THE SECRETARY OF THE INTERIOR

WASHINGTON

MAY 8 2002

Memorandum

To: Assistant Secretary - Indian Affairs

From: Secretary Gale Norton

Subject: Request for Reconsideration of Determination Against Acknowledgment of the Duwamish Tribal Organization as an Indian Tribe

On December 31, 2001, the Duwamish Tribal Organization (Duwamish) submitted a request to the Interior Board of Indian Appeals (IBIA) for reconsideration of the *Final Determination Against Federal Acknowledgment of the Duwamish Tribal Organization* (Final Determination), which you signed on September 25, 2001, and published in the *Federal Register* on October 1, 2001. 66 Fed. Reg. 49966. By a decision dated January 4, 2002, the IBIA dismissed the Duwamish petitioner's request for reconsideration as failing to allege any grounds within its jurisdiction. *In re Federal Acknowledgment of the Duwamish Tribal Organization*, 37 IBIA 95.

The IBIA, however, also referred to me, in accordance with 25 C.F.R. § 83.11(f)(2), the issues that the Duwamish petitioner allege support reconsideration. These issues are: (1) Whether the action taken by the Acting Assistant Secretary dated January 19, 2001, was a final determination to acknowledge the Petitioner and (2) if so, whether the September 25, 2001, final determination should be retracted and the final determination dated January 19, 2001, reinstated. As explained below, I exercise my discretion by declining to request your reconsideration of the Duwamish Final Determination.

The acknowledgment regulations do not contemplate that I assume the ultimate decision-making power. Rather, they provide that I have the "discretion to request that the Assistant Secretary reconsider the final determination on [the] grounds" identified by the IBIA. 25 C.F.R. § 83.11(f)(2).

Pursuant to 25 C.F.R. § 83.11(f)(4), the petitioner and interested parties have thirty (30) days from receiving notice of an IBIA referral to submit comments to me. Notification of the IBIA's order in this matter established the deadline for the Duwamish petitioner and all interested parties to submit comments as Thursday, March 14, 2002. By facsimile transmission dated March 11, 2002, the Duwamish petitioner submitted comments urging me to exercise my authority and refer the issues back to you for reconsideration. No other persons, organizations, or entities identified

as interested parties in this matter submitted comments.

The regulations at 25 C.F.R. § 83.11(f)(5) provide that I must determine whether to request a reconsideration of an acknowledgment determination and notify all parties of this decision within sixty (60) days of receiving all comments. The 60-day deadline for my final determination in this matter is Monday, May 13, 2001.

The Final Determination explained your review of the Duwamish acknowledgment petition and your decision that this petitioner did not submit sufficient evidence to meet criteria 83.7 (a), (b), and (c) of the acknowledgment regulations. The IBIA's decision makes clear that the Duwamish petitioner did not present any new evidence in its request for reconsideration to show that they meet criteria 83.7 (a), (b), and (c) of the acknowledgment regulations.

The issues referred to me by the IBIA focus on the finding of the former Acting Assistant Secretary - Indian Affairs dated January 19, 2001. The Duwamish Final Determination makes clear that the former Acting Assistant Secretary made a finding that the Duwamish met the seven mandatory requirements for federal acknowledgment. The Final Determination also explained, however, that there were procedural flaws with this finding, including the former Acting Assistant Secretary's failure to sign either his recommended final determination or the required three copies of the *Federal Register* notice before the change in the Administration. Furthermore, the former Acting Secretary's finding was not sent to the *Federal Register* before the change in the Administration — the documentation never left the Department.

In addition to your review, the Department's Office of the Inspector General (OIG) investigated the circumstances surrounding the actions of the former Acting Secretary. The OIG released its final report on this matter entitled *Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming* in February 2002. I am satisfied that the Duwamish Final Determination conforms with the OIG's findings on this matter and I do not want to disturb the OIG's final report.

After considering the record on the Duwamish acknowledgment petition, including the submitted comments, I have decided to exercise my discretion by not directing additional review in this instance. The acknowledgment regulations provide a thorough and transparent process for determining whether the Department should acknowledge an Indian group as a tribe. The Duwamish petitioner was accorded an ample opportunity to be heard and to make its case for federal acknowledgment. In light of this process, I will not direct reconsideration in the absence of a strong showing that further review would be likely to change the result or, in the absence of such a showing, that the party seeking the reconsideration was denied a fair opportunity to be heard. Based on the record, therefore, I have concluded that further review is not likely to change the determination against acknowledging the Duwamish as an Indian tribe. Accordingly, I decline to request your reconsideration of the Duwamish Final Determination.

Thank you for your attention to this matter.