Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

September 25, 2013

Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
U.S. Department of the Interior
1849 C Street, N.W. MS 4141-MIB
Washington, D.C. 20240

RE: 1076-AF18

Dear Ms. Appel,

The Amah Mutsun Tribal Band submits the following comments regarding the draft revision to the criteria for federal recognition. Our general comments regarding the recognition process is that the process should identify legitimate, historic and continuous tribes for recognition. However this process should be free of discrimination, should not result in disparate treatment or disparate impact, the process should be standardized and applied consistently . We also recommend that the BIA consult with the EEOC and formally validate the selection criteria and process based on EEOC standards for validation.

Regarding the recognition of California tribes, the following list could serve as a simple checklist of items needed to show previous recognition. A basic "pass point" could be set at, for example, 70% or 80% of items on this list. Tribe that meet this pass point are quickly recognized. Tribes that do not meet the pass point are required to submit additional material for review by OFA.

- Descend from an historic tribe
- Identified as a tribe on the 1900 Indian population census
- Identified as tribe on 1905-1906 Special California Indian Census
- Identified as tribe on 1910 Indian population census
- Had members attend Indian Boarding Schools
- Tribe identified as being under the jurisdiction of Indian Field Service (now Bureau of Indian Affairs (BIA)
- Identified as tribe on L.A. Dorrington, Superintendent, Indian Field Service's Report, 1927
- Tribe terminated based on Dorrington Report
- Members enrolled on California's Indian Rolls
  - 1929 - 1932
  - 1949 - 1955
  - 1968 - 1971

- Current tribe has California State Recognition status
- Current tribe is identified by UC Berkeley as an historic and continuous tribe
- Current tribe is identified by Fowler Museum of UC Los Angeles as an historic and continuous tribe
- Current tribe is identified by the BLM, NPS or other federal department as being the legitimate and historic tribe. Currently federal departments are barred from writing this type of letter, federal departments must be approved to do this.
- Current tribe has a signed MOU/MOA with a federal department or other federal agency (i.e. National Park Service)
- Current tribe is identified by California State Assembly as an historic and continuous tribe.
- Current tribe is identified by the Catholic Church as an historic and continuous tribe.
- Current tribe is recognized by the local newspaper as the legitimate and historic tribe.
- Current tribe was identified by the Smithsonian Institute as an historic tribe after 1900.
- Current tribe is identified by local colleges, universities, and other entities as being an historic and continuous tribe.
- Current tribe is recognized by members of congress as being the legitimate and historic tribe.

The above checklist would very easy to evaluate and allow previously recognized Tribe to be restored in an expedited manner.

Thank you for allowing this comment period and we look forward to the implementation of the revised criteria.

Sincerely,

Valentin Lopez, Chairman
Amah Mutsun Tribal Band

Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

September 24, 2013

Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
U.S. Department of the Interior
1849 C Street, N.W. MS 4141-MIB
Washington, D.C. 20240

RE: 1076-AF18

Dear Ms. Appel,

The Amah Mutsun Tribal Band submits the following comments regarding the draft revision to the criteria for federal recognition. These comments contain input from the unrecognized tribes who attend meetings on July 6 and July 25.

It is widely accepted by the legal community, ethno historians, academicians, recognized tribes and unrecognized tribes of California that the history of California Indians is unique. Any revision to the recognition criteria must take into account a tribes history. Therefore, recognition criteria must be customized depending on regional, state, geographic, or historical considerations. This letter presents; (1) the unique history of California Tribes; (2) Important Consideration Regarding Federal Recognition Standards; and (3) provides recommendation for revision to the federal recognition process.

1. Mission and Early Rancho Period 1769 - 1834:

- The mission and early rancho period was devastating for those tribes and Indigenous Peoples that were forcefully taken to the missions, including Indigenous Peoples who remained behind in villages after exploitation;
- It is estimated that approximately 40% of all Indigenous Peoples within the newly formed California boundaries died during the mission period;
- There are many documented examples of disease, massacres, physical and psychological brutality, and genocide, this history is seldom reported in history books, museums, etc.;
- The rape and violence of indigenous women and children by Spanish soldiers, landowners, and priests was rampant during mission times.
- The Missions were unequaled in their brutality and led to the extermination of tribes and the social order of indigenous peoples.
- As many as 80 tribes were taken to any one particular mission and forced to live and work together. During this time many tribes that went the missions became extinct.
- At the closing of the Missions, there was no single Tribe which could have continued openly intact, maintaining indigenous culture, knowledge and traditional ways.

However individual families, clans and small tribes maintained their autonomy and passed on their culture.

- At the closing of the Missions, there was no single mission tribe which could have continued openly intact and maintained its culture, indigenous knowledge and traditional ways.
- The Spaniards and Franciscans are on record as stating their intent was to return the land to the Indians. Land rights and resources which was never ceded by indigenous peoples.
- Impact of Mission and Early Rancharia Period on federal recognition:

  Many natives that survived the missions remained together to form a native community of different tribes or attempted to return to their traditional tribal territory. The seven criteria for federal recognition do not acknowledge the unique history of the Indigenous Peoples.

2. Mexican Period - 1833 – 1848 (Esselen – land grant & Treaty of Hidalgo - soldiers married Indig)

- During the Mexican Period huge swaths of land (ranchos) were granted to powerful citizens of Mexico. It is estimated that the total Indigenous Peoples population was reduced through extermination, migration, or forced assimilation by *** peoples.
- During the Mexican period the land owners needed a work force to manage the land. The Indigenous Peoples were used as a slave labor force by most land owners;
- Many land owners did not allow Indigenous Peoples or tribes to live on their property/ranchos which had been their traditional Indigenous Peoples territories for tens-of- thousands of years;
- Huge herds of horses, cattle, sheep, required that the landscape be changed to grazing grasses as did the planting of non-indigenous crops. This resulted in the flora and fauna be eliminated or drastically reduced. The loss of these cultural resources had a adverse impact on the ecology of CA and traditional cultural ways. This resulted in many IP and tribes being unable to continue their traditional ways on their traditional territory.
- The Mexican government through the secularization act acknowledged their intent to return ½ of mission land to the indigenous people living at each mission.

Impact of Mission Period on Indigenous Tribes and individuals: This resulted in the impoverishment, disenfranchisement, and enslavement of the indigenous tribe and peoples.

3. Early American Period - 1848 - 1900

- The discovery of gold in the foothills of CA in 1848 brought an enormous emigrant invasion from all over the globe. This resulted in a second wave of ongoing genocide of California indigenous peoples.
- From 1851 - 1852 the U.S. Indian commissioners, acting on behalf of the United States, negotiated 18 treaties with California Indian Tribes. These 18 treaties provided

8,500,000 acres of land for the Indians. The California legislature recognized the value of the land and voted to submit resolutions to oppose the ratification of the treaties. The U.S. Senate, in a secret session, rejected the ratification of these treaties. These treaties were ordered to be sealed for fifty years by the president of the US. All California tribes and all indigenous peoples were identified for relocation to these reservations.

- In 1849 "An Act for the Government and protection of Indians, Chapter 133, legalized genocidal crime against California Indians.
- On January 7, 1851 Governor Peter H. Burnett of California signed an Executive order to exterminate all Indians in California. As a result of this order bounties were paid for the heads of dead Indians. In addition, the State of California, through its own and federal funding, paid over $1,500,000 on military, militia, and volunteer expeditions to exterminate Indians.

  These military expeditions are often referred to as the "Indian Wars" and were often for the protection of gold miners and kidnappers of Indians and in particular Indian children.
- From 1850 to 1866 the kidnapping of Indians was rampant and in many cases legal in California. Indigenous Peoples were sold for $30.00 to $150.00.
- In 1858 California passed a law to legalize "indentured servitude" which is legalized slavery. It is reported that some Indigenous Peoples were indentured into the 1930's.
- 1872 the US ceased to engage in treaties with any indigenous tribe. This severely impacted a tribe's ability to stay together as they had no land base.
- In 1891 An Act for the Relief of Mission Indians in the State of California was passed and signed by the President of the United States. This act provided for a" just and satisfactory settlement" to Mission Indians residing in the State of California. Appointed commissioners were to select a reservation for each band or village of the twenty one Mission Indian tribes residing within said State. Several Mission Indian Tribes in San Diego County received land, but no other Mission Tribe received land.

  It is our understanding that the Twenty Nine Palms Band of Mission Indians received their reservation under the Act of 1891. What's interesting about this is that the Twenty Nine Palms Band of Mission Indians was not a mission tribe as it had never been missionized.
- The American government is on record as stating their goal was to give Indians land for them to live. Indigenous Peoples not approved to be placed under federal recognition regulations within California continue to wait for this goal to be fulfilled.

4. American Period - 1900 to Present

- In 1900 the U.S. Census identified the number of Native Americans living in California.
- In 1906 there was a special Indian census that identified the Native American population living in California.

- In 1910 the U.S. Census identified the number of Native Americans living in California.
- 1906 – 1937 – landless Indians received allotment land. These allotments were granted to individuals and not to tribes.
- In 1927, L.A. Dorrington, Superintendent, Indian Field Service, Sacramento Indian Agency, submitted his report regarding the land needs of California's landless tribes. In all, the report covers approximately 220 tribes. Of that number, approximately 180 tribes receive no land. It's important to understand that most of these tribes were federally recognized tribes at this time based on the BIA determination that the Muwekma Tribe was a previously recognized tribe based largely on this report. Therefore we can only conclude that the Dorrington report illegally terminated up to 180 tribes. By law only an Act of Congress can terminate a Tribe and no such Act ever occurred. Dorrington's report only provided a 2-3 sentences justification for not providing land to each tribe. In no case did Dorrington provide evidence or documentation to support his conclusions. It's important to note that a review of the 18 boxes of his archive materials at the National Archives in San Bruno, California, provides no evidence of any research for this report. For example, no known record exists evidencing Dorrington ever visiting or corresponding with the tribes, churches or governments between San Francisco and San Luis Obispo.

  Some of the reasons Dorrington provided for not giving land to the tribe included:
  - "No land is required for this band at this time."
  - "No land will be needed for this band."
  - "These Indians have been well cared for by Catholic priests and no land is required."
- In 1928 Indians not living on reservations were given the full rights of citizenship including the right to own land without relinquishing their tribal affiliation.
- When Yosemite became a National Park the Indians were removed; this was true for all National Parks. Today the Yosemite Tribe is a non-federally recognized tribe.
- When the Santa Inez Chumash Tribe, a federally recognized tribe, received tribal land the report also recommended that the Esselen Tribe receive tribal land. The recommendation that the Esselen Tribe receive land was ignored, consequently today they are a federally unrecognized tribe.
- The Indian reorganized act of 1934 allowed for Tribes to reorganize and a lot of tribal reorganizations occurred at this time. Because the unrecognized tribes were not included in this reorganization act their recognition status was administratively terminated.
- Indigenous Peoples not approved to be placed under federal recognition regulations are very seldom included in any legislation, regulations, policies, etc. that apply to federally recognized tribes. For example, in November or 2012 four departmental Secretaries and the Chair of the Advisory Council on Historic Preservation signed a Memorandum of Understanding regarding the protection of Sacred Sites. This legislation does nothing to protect the Sacred Sites of Indigenous Peoples not under federal recognition regulations. Also, on June26, 2013 President Obama issued an Executive Order to Establish the White House Council on Native American Affairs. This Executive Order

established a government to government relationship with federally recognized tribes. There are hundreds, if not thousands, of examples like these regarding every facet of our culture and our life that make it impossible for non-federally recognized Indigenous tribes and Peoples to fulfill their obligations as a tribal government.

- In 1978 the BIA developed a process to acknowledge the federally non recognized tribes. In 1992 the former Assistant Secretary of the BIA, Bud Shepard, the person who approved the regulations regarding recognition, testified before congress that the regulations were "fatally flawed" and that no recognized tribe of today could meet these standards. To the unrecognized tribe's complete detriment, these regulations have never been substantially changed. The current revision that was recently sent out for review also does nothing to change the regulations in a substantial or meaningful way.
- The recognition regulations had a "previous, unambiguous recognition" designation. Tribe considered this to be a very important distinction which should lead to an expedited path of reaffirmation or restoration. We believed that this designation put the burden of proof on the BIA to show how the previous recognition status was terminated. In the Muwekma court case the BIA answered this question by saying the Muwekma's federal recognition status "withered away." Another reason cited in the Muwekma court case for their previous unambiguous recognition being terminated was that the "statute of limitations" for the Tribe to appeal the decision to terminate the tribe had passed.
- Annually the President meets with federally recognized tribes. Non-federally recognized tribes are not included at these meetings. Our absence at this meeting give us the clear message that we are not considered part of the indigenous community in the United States.

Important Consideration Regarding Federal Recognition Standards

1. The federal government should remove the Office of Federal Recognition out of the Bureau of Indian Affairs (BIA) as there is a clear conflict of interest. The BIA has a responsibility to act in the best interest of federally recognized Tribes. It is clearly not in the best interest of recognized tribes for additional tribes to be recognized. The resources for health care, education, economic development, etc. would have to be shared with an even larger number of tribes. Furthermore, the BIA has a history of not acting in the best interest of non-recognized tribes.

   It is our recommendation that the Office of Federal Recognition be placed in the Civil Rights Division of the Department of Justice. This Division was created in 1957 by the enactment of the Civil Rights Act of 1957 and works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Furthermore, this Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin.

2. It is widely believed that the current process is designed to "weed out" tribes. The federal recognition process should be designed to affirm tribes by assisting them to understand the criteria and to actively work with them providing professional assistance (at no cost) to help them meet the standard.
3. Since 1978 only one California tribe has successfully made it through the BIA's federal recognition process. In 1983 the Death Valley Timba Sha Shoshone were federally recognized. The petition of the Death Valley Timba Sha Shoshone was 52 pages long. Three other California tribes have been administratively restored by the BIA; the three tribes are Ione, Lower Lake, and Tejon.

   The Samish Tribe of Washington was denied federal recognition by the BIA only to have their federal recognition reaffirmed by a Court. Today OFA takes credit for affirming the Samish Tribe, this is a misrepresentation of OFA's actions. If a court can see the evidence related to the Samash tribe and conclude that they should have their recognition reaffirmed how can tribes have confidence in the OFA process?

   The Duwamish Tribe of Washington State and the Eastern Pequot Tribe of Connecticut were acknowledged under the OFA process during the Clinton administration. However, the federal recognition of both these tribes was reversed under the Bush administration.

   The facts presented under number 3 clearly show that there is no objectivity in the federal recognition process. When only one California tribe is federally recognized in 35 years, when a court reverses a BIA decision, when three California tribes are administratively restored, and when a new presidential administration is able to reverse a BIA decision affecting two tribes one must question the issues of fairness and validity in the federal recognition process of OFA.

4. Initially the burden of proof was on the BIA to prove that an unrecognized Tribe shouldn't be recognized. Somewhere along the line the burden of proof shifted and now the burden of proof lies with the unrecognized tribes to prove they do meet the criteria. We believe the burden of proof should be on the BIA.
5. The time it takes to be federally recognized takes too long. Many tribes have been in the recognition process for over 30 years and they are still waiting for their federal recognition status to be determined.
6. It is unfair to have a federal recognition requirement that the majority of current day federally recognized tribes could not meet at the time they received their federal recognition status.
7. The unique history of California tribes, as discussed above, needs to be considered. The federal government cannot expect tribes to have maintained their tribal continuity when they were forced into slavery or near slavery conditions. It is extremely difficult for tribes to pass down their indigenous knowledge regarding culture, traditions, ceremonies, etc. when they're struggling just to survive. These are important factors to consider when one looks for fairness within the federal recognition process.

8. The historic trauma of Indigenous Peoples and Indigenous Tribes must be considered in the development of federal recognition criteria. Historic trauma paralyzed our ancestor and forced many of them into isolation in their attempt to survive. The current criteria punishes tribes and lineages for our survival.
9. The U.S. Supreme Court Carcieri decision has eliminated investor interest in funding federal recognition efforts of unrecognized tribes. The investor's interest was the economic development on Indian trust land. The Carcieri decision greatly raised the risk that trust lands may not be available for economic development and therefore investors are no longer talking to unrecognized tribes. As a consequence very few, if any, tribes have the resources to fund a federal recognition petition or to go through the federal recognition process. By doing nothing the OFA could be out of business in a very short while.
10. Indigenous Peoples not approved to be placed under federal recognition regulations receive no financial assistance from the federal, state, tribal, or any governmental body. It is very difficult to keep a tribe together without tribal offices, land or financial sustainability for travel, phone, internet, etc. It is vitally important for the Bureau of Indian Affairs act quickly to determine which non-federally regulated Indigenous tribes are to receive federal funding to ensure those tribes survival into the future.
11. Many of our tribal elders who would have provided critical information for meeting the federal recognition standard have died during the long delays of the recognition process. With the passing of each elder it becomes more difficult for tribes to document their tribal history and continuity during the critical years, for example the 1920's - 1950's.
12. The current criteria require the submittal of historic documents that don't exist in many cases. It is not unusual for generations to not know how to read or write. Some of our ancestors lived in tents along rivers and streams into the 1950's and 60's. Additionally many of our elders did not have the financial resources to document the historic shifts in the Indigenous communities. It is unreasonable for these members to be expected to have stayed in touch with the BIA or to voice their tribal concerns in public forums etc. that would have provided the documentation trail that the BIA now requires?
13. Due to economic pressures many tribal members had to move from their traditional tribal territories. In some locations starter homes were selling for $350,000 or more. Tribal members earning wages that are close to the minimum wage had to move from their homelands just to survive. Moving from their homelands was not a choice or conscious rejection of their tribe. How were these tribes supposed to hold their members together under these conditions?
14. The standards for federal recognition gets more difficult with the review of each petition. It seems like the OFA/BIA looks at the evidence provided for each tribe as a tribe's effort to find a loophole in the recognition process. After such loopholes are found the OFA/BIA is quick to shut these loopholes. Two good examples of this was the designation of "previously recognized" tribal status. This designation was significant for non-federally regulated tribes because if a tribe was previously recognized then only an Act of Congress could have terminated that tribe. Because no such Act of Congress ever occurred the tribe should have been immediately restored. Rather than restoring

the tribe(s) the OFA/BIA stopped assigning this designation. A second example is when the Assistant Secretary of the BIA administratively restored the recognition of the Tejon Tribe. This administrative process should have been used to restore the tribes that were determined to be previously recognized. It is our understanding that the BIA will no longer recognize Tribes by having the Assistant Secretary administratively restore tribes.

15. Many California Tribes that are non-federally recognized tribes today were referred to as landless tribes. It's interesting to note that these Indians were prevented from legally owning property prior to 1928. Furthermore, these Indians did not become citizens or have the right to vote until 1924. It's very difficult to hold tribes together without a tribal land base.
16. In 1925 Alfred Louis Kroeber, an anthropologist from U.C. Berkeley, published a book titled, "Handbook of the Indians of California." This book, recognized as the definitive book on California Indians, erroneously reported that Indians from various regions were "extinct." We believe it is very possible that this book greatly influenced the BIA's decision to discontinue any effort to support or assist many California tribes. Some of these extinct tribes are the unrecognized tribes of today.
17. We believe that the basic precept of the federal regulation standards is erroneous. Rather that asking tribes to prove they deserve to be recognized under the BIA's criteria, we believe the BIA should be asking why aren't you recognized and then the federal government should conduct research to answer this question?

Proposals for Revised Federal Recognition Standards

1. BIA should change their philosophy on the recognition process. Rather that have a process that is designed to deny the recognition process they should work to identify Tribes that are truly historical and have the capacity to substantially restore their Tribe.
2. The BIA should recognized that the indigenous knowledge of these tribes is of great value and is important to solving a lot of problems that exist today. This is particularly true regarding environmental issues. Traditional tribal foods, land stewardship, water management, knowledge of wildlife, coastal protection and many other concerns are currently considering the use of indigenous knowledge to solving these problems. Indigenous Peoples tribes can contribute to solving environmental problems and the federal government should ensure the survival of non-federally regulated indigenous tribes into the future for the benefit all mankind. It's important to note that a number of non-federally regulated tribes are currently working on research projects regarding their indigenous knowledge with major universities, California state departments, federal agencies, and many others solely for that purpose.
3. The BIA should reinstate the "previously recognized" designation and administratively restore the previously recognized tribes.
4. Tribes that are currently known and recognized as being historical and continuous by the Hearst Museum of UCB, the Fowler Museum of UCLA, the California State Assembly, the State of California, and more than one congressional leader, federal governmental agencies such as the BLM or the NPS should be administratively recognized. It's

important to note that a number of current day non-recognized tribes meet all of the above criteria.

5. Tribes that have signed MOU or MOA with federal governmental agencies should be federally recognized.
6. The federal recognition process should not be available to non-historic tribes. Tribe who are new formulated, who have members from various tribes who only came together in recent times, who have submitted fraudulent documents to the BIA in an attempt to appear legitimate, or Tribes whose leadership is non-Native should not be federally recognized.
7. Accept as evidence documentation of early anthropologist and ethno historians from the Smithsonian Institute or other approved institutions who documented tribes and tribal members prior to 1950. This oral history needs to be respected.
8. We request that the federal recognition criteria be validated by a professional industrial organization psychologist firm and that any recommendation of this firm be implemented into the process. We request that all recommendations be shared with the public.
9. The federal guidelines must be revised to recognize the special conditions and considerations of the non-federally recognized tribes and Indigenous Peoples of California.

Sincerely,

Valentin Lopez, Chairman
Amah Mutsun Tribal Band