decision to remand from the IBIA or a request for reconsideration from the Secretary.

Some cases have taken much longer than any of the timelines provided in the regulations to get from a Proposed Finding to a Reconsidered Final Determination. In the Golden Hill Paugussett case, for example, an effective Reconsidered Final Determination was not published until March 2005, nearly ten years after an initial Proposed Finding was published in June 1995.

A Reconsidered Final Determination becomes effective upon its publication in the Federal Register. The Acknowledgment regulations do not provide for any appeal of a Reconsidered Final Determination. However, in 1999 the Department allowed the Golden Hill Paugussett petitioner to return to active consideration following a Reconsidered Final Determination.

An Analysis of IBIA Decisions

The IBIA does not have the authority to reverse a Final Determination. It can only either (1) affirm the determination or (2) vacate it and remand it back to the Assistant Secretary of the Interior for Indian Affairs for the determination based on the IBIA's findings that it has found adequate grounds for such review. As noted above, in cases where the IBIA has affirmed a Final Determination but has found other alleged grounds that

it does not have the authority to rule on, it may also request the Secretary of the Interior to consider these other grounds.

Unlike every other stage of the Acknowledgment process, the IBIA review is not bound by a time limit. In the 11 cases in which it has considered a request for reconsideration, the IBIA has taken an average of 13.2 months to render a decision. However, in the recent Eastern Pequot case, the IBIA took 31 months to reach a decision (see Chart below). This was due in part to the enormity of the administrative record in that case, but also to the Board's heavy caseload of other Interior issues.

Of the 11 separate Federal acknowledgment case dockets the Interior Board of Indian Appeals has reviewed since 1990,[4] the IBIA has affirmed the Department's Final Determinations in 9 cases and vacated the determination in 2 cases. In 9 of its decisions the IBIA has requested the Secretary or the Assistant Secretary to consider alleged grounds for reconsideration that it did not have authority to rule upon (see Chart below).

In the 7 cases in which interested parties filed a request for reconsideration, the IBIA dismissed the requests in 5 cases and vacated the BIA's Final Determinations in 2 cases. In 6 of the 7 cases filed by interested parties, the IBIA requested the Secretary or the Assistant Secretary to consider alleged grounds for reconsideration that it did not have authority to rule upon (see Chart below). In the Chinook case, the positive Final Determination that was affirmed by the IBIA was ultimately denied following Secretarial review. In the two cases vacated by the IBIA, Eastern

[4] The IBIA did not review any Federal acknowledgment cases prior to 1990.

Pequot and Schaghticoke, the Department ultimately issued a negative Reconsidered Final Determination. Thus, interested parties have successfully challenged three positive Final Determinations.

In 5 of the 7 cases in which the IBIA has affirmed BIA Final Determinations, it has referred issues outside of its jurisdiction back to the Secretary of the Interior for review (see Chart below). Only in the Chinook case did this referral back to the Secretary result in a reversal of the BIA's positive Final Determination. The decision to acknowledge the Chinook petitioner was reversed in a Reconsidered Final Determination that followed an IBIA review.

ANALYSIS OF DECISIONS BY THE INTERIOR BOARD OF INDIAN APPEALS (IBIA) ON FEDERAL ACKNOWLEDGMENT CASES

Petitioner	BIA Final Determination	IBIA Action Time Frame	BIA Final Action
1. **San Juan Southern Paiute, Arizona**	To Acknowledge 12/15/89 Appealed by Navajo Nation of Arizona	Affirmed BIA Declined Request for Reconsideration, 2/27/90-3/27/90	Positive Final Determination effective 3/28/90 **IBIA Appeal Time Frame: 1 month**
2. **Ramapough Mountain Indians, Inc., New Jersey**	To Decline 2/6/96 Appealed by Petitioner	Affirmed BIA, 5/6/96-7/18/97	Negative Final Determination effective 1/7/98 **IBIA Appeal Time Frame: 14 months**
3. **Golden Hill Paugussett Tribe, Connecticut**	To Decline 9/26/96 Appealed by Petitioner	Affirmed BIA, referred five issues to SOI, 12/26/96-6/10/98	Reconsidered Negative Final Determination 5/24/99 **IBIA Appeal Time Frame: 17 months** Second Reconsidered Negative Final Determination 6/14/04

4. **Snoqualmie Tribal Organization, Washington**	To Acknowledge 8/29/97 Appealed by: (1) Tulalip Tribes of Washington (2) Lon J. Posenak (3) Lon J. Posenak (4) Ronald R. Lauzon	Affirmed BIA Declined Request referred two issues to the SOI 11/29/97-7/1/99 Dismissed Appeal 11/13/97-11/19/97 Dismissed Appeal 11/20/97-11/28/97 Dismissed Appeal 11/5/97-11/28/97	Positive Final Determination effective 10/6/99 **IBIA Appeal Time Frame: 20 months** **6 days** **8 days** **23 days**
5. **MOWA Band of Choctaw Indians, Alabama**	To Decline 12/24/1997 Appealed by Petitioner	Affirmed BIA, referred two issues to SOI, 3/23/98-1999	Negative Final Determination effective 11/26/99 **IBIA Appeal Time Frame: 20 months**
6. **Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan**	To Acknowledge 10/23/98 Appealed by City of Detroit, Michigan	Affirmed BIA Declined Request for Reconsideration, referred four issues to SOI 1/23/98-5/21/99	Positive Final Determination effective 8/23/99 **IBIA Appeal Time Frame: 16 months**
7. **Cowlitz Tribe of Indians, Washington**	To Acknowledge 2/14/00 Appealed by Quinault Indian Nation of Washington	Affirmed BIA, Declined Request for Reconsideration referred three issues to SOI 5/14/00-5/29/01	Positive Final Determination effective 1/4/02 **IBIA Appeal Time Frame: 12 months**
8. **Chinook Indian Tribe, Washington**	To Acknowledge 1/29/01 Appealed by : (1) Quinault Tribe of Indians (2) Columbia River Crab Fishermens Assn. (3) Michels Development Co. (4) Linda Amelia	Affirmed BIA, Declined Request for Reconsideration referred nine issues to SOI 4/29/01-8/1/01	Negative Reconsidered Final Determination effective 7/5/02 **IBIA Appeal Time Frame: 3 months**

9. Duwamish Indian Tribe, Washington	To Decline 10/1/01 Appealed by Petitioner	Affirmed BIA referred two issues to SOI 12/31/01-1/4/02	Negative Final Determination effective 5/8/02 **IBIA Appeal Time Frame: 5 days**
10. Eastern Pequot/ Paucatuck Eastern Pequot, Connecticut	To Acknowledge 7/1/2002 Appealed by: (1) State of Connecticut (2) 3 towns in CT (3) Wiquapaug Eastern Pequot Tribe, Rhode Island	Vacated Determination and Remanded to AS-IA For Reconsideration, Referred other issues to AS-IA 10/1/02-5/12/05	Negative Reconsidered Final Determination effective 10/14/05 **IBIA Appeal Time Frame: 31 months**
11. Schaghticoke Indian Tribe, Connecticut	To Acknowledge 1/29/04 Appealed by: (1) State of Connecticut (2) 12 towns in CT (3) several businesses	Vacated Determination and Remanded to AS-IA For Reconsideration, Referred other issues to AS-IA	Negative Reconsidered Final Determination effective 10/14/05 IBIA Appeal Time Frame **11 months** 6/3/04-5/12/05
			Historical Average IBIA Appeal Time Frame: 13.2 months

Interested Parties Can Influence Departmental Determinations

As noted above, interested parties have successfully challenged positive Final Departmental Determinations in the Chinook, Eastern Pequot, and Schaghticoke cases (representing a total of five petitions). To a much lesser degree, some interested parties that have supported petitioners have helped them gain Federal acknowledgment. For example, the Michigan Commission on Indian Affairs and the Confederated Historic Tribes, Inc., of

Lansing, Michigan, supported five petitioners that gained Federal recognition in the 1990s: the Huron Potawatomi and Match-E-Nash-She-Wish Band of Pottawatomi, acknowledged by the Department, and the Pokagon Potawatomi, Little Traverse Bay Bands of Odawa, and the Little River Band of Ottawa, ultimately recognized by Congress. However, the evidence and arguments submitted by interested parties in support of petitioners has seldom been as substantive as that submitted by interested parties in opposition to petitioners. In this regard, no interested party has been longer or stronger in opposition than has the Office of the Attorney General of Connecticut, which became an interested party in the Mohegan case in the late 1970s.

The Eastern Pequot Case

The Eastern Pequot case provides a good example of the influential role that interested parties can have on Departmental determinations. This case has relevance to the Juaneno petitioners for many reasons. First of all, it is also a case where an original petitioner was challenged by a splinter group as representing the same historical tribe. More importantly for present and potential interested parties in California, it was also a case in which interested parties, whose interests were threatened by potential acknowledgment, weighed in heavily to have a critical influence on the ultimate decision to decline acknowledgment.

The historical Eastern Pequots occupied a portion of Connecticut at the time of first contact in the 16th century. The colony of Connecticut set

aside a land base for the tribe in New London County that came to be known as the Eastern Pequot reservation. Members of the tribe resided on the reservation, but the membership became more dispersed by the 20th century. The State of Connecticut consistently recognized the Eastern Pequot as a single tribal entity with distinct rights, particularly in regard to activities on its 500-acre reservation.

After the tribal group petitioned the Department for acknowledgment in 1978 as the Eastern Pequot Indians of Connecticut (EP, Petitioner #35), it split into two factions, each with its own leaders, governing bodies, and membership, and each claiming control of the same reservation. The minority faction subsequently petitioned for acknowledgment in 1989 as a separate entity, the Paucatuck Eastern Pequot Indians of Connecticut (PEP, Petitioner #113).

After evaluating the documented petition of the two groups, the Department determined in Proposed Findings of March 2000 that the two petitioners were one group because they had functioned as such historically before the factional split. The Department's controversial findings proposed to acknowledge the two groups as one historical tribe up to 1973, but broke precedent by not making a finding in regard to the period after 1973. The Department's clear message to the petitioners was that if they wanted to be acknowledged in Final Determinations, they needed to settle their differences and merge. Despite the fact that the two groups had strenuously disavowed each other for over a generation, the stakes of potential Federal acknowledgment and its accompanying right to develop casino gaming were too high to resist the Department's pressures. Consequently, the two groups

consolidated their governing bodies and membership and the Department issued Final Determinations in July 2002 that acknowledged a single Eastern Pequot Tribe.

This development proved problematic for the investors that had backed the petitioners as separate entities. Financier Donald Trump had backed the Paucatuck Eastern Pequot, which turned out to be a minority of the consolidated tribal government. After the new tribal council dumped Trump in favor of an investment group that had supported the majority faction, Trump sued the new entity and its favored investors in an effort to recoup the alleged $12 million he had invested with the Paucatucks. The litigation is ongoing.

The semi-rural Connecticut towns of North Stonington, Ledyard, and Preston had been severely impacted by the Congressional recognition of the Mashantucket Pequot Tribe and the Tribe's subsequent development of Foxwoods, the largest grossing casino in the nation, on the neighboring Western Pequot Reservation. While the Tribe's gaming compact provided revenues to State government, the towns did not receive funding to absorb the costs of meeting new demands on their infrastructures caused by increased traffic, crime, and school enrollments, as well as the need to provide greater emergency and utility services.

The Eastern Pequot reservation lies adjacent to the Western Pequot reservation in the area of the three towns. Therefore, the towns were deeply troubled by the potential development of the Eastern Pequot land as yet another gaming operation in the midst of their communities. Consequently,

they were determined to monitor the two Eastern Pequot petitions and become active interested parties in their cases. The Connecticut Attorney General's office took the same stance, as it has in regard six other acknowledgement petitioners that either had filed or had the potential to file claims involving Connecticut lands.

After researchers and legal counsel for the towns and the Attorney General concluded that the petitioners' evidence was not sufficient to meet the mandatory Acknowledgment criteria, their position of monitoring the status of the cases gradually evolved into aggressive opposition to the petitions, which included litigation as well as active participation in the Department's administrative process, including appeals to the IBIA. The lengthy reports and numerous documents submitted to the Department by these interested parties, when added to reports and documents submitted by the well-financed petitioners, created the most prodigious evidentiary record the Department has ever dealt with in an Acknowledgment case.

In September 2002, the State of Connecticut, the three Connecticut towns, and another interested party appealed the Department's Final Determinations to acknowledge the petitioners to the IBIA as provided in the Federal acknowledgment regulations. The State and the towns challenged the findings on many grounds, including the fact that the two petitioners, with their separate governing bodies and membership, had not functioned as one political and social entity since the factional split of the 1970s. A key challenge was that the Department had given unprecedented weight to the fact that the State had continuously recognized an Eastern Pequot tribal entity.

The IBIA's administrative law judges found serious flaws in the Department's Final Determinations, including the fact that the Department had not given adequate consideration to the arguments and evidence submitted by the State and the towns. The IBIA agreed with the interested parties that the Department gave too much weight to State recognition. In May 2005, the IBIA vacated the final determinations and remanded them to the Assistant Secretary for reconsideration.

In light of the IBIA's findings, the Associate Deputy Secretary – Indian Affairs issued a Reconsidered Final Determination on October 14, 2005, which declined to acknowledge the Eastern Pequot petitioners. Among the reasons for the denial was the determination that the factional split of the historical tribe prevented the petitioners from being able to demonstrate social and political continuity "from historical times until the present," as required by the Acknowledgment regulations:

> It is the Department's policy not to encourage splits within recognized tribes., a policy equally applicable to groups that may be acknowledged. Here, the separation occurred after the petitioning process had started and was in the lifetimes of the adult membership. Because of the recentness of the split, EP and PEP neither separately nor together demonstrate existence as a community, nor the exercise of political authority of influence from historical times until the present.

This precedent does not bode well for the Juaneno petitioners especially if the Department determines that their separation occurred after the initial petition was filed.

The Schaghticoke Case

The Schaghticoke case provides another example of the successful intervention of interested parties. The Schaghticoke are another Connecticut tribal group for which the Colony set aside a reservation in 1752. The group petitioned for Federal acknowledgment in 1981. Interested parties got involved in this case initially because the Schaghticoke had pending land claims against them. These interested parties included the State of Connecticut, the Town of Kent, the Kent School Corporation, the Preston Mountain Club, and the Connecticut Light and Power Co. Eventually, twelve other towns and a regional council of elected officials joined the opposition, mostly out of concern for potential gaming development. In addition, two parties of Schaghticoke descendants that had withdrawn from membership in the group weighed in against the petitioner.

The Schaghticoke petition was placed on "ready" list in June 1997. After waiting five years, the petitioner filed suit against the Department to be placed on active consideration ahead of other petitioners (including Juaneno). On May 2001, a U.S. District Court approved an agreement between the group, the Department, and interested parties that provided an accelerated process for the Schaghticoke petition. The Department placed the petition on active consideration in June 2002 and issued a Proposed Finding declining acknowledgment in December 2002. The petitioner was probably disadvantaged by the accelerated schedule, because the Department had to evaluate what had become an enormous evidentiary record (including the substantial evidence submitted on behalf of the many interested parties)

in half the time permitted under the regulations. Under normal circumstances the Department would have likely extended its evaluation period beyond the one-year timeline, as it did in Eastern Pequot and many other cases (now including Juaneno).

In April 2001, just before the Court ordered agreement, a splinter group calling itself the Schaghticoke Indian Tribe (SIT), submitted a letter of intent to petition as a separate entity. This group submitted a documented petition in October 2002 and requested to be considered simultaneously with the STN petition, which was then under active status. The Department declined this request because it was not feasible for it to do so under the Court approved timelines for the STN petition.

A second group of one-time STN members also became an interested party in the case. This was the extended Cogswell family that either withdrew from membership or declined to be re-enrolled with STN. Both the SIT petitioner and the Cogswell family were driven to separation by their objections to the STN leadership.

Despite the accelerated schedule, the Department's evaluation of additional evidence submitted by the petitioners and interested parties extended the Final Determination date to February 5, 2004. The Department then determined that the STN met all of the seven mandatory criteria for acknowledgment.

The State of Connecticut and the many other interested parties, including SIT and the Cogswell group, subsequently filed requests for reconsideration with the IBIA. Their grounds again included the allegation

that the Department gave too much weight to State recognition. The State also challenged the method by which the Department chose to measure the group's intermarriage rate. It had found that the petitioner met criterion 83.7(b) and 83.7(c) for a certain period based on a high rate of intermarriage. In the face of this challenge, the Department was compelled to admit to the IBIA that it had miscalculated the marriage rate and that the recalculated rate was not sufficient to meet the "high evidence" standard under criterion 83.7(b)(2)(ii).

On May 12, 2005, the IBIA vacated and remanded the Final Determination back to the Assistant Secretary for reconsideration. As in its Eastern Pequot decision, the IBIA rejected the general use of State recognition as evidence for criteria 83.7(b), community, and 83.7(c), political influence or authority. After reevaluation, the Department on determined that State recognition did not provide such evidence and that, consequently, the STN petitioner did not meet the mandatory criteria for acknowledgment. This Reconsidered Final Determination to decline acknowledgement became effective on October 14, 2005, the same date as the denial of the Eastern Pequot petitioners.

The petition of the SIT splinter group remains on the Department's register of incomplete petitions, but the group stands no chance of acknowledgment since the Department has already ruled that the group from which it split did not maintain continuity with the historical Schaghticoke tribe. If the Department could have considered SIT simultaneously with STN, it would have also declined the splinter group.

The Handicap of Factionalism

The Department has to date declined to acknowledge at least seven groups that have been the subject of a tribal split in modern times. At the same time, it has only acknowledged one group that spawned a splinter group, the Mohegan Tribe of Indians of the State of Connecticut. The circumstances of the Mohegan case are not similar to Juaneno or to other cases where the Department has considered two or more petitioners simultaneously.

The Department acknowledged the Mohegan Tribe in March 1994. Beginning in the late 1960s, John Hamilton, a maverick leader of this group formed a series of separate and successive Mohegan groups. Eventually, the Hamilton group consisted of a small number of Mohegan descendants, a few descendants of other tribes, and a large number of "adopted" non-Indians. Hamilton died in 1988, but his group continued and eventually split into two other petitioners. Under the name Mohegan Tribe and Nation, the Hamilton group filed a letter of intent to petition for acknowledgment (#129) on October 10, 1992. This was nearly three years after the Department had issued a Proposed Finding to decline acknowledgment of the original Mohegan petitioner on November 9, 1989. The filing also came during an extended comment period on the Proposed Finding, in which the splinter group was also an interested party.

The Department's Final Determination to acknowledge the Mohegan Tribe, published on March 15, 1994, concluded that the Hamilton group had

little impact on, and therefore did not detract from, the political and social interaction of the majority of Mohegan tribal members. The Department did not evaluate the splinter group under the Acknowledgment criteria and the Mohegan Tribe and Nation has not submitted any documentation in support of its petition. On September 19, 2002, a faction of the Hamilton splinter group, the Native American Mohegans, #261) also petitioned for acknowledgment. This group submitted documentation in 2002 and 2003 and received a TA letter from the Department in 2004. However, it appears that it would be impossible for either of these Mohegan splinter groups to meet the Acknowledgment criteria, because of what the Department already knows about them based on evidence uncovered in the Mohegan evaluation.

At least seven split-groups have been denied acknowledgment, although two of these decisions are still pending before the Department. In addition to (1) Eastern Pequot and (2) Schaghticoke, the split groups that have been declined for acknowledgment include (3) the Kaweah Indian Nation/United Lumbee Nation of California (petitioners #70 and #70a, considered simultaneously) the (4) Southeastern Cherokee Confederacy of Georgia (petitioners #29, #29a, and #29b, considered simultaneously), and the (5) Golden Hill Paugussett Tribe of Connecticut (petitioners #108 and #251 and possibly #257, the latter two submitted in 2002 and undocumented). In addition, two split groups received negative decisions that are still pending further review. The first is the (6) United Houma Nation of Louisiana (petitioner #56), which received a negative proposed finding in 1994 and then split into two other petitioners (#56a, and #56b). The Department is currently evaluating all three for a Final Determination. The second split group is the (7) Nipmuc Nation (petitioner #69a) and the

Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians of Massachusetts (petitioner #69b). The Department considered these two petitioners simultaneously and declined acknowledgement to both groups in Final Determinations published June 25, 2004. Both petitioners have requests for reconsideration pending before the IBIA.

Evaluation of the Juaneno Evidence for Federal Acknowledgment

The Department will likely evaluate the petitioners as one historical tribe, at least up to the time of the factional split, and will thus draw evidence from both documented petitions. The original petitioner (#84a) has not served itself well in the process, and its documented petition is too weak to stand by itself. It is painfully obvious that this group has not taken advantage of changes in the Acknowledgment regulations or how they are interpreted since 1994 or kept abreast of changes in the Department's evaluation procedures since 2000. Consequently, petitioner #84a has not attempted to make a case for "unambiguous previous acknowledgment" (explained below) or for the kinds of high evidence for community and political influence or authority specified in sections 83(7)(b)(2) and 83.7(c)(2) of the revised regulations (explained in more detail below). Neither has it heeded the Department's notice of February 2000 that petitioners must interpret the documents they are presenting and cite the sources of their documentation.

Petitioner #84b was in a similar situation prior to submitting further documentation in 2004 and 2005. It is obvious that this further documentation represents the petitioner's ability, at the eleventh hour, to gain sufficient financial support from gaming interests to fund professional research and assistance. These new materials make the strongest arguments for a historical Juaneno group meeting the mandatory Acknowledgment criteria. Therefore, they are the primary focus of this evaluation of the Juaneno evidence.

Previous Federal Acknowledgment

The Acknowledgement regulations (at 25 CFR 83.8) provide, in short, that petitioners that can demonstrate "unambiguous previous" Federal acknowledgment or recognition may qualify for a reduction of their evidentiary burden in regard to the mandatory criteria for acknowledgment. The regulations state that the kinds of evidence that may be used include, but are not limited to, treaty relations with the United States, denomination as a tribe by an act of Congress or in an Executive Order, and treatment by the Federal Government "as having collective rights in tribal lands or funds." Petitioners that can demonstrate previous Federal acknowledgment need only to provide evidence for criterion 83.7(a), external identification, since the date of last acknowledgment and for criterion 83.7(b), community, and 83.7(c), political influence or authority, only for the present time. If a previously acknowledged petitioner cannot meet these reduced criteria, they are given the alternative of demonstrating that they meet criteria (a)-(c) since the date of last acknowledgment, which may or may not represent a significant reduction in their evidentiary burden.

The Acknowledgment regulations state that a determination on "unambiguous previous Federal acknowledgment" shall be made during the Technical Assistance (TA) review of a documented petition (25 CFR 83.8(b)). In the Muwekma case for example, the petitioner claimed previous acknowledgment in its documented petition and the BIA agreed "on a preliminary basis" in a May 1996 letter that the group would be considered under section 83.8, have determined that the last date of acknowledgment was 1927 (see below). This was nearly five years before the case was placed under active consideration

Petitioner #84a's TA review was completed in 1993 and no claim was made in its documented petition for unambiguous Federal acknowledgment." Petitioner #84b's initial TA review ended in 1996 and it likewise made no claim for previous acknowledgment. However, #84b submitted further evidence and arguments in August 2004 and November 2005, which the Department will address in its Proposed Finding (as a technicality, the Department might hold that the TA review ended for #84b when it held an informal TA conference call with the petitioner on September 6. 2005). These materials argue, albeit not too strongly, that the Juanenos were intended to be included under the 1852 Treaty of Temecula and that this was their "first point of unambiguous federal acknowledgment."

The petitioners have made no claim that they were denominated as a tribe by the Mission Indian Relief Act of 1891 (26 Stat. 712), the California Indians Jurisdictional Act of 1928 (45 Stat. 602), the California Indian

Judgment Act of 1968 (82 Stat. 860), or any other statute or Executive Order. Neither have they claimed that had collective interests as a tribe in Federal judgment funds that were distributed under the 1828 and 1968 acts. It appears that the Federal Government made no attempt to set aside land from the public domain or purchase land with federal funds for the Juanenos. Petitioner #84b's most recent narrative admits that it has found no evidence linking Juanenos to Federal efforts to establish reservations.

There is no evidence that the Department has determined that the Juaneno petitioners had unambiguous previous acknowledgment. It would appear be a stretch for the Department to find that an invisible party to an unratified agreement had "treaty relations with the United States." However, even if it did grant previous acknowledgment status based on this claim, 1852 does not give the petitioners a huge advantage. While they might be able to take advantage of having a reduced burden for criteria 83(b) and 83(c), they would still have to fully meet all the requirements of the other five criteria. Their ability to demonstrate community and political influence or authority at present is greatly hampered by their intense factionalism.

The Muwekma petitioner could not meet the criteria even with a 1927 advantage. This group is derived in part from people gathered at the San Jose Mission. Its previous acknowledgment status was based on Federal efforts to secure a land base for its members between 1914-1927.

Here are some descriptions from the Department's findings on this group:

The BIA informed the Muwekma petitioner, in a letter dated May 24, 1996, that it had concluded, "on a preliminary basis," that the Pleasanton or Verona band of Alameda County was previously acknowledged by the Federal Government between 1914 and 1927. As a result of this finding, the BIA advised the petitioner that it would be able to complete its petition documentation with the expectation that it would be evaluated under section 83.8 of the regulations and would have to demonstrate its continuous existence as a group only from 1927 to the present (BIA 5/24/1996).

> The petitioner has demonstrated a genealogical connection of many of its members to two Indian settlements, or rancherias, which existed until the 1910's in Alameda County, in the area north of historical Mission San Jose and east of San Francisco Bay, an area referred to today as the "East Bay" (see Figure). The most prominent of these settlements was located in a canyon just southwest of the town of Pleasanton, California, and near a railroad station named Verona. This settlement was known as the Alisal or Pleasanton rancheria, and its members were referred to by U.S. Indian agents as the Verona band. A second settlement, known as El Molino, was located near the town of Niles, which was within ten miles of Verona. It was about 1915, the petitioner says, that the Alisal rancheria ceased to exist as a geographically distinct settlement.

> The Alisal settlement at the Verona railroad station came to the attention of the Office of Indian Affairs after 1906 while that agency carried out a program to purchase land on behalf of the landless, non-reservation Indians of California which was explicitly funded by congressional appropriations after 1906. The land purchases began under Special Indian Agent C. E. Kelsey and were continued by several other special agents and the Sacramento Agency. A Verona band in Alameda County was first mentioned as a potential beneficiary of the program in statements by Agent C. H. Asbury in 1914 and later by the Sacramento Agency in 1923. However, no land was purchased for the group and no negotiations to buy land on its behalf are known to have taken place. In 1927, Superintendent L. A. Dorrington referred to the band but concluded that land should not be purchased on its behalf. The Proposed Finding was made in accordance with a preliminary determination that a Verona band had previous Federal acknowledgment between 1914 and 1927.

Criterion 83.7(a) External Identification as an American Indian Entity

This criterion is included among the seven mandatory criteria in Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR 83) to prove the continuous ethnic identity of a petitioner since the beginning of the 20th century. It demands continual identification of the group since 1900 by external sources. The criterion is intended to exclude from acknowledgment

those groups that have only been identified as being Indian in recent times. It also is intended to exclude those groups whose "Indianess" is based solely on self-identification or, in other words, on documents or other evidence generated by the group itself.

The qualification that identification of the petitioner must be on a "substantially continuous basis" allows for certain gaps in time during which the group's existence or activities may not have been documented. Many, if not most, petitioners find that they have such gaps. Criterion 83.7(a) evidence is supposed to focus on the identity of the tribe as an existing Indian entity rather than on the Indian identity of its individual members or on a historical tribe. The regulations state that the criterion may be met by using only one of the six kinds of identifying evidence specified, ranging from Federal records to other tribal entities. However, most petitioners will not have continued identity from one source since 1900, and so are likely to have to show evidence of a number of kinds of identifications. **The Department's minimum standard for meeting this criterion is the demonstration of at least one valid external identification as a tribal entity for every decade since 1900.**

It appears that the Juaneno petitioners may not have sufficient evidence to meet criterion 83.7(a) for the period 1910 to 1929. The identifications by Bishop Thomas J. Conaty and by anthropologists A.L. Kroeber and Philip Stedman Sparkman are probably sufficient to meet the criterion for the decade 1900 to 1909. Petitioner cites identifications by the City of San Juan Capistrano, the Sherman Indian School, the Catholic Church, the Mission Indian Federation, and the Federal Government in

relation to the 1928 census roll as evidence for the period 1910 to 1929. However the petitioner did not provide specific documentation of these identifications and the descriptions of them fail to make clear whether the sources actually identified an existing tribal entity, as required by the criterion. The identifications may have been merely of individuals of Juaneno descent and/or affiliations with the historical tribe. The portions cited of the 1935 Alfonso Yorba article, "Old San Juan: Last Stronghold of Spanish California," and the description of the 1924 *Los Angeles Times* article do not reference an existing tribal entity. The Yorba article identifies the historical tribe and the 1924 article identifies a "few remaining Spanish Indian attendees of the mission." This is not clear identification of an existing tribal entity. The remaining attendees could be just one family or a group of individuals with different tribal affiliations.

An existing tribal entity is more clearly described in another Alfonso Yorba article from 1937 entitled "Forgotten Race of More Than 300 Still Survive the Original Indian Mission." This article identifies the San Juan Mission Indians as "a tribe that today numbers more than 300 strong and is still resident in this county. This identification is sufficient to meet the minimum standard for criterion 83.7(a) for the decade from 1930 to 1939.

The other evidence submitted by the petitioners to demonstrate external identification as a tribal entity from 1940 to the present appears to also meet the Department's minimum standard for criterion 83.7(a). Thus, it would appear that only the evidence for the period 1910 to 1929 may be deficient.

Even if the Juaneno petitioners are found in Proposed Findings not to meet criterion 83.7(a) because of gaps in valid evidence for the early 20th century, this deficiency alone could likely be easily remedied by further research during the 180-day response period. If the petitioners meet all the other criteria, the Department might give them the benefit of the doubt in regard to a gap in evidence for criterion 83.7(a). There is precedent for this, for example, in the Mashpee case. The Department held in its Proposed Finding for this group that the petitioner met all of the criteria, but noted that it only marginally met criterion 83.7(a) for the period 1900 to 1923. There was only one source of identification provided for this period. The Department encouraged the petitioner to submit further evidence during the response period. In that case, however, the petitioner had demonstrated possibly the strongest evidence of any previous group for criterion 83.7(b), community, and 83.7(c) political influence or authority. Thus, it would have been arbitrary and cruel for the Department to decline acknowledgment on the basis of a small gap in evidence for criterion 83.7(a).

Criterion 83.7(b), Community

Criterion 83.7(b) requires that most of the members of the petitioning group have comprised a distinct community throughout history since the time of first sustained contact with non-Indians. In essence, community means the continued maintenance of tribal relations. This means that tribal members knew each other and interacted in various ways. Ideally, this interaction can be demonstrated by showing that there was intermarriage across tribal family lines and reasonable residential proximity of the tribal

families within a defined geographic area. Community can also be shown, however, by evidence that tribal members visited each other, shared information, attended each other's life events, such as weddings and funerals, and/or discussed or even argued over issues of importance to the tribal membership. The settlement patterns and social relationships of the group need to be documented and interpreted within the context of strategies used by the tribal members to retain their distinct identity, social cohesion, and interaction. Actual interaction does not need to be evidenced if marriage and residential patterns can demonstrate that the families lived in close enough proximity to make interaction probable.

The intent of criterion 83.7(b) is to preclude from acknowledgment those petitioners whose members have not been familiar with each other and have not interacted within a distinct tribal community historically, even though they may share a common Indian ancestry.

Whereas the minimum standard for evidence for criterion 83.7(a) requires documentation for every decade since 1900, the evaluation standard for criteria 83.7(b) and 83.7(c) allows for certain periods during which little or no documentation may be available. The test for these gaps of evidence is whether the characteristics of the petitioner after the evidentiary gap is essentially the same as what is known about the tribal group prior to the evidentiary gap. The Department has used the analogy of a train going into a tunnel to describe this standard. It is not known from the outside what a train (petitioner) looks like when it is in a tunnel [evidentiary gap], but if its characteristics when it emerges from the tunnel (gap) appear to be essentially the same as when it entered, then it may be

assumed that it is the same train (petitioner) and that it has not changed significantly.

The Acknowledgment regulations specify nine categories of evidence that may be used in combination to meet the community criterion. In addition, the regulations provide that one of five kinds of so-called "high" evidence of community may be used by itself to demonstrate sufficient evidence for both criteria 83.7(b), community, and 83.7(c), political influence or authority, for a given point in time. They likewise provide that one of four kinds of "high" evidence of political influence or authority may be used to meet criteria 83.7(b) and 83.7(c) for a given period. This means that the evidence for these criteria is conclusive at that time, even if there is no other evidence for criteria 83.7(b) and 83.7(c)

The evidence for community for the Juaneno Band of Mission Indians varies depending on the period. Petitioner #84b argues that 1848 should be the standard for submission of evidence from historical times in its Narrative Reports & Source Extracts supplement, and indicates that the Department interprets the matter as prior to 1848. Nevertheless, the petitioner includes substantial evidence from the Mission period. Much of their best evidence is provided by the writings of Franciscan priest Geronimo Boscana. He served at the Mission San Juan Capistrano (SJC) from 1812 to 1826 and commented on the Indians in an 1822 ethnographic report. Included in his report are comments on the Juaneno's resistance to conversion, their continued practice of cultural and religious ceremonies and their refusal to learn Spanish. Boscana's observations indicate that the SJC mission Indians conducted their social and ceremonial life with little meaningful interference

from their Spanish overseers. The petitioner alleges that the Juaneno Mission community of 1822 satisfies criteria 83.7(b), community and 83.7(c), political influence or authority, and that the non-Mission Juaneno population continued to be involved in the mission community. This last claim has little evidence behind it other than demographic speculation of population movements between the mission and unidentified Juaneno settlements. However, the evidence presented is strong for those Indians within the Mission.

Discussion: Based on the precedent of other cases, the Department might establish 1776 as the beginning of "historical times" for the Juaneno petitioners. This is the year in which the San Juan Capistrano Mission was founded. The Acknowledgment regulations define "historical" as meaning "from first sustained contact with non-Indians" (25 CFR 83.1). The Department is likely to not be too concerned with the native villages from which the Indians were drawn to SJC, but will begin its focus on the Indian community that developed at the Mission. Even if autonomous groups inhabited these native villages, the regulations provide that a petitioner can be acknowledged if its members are found to descend "from a historical Indian tribe or from historical Indian tribes which combined and functioned as an autonomous political entity" (25 CFR 83.7(e)). If the villages were autonomous, the Department is likely to view the evolution of the Juaneno Band as a case where historical tribes combined into a new tribal entity in the SJC community.

Such an entity would not be required to be autonomous vis-à-vis the strict controls of the Franciscan missionaries. The regulations define