83.7 in its unmodified form, they could not have been federally acknowledged. Criteria [*sic*] 83.7(c) would have disqualified them (McClurken 1998, 5).

As his justification for this claim, McClurken stated that, "The historical technical report indicates that the political influence and leadership generally associated with a tribe 'lapsed' with the death of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians' last traditional chief in 1903" (McClurken 1998, 5; citing MBPI Historical Technical Report 115). He quoted 83.8(d)(3) in full (McClurken 1998, 6) and summarized his understanding of its meaning by saying:

Under this revised criteria [*sic*], the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians only have to evidence [*sic*] that they continued to exist, that the form the entity existed in had leaders of some kind, and that these leaders maintained political influence or authority over its members from 1870 to the present (McClurken 1998, 6).

The criteria the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians were judged by did not demand that the petitioning group continue

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<sup>29</sup>This approach has not been limited by the AS - IA to the instance of MBPI. See the discussion of the amalgamation of the Salish-speaking Lower Cowlitz and the Sahaptin-speaking Upper Cowlitz under BIA policy in the Cowlitz proposed finding (Cowlitz PF, Summ. Crit. 13-15).

to function as a tribe from 1870 to the present. Tribal political leaders not only facilitate decision-making processes within a tribe, but also represent the tribe in dealings with outsiders. Most Michigan tribes can demonstrate a long and continuous dealing with the U.S. over treaty issues and their continuing sovereignty. The historical evidence presented in the Match-e-be-nash-she-wish Band of Pottawatomí Indians' proposed findings [*sic*] and reports give no indication that the entity had political leaders represented [*sic*] the treaty-based interests of the tribe with the U.S. [*sic, no comma*] the state [*sic*] of Michigan or any other political non-Indian political entity after 1903 (McClurken 1998, 6).

Based on this definition of "political authority or influence," McClurken commented that, "The BAR proposed findings [*sic*] forgave a sixty-year lapse of political continuity" (McClurken 1998, 6; citing MBPI Summ. Crit., 11-12), and stated that the proposed finding's conclusion that political influence or authority under criterion 83.7(c) continued through the Indian mission churches at Bradley and Salem was, "among the weakest parts of the findings" (McClurken 1998, 6). He asserted that:

The evidences given for the "political authority/ and or influence" [*sic*] show preachers taking care of churches, not running communities or tribes. They raised enough money to build or repair churches. They maintained committees in the church whose responsibilities included providing emergency help to needy people in their congregations, counseling troubled congregation members and their extended families, and sent delegates to Methodist Church meetings in other places (McClurken 1998, 6-7).

He then quoted the MBPI Summary Under the Criteria when it stated that this church leadership and occasional identifications of secular leaders was not sufficient to meet the procedure possible under 83.8(d)(3) (MBPI Summ. Crit. 12-13), concluding from the fact that MBPI did not utilize 83.8(d)(3) that:

Despite this failure to demonstrate political leadership, the BAR accepted a succession of Indian preachers Bradley Indian Church activities [*sic*] as a reasonable evidence "authority" [*sic*] within the Matche-be-nash-she-wish [*sic*] Band of Pottawatomí Indian [*sic*] entity. They did so even though they found no evidence of any attempt at secular government until the years 1987-and 1991 [*sic*]. In effect, the BAR is recommending that federal [*sic*] acknowledgment be extended to churches because of their continual identification as an Indian entity (McClurken 1998, 7).

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*BIA Analysis of Subsection 1: Political Authority or Influence under 83.7(c) as modified by 83.8(d)(3).* The modifications of criterion 83.7(c) by 83.8(d)(3) do not deal with the substantive issue, but with the streamlining of evidentiary requirements for those petitioners that can demonstrate unambiguous prior Federal acknowledgment.

The "Comments" section introducing the 1994 regulations as published in the FEDERAL REGISTER stated:

None of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations. Neither will the changes result in the denial of petitioners which would have been acknowledged under the previous regulations (59 FR 38, February 25, 1994, 9280).

In so far as objections to 25 CFR 83.8 were advanced during the public comment period before the 1994 revised regulations were published, the objections advanced were that the provisions were still too stringent for groups which could demonstrate prior unambiguous Federal acknowledgment (59 FR 38, February 25, 1994, 9282). The BIA pointed out that:

The changes reduce the burden of evidence for previously acknowledged tribes to demonstrate continued tribal existence. The revisions, however, still maintain the same requirements regarding the character of the petitioner. For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight. Such groups, therefore, require only a streamlined demonstration of criterion (c). Although these changes have been made, the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations (59 FR 38, February 25, 1994, 9282).

These changes are an integral part of the Federal acknowledgment process, and have been applied in several other proposed findings, such as those for Huron Potawatomi, Inc., Cowlitz, and the final determination for the Snoqualmie Tribal Organization.

Specifically, 83.8 states:

Sufficient evidence to meet the criterion in 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in 83.7(c) (83.8(d)(3)).

If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment until the present (83.8(d)(5)).

In the case of MBPI, lacking the specific forms of evidence concerning political influence for the streamlined evidentiary procedure enumerated under 83.8, the petitioner used the alternative: MBPI demonstrated that they met the standards for criterion 83.7(c) in the unmodified form, using the types of evidence presented by petitioners who are not eligible to proceed under 83.8. By Dr. McClurken's own argument therefore, the AS-IA concluded that MBPI met what he regards as the more stringent, unmodified, evidentiary standards of criterion 83.7(c), including some material available through cross-over provisions from 83.7(b)(1)(iv) and 83.7(b)(2) under 83.7(c)(3), until 1957, and using other evidence after 1957.

The regulations do not require that a group's leaders "represent the tribe in dealings with outsiders" (McClurken 1998, 6). While they may do so, this is not listed as a required form of evidence under 83.7(c). Additionally, the regulations make allowance for varying levels of political activity:

Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria (25 CFR 83.6(e)).

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On the issue of leadership through the Indian mission churches of the Bradley and Salem settlements, the 25 CFR Part 83 regulations do not make any requirement that a petitioner have a "secular government" (McClurken 1998, 7), but rather, under 25 CFR 83.7, that it have political influence or authority over its members (see discussion above, under Whittlesey's Point 2). The technical reports to the proposed finding discussed how the authority of the lay ministers extended to the community as a whole (MBPI PF, Historical Technical Report; MBPI PF, Anthropological Technical Report).

Subsection 2. Historical Enrollment of Current MBPI Members in HPI.

McClurken asserted that:

The fact that 140 of 148 enrolled Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians members were previously enrolled in another tribe is a result of the failure of tribal leadership among the church communities at Bradley and Salem [footnote 16, citing to [MBPI PF] Genealogical Technical Report . . . , 12]. The fact also calls into question the ability of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians to meet criteria [*sic*] 25 CFR 83.7 (B) [*sic*] (McClurken 1998, 8).

Not only did the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians lack a record of distinct, autonomous political leadership from 1903 to 1992, the membership of their community was politically indistinguishable from that of the Huron Potawatomi for nearly forty years of that time.<sup>30</sup> Since the BAR issued its proposed findings in July 1997, twenty-five Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians community members have enrolled with the Little River Band of Ottawa Indians, and that tribe is still receiving applications for membership [footnote 17, citing "Phone Conversation with Little River Band Tribal Enrollment Officer, January 12, 1998"]. This further undermines the distinct community claims outlined in the BAR proposed findings [*sic*] (McClurken 1998, 8) [footnote added].

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<sup>30</sup>Neither the HPI petition nor the MBPI petition submitted any membership lists created between the 1904 Taggart Roll and the 1978 HPI membership list (MBPI PF, Genealogical Technical Report, 20). From 1978 to 1998 is not 40 years.

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*BIA Analysis of Subsection 2: Historical Enrollment of Current MBPI Members in HPI.*

Concerning the first paragraph of this subsection of McClurken's report, it proved impossible to determine the passage in the genealogical technical report that McClurken was citing in his footnote 16.<sup>31</sup> There were not 148 names on the October 20, 1994, MBPI membership, but only 140 (MBPI Genealogical Technical Report, 28).

The relevant statement in the genealogical technical report read: "Only eight of the 140 persons on the October 10, 1994, MBPI membership list had never enrolled with HPT" (MBPI Genealogical Technical Report, 27). In a more limited comparison with the final, 1994, HPI membership list, the Genealogical Technical Report stated:

On October 20, 1994, the MBPI submitted the genealogical portion of its petition for Federal acknowledgment. The MBPI membership list contained a total of 140 names of persons who had certified in writing that they wished to be considered with the MBPI petition. Of these, 126 appeared on the 1994 HPI membership list (MBPI Genealogical Technical Report, 28).

The distinction between the eight persons who had "never enrolled with HPT" and the 14 persons who did not appear on the 1994 HPI membership list was that six persons had been listed on prior HPI lists, but not on the 1994 HPI list.

The MBPI Genealogical Technical Report discussed the topic of "Interrelationship between HPI membership and MBPI membership" on pages 27-28, but never attributed the enrollment of MBPI members with HPI to "the result of a failure of tribal leadership among the church communities at Bradley and Salem" as footnoted by McClurken (McClurken 1998, 8, 8n16), either on page 12 or elsewhere.

Concerning the last sentence of the first paragraph of this subsection of McClurken's report, see the more extended discussion of the relationship of enrollment to community membership above, under Whittlesey's Point 3 and Whittlesey's Point 4.ii.

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<sup>31</sup>McClurken's documentary citations have proven very difficult to follow. Page 12 of the MBPI PF Genealogical Technical Report made no reference to the number of persons enrolled or their prior enrollment: it discussed MBPI governing documents and membership criteria. The BIA attempted to locate the passage under discussion elsewhere in the report, but could not determine the exact origin of the citation. The genealogical technical report discussed the October 20, 1994, MBPI membership list on pages 19-20; it discussed prior rolls, including HPI rolls from 1978 through 1993, on pages 20-27.

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Concerning the second paragraph of this subsection of McClurken's report, dual enrollment in itself is not an issue applicable under 83.7(b). It is standard BIA procedure to check the membership lists of petitioners for Federal acknowledgment against the rolls of federally acknowledged tribes when there may be a problem under 83.7(f). See the more extensive discussion below under the topic of enrollment issues.

The following part of the second paragraph of McClurken's statement was relevant to the MBPI petition:

Since the BAR issued its proposed findings in July 1997, twenty-five Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians community members have enrolled with the Little River Band of Ottawa Indians, and that tribe is still receiving applications for membership [footnote 17, citing "Phone Conversation with Little River Band Tribal Enrollment Officer, January 12, 1998"]. This further undermines the distinct community claims outlined in the BAR proposed findings [*sic*] (McClurken 1998, 8).

In and of itself, the fact that the Little River Band of Ottawa Indians is still receiving applications for membership does not pertain to this case, nor does the opening of enrollment by a federally acknowledged tribe, *per se*, impact the nature of any other group's community.

The Michigan Agency has found that only 11 MBPI members are currently dually enrolled with the Little River Band of Ottawa Indians (Bolton to Reckord 6/4/1998). For a more detailed discussion, see the section on enrollment issues, below. For discussion of the impact on community of the 25 persons who disenrolled from MBPI between 1994 and 1998 in order to enroll with the Little River Band of Ottawa Indians, see the discussion above under Whittlesey's Point 4.ii.

### Subsection 3. Historical Relationship of MBPI Political Leadership to HPI Political Leadership.

McClurken stated:

The BAR historical report describes an evolution of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians political entity within the Huron Potawatomi Tribe and a subsequent fission of the two. Between 1987 and 1991 the Huron Potawatomi Tribe attempted to create a new tribal structure, one that extended the elected representation of the council that would allow more representation of persons living in dispersed

Potawatomi populations throughout Allegan and Calhoun counties.<sup>32</sup> The BAR historian calls this evolution a “Temporary amalgamation between the Allegan County Indians and HPI.” The word “temporary” seems inappropriate. The Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians had already been enrolled members of the Huron Potawatomi Tribe since the 1970s [*sic*], not merely since 1987 as the analysis implies. The organization had worked effectively for nearly twenty years, when in 1992, current members of the Matche-be-nash-she-wish Band of Pottawatomi Indians lost a bid for power in the restructured tribal government and began the effort of creating their own federally acknowledged tribe [footnote 18, citing Historical Technical Report, pp. 164-178] (McClurken 1998, 8) [footnote added].

In the remainder of this subsection, McClurken specifically questioned the presentation of the data in the MBPI Historical Technical Report, stating:

The BAR historian who analyzed the separation of the Matche-be-nash-she-wish [*sic*] Band of Pottawatomi Indians from the Huron Potawatomi tribe claimed that the separation reflected the distinct divisions between the two historically distinct communities. Instead of analyzing the events from the perspective of a factional fight in a single political community as facts cited in the report imply, the BAR historian chose to treat these events as a clash of two separate communities . . . (McClurken 1998, 8-9).

Given the demonstrated political actions [*sic*] between these two supposedly distinct communities, the large degree of intermarriage that created kinship ties crossing 150 year old band identities, and the continued sustained interaction between church ministries, the BAR historian’s position is a strange one. Perhaps the explanation for this stance is found in the citations on many of the pages that describe the events. The citation often reads “MBPI Pet. 1993.” This petition was created by the Matche-be-nash-she-wish Band of Pottawatomi Indians’ Secretary of State, William L. Church, one of the employees who helped create the factional dispute in the first place. As Secretary of State for the new tribe with plans to construct a casino the source of this information

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<sup>32</sup>There was no indication in the documentation submitted with the HPI petition for Federal acknowledgment that the restructuring involved any change in representation for “dispersed” Potawatomi populations in Calhoun County, or of Pine Creek descent.

stands to gain political prestige and wealth should his new tribe be federally acknowledged (McClurken 1998, 9).

*BIA Analysis of Subsection 3: Historical Relationship of MBPI Political Leadership to HPI Political Leadership.*

McClurken did not distinguish between tribal organization and intertribal cooperation among groups of treaty descendants for the purpose of pursuing claims. From the 1950's through the 1970's, Huron Potawatomi, Inc. existed as an umbrella organization for claims work,<sup>33</sup> as well as a tribal government for the Pine Creek reservation community in Calhoun County, Michigan (HPI PF, Historical Technical Report 136-137). Earlier claims activities by members of the Indian settlements Allegan County (the MBPI organization's historical antecedents) in the 1950's were undertaken in cooperation not only with HPI, but also in cooperation with the Pokagon Potawatomi and with the Northern Michigan Ottawa Association. The claims organizations did not control or supersede internal leadership or tribal government within the participating communities, but rather represented cooperation among them (MBPI Historical Report, 147-152).

BIA technical reports often cite to petition materials. Citation of a passage in the petition narrative, or of a document presented as a petition exhibit, does not mean that the BIA has accepted the statement, but only that the technical report has referred to the statement.<sup>34</sup> For example, one citation to the MBPI Petition was introduced by the phrase, "One explanation offered by the petitioner was that:" (MBPI PF, Historical Technical Report 165); other quotations were preceded by, "The following explanation of

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<sup>33</sup> The 1978 HPI membership list was compiled specifically in connection with the claims payments, although it also was to be used for election purposes, since it distinguished between the HPI voting membership and lineal descendants (MBPI PF, Genealogical Technical Report 21, 22n8).

<sup>34</sup> See the Technical Report to the Snoqualmie Final Determination for a discussion of this issue. The Tulalip Tribes' comments asserted that the BIA technical reports supporting the proposed finding were defective because they depended upon the petitioner's research (Snoqualmie FD, TR 129). The BIA replied that:

The technical reports are based on information provided by the petitioner and interested parties and on documentary and interview information gathered by the BIA staff. The information gathered by BIA researchers is for the purpose of augmenting, evaluating, and putting in context information provided to the Department by the parties. The Department may depend on specific factual points and analysis provided by others, or may undertake additional analyses. The extent to which any argument or information is accepted depends on its merits (Snoqualmie FD, TR 129-130).

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the ensuing developments was provided by a member of the Bradley community and current official of the MBPI:" (MBPI PF, Historical Technical Report 168), and "According to the petitioner:" (MBPI PF, Historical Technical Report 170).

The BIA verifies, evaluates, and weighs cited material from any source before it is accepted as valid evidence. In this particular instance, many of the same issues had already been discussed in the Historical Technical Report for the HPI petition for Federal acknowledgment (HPI PF, Historical Technical Report 163-175). In addition to the MBPI Petition, the MBPI Historical Technical Report cited to HPI Tribal Minutes, the HPI OD Response, and a letter from former HPI chairman John Chivis (MBPI PF, Historical Technical Report, 164-170).<sup>35</sup>

*McClurken's Section Headed, "The Petitioner and the Casino"* (McClurken 1998, 9-11).

McClurken stated that:

Given the short time remaining for response, it is impossible to accurately trace the relationship between the creation of the Matche-be-nash-she-wish [sic] Band of Pottawatomi Indians and the [sic] Sungold Gaming International. However, documentation readily available on the internet shows the long relationship between the [sic] William L. Church, the company and the Matche-be-nash-she-wish [sic] Band of Pottawatomi Indians. The information seems to impeach the veracity of the source of information about the "temporary amalgamation between the Allegan County Indians and HPI." Given the current well publicized relationship between William L. Church, the Matche-be-nash-she-wish [sic] Band of Pottawatomi Indians, and Sungold Gaming International, the following quotation from the historical report seems almost comical [footnote 20, citing: "See the Sungold web page at [sungoldgaming.com](http://sungoldgaming.com). For information about the relationship between the company and the Gun Lake or Matche-be-nash-she-wish Band of Pottawatomi Indians"]<sup>36</sup> (McClurken 1998, 9, 9-10n20) [footnote added].

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<sup>35</sup>In both the proposed finding and the final determination issued for HPI, independently of any data that would be presented in the MBPI petition narrative, the AS - IA concluded that the political separation between HPI and MBPI initiated in 1992 did not adversely affect the acknowledgability of HPI (HPI PF, Summ. Crit. 17-18; HPI FD, 60 FR 104, May 31, 1995, 28427).

<sup>36</sup>It appears that McClurken's footnote 20 was misplaced, and should have been located earlier in the paragraph.

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McClurken then quoted two paragraphs which he described as being from the Historical Technical Report, in such a way as to attribute them to the BIA researcher (McClurken 1998, 10; citing MBPI Historical Technical Report, 175-176).<sup>37</sup>

The remainder of the section described connections between Sungold Gaming and the petitioner as reported on various Internet sites, primarily that of Sungold Gaming itself, and in the Detroit Free Press (McClurken 1998, 10-12).

*BIA Analysis of McClurken's Section Headed, "The Petitioner and the Casino."*

Federal acknowledgment is a process that takes place independently of whether or not a successful petitioner for Federal acknowledgment intends to participate in Indian gaming. Plans for gaming and agreements between developers and petitioners are not in themselves evidence for or against tribal existence.<sup>38</sup> Essentially, none of the data in this section of the McClurken report was relevant to the 25 CFR 83 mandatory criteria 83.7(a-g) as modified by 83.8.

In regard to the "veracity of the source of information" (McClurken 1998, 9), the issue of how the BIA utilizes material submitted by petitioners has been discussed above in the analysis of subsection 3 of McClurken's "The Acknowledgment Criteria and Findings." As noted above, the "quotation from the historical report" which seemed "almost comical" to Dr. McClurken (McClurken 1998, 9) was a direct, two-paragraph, quotation in the historical report of two paragraphs of petition material, preparatory to an analysis (MBPI PF, Hist. Tech. Report 175-176). In relation to a related statement by Mr. Church that, "I convinced the Elders to make the formal request for Federal Acknowledgment for the Tribe in 1992 only after it was agreed there would never be casinos in our Tribe" (MBPI Pet. 1993b, [3]; Church to Deer 11/10/93, quoted in MBPI PF, Historical Technical Report 175), the BIA historian added the comment: "No minutes of discussions, or other documentation, was submitted to support the above statement" (MBPI PF, Historical Technical Report 175).

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<sup>37</sup>These two paragraphs were direct quotations of material that had been submitted in the MBPI petition, quoted in the Historical Technical Report for purposes of analysis.

<sup>38</sup>The handling of gaming issues by a petitioner, as reflected in minutes of meetings, constitutional provisions, etc. may constitute relevant evidence under criterion 83.7(b) or criterion 83.7(c). In such cases, it is analyzed in the technical reports prepared by BIA staff. However, the question of whether or not a petitioner may, after acknowledgment, opt to engage in gaming is not in itself relevant to the acknowledgment criteria.

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The BIA's source of information was not limited to the MBPI petition narrative, but included other documentation, much of which had been previously considered in the HPI PF. The MBPI Genealogical Technical Report also summarized and cited some of the independent documentation from HPI sources (MBPI PF, Genealogical Technical Report 5, 24-26).

## ENROLLMENT ISSUES

Because MBPI did not submit a direct response to the Proposed Finding, all the questions concerning the governing document (MBPI PF, Genealogical Technical Report 1, 8-12), the membership criteria, and their application (MBPI PF, Genealogical Technical Report 12-17) raised in the Genealogical Technical Report to the Proposed Finding remain unresolved. The draft 1996 constitution (used as the current governing document for the proposed finding) and the membership criteria have been adopted by the Elders' Council, but the BIA has not received notice that they have been ratified by the MBPI membership.

During the 180-day comment period provided by the 25 CFR 83 regulations following the issuance of a proposed finding, a BAR staff member met with D.K. Sprague, MBPI chairman, and William L. Church, primary petition contact, to provide technical assistance under the provisions of the regulations:

During the response period, the Assistant Secretary shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding (83.10(j)(1)).

BIA staff explained the enrollment policies for federally acknowledged tribes and the provisions of criterion 83.7(f) as they pertained to the MBPI petition, so that they as a petitioner could explain the issues to their members and adequately establish consent to be on the final membership list. The BIA also provided information to the petitioner concerning the processes for transition from unacknowledged to acknowledged status in case of a positive final determination.

*Tribal Enrollment Options and Criterion 83.7(f).* It is not unusual for American Indians to have enrollment options. Because of intermarriage, and because federally recognized American Indian tribes have control of their own membership requirements, many individuals are eligible to enroll in more than one federally recognized tribe and must make a choice. Choices can be based on social affiliation, residential propinquity, available benefits and services, etc. The BIA does not prescribe how individuals reach a

decision. Dealing with issues of enrollment is a major task of tribal registrars and enrollment clerks.

The primary purpose of 83.7(f) was to prohibit acknowledgment of splinter groups attempting to withdraw from federally recognized tribes. The Guidelines for the 25 CFR 83 regulations discuss 83.7(f) in the context that, "Even though unrelated groups may have been put together on one reservation, they must seek Congressional action or some other route to be separated" (Official Guidelines 1997, 55). It was not directed primarily at individuals within a petitioning group enrolled elsewhere because of eligibility through the other parent or a grandparent. In fact, the Guidelines advised under these circumstances:

Individuals should be urged not to give up their membership in federally-recognized tribes because they believe the unrecognized group may be acknowledged. If the petitioner is not acknowledged, the individuals will be without tribal affiliation. After acknowledgment, the individuals may change their affiliation, depending on the provisions of the individual tribal constitutions (Official Guidelines 1997, 55-56).

However, the wording of 83.7(f) did not specify that it was specifically applicable to organized splinter groups seeking to separate from federally recognized entities. It reads, "The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe," (83.7(f)). The remainder of the paragraph discussed contingencies that pertained only to groups rather than to individuals. Therefore, if MBPI's members were principally persons enrolled in other tribes, even if only a small number were in any one of those tribes (as might well be the case in the Michigan situation where there are numerous tribes and a long history of tribal intermarriage), the petitioner would not have met criterion 83.7(f). However, only a small minority of the MBPI members are dually enrolled (see below).

*Relationship of HPI and MBPI at the Time of the HPI Proposed Finding.* The dual enrollment situation in this instance did not have any precedents in prior Federal acknowledgment decisions. At the time the MBPI petition was initiated in 1992, the other genealogically most closely connected Indian groups in Michigan (Pokagon Potawatomi, HPI, and Little River Ottawa) had not yet received Federal acknowledgment. Dual enrollment with other unacknowledged Indian groups is not prohibited by 83.7(f) or elsewhere in the 25 CFR 83 regulations.

Because of the wording of 83.7(f), the BIA considered the new issue posed by the HPI/MBPI situation with care at the time of the issuance of the proposed finding and final determination for HPI, and ensured that the persons who opted for MBPI membership

were not included on the final HPI acknowledgment membership list (HPI PF Summ Crit. 22-24; HPI FD, 60 FR 104, May 31, 1995, 28427). The MBPI proposed finding also discussed the issue (MBPI PF, Summ. Crit. 19-20). The reason was that if the MBPI members, individually, had continued to be enrolled with HPI after acknowledgment, then collectively the MBPI petitioner would have been "composed principally" of persons who were on the roll of another acknowledged North American Indian tribe. In order to avoid the situation of having the MBPI petitioner classified as a splinter group seeking to separate from HPI, persons who wished to join in the MBPI petition had to renounce their HPI membership before acknowledgment of HPI. Each person who signified in writing the desire to be included with the MBPI petition thus gave up the option of remaining in a federally acknowledged tribe until the AS - IA made a final determination concerning the MBPI petition.

*Current MBPI Dual Enrollment Questions.* Since the acknowledgment of the other related Michigan tribes (Pokagon Potawatomi, HPI, and Little River Ottawa) in 1994, some individuals who were on the 1994 MBPI membership list have chosen to affiliate with another acknowledged tribe. Such a choice is their right, as explained above. The collective impact of these choices on the MBPI petition is discussed below.

During the early winter of 1998, the BAR received a copy of a newspaper article, sent anonymously, which indicated that the enrollment of the Little River Ottawa was expanding rapidly (Little River Band of Ottawa must be enrolled by Jan. 15: Ottawa face decisions after recognition, unidentified newspaper article, hand-dated January 1998).<sup>39</sup> The transmitter implied a possibility that numerous persons on the MBPI membership list that had been utilized for the proposed finding in 1994 (MBPI List 1994) were enrolling with the Little River Ottawa in order to take advantage of its per capita judgment award.<sup>40</sup> BAR also received a request from the Michigan Agency of the BIA for a copy of the MBPI membership list, for purposes of comparison with the rolls of federally acknowledged tribes in Michigan, on March 24, 1998, (BIA Michigan Agency, Gravelle to Fleming 3/24/1998).

Because of enrollment questions, as well as the assertions received in the third-party comments to the MBPI PF, the BIA sent a copy of the MBPI FD membership list to the

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<sup>39</sup>A BIA staff member also noted this newspaper article on the topic of Little River Band of Ottawa Indians enrollment as published in News from Indian Country.

<sup>40</sup>For the financial implications of enrollment in Little River Ottawa Band, see H.R. 1604, "Providing for the Division, Use, and Distribution of Judgment Funds of Ottawa and Chippewa Indians" pursuant to dockets numbered 18-E, 58, and 364 before the Indian Claims Commission.

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Michigan Agency for verification and comparison purposes.<sup>41</sup> On June 4, 1998, the Michigan Agency reported that, "After completing this review it was found that 25 individuals are listed with other tribes. Two of these individuals are deceased. This is 17% of the MBPI membership" (BIA Michigan Agency, Bolton to Reckord 6/4/1998).

The accompanying report from the Michigan Agency indicated that of the MBPI members found to be dually enrolled, nine living and two deceased persons were enrolled with HPI, while 14 individuals were enrolled with Little River Ottawa and three were enrolled with the Pokagon Band of Potawatomi Indians (BIA Michigan Agency, Bolton to Reckord 6/4/1998). These totals indicated not 25, but 28 persons, of whom two were deceased. It indicated that a predominant portion of the petitioner's membership was not enrolled in any other federally acknowledged tribe.

*MBPI Final Membership List.* MBPI submitted its final membership list for BIA use in preparing the final determination under the title: "Membership Roll of Match-e-be-nash-she-wish Band of Pottawatomi Indians - Gun Lake Tribe As of March 12, 1998" (MBPI List 1998).

The 1998 MBPI membership list (MBPI List 1998) included a total of 143 persons, as compared to 140 persons on the MBPI membership list submitted for the proposed finding (MBPI Membership List 10/20/1994).<sup>42</sup> Each individual retained the same membership number used on the two lists submitted for the proposed finding (MBPI Pet. 1993a, Doc. 406 and MBPI List 10/20/1994), which made a direct comparison convenient. Numbers 221-238 (18 individuals, or 12 per cent) represented persons who were not on the 1994 list. All but two of these represented births in or since 1993; the other two were also minor children (MBPI List 1998).

MBPI removed from the 1998 list the names of persons who were known to have died since the list submitted for the proposed finding, added new births, provided current addresses, and accounted for any known name changes resulting from marriages.

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<sup>41</sup>The transmittal memorandum stated: "We do need accurate figures on dual enrollment to determine if MBPI meets criterion 83.7(f), which states that a 'predominant portion' of the petitioner's membership may not be enrolled in any other federally recognized tribe" (Reckord to Gravelle 4/21/1998).

<sup>42</sup>In connection with the petition for Federal acknowledgment, the MBPI had also submitted a list containing 220 names on May 16, 1994. This list represented the maximum anticipated membership under the petitioner's current membership criteria, if all eligible persons chose to enroll (MBPI PF, Genealogical Technical Report 5). For the proposed finding, the BIA historical, anthropological, and genealogical reports considered the full body of Bradley/Salem families in determining the nature of the Bradley/Salem community from 1870 to the present, although for enrollment purposes, the proposed finding used the list of 140 persons who had completed enrollment formalities (MBPI List 10/20/1994).

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divorces, etc. MBPI also omitted from the final list those persons included on the 1994 list who had decided to enroll with another federally recognized tribe. However, the list did not provide annotations as to whether a removal was the result of death or disaffiliation.

The membership list prepared for the final determination (MBPI List 1998) contained the following items of information in columns: Roll Number; Name and Address; Sex; Birth Date; Ref. Roll # [to qualifying ancestor on the 1904 Taggart Roll], Rel to [qualifying ancestor on the 1904 Taggart Roll]; Names of Parents; Tribe [of each parent]. These were the identical information items in columns that had been used for the tentative list submitted by MBPI for the proposed finding (MBPI Pet. 1993a, Doc. 406). See extensive discussion of these lists and their relationship to one another in the genealogical technical report for the proposed finding (MBPI Genealogical Technical Report, 19-20).

The BIA compared the three lists (MBPI Pet. 1993a, Doc. 406; MBPI Membership List 10/20/1994; MBPI List 1998) in detail. Omitting the 18 children added to the 1998 membership list there were 125 persons on the 1998 MBPI list. The relationship among the three lists was complex. However, all of the persons under discussion have documented descent from the 1904 Taggart Roll of Michigan Potawatomi prepared by the BIA for claims payment purposes. Descent from the Taggart Roll is a basic eligibility requirement for MBPI membership.<sup>43</sup> The relationship among the various specific membership lists exists within that basic boundary.

The first set of statistics relates to the relationship between the list used for the proposed finding (MBPI List 10/20/1994) and the list submitted for the final determination (MBPI List 1998):

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<sup>43</sup>On July 30, 1997, the Michigan Agency sent a query to the BIA Central Office questioning the mention of the Taggart Roll as an eligibility standard in the FR notice of the MBPI PF, on the basis of a set of "membership requirements" that a MBPI member had sent to the Agency (BIA Michigan Agency, Gillet to Springer 7/30/1997). However, these were headed, "Draft Criteria for membership" and had not been incorporated into the 1996 draft constitution. The effective membership provisions of MBPI were summarized in the Proposed Finding as:

Section 1. (2) All persons who are direct relatives of those on said Roll of October 25, 1993, or any subsequent Roll approved by the Elder's [sic] Council and submitted to the BIA prior to approval of Federal Acknowledgment by the Secretary of the Interior (MBPI PF, Genealogical Technical Report 14).

10/20/1994 List:	140 persons
Removed from 1998 List:	49 persons <sup>44</sup>

Thus, 35 per cent of the persons listed as MBPI members on the 10/20/1994, list are not on the list submitted for the final determination (see discussion below of the current enrollment status of these 49 persons). In the case of five individuals (#14, #15, #45, #151, #153), a parent remains on the MBPI list. In the case of two more (#46 and #47), a grandparent remains on the MBPI list. In the case of four adults (#16, #24, #56, #73), a sibling remains on the MBPI list: these four adults are direct ancestors of 24 more of the individuals removed. Thus, 35 of the 49 disenrolled persons removed have immediate relatives in MBPI.

Under the provisions of the MBPI constitution, the above 35 persons with first-degree relatives on the 1998 MBPI membership list could re-enroll:

**Since October 20, 1994, our Elder's Council has made provisions for the addition of a limited number of persons to our rolls of the following type or classification of individuals. "Direct relatives" (defined to mean, brothers, sisters, sons, daughters, grand fathers, and grand mothers of those listed on previous rolls submitted by our Tribe to BAR may also be added to the Tribe's Rolls once each of the three S.W. Michigan Pottawatomí groups have been acknowledged by the U.S. . . . (Church to Stearns 3/8/1996; MBPI PF, Genealogical Technical Report 13-14n5) [emphasis in original].**

The remaining 14 of the 49 removals represented persons eligible for MBPI membership by genealogical descent whose families had not resided in the Bradley/Salem area for the past two generations. All of them were known, on the basis of genealogical data submitted for the HPI and MBPI petitions, to have had enrollment eligibility with at least one other tribe.

There was a direct continuity from the 10/20/1994 List to the 1998 List of 91 persons, or 72 percent. However, this percentage must be modified by consideration of the March 1994 List (MBPI Pet. 1993a, Doc. 406), which was an informal, complete list of all

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<sup>44</sup>Membership numbers 2, 14-19, 23-29, 45-47, 56-65, 72-77, 101-105, 151, 153, 177-179, 208-213. Eligibility for enrollment in multiple tribes is common in Michigan because of widespread intertribal marriages. Of the 49 persons removed from the list, eight were minors (born in 1980 or more recently).

persons known to be eligible for MBPI membership under the provisions of the group's constitution:

Doc. 406, March 1994,	220 persons	all living individuals known to be eligible for enrollment with MBPI
Of these 220 persons,	80 persons	were not included on the 10/20/1994 List <sup>45</sup>
Of the 80 persons not included on 10/20/1994,	34 persons <sup>46</sup>	were included on the 1998 List

Thus, adding to the 91 members continuing from the 10/20/1994, list to the 1998 List, the 34 persons from the March 1994 list, of the 125 persons on the 1998 List, all were on at least one of the two 1994 lists. The 34 newly included on the MBPI 1998 list represented 27 per cent of the membership. All were from long-standing Indian families of the Bradley/Salem settlement. Their addition to the 1998 MBPI membership list did not change the character of the group.<sup>47</sup>

No clear pattern emerged from the relinquishments and re-enrollments. In several cases in which a family was genealogically eligible to enroll in another tribe, one or more siblings remained on the MBPI list, while another affiliated elsewhere. While in several cases it appeared that an entire nuclear family disaffiliated, there were instances in which

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<sup>45</sup>The BIA did not determine for the proposed finding how many of these were enrolled elsewhere and how many had not simply not yet completed the enrollment paperwork with MBPI.

<sup>46</sup>Membership numbers 113-120, 123-127, 129-133, 136-139, 181-182, 194, 199-201, 214-220. Seven of the 34 persons re-enrolled on the 1998 MBPI List were born since June 1980, and were therefore minors. Six were born before 1940. The persons newly included in 1998 were from six family lines. Six of these persons were identified by the Michigan Agency report as dually enrolled with HPI. None were identified by the Michigan Agency report as dually enrolled with any other Michigan tribe.

<sup>47</sup>This is a standard that has been used by the BIA in other acknowledgment cases:

The 358 names on the 1996 roll include 201 individuals whose names appear on the 1990 roll used for the proposed finding. The other 157 persons are almost all drawn from the same family lines which historically have been part of the STO, and are primarily the children, siblings and other close relatives of those on the 1990 roll. Thus, the increase in membership and the "new" surnames on the roll do not represent a change in the character of the STO (Snoqualmie FD, TR 133).

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a parent and one or two adult children disaffiliated, while other adult children remained with or returned to MBPI. In other cases, a parent and all but one or two adult children remained with MBPI.

*Current Status of the 49 Members on the October 1994 List Omitted from the 1998 List.* On July 1, 1998, by telephone, the BIA received a report from the Michigan Agency on the current status of the 49 persons listed on the 1994 MBPI membership list, but no longer on the 1998 MBPI membership list. Of these persons, Michigan Agency identified one listing as a duplicate, leaving 48 individuals.

Of the 48 individuals:

- 25 were enrolled with the Little River Band of Ottawa Indians;
- 11 were enrolled with HPI;
- 6 were enrolled with the Saginaw Chippewa Tribe; and
- 3 were enrolled with the Grand Traverse Ottawa.

The other three individuals could not be identified by the BIA as currently enrolled with any other tribe.

## SUMMARY OF THE EVIDENCE

The third-party comments received in this case were undocumented and, to a considerable extent, were based on issues of trust land or Indian gaming, irrelevant to the mandatory criteria for Federal acknowledgment established by the 25 CFR 83 regulations.

The comments which challenged the AS-IA's determination of previous unambiguous Federal acknowledgment for MBPI were based on a misreading of the historical data--the person whose identity was questioned by the commenter was not the person who was chief of the band from 1855 through the early 1900's.

The comments which argued that MBPI did not have modern community were based almost entirely on prior appearance of the names of Indians from the Bradley and Salem communities on HPI membership lists from the 1970's and 1980's. The nature of the participation of current MBPI members in HPI from the 1950's through 1988 was extensively discussed in the HPI PF as well as the MBPI PF. In both cases, the AS-IA concluded that the nature of the connection between the two petitioners, largely for inter-tribal prosecution of claims, did not negatively impact the acknowledgedability of the two distinct tribes.

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The interpretations of political authority or influence in the MBPI PF were in line with the precedents set in prior acknowledgment decisions, which allowed for the existence of informal leadership structures, including leadership provided through tribal church organizations.

The petitioners' descent from the historical Potawatomi tribe is adequately documented, using in particular the 1870 annuity payroll and the 1904 Taggart Roll. For acknowledgment purposes, it is not necessary to define the precise tribal antecedents of individual community members before those documents. The proposed finding took into account the evidence that some families of the settlement also have Ottawa ancestry.

The third-party statements concerning the nature of recent dual enrollment in other federally acknowledged tribes proved to be unsubstantiated.

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