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Tribal Government Services - A&R  
MS 4603-MIB

OCT 10 1996

Ms. Rosemary Cambra  
1845 The Alameda  
San Jose, California 95126

Dear Ms. Cambra:

The Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR) has completed an initial review under sections 83.10(b) and 83.10(c) of the acknowledgment regulations of the Muwekma Indian Tribe's (Muwekma) petition for Federal Government acknowledgment as an Indian tribe. This letter is issued under section 83.10(c). It describes any obvious deficiencies or significant omissions apparent in the Muwekma Indian Tribe petition.

The technical assistance (T/A) review is provided for in the Federal Government acknowledgment regulations to ensure that a petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its merits. The T/A review provides the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification prior to the actual active consideration period.

The T/A review does not purport to be a preliminary determination of any case. This T/A letter does not constitute any evidence that a positive conclusion has been or will be reached on the petition, or on the portions of it not discussed in this letter. Nor does the fact that a petitioner responds to the T/A review imply in any way that the group meets the seven mandatory criteria by simply submitting additional data. The T/A review is a limited, preliminary review conducted over a period of several weeks by a staff anthropologist, genealogist, and historian. Only during active consideration is the petition reviewed and evaluated in depth by the BAR staff to determine whether or not the group meets the requirements to be acknowledged as an Indian tribe.

With the requested information and/or documentation, the BAR staff can fully evaluate the petition when it is placed on active consideration. The BAR staff's research during the active consideration period is for the purpose of verifying and/or elaborating on an already complete petition. The BAR staff is no longer in the position to do research on behalf of the petitioner to the extent they have sometimes done in the past.

Petitioners have the option of responding in part or in full to the T/A review or of requesting, in writing, that the Assistant Secretary - Indian Affairs (AS-IA) proceed with the active consideration of the documented petition using the materials already submitted. The BIA determines whether or not a petition is ready to be placed on active consideration.

The decision as to whether or not the group chooses to address the deficiencies noted in the T/A review should be made by the petitioning group and not solely by its researchers. If your group requests that the materials submitted in response to the T/A review also be reviewed as to their adequacy, the AS-IA will provide the additional review. The additional review will not be automatic, and will be conducted only at the request of the petitioner.

The limits of these preliminary reviews must be taken into consideration. We do not know all of the questions that an in-depth review during active consideration might raise.

### **General Comments**

In a letter to Rosemary Cambra of May 24, 1996, Deborah J. Maddox, Director, Office of Tribal Services stated: "The Muwekma have also established, on a preliminary basis, that it is the same group as the band identified between 1914 and 1927. This means that you could proceed under §83.8 of the regulations." However, this T/A review will raise some important questions concerning the relationship between the Muwekma petition and the tribe previously recognized by the Department of the Interior. We are specifically concerned that families currently in your membership do not have ancestors in the Pleasanton-Verona Band acknowledged as late as 1927, and that important families of that band are not now represented in your membership. This letter will make suggestions about what we think you can do to address this problem and answer our concerns.

The first thing you need to do is reconstruct the composition (membership) of the Pleasanton-Verona Band in the years immediately preceding 1927, the point of last acknowledgment. Was there a BIA report written in 1914, when the agency proposed to buy a homesite for the band? If so, is there a list of members with it?

In absence of this list or similar lists, compile all references to individuals who are associated with the band. These references may come from a variety of sources; linguists, newspapers, letters, BIA documents, etc. . . . Carefully coordinate where people are located and when they are together.

It may be that even if BIA lists or other lists are found, they may be incomplete. You should, in any case, analyze as many sources as possible to describe the band's composition. Some band members may not be resident at Pleasanton. They may

live in Alisal, Sunol and El Molina or elsewhere. If so, it is important to include these individuals in the band. If you can't do this for 1927, then go to an earlier period.

Our review indicates that there are other significant omissions in your petition. The fact that you are being reviewed under §83.8 doesn't relieve you of the responsibility of demonstrating previous tribal existence, although it significantly lowers the burden of evidence. The narrative description submitted with our petition of the development of the Muwekma Indian Tribe in the 20th century is insufficient for purposes of evaluation by the BIA. The depression era is discussed in only one paragraph (p. 21). Treatment of World War II's impact on your group also only includes one paragraph. For the 1950's, nothing is provided but a general description of where several families were living (p. 22). There are virtually no documents submitted for the years following 1930. The efforts leading to gaining title to the Ohlone Cemetery on Washington Boulevard in Fremont during the 1960's are mentioned (p. 22), but are not described or documented. Nothing is said concerning the past and present interrelationship between the Muwekma Indian Tribe and the Ohlone Tribe, Inc. (pp. 22-23).

We recommend that you review the Federal Government acknowledgment criteria carefully, particularly under 83.7(a), 83.7(b), and 83.7(c), and direct additional research toward providing the evidence that will demonstrate that your group meets each criterion. The section below explains the requirements of the criteria in greater detail. The petition narrative indicates the existence of a complex relationship between the Muwekma Tribe and the Ohlone Tribe, Inc. Please include sufficient documentation to explain these structural relationships.

In addition, we strongly urge that you and your researchers contact BAR to arrange a meeting or conference call, so that we can discuss the criteria further and provide more specific T/A.

**Criterion 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. . . .**

In the case of a group with prior unambiguous Federal Government acknowledgment, this criterion requires proof of the external identification of the group as an American Indian entity since the most recent date of prior unambiguous Federal Government acknowledgment. The criterion is intended to exclude from acknowledgment those entities whose "Indian Identity" is based solely on self-identification.

Documentation for criterion 83.7(a), historical identification, as modified by criterion 83.8(d)(1) should focus on the identity of the **group** as an Indian entity rather than on the Indian identity of past or present individual members. These identifications must also show that your present petitioning group is the same as that identified throughout history.

Criterion 83.7(a) describes six kinds of sources which may be relied upon to demonstrate a group's continuous Indian identity, including identification by federal, state and local government, scholars or other writers, in newspapers and books, and/or by recognized tribes or national Indian organizations. All church documentation submitted was prior to World War I and did not continue into the most recent 80 and 90 years. No examples of identification by local governments since the early 20th century were included in the exhibits. The Muwekma Tribe's narrative petition asserts that such identifications exist throughout the 20th century in each category, but does not include specific examples in the exhibits. For example, it says that the State of California attorney general's office consistently, from 1928 through 1972, represented the interests of the group's members under the California Indian Jurisdiction Act, but no documentation was submitted to confirm this.

The 1928 California Claims Act (25 U.S.C. §651) authorized the Attorney General of California to bring suit in the U.S. Court of Claims on behalf of the Indians of California for lands taken without compensation by the United States. The Act did not authorize the attorney general to represent specific tribes and did not identify any tribes. To use the state's activities at various times between 1928 and 1972, it will be necessary to submit documents where the attorney general specifically identifies the Muwekma Band (by whatever name) as existing at the time of the state's action. Reference to a band which existed earlier in history, e. g., at the time of the California treaties, does not meet the requirements of this criterion.

The petitioner is not required to submit evidence from each of the six sources nor are petitioners limited to the six types of evidence. You need to show continuous identification since previous recognition using any type or combination of types of sources described. It is important to demonstrate that any identifications found refer to your group specifically and not to other Indian groups that may have resided in the same general geographical area.

In the case of the Muwekma Indian Tribe, the petition as submitted does not provide clear BIA identification of an entity in the decade following the 1913 BIA map and 1914 Asbury letter. For your information, the "various BIA correspondence under the Appropriation Acts of 1906 and 1908" refer to the Sacramento-Verona Band in Sacramento County, California. This was a different band and not the Verona Band from Alameda County which the Muwekma Indian Tribe cites as its antecedent historical tribe. This band, we believe, became the Shingle Springs Rancheria.

Your petition indicated that the 1927 Dorrington report was using the outdated Kelsey data and did not represent the current status of the entity. However, the fact that Dorrington may have used Kelsey's report does **not** demonstrate that all of his information was out of date. BAR researchers have found one case where the numbers stayed the same as Kelsey's, but the family composition shifted. Below is a summary discussion of Dorrington's discussion of the band that was part of the May 24, 1996, letter. It appears to be contemporary information:

In 1927, Agent Lafayette Dorrington's comprehensive review of the Indians under his jurisdiction stated that "there is one band in Alameda County, commonly known as the Verona Band, which consists of about thirty individuals, located near the town of Verona; these Indians were formerly those that resided in close proximity of the Mission San Jose." He distinguished them from other Indians in the county, whom he treated as individual residents of an urban area that did not form bands. Dorrington went on to say concerning the Verona group that "It does not appear at the present time that there is need for the purchase of land for the establishment of their homes."

The petition presented only extracts from Harrington's notes taken in the late 1920's and the early 1930's. The extracts were primarily retrospective, referring to an "entity" which had existed in the past, and individual informants whom he was interviewing in the present. If the full notes contain any information pertinent to the continuity and interaction of the group as late as 1934, this material should be submitted as evidence about the contemporary community.

The only other materials submitted from the 1930's and 1940's were the letters written by and pertaining to Dolores Galvan. These concerned an individual woman and her immediate family. They included no data on the identification of a Muwekma or Ohlone entity, or group. The petition states that the Muwekma families "became very active" during the 1950's, but submits no documentation whatsoever for that decade. You need to include documentation on the external identification of the Muwekma for criterion 83.7(a), as well as documentation on the group's leadership and activities (see the discussion under criteria 83.7(b) and 83.7(c) below).

You also need to include external identifications of the group from the decade of the 1960's, and of the group (not just of the incorporated Ohlone Tribe, Inc.) from the 1970's. You may wish to have your researchers prepare a simple linear chronology from 1900 to the present, arraying each type of evidence in order. Please keep in mind that an ethnohistorical narrative published in the 1960's is not evidence for the identification of a Muwekma entity in the 1960's if the content is based on data gathered in the 1920's that relates to the Alisal Rancheria in 1905.

**Criterion 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.**

Criterion 83.7(b) as modified by criterion 83.8(d)(2) requires you to show that the petitioning group is a community at the present day, but does not require you to demonstrate the existence of community from historical times until the present. The "present" is defined as approximately the last ten years, but the petitioner is free to submit earlier data that will explain the current situation. If your group is able to document extensive social community throughout the period since the Kelsey census of 1905/1906, it may wish to do so, in order to strengthen its evidence for criterion 83.7(c) under the carry over provisions of the regulations between these two criteria.

Your group provided the BIA with only a brief narrative. This is far short of the documentation needed by BAR staff to begin to evaluate your petition. To strengthen your petition, you will need to supply the BIA with a written narrative, along with copies of documents, that supports your case for community, as outlined in 25 CFR part 83. For a future supplemental submission, please consider the general recommendations below.

Describe more fully the group's modern community. Your discussion may include methods of communication among members, evidence of member involvement in group and community activities, marriage patterns, religious practices, educational activities, and other events/activities that demonstrate the distinctive qualities of your group. Documentation on community can be in the form of letters, group newsletters, oral interviews, or from copies of signed guest lists from funerals, marriages, graduation parties, meetings, etc. . . .

The narrative states that in 1971, about 130 descendants of the Muwekma "were identified" (p. 22). This implies that they were not previously known to one another and had not been interacting on a consistent basis. Please explain how this affects the modern community. Are the "descendants of the Muwekma" and the actual membership of the Muwekma Indian Tribe synonymous, or are there distinctions between the two categories? If some "descendants of the Muwekma" are not a part of the petitioning group, please explain why?

You are encouraged to contact the BAR staff, which can offer you further T/A in providing documented material to address this criterion.

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

Criterion 83.7(c) as modified by criterion 83.8(d)(3) requires a demonstration that a petitioning group does now and has in the past exercised political influence over its membership. In this instance, this criterion must be demonstrated since the most recent date of unambiguous prior Federal Government acknowledgment. The modification under 83.8(d)(3) allows for a streamlined presentation in which the group has had, since the most recent date of unambiguous prior Federal Government acknowledgment, a named sequence of leaders identified by knowledgeable, reliable external sources having political influence or authority, together with one other type of evidence listed under criterion 83.7(c). If your group cannot provide such a named sequence under 83.8(d)(3), it may use the other form of demonstrating this criterion listed under criterion 83.7(c), even though it has unambiguous prior Federal Government acknowledgment.

This approach may be simpler and more efficient, since it allows a broad variety of different kinds of evidence, which may be more readily available, to be used. Among these are evidence demonstrating community which, while not directly required, can be used as supporting evidence. In the case of the Muwekma, there was little indication that there were leaders with the required degree of knowledgeable, external verification to meet the requirements in 83.8(d)(3). In addition, under 83.8 (d)(2), you must also show that you meet the political requirement under 83.7(c) for modern community.

"Political influence or authority" means that there were in the past, and are now, leaders who have followers whom they influence and who influence them in significant ways. This does not mean that there had to be a formal structure with a chief and council. You may show that the group had other ways to make decisions in matters of consequence and maintain a consensus among its members. You may also present evidence that your group's leaders have been authorized to represent it to outsiders or mediate with outsiders in matters of significance.

It must be shown that there is a political connection between the membership and leaders and thus that the members of the group and its leadership maintain a bilateral political relationship. This connection must exist broadly among the membership. It has sometimes been phrased that not only must there be leaders, but there must also be followers. On occasion, a small body of people carries out legal actions or makes agreements affecting the economic interests of a group, and the membership may be significantly affected without the slightest awareness or consent occurring. A group which operates in this way, generally does not demonstrate evidence which would meet criterion 83.7(c).

Political connections between leaders and members may be informal, through public opinion or other indirect connection. The existence of a significant level of social cohesion is an important form of supporting evidence because political influence, where coercive authority is not exercised, requires social connections and obligations as its basis.

The petition states very briefly that "family heads" were leaders in the period 1928-1940 (p.35), but mentions only Dolores (Marine) Galvan and cites only one example of activity, which was on behalf of her nieces and nephews. Similarly, the petition says that "the families became very active" in the 1950's (pp. 21-22), but provides neither narrative description of the activities nor documentation. The petition indicates that the 1971 incorporators of the "Ohlone Tribe, Inc." were three Galvan siblings (p. 22). Was there wider participation than just this single family?

You will need to provide specific examples of how your group has resolved disputes among its members and taken action on issues of importance to the group as a whole. Be sure to give specific examples when describing how members emerged as leaders and then how they exercised their influence over the membership. There may be useful material in the documents you have provided or already collected but not provided. You need to view these materials from this perspective.

Try to describe in detail how your group has responded to important issues and how group events have been organized and carried out in the past. For example, describe in detail how your group was organized as a political entity, who was involved in its organization, and the interplay of leadership decisions among the membership and outside entities (such as the American Indian Historical Society). The petition narrative indicates the existence of a complex relationship between the Muwekma Tribe and the Ohlone Tribe, Inc. Please include sufficient documentation to explain these structural relationships. Include copies of the minutes and other documents of your group's organized meetings that demonstrate the political structure of your group and the interaction among members who attend such meetings.

The Federal Government acknowledgment regulations allow for consideration of the cultural differences between tribes and the historical circumstances affecting their organization. However, when a petitioner is evaluated, the fact that it no longer has a land base, controls significant resources, and is subject to the legal and political institutions of non-Indian society, may inform the evaluation, but the BIA cannot set aside the requirement that to be acknowledged as a tribe, some form of significant political authority, leadership, and decision-making must be retained.

Again, you are encouraged to contact BAR staff who can offer you further T/A in providing documented material to address this criterion.

**Criterion 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.**

#### **Governing Document**

The petitioner submitted the current governing document. Please also include any prior governing documents, and relevant other material such as the Articles of Incorporation. If minutes exist of meetings where the governing documents were discussed, please provide them, including any lists of persons who were present at these meetings.

This criterion (83.7(d)) illustrates the importance of tribal political status. The United States government, in the Federal Government acknowledgment process, extends acknowledgment to political entities, not merely to the individuals of families who have Indian heritage.

#### **Membership Criteria**

It is important to discuss your membership criteria in your submission. Generally, this was covered very well in your enrollment ordinance. However, it was not clear from the material presented whether or not any person who can document descent from the San Jose Mission Indians of the 19th century, as documented in your genealogical section, would be eligible for membership in the Muwekma Tribe. Similarly, it was not clear whether descent from any of the individuals who filled out the 1928/1932 applications under the California Indian Jurisdiction Act included in your petition automatically qualifies an applicant for membership.

Please clarify your standards on these issues. Potentially, there may be far more such descendants than are currently included in your membership. If the Muwekma Indian Tribe were to obtain Federal Government acknowledgment, and all such descendants then became members, it could significantly alter the character of the acknowledged group. The revised Federal Government regulations prohibit changing the membership after recognition in such a way as to also change the character of the tribe [§83.12(b)].

The sample enrollment application packet included indicates that the procedures for verifying the genealogical connection between current applicants for membership and the documented 19th century Indian ancestors are adequate. During active consideration status, a BIA genealogist will examine the enrollment records during the site visit and obtain some additional samples.

**Criterion 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.**

**Descent from the Historic Tribe**

The petition has done an excellent, indeed outstanding, job of documenting the genealogical connection between the individual current members of the Muwekma Indian Tribe and the historical Indians of the San Jose Mission. No additional genealogical work needs to be undertaken.

However, the Federal Government regulations also require that your group descend from the "historic tribe." Because your group is proceeding under the provisions of §83.8, prior unambiguous Federal Government acknowledgment, this means that in your specific case you must show descent from the tribe that was previously acknowledged, the 1927 Pleasanton-Verona Band. We are specifically concerned that families currently in your membership do not have ancestors in the Pleasanton-Verona Band acknowledged as late as 1927, and that important families of that band are not now represented in your membership. As was discussed above on page 2, to do this you will need to reconstruct the composition of that band to determine if your present group descends from it.

**Current Membership List**

Your current membership list as submitted is adequate and has been officially certified by your group's governing body as prescribed in the Federal Government regulations. If you revise it in submitting your response to this T/A review, please keep the following considerations in mind.

The membership list is a very important component of the petition for the following reason:

- It defines the group, that is, those people who make up the community. If recognized, the list of members submitted for acknowledgment purposes will become the group's base roll for BIA purposes, and, as such, will be binding on the group for some time to come, except for minor corrections (§83.12(b)). Thus, it must be complete.
- In evaluating other criteria such as 83.7(a), 83.7(b), and 83.7(c), the community defined in the membership list is the unit which will be focused upon. For this reason, it is extremely important that the membership be defined accurately. Otherwise, the petitioner runs the risk of failing to meet other criteria because the group, as defined by its membership list, represents only a portion of a community or, conversely, includes a large number of people who are not demonstrably part of the community.

### **Prior Membership Lists**

The regulations also require all previous lists to be submitted, if available [see §83.7(e)(2)].

The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

If previous lists of members of the Muwekma Indian Tribe exist, please provide copies. If they do not exist, please say so. If your membership was formerly included in the official membership list of the Ohlone Tribe, Inc., from which you have separated, please describe the membership procedures of that group and the circumstances under which the separation took place.

You will be notified when the petition is being placed on active consideration. At that time, it will be appropriate to submit a supplemental list. The supplemental list should include those additions to the membership, such as new births, who are considered to be members, any individuals who were inadvertently omitted from the list submitted with the petition, and a note of those members on the original list who are deceased at the time the petition is placed on active consideration.

**Criterion 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. . . .**

The petitioner has stated that the membership of the Muwekma Indian Tribe meets this criterion, that members of the petitioning group may not be enrolled in any recognized tribe. In the future, you may wish to consider including on your membership application form a place for the applicant to certify that he/she is not enrolled in any federally recognized Indian tribe.

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

The petition includes a formal statement that the Muwekma Indian Tribe is not the subject of congressional legislation that has expressly terminated or forbidden a Federal Government relationship. This is adequate.

Once you have had an opportunity to review this letter thoroughly and share its contents with your researchers and general membership, we recommend that you

contact the BAR staff so that we can make arrangements to provide additional T/A to you and your researchers. You may write the Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS-4603-MIB, 1849 C Street, N.W., Washington, D.C. 20240, or call at (202) 208-3592.

Sincerely,

/SGD/ DEBORAH J. MADDOX

Director, Office of Tribal Services

cc: Ms. Dena Ammon Magdaleno  
California Advisory Commission  
P. O. Box 56  
Burnt Ranch, California 95527

Honorable Dianne Feinstein  
United States Senate  
Washington, D. C. 20510

Honorable Barbara Boxer  
United States Senate  
Washington, D. C. 20510

Honorable Zoe Lofgren  
House of Representatives  
Washington, D. C. 20515

Allen Leventhal, M.A.  
Ohlone Families Consulting Services  
1845 The Alameda  
San Jose, California 95126

cc: BIASurname; 440B Chron Holdup Deskcopy 400  
VEDeMARCE:omb:(202)208-3592:10/08/96:[c:\wpwin\muwekma.cam]  
tamuwekm.dft; HR ORANGE DISK #2 \MUWEKMA.CAM;9/30/96;ved rev  
VED Green "Travelling Files" disk muwekma.cam 10/1/96;