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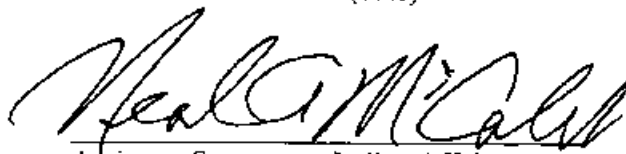
**(6) Final Determination Documents**

**- September 6, 2002**

Summary Under the Criteria and Evidence for  
Final Determination against Federal Acknowledgment  
of the  
MUWEKMA OHLONE TRIBE

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

Approved: SEP 06 2002  
(date)

  
Assistant Secretary - Indian Affairs

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## ACRONYMS AND ABBREVIATIONS

ACCIP	Advisory Council on California Indian Policy
AIHS	American Indian Historical Society
AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research
BIA	Bureau of Indian Affairs
CFR	<i>Code of Federal Regulations</i>
COE	U.S. Army Corps of Engineers
Cong.	Congress
CRM	Cultural Resource Management
DOE	U.S. Department of Energy
EBRPD	East Bay Regional Park District
Ex.	Documentary exhibit
FD	Final Determination
FR	<i>Federal Register</i>
GPO	Government Printing Office
MICA	Muwekma Indian Cultural Association
MLD	Most Likely Descendant
NAHC	Native American Heritage Commission
NAGPRA	Native American Grave Protection and Repatriation Act
NPS	U.S. National Park Service
PF	Proposed Finding
RG	Record Group
sess.	Session
U.C.	University of California
U.S.	United States
USGS	U.S. Geological Survey

Muwekma: Final Determination - Summary under the Criteria

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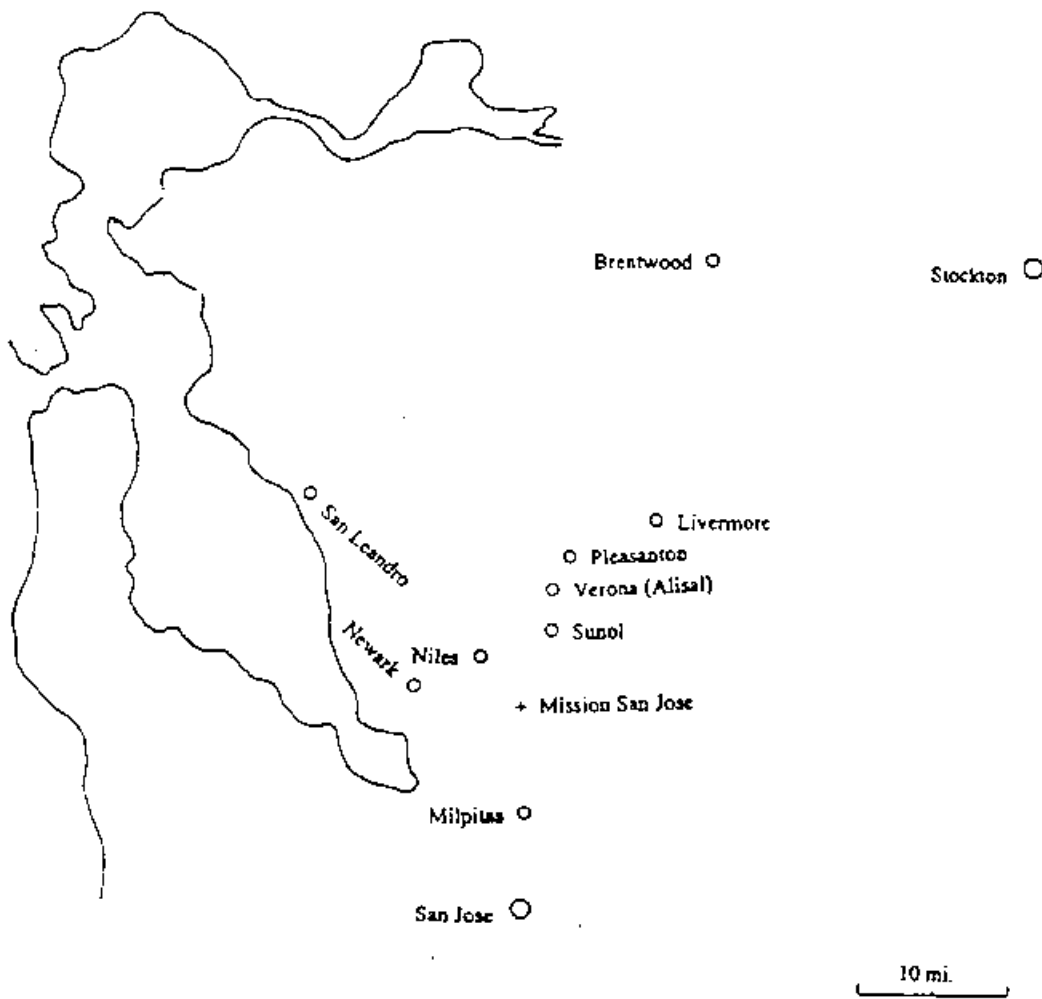


FIGURE 1: AREA MAP, PLEASANTON, CALIFORNIA

Source: Branch of Acknowledgment and Research

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Summary under the Criteria for the Final Determination

on the

MUWEKMA OHLONE TRIBE

Introduction

BASES FOR THE FINAL DETERMINATION

This Final Determination is based upon all of the evidence in the record for this case submitted by the petitioner Muwekma Ohlone Tribe and third parties or obtained by the BIA. This Final Determination has considered the comments on the Proposed Finding and the new evidence submitted by the petitioner and third parties, and additional documents obtained by BIA researchers. The evidence and arguments submitted by the petitioner, or developed by the BIA researchers, for the Proposed Finding were also considered in the preparation of the Final Determination. Therefore, this Final Determination report should be read together with the Proposed Finding.

ADMINISTRATIVE HISTORY

*Administrative History Preceding the Proposed Finding*

The Bureau of Indian Affairs (BIA) received a letter of intent to petition for Federal acknowledgment from the Ohlone/Costanoan Muwekma Tribe on May 9, 1989.<sup>1</sup> The BIA provided the petitioner with informal technical assistance (TA), as well as formal TA by letters dated October 10, 1996, and June 30, 1997. The BIA placed the petitioner on the "ready, waiting for active consideration" list on March 26, 1998.

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<sup>1</sup> The group's constitution as amended on October 21, 2000, changed the group's legal name to the "Muwekma Ohlone Tribe of the San Francisco Bay" (Petitioner 2000a). The group's letterhead stationery since that date carried the name "Muwekma Ohlone Indian Tribe of the San Francisco Bay Area."

## Muwekma: Final Determination - Summary under the Criteria

In *Muwekma Tribe v. Babbitt*, the United States District Court for the District of Columbia (District Court) issued an order dated January 16, 2001, requiring the BIA to begin active consideration of the Muwekma petition on February 12, 2001. The order required the Assistant Secretary - Indian Affairs (AS-IA) to issue a Proposed Finding by July 30, 2001, and specified completion dates for other aspects of active consideration, superseding the time frames established by 25 CFR 83.7.

### *Administrative History Since the Proposed Finding*

The Assistant-Secretary - Indian Affairs (AS-IA) signed the Proposed Finding declining to acknowledge the Ohlone/Costanoan Muwekma Tribe on July 30, 2001, the issuance date required by order of the District Court. Notice of this finding appeared in the *Federal Register* on August 3, 2001 (66 FR 40712).

The AS-IA found that the petitioner did not satisfy three of the seven mandatory criteria set forth in 25 CFR 83.7, as modified by 83.8(d). Section 83.8 applies if, in the TA phase prior to active consideration, a petitioner is determined to have had "unambiguous previous Federal acknowledgment." The BIA made such a preliminary determination, that the Muwekma petitioner had previous Federal acknowledgment as the Verona Band or Pleasanton rancheria<sup>2</sup> between 1914 and 1927, and indicated to the court that its evaluation of the petitioner would proceed on that basis.

The Proposed Finding concluded that the petitioner did not satisfy criteria 83.7(a), (b), and (c) as modified by 83.8. That is, the petitioner was not identified by external observers as an Indian entity on a substantially continuous basis, does not comprise a distinct community at present, and has not demonstrated that it maintained political influence or authority over its members at any time since 1927.

The January 16, 2001, order of the District Court specified that the petitioner or any third party had until October 29, 2001, to submit arguments or evidence to the AS-IA to rebut or support the Proposed Finding. The petitioner had until December 27, 2001, to respond to any comments submitted by any third parties, and the AS-IA had to issue a Final Determination on this petition by March 11, 2002.

On August 16, 2001, the BIA provided the petitioner with photocopies of records used for the Proposed Finding, subject to release, that were not already held by the petitioner.<sup>3</sup> The BIA also furnished a copy of the guidelines for a formal TA meeting that petitioners

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<sup>2</sup> The Proposed Finding and Final Determination for this petitioner use the term "rancheria" as it was used by Harrington, Kelsey, Levy, and Merriam, that is, to describe an Indian settlement or village (Harrington 1929, 36:518(2); Kelsey 7/25/1913, 3; Levy 1978, 487; Merriam 1967, 367).

<sup>3</sup> From a total record of 4,261 pages, the BIA withheld 731 pages of photocopies of records that were part of the deliberative process, or contained pre-decisional or personal information.



## Muwekma: Final Determination - Summary under the Criteria

may request under 25 CFR 83.10(j)(2). The guidelines state that requests for a formal TA meeting should be made within 60 days of the issuance of a Proposed Finding and must be accompanied by a proposed agenda.

On September 4, 2001, the BIA received the petitioner's request to begin scheduling a formal TA meeting, to be held during the first two weeks in October, even though the petitioner had not finalized an agenda. The BIA advised by letter dated September 14, 2001, and faxed to the petitioner, that an agenda must accompany its request for a formal TA meeting. On October 2, 2001, which was the 60<sup>th</sup> day after the publication of the notice of the Proposed Finding in the *Federal Register*, the petitioner faxed the BIA an agenda and a request that a formal TA meeting be held October 17 or 18, 2001.

On October 3, 2001, the BIA notified the petitioner, its counsel, and interested and informed parties by fax that the earliest date possible for a formal TA meeting was October 24, 2001. The BIA faxed these parties a copy of the final agenda for the October 24 formal TA meeting on October 10, 2001.

On October 22, 2001, the petitioner's counsel advised the BIA of their intention to seek a 30-day extension to all completion dates specified in the January 16, 2001, order of the District Court. The Department of Interior voiced no objection on the condition that the petitioner would not pursue additional extensions in the future. On October 25, 2001, the District Court granted the plaintiff's motion to "extend certain dates by thirty days." The first paragraph of the order stated, "The Petitioner shall not request any additional extensions of the comment period." This order specified the formal TA meeting date as "on or before November 7, 2001," and extended the close of the comment period to November 28, 2001, the close of the petitioner's response to third-party comments to January 28, 2002, and the issuance of a Final Determination to April 10, 2002.

The BIA advised the petitioner and interested parties of these new dates, and of the scheduled formal TA meeting, which took place on November 7, 2001. Following the meeting, the petitioner filed a nonconsented motion for additional extensions of deadlines. The Department objected on the basis that the grounds for these extensions were not justified and were prejudicial to other petitioners. The District Court granted the petitioner's motion on November 27, 2001, and extended the comment period to January 27, 2002, the response period to March 28, 2002, and the issuance of a Final Determination to August 8, 2002. The BIA's motion to amend the Final Determination deadline was denied.

Since the close of the comment period, January 27, 2002, fell on a Sunday, the BIA advised the petitioner by letter on January 24, 2002, that the petitioner would have until close of business on Monday, January 28, 2002, to submit its comments and materials to the BIA or, for privacy materials it preferred not to submit to BIA, to its counsel's office in Washington, D.C. The BIA received materials from the petitioner on January 28, 2002, on which date BIA staff members visited the Washington, D.C., office of the petitioner's counsel, and confirmed the presence there of membership files date-stamped as being received on January 25, 2002.

## Muwekma: Final Determination - Summary under the Criteria

The BIA received one third-party comment letter before the close of the comment period on January 27, 2002. Three additional comment letters arrived after January 27, 2002, but bore postmarks showing they were mailed well before the close of the comment period. The irradiation of mail addressed to Federal Government offices to prevent the spread of anthrax caused the delay in their delivery, and the Solicitor advised that all three should be considered timely comments. Five third-party comment letters mailed and received after the close of the comment period were not considered and were forwarded to the Office of the Solicitor. In the event that a reconsideration is requested of the Interior Board of Indian Appeals (IBIA), the comments will be supplied to the IBIA at that time.

The petitioner's comments and evidence made reference to items that were not supplied in its submission of materials on January 28, 2002. As a result, the BIA requested that the petitioner submit these items, which included five audiocassette tapes of oral histories, and the group's governing documents as amended on October 21, 2000. The group's constitution as amended on October 21, 2000, shows a change in the group's legal name from the "Ohlone/Costanoan Muwekma Tribe of Indians of the San Francisco Bay" to "Muwekma Ohlone Tribe of [the] San Francisco Bay."

In July 2002, the BIA filed a consented motion for a 30-day extension to the August 8, 2002, deadline amended by the District Court on November 27, 2001, for the issuance of a Final Determination on this petition. The court granted this motion on August 2, 2002, and set September 9, 2002, as the new date by which the AS-IA must issue a Final Determination. The Department of Interior must also inform the District Court in writing within seven days that a Final Determination has been issued. A notice of this Final Determination will be published in the *Federal Register*.

The regulations provide that the petitioner or any interested party may file a request for reconsideration with the IBIA no later than 90 days after publication of the Final Determination in the *Federal Register*. If no timely request for reconsideration is filed, the Final Determination will become effective 90 days from its date of publication in the *Federal Register*.

### OVERVIEW OF THE MUWEKMA PETITIONER

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.

## **Muwekma: Final Determination - Summary under the Criteria**

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.

No census of the members of the Verona band during the years between 1914 and 1927 has been produced by the petitioner or found by BIA researchers. Therefore, the Proposed Finding used a proxy, formed from residential lists, in lieu of a historical census of the Verona band. This proxy consisted of a census by Special Agent Kelsey in 1905-1906, which listed 29 landless Indians at Pleasanton and 14 at Niles, and the enumeration of "Indian town" on the special Indian population schedule of the 1910 Federal census of Alameda County, which listed 17 Indian residents. The petitioner's members descend predominantly from an Indian woman, Avelina (Cornates) Marine (1863?-1904), who may have been raised in the Pleasanton or Niles settlements before the 1880's. Two of Marine's children were listed on the 1910 census of "Indian town" in the household of the Indian woman who was said to have raised Marine. The majority of the petitioner's members descend from Marine's other children who were not listed on the 1910 Indian census. All of the petitioner's members claimed descent either from an Indian individual listed on the 1905-1906 Kelsey census or the 1910 census of "Indian town," or from an unlisted Marine sibling of an individual on those lists.

The petitioner's members also descend from 24 persons listed by the BIA on a census of California Indians issued in 1933. That census was produced as a result of an act passed by Congress in 1928 which gave the Court of Claims jurisdiction to hear claims against the United States on behalf of the "Indians of California" for compensation for aboriginal territory acquired by the Government. Successful applicants were required to descend from an Indian who had been living in California in 1852. Ancestors of the petitioner's members were included in 9 of 18 applications made pursuant to the act which the petitioner has submitted as evidence. Those 18 successful applications were made between 1929 and 1932 by individuals associated with the settlements at Verona or Niles on behalf of themselves and members of their families as "Indians of California."

The petitioner says that it formed its current organization in 1984. The petitioner says that it now operates under a constitution last revised in October 2000. The petitioner's membership list analyzed for the Proposed Finding identified 400 members. Its most recent membership list identifies 419 members. The petitioner's office is located in San Jose, California.

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**Muwekma: Final Determination - Summary under the Criteria**

## Muwekma: Final Determination - Summary under the Criteria

### Summary Conclusions Under the Criteria (25 C.F.R. § 83.7)

Evidence submitted by the petitioner and obtained through third parties and independent research by the staff of the Bureau of Indian Affairs, Branch of Acknowledgment and Research, demonstrates that the petitioner does not meet all seven criteria required for Federal acknowledgment. Specifically, the petitioner does not meet criteria 83.7(a), (b), or (c) as modified by sections 83.8(d)(1), (d)(2), (d)(3), or (d)(5). In accordance with the regulations set forth in 25 CFR 83.10(m), failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law.

The review of all the evidence in the record concludes that the Muwekma petitioner has satisfied the requirements of 25 CFR 83.7(d), (e), (f), and (g). That is, the petitioner's constitution and enrollment ordinance describe its membership criteria and governing procedures, its members have demonstrated their descent from the historical tribe (in this case, from the Verona band last acknowledged by the Federal Government in 1927 and as defined in the Proposed Finding and Final Determination), the group is principally composed of persons who are not members of another North American Indian tribe, and neither the group nor its members are the subject of congressional legislation expressly terminating or forbidding the Federal relationship.

The review further finds that the petitioner has not satisfied the requirements of 25 CFR 83.7(a), (b), or (c), as modified by 83.8(d). The petitioner has not provided evidence of substantially continuous external identifications of the petitioning group as a continuation of a historical "Verona Band" or Pleasanton rancheria from 1927 to the present. Neither did it provide evidence that it was identified as an Indian entity on a substantially continuous basis since 1927, although evidence is sufficient for the time periods of 1965 to 1971, and from 1982 to the present. The petitioner has not provided sufficient evidence that it comprises a distinct community at present under criterion (b). The petitioner has not provided sufficient evidence of identifications of leaders or of a governing body of the petitioning group by authoritative, knowledgeable external sources on a substantially continuous basis since 1927 under criterion (c). Further, the petition lacks the specific types and level of evidence for community that may be combined and applied toward demonstrating political influence and authority. The available evidence, when considered in combination, does not demonstrate that the petitioning group has maintained political influence or authority over its members since 1927.

When a Final Determination is negative, the regulations direct that the petitioner be informed of alternatives to this administrative process for achieving the status of a federally recognized tribe, or other means by which the petitioner's members may become eligible for services and benefits as Indians (25 CFR 83.10(n)). Some of your

**Muwekma: Final Determination - Summary under the Criteria**

individual members may be eligible for membership in recognized tribes or eligible for individual services or benefits under certain Federal statutes. In addition, Congress may consider taking legislative action to recognize petitioners which do not meet the specific requirements of the acknowledgment regulations but, nevertheless, have merit.

**Criterion 83.7(a)  
as modified by Section 83.8(d)(1) and 83.8(d)(5)**

- 83.7(a)** The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. . . . Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.
- 83.8(d)(1)** The group meets the requirements of the criterion in § 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.
- (5)** If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7(a) through (c) from last Federal acknowledgment until the present.

**The Proposed Finding**

The Proposed Finding concluded that the Muwekma petitioner did not meet criterion 83.7(a) as modified by section 83.8(d)(1) because it did not demonstrate that it had been identified on a substantially continuous basis since 1927 "as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity" (*Muwekma PF*, 10, 19). The regulations provide, in section 83.8(d)(5), that the petitioner may demonstrate alternatively that it meets the requirements of criterion 83.7(a) from last Federal acknowledgment until the present, in this case from 1927 until the present.

The Proposed Finding for criterion 83.7(a) on the Muwekma petition identified three chronological periods: the years between 1927 and 1964 when evidence was lacking of

## **Muwekma: Final Determination - Summary under the Criteria**

an identification of an Indian entity; the years from 1965 to 1985 when there was some evidence of the identification of an Indian entity, or entities, but not of an entity that had been shown to be a predecessor of the petitioner's organization; and the period since 1985 when there was evidence sufficient to demonstrate the identification of an Indian entity linked to the petitioner (*Muwekma PF*, 10-19). Therefore, the Proposed Finding concluded that the petitioner did not meet the requirements of criterion 83.7(a) as modified by section 83.8(d)(5) between 1927 and 1985.

In view of the conclusions of the Proposed Finding, it is the period between June 1927 and September 1985 for which the petitioner had to present new evidence, or new arguments about the previous evidence, to demonstrate for this Final Determination that it was identified as an Indian entity by external observers.

### General Comments on the Proposed Finding

The petitioner has submitted both a 153-page narrative and a chronological chart of evidence it contends meets the criterion (Petitioner 2002, Vol. 83.7(a)). The petitioner's comment covers the entire 20th century. The petitioner's chart of specific documents relating to criterion (a) since 1927 consists of about one-fourth new evidence and three-fourths previous evidence. The chronological chart of the evidence includes some entries to provide context. Because the petitioner's narrative and chart are not just matching supplements to each other, and do not refer to each other, this evaluation sometimes considers them separately.

A portion of the petitioner's comment on the Proposed Finding concerns time periods for which no evaluation is necessary for this Final Determination. The Proposed Finding was made in accordance with a preliminary finding that the petitioner had previous Federal acknowledgment as late as 1927, and that, as provided in section 83.8(d) of the regulations, the petitioner therefore needed to demonstrate that it met criterion 83.7(a) only for the period since 1927. The petitioner, however, submitted extensive comment on this criterion for the years prior to 1927 (Vol. 83.7(a), 44-55, much of 56-65, and a portion of the chart). The Proposed Finding found that the petitioner met criterion 83.7(a) during the period since 1985. It was necessary for the petitioner to rebut the negative finding on this criterion, therefore, only for the period prior to 1985. The petitioner, however, submitted extensive comment on this criterion for the period after 1985 (Vol. 83.7(a), 127-128, 131-148, and a portion of the chart).

Given these conclusions of the Proposed Finding under criterion 83.7(a), that the period prior to 1927 is outside the period to be evaluated and that the petitioner met this criterion during the period after 1985, it is not necessary to respond to the petitioner's comments and arguments for those two time periods. Neither the petitioner nor any third party challenged the conclusions of the Proposed Finding that the petitioner met the criterion before 1927 and after 1985. Therefore, the evaluation of criterion 83.7(a) for this Final Determination will review the evidence and arguments for the years between 1927 and 1985.

## Muwekma: Final Determination - Summary under the Criteria

Part of the petitioner's comment on criterion (a) concerns issues beyond the scope of this criterion. The petitioner provides extensive comment on a BIA staff member's draft working paper on Federal policy in California prior to 1933 (Vol. 83.7(a), 21-41). This manuscript was not cited in support of the Proposed Finding under criterion (a). The petitioner's comments on that draft paper do not discuss criterion (a). Therefore, this Final Determination does not respond to the petitioner's arguments about either this draft working paper or the issue of previous Federal acknowledgment in California prior to 1927 as part of the evaluation of criterion (a).

As part of its comment on the Proposed Finding, the petitioner lists a variety of names, or "identifiers," which it says were used historically either by the petitioner's members or by outsiders to refer to the petitioning group (Vol. 83.7(a), 17-18). It additionally says that when the petitioner has employed the term "Muwekma" to refer to its members or ancestors at various historical times, it has meant that term to be the equivalent of all these other identifiers. The petitioner then chides the BIA for its alleged "disregard and treatment of Muwekma's preferred use of its present-day tribal name" because the Proposed Finding had pointed out that "Muwekma" was not a term used in the documentary record prior to 1985 (Vol. 83.7(a), 19, 54-55, citing *Muwekma PF*, 6, and Description, 12).

The problem, of course, is not that the *petitioner* has adopted this name recently, but that the petition implied that *external observers* had used the term "Muwekma" historically, when they had not. The Proposed Finding merely clarified that factual issue by noting that "Muwekma" was not in historical use as a group name and had not been continuously used by outside observers. The Proposed Finding did not make the use of the name "Muwekma," or "Verona Band," a requirement for an acceptable historical identification. Acknowledgment precedent is clear on the point that historical identifications of the petitioning group do not have to use the petitioner's current or preferred name. They do, however, have to be identifications of the petitioning group or a predecessor entity. If the evidence shows that external observers identified the petitioning group as a contemporaneous Indian entity by any of the names or identifiers listed by the petitioner, or by any other name, then that evidence is sufficient to meet criterion (a) at that time.

The four third-party letters submitted before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(a).

### Section 83.8(d)(1)

The Proposed Finding noted that section 83.8(d)(1), which modifies criterion 83.7(a) for groups with previous Federal acknowledgment, requires not only that the petitioning group has been identified as an Indian entity on a substantially continuous basis, but also that some identifications of the petitioning group have identified it "as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity." The Proposed Finding found that the petitioner's documentation contained only



**Muwekma: Final Determination - Summary under the Criteria**

a single example between 1927 and 1995 of an identification of the petitioning group as one that had evolved from the Indian settlement at the Verona railroad station. The Proposed Finding concluded that one example is not sufficient to meet the requirements of section 83.8(d)(1).

If a petitioner cannot meet the requirements of section 83.8(d)(1), the acknowledgment regulations provide, in section 83.8(d)(5), that the petitioner may demonstrate alternatively that it meets the unmodified requirements of criterion 83.7(a) since the date of last Federal acknowledgment. In accordance with the provisions of section 83.8(d)(5), the Proposed Finding evaluated whether or not the petitioner had demonstrated that it met the requirements of criterion 83.7(a) from 1927 until the present.

The petitioner's comment on the Proposed Finding does not attempt to demonstrate that the petitioning group has been identified by external observers as the same Indian entity that was previously acknowledged, or as a group that evolved from that entity. The narrative portion of the petitioner's comment does not address section 83.8(d)(1) directly (Petitioner 2002, Vol. 83.7(a)). In its summary argument for criterion (a), the petitioner claims that it has demonstrated a genealogical connection to previously identified Indian entities, not that an external observer identified the petitioner as having evolved from a previously acknowledged Indian entity (Vol. 83.7(a), 153).

The chart portion of the petitioner's comment implies that certain documentary evidence is responsive to section 83.8(d)(1), but none of these chart entries specifically argues that a document shows that an external observer identified a contemporaneous entity as the same Indian entity that was previously acknowledged (Petitioner 2002, Chart 83.7(a)). The Proposed Finding was made on the basis that a preliminary determination had found that a "Verona Band" or Pleasanton rancheria was acknowledged between 1914 and 1927. In general, the petitioner appears to make the point that certain documents referred to "Ohlone" Indians or to Indian descendants of the "Mission San Jose." None of the petitioner's chart entries refer to any link between a contemporary Indian entity and an earlier Verona band or Pleasanton rancheria. Contrary to the petitioner's implication that documents from the period between 1927 and 1985 are responsive to section 83.8(d)(1), the one document that referred to a historical group at Pleasanton, a 1955 report by anthropologists Alfred Kroeber and Robert Heizer, did not contend that the historical group continued to exist, only that individual survivors did so (R. Kroeber and Heizer 1955).

Many documents created by people the petitioner considers to have been part of the petitioning group (e.g., Chart 83.7(a), 1960s:1, 41, 86, 104, 107, 110; 1970s:48, 51; 1980s:11, 13, 19, 33) are included among the petitioner's chart entries that imply that this evidence is responsive to the requirements of section 83.8(d)(1). These documents do not satisfy the requirement for identifications by external sources. The same conclusion applies to individual claims applications from the 1930's, 1950's, and 1960's, that provided self-identifications of the individual's historical tribe. In addition, those applications referred to Mission San Jose or Ohlone historical tribes, rather than an Indian entity at Verona or Pleasanton. The petitioner's chart also lists some death

## **Muwekma: Final Determination - Summary under the Criteria**

certificates as responsive to section 83.8(d)(1), although it only describes them as supporting evidence rather than as documents that meet the requirements of criterion (a) (e.g., Chart 83.7(a), 1920s:31, 67; 1930s:26, 31). Individual death certificates identified neither contemporary nor historical Indian entities, and thus did not identify any linkage between such entities as required by section 83.8(d)(1).

The petitioner does not demonstrate that it meets the requirements of section 83.8(d)(1) with evidence since 1927 of substantially continuous external identifications of the petitioning group as a continuation of a historical "Verona Band" or Pleasanton rancheria. No new evidence demonstrates such identifications. Therefore, the conclusions of the Proposed Finding on this issue remain unchanged. Because there is insufficient evidence to meet the requirements of criterion 83.7(a) as modified by section 83.8(d)(1), this Final Determination will evaluate, as provided in section 83.8(d)(5), whether or not the petitioner has demonstrated that it meets the unmodified requirements of criterion 83.7(a) from 1927 until the present.

### Comments on the Proposed Finding for the Period 1927 to 1964

The new evidence which the petitioner's chart cites as meeting criterion (a) for the period between 1927 and 1964 consists of new citations to the field notes of anthropologist J. P. Harrington in 1929-1930, school records for Domingo Marine from Sherman Institute in the late 1930's, school records for John and Rayna Guzman at Chemawa Indian School in the 1940's, 21 applications in the 1950's for inclusion on the California judgment roll, a 1955 paper by anthropologists Alfred Kroeber and Robert Heizer, and a 1957 affidavit to correct a record (Petitioner 2002, Chart 83.7(a)). The petitioner's textual response additionally mentions local death records for the 1920's and 1930's, a photograph by anthropologist C. Hart Merriam in 1934, and the witnessing of documents in the 1950's by Charles Wauhab (Vol. 83.7(a), 68-69, 73). In addition, the petitioner's chart for criterion (c) cites a 1949 local history of the town of Pleasanton (Chart 83.7(c), 1940s:31). The petitioner also includes in its chart the evidence it submitted for the Proposed Finding and contends that this evidence, especially the individual applications made between 1930 and 1932 to the BIA to be included on the judgment roll of California Indians, meets the criterion.

#### *Harrington's Field Work, 1929-1930*

The Proposed Finding considered the field notes of scholar J. P. Harrington submitted by the petitioner and concluded that they did not constitute an identification of an Indian entity consisting of the petitioner's ancestors (*Muwekma PF*, 11, 12). For this Final Determination, the petitioner has submitted additional copies of Harrington's field notes (Vol. II, tab: JPH notes), and a revised argument about Harrington's notes as a form of external identification of the petitioning group (Vol. 83.7(a), 60-62; Chart 83.7(a), 1920s:37-42). The Proposed Finding discussed Harrington's field work and noted his six informants in the Pleasanton area (*Muwekma PF*, 11, and Description, 5, 8, 40-42). The petitioner seeks to expand that discussion by including not only the Indians interviewed

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by Harrington, but also those identified in those interviews or mentioned in Harrington's notes. It contends that these individuals constituted a surviving community, even though not explicitly called such by Harrington (Vol. 83.7(a), 60-62). By identifying individual survivors, the petitioner contends, Harrington "indirectly" identified a tribal entity (Chart 83.7(a), 1920s:38).

The petitioner claims that, between 1925 and 1930, Harrington "interviewed, visited, and/or identified" at least 15 "members of the Mission San Jose/ Verona Band/ Pleasanton/ Niles/ Livermore 'landless' Indian community . . ." (Vol. 83.7(a), 61; Chart 83.7(a), 1920s:38, however, lists 14). The words "community" and "members" are the petitioner's terms, not Harrington's. The concept of a "Mission San Jose/ Verona Band/ Pleasanton/ Niles/ Livermore" Indian community was previously advanced by the petitioner, but the Proposed Finding did not agree that the petitioner had demonstrated that such a community had existed at any time (see *Muwekma PF*, 6, and Description, 3-4). In the absence of any list of members of a "Verona Band" prior to 1927, the Proposed Finding created a proxy for such a list of the historical band by using lists of the Indian residents of Indian settlements at Pleasanton and Niles during 1905-1910 (see *Muwekma PF*, 43-47, and Description, 115-117, App. C).

After a review of Harrington's field notes submitted by the petitioner (Vol. II, tab: JPH notes), the researchers for the BIA have counted a group of living Indian individuals "interviewed, visited, and/or identified" by Harrington during 1925-1930 that is slightly different from the petitioner's list. The BIA's review notes six interviewees, and a mention of two other individuals, a spouse of an interviewee, and six children of the interviewees.<sup>4</sup> This also totals 15 persons. The BIA finds that 5 of the 6 interviewees and 9 of the 15 total individuals were part of the proxy census of the historical band used for the Proposed Finding. If the petitioner's 15 individuals are used, the result is that 10 of the 15 were part of the proxy census. Two other people mentioned by Harrington were siblings of someone on the proxy census. These differences, however, do not impact the evaluation of this evidence under criterion (a).

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<sup>4</sup> The BIA researchers and the petitioner agree that Harrington's interviewees in the submitted field notes are: Trinidad Gonzalez Reyes Sanchez\*, Maria de los Angeles Colós\*, Francisca [Guzman]\*, José Guzman\*, Susanna Nichols, and Catarina Peralta Marine\*. They agree that also named are: José Binoco\*, Lucas Marine (spouse of Catarina Peralta), and four of Francisca [Guzman]'s children (Martin\*, Juan or Jack\*, Alfredo or Alfred, and Antonio or Tony). The BIA researchers agree that a child of Susanna Nichols is named, but find that to be Charlie rather than Lawrence Nichols. The differences concern two individuals. The BIA staff, but not the petitioner, notes a mention of Francisca's daughter Maria\* and of José Avencio (who was identified by Harrington as different from José Guzman, but could be the same individual as José Binoco). The BIA staff does not find a mention of Phoebe Alaniz [Phoebe Inigo\*] or Albert Arellano\*, listed by the petitioner. It would appear that the petitioner has supplied a name for a daughter of Trinidad Gonzalez Reyes Sanchez who was not named by Harrington.

\* Note: These individuals were listed on the proxy of a census of the historical band (*Muwekma PF*, Description, App. C).

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Most of the families on the proxy census, however, were not mentioned by Harrington. If viewed from 1910 rather than from 1929, then 9 or 10 of the 53 individuals on the proxy census of the historical band of 1905-1910 were people known to Harrington during 1925-1930. Thus, the petitioner's statements that Harrington "found the same 'tribal community'" (Vol. 83.7(a), 62), or "the very same" band, or "the same 'surviving group'" (Chart 83.7(a), 1920s:40) as listed on the 1905-1906 Kelsey census and 1910 Indian population schedule are overstatements. In its submission for the Proposed Finding, the petitioner noted that the Pleasanton rancheria had disappeared as a geographical settlement by 1915. While the historical settlements in the Pleasanton area had not continued, it follows from the evidence of Harrington's field notes that some of their former residents remained in the area to be interviewed by Harrington.

Even if all of the people mentioned to Harrington had been living in the Pleasanton or Niles rancherias twenty years earlier, however, it would neither demonstrate that a community continued to exist nor that Harrington observed these individuals as constituting a community. The fact that Indian descendants survived until 1929 in the general area did not make them a group nor demonstrate that they were considered to be a group. Harrington found his informants living in different geographical locations. Although some informants knew each other, Harrington did not comment on existing social relationships nor portray his informants as part of an existing community or group. As noted in the Proposed Finding, Harrington's research purposes were primarily to preserve Indian languages and additionally to record aboriginal culture. His research notes often consisted of lists of Indian words. Harrington's focus was on the past rather than the present. The field notes submitted by the petitioner do not contain any references to contemporaneous Indian settlements, groups, or entities. For the purposes of criterion (a), therefore, Harrington did not identify an Indian entity.

The petitioner rests its argument largely on a single quotation from Harrington's extensive field notes. Relying upon an unidentified informant, probably in October 1929, Harrington wrote: "The San José Indians were of many tribes – gathered at the mission. They are called Chocheños" (Vol. II, tab: JPH notes, marked as reel 36:156). Indians were gathered at Mission San Jose from 1797 to 1834. The petitioner argues for the importance of Harrington's use of the present tense in his note that they "are called Chocheños" (Vol. 83.7(a), 62, 64; Chart 83.7(a), 1920s:38). The petitioner thus reads the quotation as: "The San José Indians. . . are called Chocheños." Alternatively, the quotation may be read as: "The San José Indians . . . gathered at the mission. . . are called Chocheños." That is, in the present we have a name that we use to refer to a group in the past, and historical Indians "are called" this name now. The use of the present tense, therefore, did not necessarily make this research note a reference to a contemporary group.

Given Harrington's interest in linguistics and using informants to preserve historical Indian words, it is likely that he recorded the word "Chocheños" as a language or dialect spoken by Indians who were gathered at the Mission San Jose, and as a name for individuals who had spoken or could still speak that language. By 1929, the descendants of the Indians who had been gathered at Mission San Jose would have been a much larger

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number of people than the petitioner's ancestors. A reference to the "San José Indians," even if to contemporary rather than historical Indians, therefore, did not necessarily make Harrington's note a reference to a group that was a predecessor of the petitioning group. Although the petitioner argues that Harrington spent much time with these Pleasanton-area informants, it does not contend that he commonly used "Chocheños" as a group name for them. If Harrington thought of his informants as a contemporary group which he called the "Chocheños," there is a reasonable likelihood that he would have used this term on a repetitive basis during his fieldwork. Rather, this research note represents an isolated use of the term. This observation suggests that Harrington recorded the name for a purpose other than identifying his informants as an entity.

Anthropologist Richard Levy used "Chochenyo" as the name for the language spoken in the East Bay about 1770. Levy relied upon Harrington's field notes in choosing this term as a designation for a dialect. He described the term as a Mutsun word for "the people living north of Santa Cruz" (Levy 1978, 485, 487, 495). Anthropologist Beverly Ortiz also relied upon Harrington's field notes to use "Chocheño" as the name of a language that had been spoken before 1915 at the Alisal, or Pleasanton, rancheria (Ortiz 1994, 100). Referring to two of Harrington's key informants, who had lived at the rancheria, she concluded that "neither person was from a *Chocheño*-speaking tribe by birth" (Ortiz 1994, 101). Thus, these scholars have taken Harrington's use of "Chocheños" to have been a reference to a language and the people who spoke that language. Neither Levy nor Ortiz considered the historical Pleasanton rancheria to have been a "Chocheño" community, for both spoke of it as a multi-ethnic settlement in which only some of the residents were descendants of Chocheño-speakers (Levy 1978, 487; Ortiz 1994, 100). The work of these scholars does not support the petitioner's contention that Harrington used the term "Chocheño" to refer to a contemporary group of people.

The petitioner claims that 15 individuals associated with a former Indian community in the vicinity of Pleasanton were known to Harrington in 1929-1930. The petitioner contends that a social community must have continued to exist until that time because these individuals were alive and still living in the area, although no longer in a geographical settlement or settlements. The actual existence of a distinct community is evaluated under criterion (b). The demonstration needed to meet criterion (a), however, is not that individual Indian descendants were known to be alive at a certain time, but that outsiders who had contact with them described them as an Indian group or entity. Even though Harrington's field notes show that some of the individuals who had lived at the Indian rancherias at Pleasanton or Niles were still living in the vicinity in 1929-1930, the petitioner has not shown that Harrington described them as an existing Indian group or entity at the time of his field work with them. Therefore, the available evidence on Harrington is not sufficient to meet the requirements of criterion (a).

### *Indian Claims Applications, 1929-1933*

The Proposed Finding examined 18 applications, submitted by the petitioner, that had been made between 1929 and 1932 for approval as individuals eligible to share in any judgment funds awarded to the "Indians of California" in a claims case against the

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United States authorized by the Act of May 18, 1928. The petitioner claimed that the BIA's 1933 "Census Roll of the Indians of California" and later revised lists were examples of the external identification of the petitioning group because they listed ancestors of its members as approved applicants.

The Proposed Finding considered those applicants' statements about the historical tribe of their ancestors as identification of a historical, rather than contemporary, entity. It considered those applications to be a form of self-identification, rather than external identification, because they were made by people the petitioner considers to have been part of the petitioning group. The Proposed Finding noted that the BIA verified the descent of applicants from an Indian who resided in California in 1852, but did not identify any Indian group in 1933. Therefore, the Proposed Finding concluded that the evidence of the inclusion of individual ancestors on lists of the "Indians of California" was not sufficient to meet the requirements of criterion (a) because it did not constitute external identification of a contemporaneous Indian entity (*Muwekma PF*, 12).

The petitioner again argues that the BIA's approval of individual applications for inclusion on the several censuses of the "Indians of California" prepared between 1933 and 1972 to comply with the Act of 1928, and revisions of that act, "constitute evidence of third party identification" of the petitioning group (Vol. 83.7(a), 16, without emphasis; see also Chart 83.7(a), 1920s:47 and *passim*). The petitioner advances an argument about the entire claims application process, and applies it to each version of the judgment roll and each series of applications (Vol. 83.7(a), 9-16, 67, 71, 77). The petitioner notes that the censuses of the "Indians of California" finally included all qualified California Indians regardless of tribal affiliation . . ." (Vol. 83.7(a), 13). It argues, however, that "eligibility for the judgement [*sic*] roll depended on the applicant's ability to demonstrate affiliation with and descent from a tribe that had retained tribal relations at least through the period of treaty-making . . ." (Vol. 83.7(a), 13). In short, the petitioner seeks to establish a required tribal affiliation, and to interpret the approval of applications providing such an affiliation as an identification of a contemporary entity.

The petitioner thus argues that the Proposed Finding's alleged "presumption concerning the irrelevance of tribal affiliation to one's eligibility as a distributee is problematic" (Vol. 83.7(a), 8). The petitioner contends that to be eligible for inclusion on the census of the "Indians of California" for the claims case, "one had to be able to assert affiliation with an historic entity or entities that had participated in the process of treaty negotiation" (Vol. 83.7(a), 7). The petitioner appears to base this position in part on the application form used from 1929 to 1933, in part on a 1971 letter by the BIA, and in part on a claim that the United States had attempted to get the Court of Claims to require tribal affiliation. To support its position, however, the petitioner has not cited the provisions of the Act of 1928, the acts that revised it, or the act that provided for the payment of the judgment award.

The petitioner asserts that the United States "attempted to get the Court to require tribal affiliation as a condition of participation" in a claims case, and did so until the issue was settled after most of the original applications had been made (Vol. 83.7(a), 8). As

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support for this contention, the petitioner cites Congressional reports and hearings from the legislative history of the claims jurisdictional act prior to its approval in 1928, not documents relating to the implementation of the application process after 1928 (Vol. 83.7(a), 8, n.10).<sup>5</sup> The cited Congressional documents do not provide evidence about any motion to the Court of Claims. Other evidence would be needed to demonstrate that point. The Department of the Interior's comments on pending bills in the cited House and Senate reports did not advocate a requirement of tribal affiliation (U.S. House 1928; U.S. Senate 1928). Regardless of any position the executive branch may have taken on proposed claims legislation prior to its enactment, the Act of 1928 indicated the intent of Congress and set forth the requirements the executive branch was to implement.

The word "affiliation" does not appear in the Act of 1928 (U.S. Statutes 1928). The language of the Act does not support the petitioner's assertions that an approved applicant "had to be able to assert affiliation with an historic entity or entities that had participated in the process of treaty negotiation" (Vol. 83.7(a), 7) and had to "demonstrate affiliation with and descent from a tribe that had retained tribal relations at least through the period of treaty-making . . ." (Vol. 83.7(a), 13). Such requirements did not appear in the Act. As the petitioner notes, the Act of 1928 defined the class of claimants as "all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State" (Vol. 83.7(a), 7; U.S. Statutes 1928, sec. 1). This definition imposed only two requirements; a successful claimant needed to be: (1) living in California in 1928, and (2) the descendant of an Indian who had been living in California in 1852.

The word "affiliation" does not appear on the application form developed by the Office of Indian Affairs to prepare the 1933 census roll of the "Indians of California" in compliance with the Act of 1928 (Ex. A, I, tab: 1928 applications). The petitioner implies that the application form made membership in an Indian tribe mandatory for approval of the application (Vol. 83.7(a), 12; see also Chart 83.7(a), 1920s:44). It notes that question number 10 asked: "What is your degree of Indian blood and to what Tribe or Band of Indians of the State of California do you belong?" (Ex. A, I, tab: 1928 applications). Rather than an unambiguous question about tribal membership or affiliation, the question linked one's tribe to one's degree of Indian blood. This linkage suggests a request for information about the predominant tribal ancestry of the Indian applicant.

The petitioner submitted for the Proposed Finding 18 applications made prior to the 1933 census roll of the "Indians of California." Fourteen of the 18 applicants answered question number 10 with some variant of "Mission San Jose" (Ex. A, I, tab: 1928 applications, and Ex. L, II, sec. VII-B). This response referred to 19th century tribal ancestry, not to contemporary membership. This point is made more clearly by the two answers that stated, "Tribal name unknown," and one answer that stated, "Ohlones (?) Tribal name Unknown." Generally, an individual's active tribal membership would not be unknown to him or her, while his or her specific tribal ancestry back to 1852 could be

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<sup>5</sup> See, however, the discussion below of an opinion of the Solicitor of the Department of the Interior in 1948.

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unknown. This evidence suggests that the applicants, and the BIA examiner, interpreted question number 10 to inquire about the applicant's historical tribal ancestry.

In its discussion of these 18 applications, the petitioner concludes every chart entry but one with the statement that the evidence shows applicants "identifying themselves" and their ancestors as "Mission San Jose" Indians (Chart 83.7(a), 1920s:47, 50, 52, 54, 57, 59, 61, 64; 1930s:3, 6, 8, 10, 12, 15, 17, 20, 23; the exception is at 1920s:42). In one case, the petitioner states that the applicant "identifies her tribe" as Mission San Jose (Chart 83.7(a), 1920s:50). The petitioner, therefore, notes that any identification of an Indian entity in the applications was self-identification. Even if the applicants' answers were identifications of a contemporary tribe to which the applicant claimed to belong, rather than identifications of the applicants' tribal ancestry, they were not identifications by the Government, but by the applicants. Self-identification does not meet the requirements of criterion (a) because it is not identification by an external observer. The petitioner puts emphasis on Government approval of the applications. This Final Determination does not consider the Department's approval of an application that included one's self-identification to be an external identification of a contemporary Indian entity.

The petitioner contends that in approving the applications of ancestors of the petitioner's members for inclusion on the 1933 census roll, the Government found that they were "specifically affiliated" with "the 'Mission San Jose Tribe' or 'Ohlone Tribe' (or a variation of that named)" as an identifiable tribal group (Vol. 83.7(a), 5). As the discussion above reveals, however, the notion of a required specific tribal "affiliation" is asserted by the petitioner without being found in the underlying documents. The petitioner seeks to portray the Government's approval of an application as its acceptance of and agreement with the applicant's self-identification (Chart 83.7(a), *passim*). Since the Act of 1928 required descent from a California Indian rather than descent from a specific historical tribe, however, the Government did not need to approve or reject claims of specific tribal ancestry. Contrary to the petitioner, no specific answers were required for approval of an application. The available evidence does not provide a basis for accepting the petitioner's contention that the variety of applicants' references to historical tribes should be read as the Government's identification of one contemporary Indian entity.

The application form asked several questions about treaties, treaty bands, and ancestors who were parties to treaty negotiations (Ex. A, I, tab: 1928 applications). An emphasis on gathering information about the claimants' relationship to treaty tribes was a logical preparation for bringing this suit in the Court of Claims in view of the Act's statement that the Indians' failure to secure the lands and compensation provided for in the unratified treaties of 1851-1852 was "sufficient ground for equitable relief" (U.S. Statutes 1928, sec. 2). It does not follow that the application form imposed a requirement, in the petitioner's words, of "affiliation with an historic entity" that negotiated one of those treaties (Vol. 83.7(a), 7). Question number 11 asked: "To what Treaty or Treaties were you or your ancestors a party?" (Ex. A, I, tab: 1928 applications). All 18 of the applicants answered "I do not know" or "unknown" (Ex. A, I, tab: 1928



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applications, and Ex. L, II, sec. VII-B). It is unclear how these answers could be construed as an assertion of "tribal affiliation." Since these applications were approved, the BIA obviously had not required descent from a treaty tribe for approval.

The best claim for identification of an Indian entity during the claims application process relates to only one of the applicants. On the application form of José Binoco, BIA examiner Fred A. Baker wrote in the "remarks" section that: "The applicant is a full blood Indian. He is one of the last surviving members of the Mission San Jose Indian band" (Chart 83.7(a), 1920s:42-43; Ex. A, I, tab: 1928, #8419). This text is ambiguous since an individual may be one of the "last surviving" members of a band that barely continues to exist, or a band that existed in the past but no longer exists. The focus of the application process, however, was on the past and descent from an 1852 Indian ancestor. This man was the first of the 18 applicants and, while several later application forms included remarks that applicants were, or had the appearance of being, a "full blood" Indian, none of the other forms identified an individual as a "surviving member" of a band. One form contained the remark that the applicant was "a descendant" of Mission Indians (Chart 83.7(a), 1920s:52; Ex. A, I, tab: 1928, #10296). Considering the applicants collectively, Baker did not identify a group of individuals as members of a contemporary Indian entity.

The petitioner notes that the Office of Indian Affairs had the authority to reject applications for the census roll of the "Indians of California," and did so. It submits as evidence an excerpt from the "Index of Rejected Applications" (BIA ca. 1932). The petitioner argues that some applicants were rejected on the grounds that they had not demonstrated "membership in an Indian Tribe" (Vol. 83.7(a), 12; see also Chart 83.7(a), 1920s:45). On the excerpt of the "Index of Rejected Applications," the petitioner highlights two examples which suggest that "membership" was a basis for rejection. The petitioner only discusses and submits evidence for one of these examples. BIA researchers obtained documentation for both examples. The petitioner contends that such rejections imply a requirement of present tribal affiliation. The evidence does not support the petitioner's argument.

The petitioner discusses only the rejection of the applications of members of the Oliphant family. This case is presented by the petitioner to make a general point about the application process, not because that family had any connection with the petitioning group (Vol. 83.7(a), 12-13; Chart 83.7(a), 1920s:45-46). The petitioner provides a copy of the examiner's "Decision" in that case (Baker n.d.). This family claimed descent from the parents of a woman who had been allotted on the public domain as a Cherokee Indian. It "is alleged," examiner Baker wrote, that the allottee's Cherokee father married a California Indian. The examiner noted, however, that the allotment record contained "no mention of any California Indian blood" and there was "nothing to show that she [the allottee] ever was a member of any Indian tribe in the State of California." The petitioner quotes a passage in which the examiner, referring to the allottee's Cherokee father, stated that the "record does not give the name of the Indian woman whom he married, nor does it reveal the name of the tribe of California Indians to which she belonged" (Baker n.d.).

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Thus, the examiner had made the point that there was no direct evidence that this family had an ancestor who was a California Indian in 1852.

The examiner's finding that "none of these applicants ever associated or affiliated with any California Indian tribe" (Baker n.d.) is emphasized by the petitioner. Because neither the applicants nor the Cherokee allottee through whom they traced back to an 1852 ancestor could be considered California Indians, the examiner had made the point that there was no circumstantial evidence from which to infer that the 1852 ancestor had been a California Indian. The problem here was not that an ancestral California Indian residing in the state in 1852 had been identified, while the applicants had been found not to be members of a tribe. Rather, the problem was that there was no direct or circumstantial evidence to identify any ancestral California Indian in 1852. Therefore, both the "Index of Rejected Applications" and the application form stated that the reason for the rejection of the application (#10413) of a member of this family was that the "[a]pplicant is not of California Indian descent" (BIA ca. 1932; Allwardt 1929). It was not membership, but ancestry, that was at issue and led to rejection.

The petitioner also highlights an entry on the "Index of Rejected Applications" that indicated that the reason for the rejection of one application (#7226) was that it was lacking "[p]roof of membership in an Indian tribe" (BIA ca. 1932). The petitioner does not discuss the details of this case. The documentation for this case was easily found by BIA researchers at the National Archives. This applicant was born in 1900 in the State of Washington, and stated that her mother's mother, of Cowlitz ancestry, had been living in 1852 in the State of Washington. The applicant claimed to have applied for Cowlitz membership, but not to be a member of that tribe. This applicant resided in California in 1928, but claimed Indian descent exclusively through the "Cowlitz Tribe, State of Washington" (Allain 1930).

Examiner Baker sent the applicant a letter stating that her application had been rejected (*in* Allain 1930). Although this form letter provided four standard reasons for rejection, none quite applied to this case. For example, the applicant had not submitted insufficient evidence to establish her claim that she was a descendant of an Indian residing in California in 1852, one of the standard reasons for rejection, because she had not made such a claim. In this case, the *claim* did not even meet the requirements of the Act of 1928. Therefore, the evidence as stated on the application was insufficient to establish the applicant's descent from an Indian residing in California in 1852. It might be said that rejection of this application was based on the lack of membership in a California tribe by the qualifying ancestor in 1852. For the applicant, however, her rejection was not based on her lack of tribal membership, but on her lack of descent from a California Indian. Therefore, neither of these examples of rejected applications supports the petitioner's contention that the BIA based approval of applicants on identifiable tribal membership.

The support of the petitioner's contention that the United States "attempted to get the Court to require tribal affiliation as a condition of participation" in a claims case (Vol. 83.7(a), 8) appears to be cited in its chart for criterion (c), rather than in its presentation

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for criterion (a). The petitioner states that the Solicitor of the Department of the Interior, in a 1948 opinion, rejected the "Indians of California" as an "identifiable group" of Indians within the meaning of the Indian Claims Commission Act of 1946 (Chart 83.7(c), 1950s:26). The result, the petitioner contends, was that the Department identified applicants in the 1950's and later by their tribal affiliation. While the Solicitor in 1948 expressed his opinion that the "Indians of California" were not an identifiable group of Indians, he also noted that the Act vested in the Indian Claims Commission the function of making "authoritative determinations" on that question. He thus approved the attorney contracts at issue in his opinion because a decision as to whether the Indian parties to the contracts were an identifiable group of Indians "should be made by the Indian Claims Commission" (Department 1948, 155-156).<sup>6</sup> This evidence does not show that the Department implemented a policy of identifying the tribal affiliation of applicants.

The petitioner emphasizes that a form letter written in 1971 by the BIA to claims applicants stated that it was necessary to establish "an applicant's tribal affiliation" (Vol. 83.7(a), 13; quoting BIA 4/7/1971). Attached to this letter, according to the petitioner, was a copy of a regulation relating to preparation of the judgment roll. Therefore, the petitioner argues, "eligibility for the judgement [*sic*] roll depended on the applicant's ability to demonstrate affiliation with and descent from a tribe that had retained tribal relations at least through the period of treaty-making" and into the 20th century (Vol. 83.7(a), 13). The petitioner further contends that its ancestors "met these criteria" and were approved for the judgment roll. The implication of the petitioner's argument is that these requirements existed for the 1933 census roll as well as for the final judgment roll of 1972.

A reference to the group "affiliation" of the ancestors of individuals on the list of the "Indians of California" was not introduced to this claims process until an Act of September 21, 1968 (U.S. Statutes 1968).<sup>7</sup> Like the Act of 1928 and its revisions, the Act

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<sup>6</sup> The United States argued before the Indian Claims Commission that the "Indians of California" were not an "identifiable group" within the meaning of the Indian Claims Commission Act of 1946, and the Commission agreed (1 Ind.Cl.Comm. 366 (1950)). The U.S. Court of Claims, however, in 1952 reversed the Commission's decision and found the "Indians of California" to be an "identifiable group" of Indians capable of bringing suit against the United States under the Act of 1946 (122 Ct.Cl. 348 at 356 (1952)), even though the Commission had found that the Indians of California "have never as a single group or entity owned, used and occupied any definable area of land" (122 Ct.Cl. 348 at 355). Thus, this issue was settled before the end of the 1948-1955 enrollment period.

The petitioner also suggests that it was a report for the Department of Justice in 1955 by anthropologists Alfred Kroeber and Robert Heizer (A. Kroeber and Heizer 1970) that allegedly caused the Government, after 1955, to list approved applicants by their "tribal affiliation" instead of as "Indians of California" (Chart 83.7(a), 1950s:18-19). In view of the 1952 ruling of the Court of Claims, however, there was no point in 1955 in identifying as an "identifiable group" any "tribal affiliation" as an alternative to the "Indians of California."

<sup>7</sup> The Act of May 18, 1928 (45 Stat. 602) was revised by the Acts of Apr. 29, 1930 (46 Stat. 259); June 30, 1948 (62 Stat. 1166); May 24, 1950 (64 Stat. 189); June 8, 1954 (68 Stat.

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of 1968 provided for the preparation of a "roll of persons of California Indian descent." In contrast to earlier legislation, the Act of 1968 provided for the actual distribution of the amount appropriated by Congress to pay the judgment of the Court of Claims in the case of *The Indians of California v. United States*. The judgment roll should be prepared, the Act of 1968 stated, to indicate "the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852." The Act was concerned with "the affiliation of an enrollee's ancestors on that date . . ." (U.S. Statutes 1968, sec. 1(b)). The language of the Act of 1968 makes clear that it did not refer to any present tribal affiliation of applicants.

The Act of 1968 introduced this concept of the affiliation of an applicant's ancestors in order to exclude certain individuals from receiving a share of the award to the "Indians of California" who chose to receive a share of any awards to certain tribes in California that had splintered off from the generic group.<sup>8</sup> The members or ancestors of the petitioning group were not affected by the exclusion in the Act. Individuals with lineal or collateral descent from an Indian who resided in California in 1852 would, if not excluded by the provisions of the Act of 1968, remain on the list of the "Indians of California." To comply with the Act, the Secretary of the Interior would have to collect information about the group affiliation of an applicant's Indian ancestors. That information would be used to identify applicants who could share in another award. The group affiliation of an applicant's ancestors was thus a basis for exclusion from, but not a requirement for inclusion on, the judgment roll. The Act of 1968 stated that the Secretary of the Interior would distribute an equal share of the award to the individuals on the judgment roll "regardless of group affiliation . . ." (U.S. Statutes 1968, sec. 3).

Because a reference to group "affiliation" was not introduced until the Act of 1968, it is inappropriate to apply this provision of that Act to the application process of 1929 to 1933 or to the 1933 census roll. In addition, neither the Act of 1968 nor the 1971 BIA letter contained any references to "tribal relations" or to any post-1852 tribal affiliation. Contrary to the petitioner's contentions, these were nonexistent criteria. Thus, this evidence does not support the petitioner's argument on these points. The language of the 1968 Act reveals that it inquired about the group affiliation of an applicant's ancestors in 1852 to separate claimants into different groups for purposes of receiving claims awards, but did not impose any new requirement to qualify for inclusion on the judgment roll for the "Indians of California." Eligibility continued to be based on descent from an Indian who resided in the state in 1852. Neither the Act of 1968 nor the 1971 BIA letter provide

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240); and Sept. 21, 1968 (82 Stat. 860).

<sup>8</sup> The Act of 1968 excluded from the award to the Indians of California: "Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share . . . in any award granted to any of the following groups . . . Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes" (U.S. Statutes 1968, sec. 2(b)). The BIA letter quoted by the petitioner referred to these claimant groups as "the 10 'splinter tribes'" (BIA 4/7/1971).

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any basis for concluding that the Government's approval of a claims application constituted an identification of an applicant's affiliation with a contemporary group.

The petitioner contends that the Department of the Interior, in previous decisions and actions related to the restoration of terminated California Indian tribes, has used the applications under the 1928 Act and the 1933 census roll as the "base roll" for a reconstructed tribal enrollment (Vol. 83.7(a), 11). The petitioner discusses no examples of actual Departmental practice to implement enrollment.<sup>9</sup> The petitioner cites a report prepared by the BIA on pending legislation to restore the Paskenta Band (Vol. 83.7(a), 11).<sup>10</sup> The BIA report evaluated "whether the Paskenta Band seeking restoration represents the lineal descendants of the historic" band (BIA 8/11/1994, 1), but did not prepare a base roll. Rather, the report stated clearly that the Paskenta Band had prepared its interim 1994 membership list (BIA 8/11/1994, 4). It was the interim constitution of the Paskenta Band, not the BIA report, that defined membership in part as persons "who were identified as Indians from Paskenta in any of the official or unofficial rolls" prepared by the BIA (BIA 8/11/1994, 4). The Paskenta Band indicated that it relied upon five such rolls, but not the 1933 census roll of the "Indians of California."

The bibliography of the BIA's Paskenta report cited twelve Indian census rolls prepared between 1892 and 1937, but not the 1933 census roll for the claims case (BIA 8/11/1994, 14-15). The BIA report noted that the Central California Agency of the BIA had supplied Certificates of Degree of Indian Blood for 58 interim members of the Paskenta Band, and noted that 49 of them had been listed on the 1972 judgment roll (BIA 8/11/1994, 4). The report pointed out, however, that all of the certifications noted that: "The 1972 Judgment Fund Roll is only considered as a payment list and inclusion on the payment list does not denote tribal membership . . ." (BIA 8/11/1994, 5). On this point, then, the BIA's report of 1994 on the Paskenta Band and the Department's Proposed Finding of 2001 on the Muwekma petitioner were consistent.

The petitioner also contends that when tribes have been restored by decisions of Federal courts, "these lists" (presumably including the 1933 census roll) have been employed (presumably by the Department of the Interior) to determine membership (Vol. 83.7(a), 11).<sup>11</sup> However, the petitioner neither provides nor discusses any specific examples of the use of the 1933 census roll by the Department as the base roll for any of these restored tribes. It does not discuss any orders by the courts regarding tribal enrollment

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<sup>9</sup> In a footnote, the petitioner lists four "restoration and reaffirmation cases": Paskenta, Auburn, Ione, and Lower Lake.

<sup>10</sup> The Act of 1994 that restored the Paskenta Band of Nomlaki Indians provided, in section 306(b), for a temporary membership roll that would be effective only until the tribe adopted a constitution (U.S. Statutes 1994). The Act referred to BIA rolls, but not specifically to the 1933 census roll or its underlying applications. Thus, the Act neither established a base roll nor mandated use of the 1933 census roll.

<sup>11</sup> In a footnote, the petitioner cites the *Tillie Hardwick* and *Scotts Valley Band* cases.

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that the Department was to implement, nor mention what the courts or the Department said about tribal membership. The petitioner has failed to provide any specific evidence to support its contention that these court-ordered restorations demonstrate its point about "previous decisions and actions by the Department of the Interior" (Vol. 83.7(a), 11).

The petitioner has not demonstrated its contention that the Department of the Interior previously has used the 1933 census roll, and the individual applications to be included on that census, as evidence of specific tribal affiliation or as the basis for a "base roll" for a restored tribe. The petitioner has not demonstrated that the Department has used the 1933 list of the "Indians of California" in other contexts in a manner different from the Department's use of the 1933 list in the Muwekma Proposed Finding to validate Indian ancestry. The Department's unwillingness to accept the approved applications for the 1933 census roll as evidence of external identification of an Indian entity is not a "higher standard" for the petitioner than for restored tribes, as alleged by the petitioner (Vol. 83.7(a), 11-12).

This review of evidence relating to the claims application process under the Act of 1928 concludes that the approval of individual applications did not constitute the Government's identification of a contemporary Indian entity. The petitioner's arguments and evidence about an alleged relationship between the Government's approval of claims applications and an applicant's "tribal affiliation" do not demonstrate that the Government designated a contemporary group affiliation by approving an application. Therefore, the available evidence of the application forms that were approved after the Act of 1928, and the 1933 census roll and later judgment rolls that included individual ancestors, is not sufficient to meet the requirements of criterion (a).

### *1930's*

The petitioner's discussion of criterion (a) lists county death certificates of some of its ancestors as evidence of the identification of an Indian entity by local governments (Vol. 83.7(a), 60, 68). Its chart, however, cites death records as supporting evidence rather than as evidence that meets the criterion (Chart 83.7(a)). The petitioner's argument about these death certificates from the 1930's is that some of its Indian ancestors "were buried in some cases at the Ohlone Indian Cemetery designated as 'Mission San Jose' or 'Indian Cemetery'" (Vol. 83.7(a), 68). While this statement is accurate for some burials prior to 1926, it does not apply to the five county death certificates submitted from 1928 to 1942 (Vol. II, records 10/22/1928, 12/20/1930, 9/17/1934, 10/28/1934, and 12/12/1942). For those five individuals, the death records indicate that four were buried in Centerville (at least two in Holy Ghost Cemetery) and one at Livermore (in Masonic Cemetery). The Indian cemetery associated with Mission San Jose was located in Irvington. No evidence indicates that an external source designated a burial location as appropriate for a group. No information on these five death records indicates that any county government identified any of these individuals as part of a contemporaneous Indian entity.

The petitioner lists the "field and photographic work of anthropologist C. Hart Merriam" in 1934 as evidence meeting criterion (a) as identification by a scholar (Vol. 83.7(a), 69).

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According to the petitioner, Merriam returned to Alameda County to look for “his old ‘Mewko’” informants, and “located an aged Jose Guzman living with a relation in Niles” and photographed him in August 1934 (Vol. 83.7(a), 69). The petitioner provides no quotation from Merriam to demonstrate that he identified a contemporaneous Indian entity. It submits only the photograph. Merriam’s photograph shows only Guzman and an unidentified woman, and is labeled as an example of “YOKUTS, Yachicumni subtribe” (Vol. II, tab: 1931-1940). The catalog entry for this photograph gives the information that Guzman was “born at the Indian village in Stockton, ca. 1850” and died in 1934 (T. Kroeber and Heizer 1968, 22, 166). This information does not identify this individual as part of an existing Indian group containing ancestors of the petitioner or of any other contemporaneous Indian entity.

The petitioner submits, as new evidence, twelve pages of records from the Sherman Institute in Riverside, California, which demonstrate that Domingo Marine attended this Indian school during the 1930’s (Vol. II, tab: 1931-1940). The petitioner contends that approval by the BIA of his enrollment constitutes evidence of an external identification of an Indian entity (Vol. 83.7(a), 68, and chart). This response fails to engage the point made in the Proposed Finding that the basis on which students were accepted for admission – whether as individuals of a certain degree of Indian blood or as members of a tribal entity – is crucial to an evaluation of whether or not attendance at an Indian school is evidence of an external identification of an Indian entity (*Muwekma PF*, 13).

Two application forms, neither dated but *circa* 1930-1931, do not indicate the basis for approval of Marine’s enrollment at the school. The forms contain no information on tribal membership and no tribal certification or endorsement. The submitted information contains no certification or endorsement by a local Indian agent. The application forms list Marine’s tribe as “Digger,” while his 1937 report cards list his tribe as “Mewuk.” These generic references, which apply to many separate Indian groups, do not refer to the petitioner as a specific Indian entity. The forms list Marine’s degree of Indian blood as “full.” On the basis of this available information, the most likely explanation of Marine’s attendance at the Sherman Institute is that he was accepted on the basis of his Indian blood degree. This would have been a determination based upon his individual characteristics rather than any recognition or identification of an Indian entity to which he may have belonged. Acknowledgment precedent has established the principle that the identification of individuals as Indians is not evidence sufficient to meet the requirements of criterion (a).

### *1940’s*

The petitioner also supplies, as new evidence, nine pages of records which demonstrate that John and Rayna Guzman attended the Indian school at Chemawa, Oregon, during the 1940’s (Vol. II, tab: 1941-1950). The petitioner contends that approval by the BIA of this enrollment constitutes evidence of an external identification of an Indian entity (Vol. 83.7(a), 71, and chart). As in the example of the Sherman Indian school, the petitioner does not address the issue of whether enrollment was approved on the basis of the individual’s blood degree or tribal membership.

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An application form for John Guzman, dated 1944, does not indicate the basis for approval of his enrollment. The form contains no information on tribal membership and no tribal certification or endorsement. It lists his tribe as "Mission," and other documents also refer to the tribe of the Guzman siblings as "Mission." This generic reference, which applies to many separate Indian groups, does not refer to the petitioner as a specific Indian entity. John Guzman's application form lists his degree of Indian blood as "5/8." An incomplete copy of a 1944 letter from the Sacramento Indian Agency about John and Rayna ("Rena") Guzman stated: "There is no doubt but what these children have sufficient Indian blood to admit them to a Government Boarding School" (BIA 8/14/1944). The Agency's letter contained no claim of tribal membership for the Guzman children. Therefore, the available evidence suggests that the Guzmans' attendance at the Chemawa school was based on their degree of Indian blood. The identification of individuals as Indians is not evidence sufficient to meet the requirements of criterion (a).

The Proposed Finding rejected the petitioner's claim that a 1945 letter by local resident and notary public Charles Wauhab was evidence of an identification of an Indian entity. The petitioner now argues that the Proposed Finding reached this conclusion because the BIA researchers changed the tense of Wauhab's letter from the present tense "is" to the past tense "was" (Vol. 83.7(a), 72; see also 70). In 1945, Wauhab wrote of "Trina" of the "Marino" family that: "She is a descendant of the local Indian tribe . . ." (Wauhab 2/3/1945). In 2001, the Proposed Finding described this letter by noting that Wauhab had "stated that an individual was 'a descendant of the local Indian tribe'" (*Muwekma PF*, 13).

It is common practice for text written in 1945 in the present tense to be described in 2001 in the past tense. The petitioner's contention might have had merit if the point of the Proposed Finding's evaluation had been whether or not the *individual* identified by Wauhab was alive in 1945. The issue for criterion (a), however, was whether or not he identified an Indian *entity* in existence at that time. The Proposed Finding concluded that this was not a contemporaneous identification of an Indian entity in 1945 because Wauhab "referred to a tribe in the past, since one is a 'descendant' of a tribe that existed in the past" (*Muwekma PF*, 13, using the present tense "is" a descendant). Wauhab did not write that "she belongs" to the local tribe or that "she is active" in the local tribe, language that would have referred to an existing entity, but that "she is a descendant." The point is that even though Wauhab used the present tense to indicate that "Trina" Marine Ruano was alive in 1945, it is reasonable to conclude that his reference to the "local Indian tribe" was to an entity that had existed at an earlier time. There is not a reasonable likelihood that this 1945 letter was an identification of a contemporaneous Indian entity.

The petitioner also contends that new documentation shows that Wauhab "personally knew other individuals" of Indian descent because, in the 1950's, he witnessed three applications of ancestors of the petitioner's members to share in judgment funds for the "Indians of California," and also notarized one legal affidavit of an ancestor (Vol. 83.7(a), 73). On the three forms on which individuals acknowledged receipt of judgment



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funds, Wauhab signed in 1951 and 1957 as one of the "witnesses to signature" (Wauhab 1951-1957). On the legal affidavit, he signed in 1957 as a notary public who witnessed the signature of the affiant. Even if these documents reveal Wauhab's personal knowledge that several individuals had Indian ancestry, they do not identify those individuals as part of a contemporary Indian entity. Criterion (a) requires that the petitioner's members or ancestors have been identified as comprising an Indian entity. The petitioner has not shown that Wauhab's witnessing was accompanied by such an identification.

Part of the petitioner's new evidence is a one-page excerpt from a 1949 local history of the town of Pleasanton, California. Although the petitioner discusses this document only in its chart of evidence for criterion (c), it should be considered in relation to criterion (a) as well (Chart 83.7(c), 1940s:31). This local history mentioned Indian rancherias as having been a part of Pleasanton "up until 1914" (Soito 1949). The excerpt submitted by the petitioner did not describe any Indian group or individuals after 1914. Therefore, it did not identify the petitioning group at any time since 1927.

### 1950's

The petitioner submits, as new evidence, copies of BIA forms and correspondence from the early 1950's relating to revisions of the judgment roll of the "Indians of California," as authorized by an Act of 1948, and a partial payment of the claim, as authorized by an Act of 1950 (Vol. 11, tab: 1950-1955). These documents sought or provided information about the deaths of people on the roll, the birth of children of people on the roll, the current mailing address of people on the roll, and about persons born since the Act of 1928. That the BIA corresponded with individuals on the payment list does not constitute identification of an Indian group or entity, for it wrote to them as individuals, not as a group. This Final Determination does not find that approval of an application identified the applicant "as a member" of a tribe. The petitioner makes the same argument about the approval of applications in the 1950's as it did for the applications approved prior to 1933 (Vol. 83.7(a), 75-77, and Chart 83.7(a), 1940s:4, 6, 8, 11, 13; 1950s:1, 2, 4, 9, 11, 12, 14, 16, 20, 23, 24, 26, 28, 31, 36, 37).<sup>12</sup> An evaluation of the merits of that argument are set forth above in the section on "Indian Claims Applications, 1929-1933."

The petitioner supplies a paper written in 1955 by anthropologists Alfred Kroeber and Robert Heizer for use in Indian Claims Commission cases, and published in 1970, as new evidence (A. Kroeber and Heizer 1970). In this paper, entitled "Continuity of Indian Population in California from 1770/1848 to 1955," these two anthropologists selected and examined a small, non-random, "strategic sample" of the 1933 census roll of the

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<sup>12</sup> There appears to be an inconsistency between the petitioner's contentions that the BIA identified all 1948-1955 applicants as members of a "Mission San Jose" tribe (Chart 83.7(a), 1940s:4 and *passim*) and that "[t]hroughout the second (1948-1955) and third enrollment (1968-1972) periods" the BIA listed the petitioner's members and their ancestors as the identifiable group "Costanoan Indian" (Chart 83.7(a), 1950s:18-19).

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"Indians of California" as prepared by the BIA in response to claims brought under the Indian claims jurisdictional Act of 1928. Their research assistants reviewed the individual applications of the sample of individuals. Thus, Kroeber and Heizer did not examine Indian populations in California in 1955, but at the time of the creation of the 1933 census roll.

Kroeber and Heizer did not claim that Indian entities or settlements existed in 1955, or in 1933, but that historical groups that had lost their distinct culture had surviving lineal descendants in the population of California at the time of the 1933 list. Their argument was that even though Indian cultures had become extinct, Indian populations had not. Contrary to the petitioner, this was not a conclusion about survivorship of Indian groups. Although the petitioner emphasizes the anthropologists' use of the word "group" (Vol. 83.7(a), 78; Chart 83.7(a), 1950s:18-19), the context indicates that they referred to the historical groups which they used as the starting point of their analysis. Kroeber and Heizer stated as their conclusion that the 1933 census roll of California Indians showed "that almost every group identifiable between 1770 and 1850 is represented by some lineal descendants surviving today" (A. Kroeber and Heizer 1970, 5). This was a statement about the survival of individual descendants, rather than Indian groups. Because Kroeber and Heizer's paper was based on 1933 data, it described the early 1930's rather than the mid-1950's. Because those anthropologists referred to surviving descendants rather than groups, they did not identify an Indian entity in either decade.

The main point of Kroeber and Heizer's paper already had been made by the Proposed Finding, which noted that individuals alive in 1933 were credited with Indian descent and claimed descent from the Mission San Jose (*Muwekma PF*, 7, 47-48). Kroeber and Heizer counted fewer such individuals (12) than did the Proposed Finding (55 individuals in 18 applications) and, in contrast to the evaluation for the Proposed Finding, identified no individuals by name (A. Kroeber and Heizer 1970, 10; see also Chart 83.7(a), 19-20). The Proposed Finding provided a much more thorough evaluation than this 1955 paper of the 1933 judgment roll in relation to the petitioner's ancestors. This paper by Kroeber and Heizer contains no additional information and no conclusions different from the Proposed Finding. Whether individuals of Indian descent survived until 1933, or later, is not the test posed by criterion (a). Kroeber and Heizer did not describe the Mission San Jose survivors as an Indian entity. Therefore, their 1955 paper is not evidence sufficient to meet criterion (a).

### 1960-1964

The petitioner contends in its chart for criterion (a) that a 1964 letter from Howard Reese, the City Manager of the City of Fremont, to Rupert Costo, of the American Indian Historical Society, constitutes an external "identification of an Indian entity via 'the Ohlone Indian Cemetery' by a local government official" (Chart 83.7(a), 1960s:3).<sup>13</sup> A

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<sup>13</sup> The petitioner repeats the argument for identification "via the 'Ohlone Cemetery'" for Governor Brown and Rupert Costo (Chart 83.7(a), 1960s:10, 38). Many other entries in the petitioner's chart for criterion (a) claim references to the cemetery or to an "Ohlone Indian burial

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reference to a cemetery is not an identification of a contemporaneous Indian entity. The city manager referred to the "Ohlones [sic] Cemetery" in response to Costo's inquiry about it, and the petitioner provides no explanation of how Reese's references to "this property" transferred to an Indian group (Reese 7/15/1964; see also *Muwekma PF*, 15, and Description, 14). The petitioner may also contend that this letter identified an Indian "community" by identifying its spokespersons (Chart 83.7(a), 1960s:4), but Rupert Costo and his organization were not the petitioning group. The petitioner does not specify the language in Reese's letter that constitutes identification of an Indian entity consisting of the petitioner's members and ancestors alive at that time, and no such identification is apparent in his letter.

### *Summation for the period 1927-1964*

This review of the comments and evidence concludes that although Harrington mentioned Indian individuals in his field notes, he did not identify any contemporaneous settlement, group, or entity. Neither the Act of 1928 nor the claims application process required current tribal affiliation, and the Government's approval of claims applications did not constitute an identification of a contemporary Indian entity. Indian school attendance records suggest that the petitioner's ancestors were accepted as students because of their degree of Indian blood, and did not identify any existing Indian group. A paper by anthropologists referred only to historical groups, and did not identify surviving Indian descendants as an Indian entity. Death certificates, notarized documents, and a local official's letter did not identify existing Indian groups. The identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity. Thus, the available evidence is not sufficient to meet the requirements of criterion 83.7(a) between 1927 and 1964.

Even if Harrington's field notes were accepted as evidence sufficient to meet the criterion, such a conclusion would advance the time period for which the criterion is met only from 1927 to 1929 or 1930. If the 1933 census roll were accepted as evidence sufficient to meet the criterion, that conclusion would advance the time period for which the criterion is met only to 1933. Given the conclusions of the Proposed Finding, the petitioner would still need to provide evidence of external identification between 1930 or 1933 and 1985. The review above reveals that the petitioner has not done so for the period between 1927 and 1965.

### Comments on the Proposed Finding for the Period 1965 to 1985

The new evidence which the petitioner's chart cites as meeting criterion (a) for the period from 1965 to 1985 consists of a 1973 local history by Florence Fava, a 1974 historical resources inventory for the State of California, proposed articles of incorporation of a tribal council in 1982, both a proposal and report by anthropologist Nancy Olsen in 1985, and studies by archaeologist Mark Hylkema for the State of California in 1989 and 1995

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grounds" as identification of a contemporary group.

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(Petitioner 2002, Chart 83.7(a)). The petitioner's textual response additionally mentions a "Sunol Regional Wilderness History" which the petitioner says was written about 1969 by the naturalist for a local regional park, and an interview with an unidentified local resident by an unidentified interviewer about 1970 (Vol. 83.7(a), 82-85, and Vol. II, marked as 1969 and 1970). The petitioner also includes in its chart all of its previously submitted documents as evidence to meet the criterion.

In addition, the petitioner's chart cites documents created by the petitioner's own members, their ancestors, or their relatives between 1965 and 1971, minutes recorded by members or their ancestors of a meeting in 1982, and letters written by the petitioner's leader in 1981 and 1985 or by advocates on her behalf in 1983-1985. The regulations, however, require "evidence of identification by other than the petitioner itself or its members" to satisfy criterion (a).

About one-third of the items the petitioner cites in its chart as meeting criterion (a) date to the second half of the 1960's. All of this evidence from the late 1960's was evaluated for the Proposed Finding (*Muwekma PF*, 14-16, 32-35, and Description, 44-46, 53-66).

### *American Indian Historical Society, 1965-1971*

Much of the petitioner's evidence for the Proposed Finding related to the activities of the American Indian Historical Society (AIHS) between 1965 and 1971. The petitioner's comment contends that the Proposed Finding sought to "delegitimize" the AIHS (Vol. 83.7(a), 91). On the contrary, the Proposed Finding treated that organization in a manner consistent with the petitioner's observation that the AIHS was "a real organization" that was more than just its director Rupert Costo (Vol. 83.7(a), 91). The Proposed Finding referred to the AIHS as a national Indian organization with multi-tribal representation on its board of directors (*Muwekma PF*, Description, 45, 54). Indeed, precisely because the Proposed Finding viewed the AIHS as a legitimate, intertribal, national organization, it did not consider the actions of the AIHS and its director as the actions of the petitioner, or identifications of the AIHS as identifications of the petitioning group.

In addition, the petitioner claims that the Proposed Finding "apparently" relied upon an assumption that "as an Indian from southern California, Costo had no authority to analyze or support Indians of northern California, and moreover as an Indian he simply had no legitimacy as a scholar whatsoever" (Vol. 83.7(a), 91). This contention has no merit and is not based upon any specific language in the Proposed Finding. Although the evidence produced by the petitioner consists of letters written by Costo in his role as an advocate, rather than professional publications written by him in his role as a scholar, the Proposed Finding gave deference to his scholarly reputation to treat him as a "knowledgeable" observer for purposes of an evaluation under section 83.8(d)(3) of the regulations (*Muwekma PF*, 28). Under criterion (a), the issue for an analysis of Costo's letters is not whether he had the "authority" to support Indians of northern California, but whether the Indians he dealt with between 1965 and 1971 were a precursor of the current petitioning group.

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The Proposed Finding concluded that Rupert Costo of the AIHS identified a group, or groups, of Ohlone Indians. As the best evidence of that identification, it cited a 1971 letter by Costo to three Galvan siblings as leaders of a "Native group," and references by Costo, his wife, and the AIHS to the Ohlone Indian Tribe, Inc., to which the AIHS transferred title to a historical Indian cemetery in 1971 (*Muwekma PF*, 14-15, and Description, 13, citing R. Costo 3/8/1971, 8/25/1971; Newspaper 1971). The Proposed Finding, and its supporting Description and Analysis of the Evidence, recognized that other AIHS documents referred to several Ohlone groups in the period 1965 to 1971, but did not find that it had been demonstrated that those groups or the Ohlone Indian Tribe, Inc., were the same entity as the petitioner (*Muwekma PF*, 15, 16, 34-35). The major problem with the identifications by the AIHS is that they referred specifically to a small number of Ohlone descendants associated with the leadership of a single Galvan nuclear family, and not necessarily to an inclusive group of the petitioner's ancestors that was a predecessor entity of the petitioner's current organization.

The BIA researchers' evaluation of the petitioner's newly submitted oral history interviews, however, has provided evidence that demonstrates that members, and ancestors of members, of the petitioning group in addition to the Galvan family participated in clean-up activities at the Ohlone Indian Cemetery and attended a meeting about control and ownership of that cemetery in the mid-1960's. Although it appears that these meeting attendees challenged the role of the AIHS more than they cooperated with the AIHS, knowledge of the identity of many of the participants in that meeting and those activities provides the basis for now concluding that a group of the petitioner's members and their ancestors was known to Costo as the Ohlone descendants over whom he attributed leadership to the three Galvan siblings.

This new evidence about the participants in activities in the 1960's requires a review of the available evidence for possible identification of the petitioning group by the AIHS. In 1965, Jeannette Henry Costo referred to an "executive committee of the Ohlone Band of Miwuk Indians" (J. Costo 5/17/1965). In 1966, Rupert Costo suggested that a local organization "invite the people of the Ohlone Tribe to attend" a proposed meeting on Ohlone history (R. Costo 5/20/1966). Costo's identification of a "Native group" in 1971 already has been cited (R. Costo 3/8/1971). The oral history evidence that participants in activities involving the cemetery and the AIHS were members and ancestors of members of the petitioning group establishes a reasonable likelihood that the AIHS's identification of an "Ohlone Band" in 1965, the "people of the Ohlone Tribe" in 1966, and a "Native group" in 1971 were identifications of the petitioning group.<sup>14</sup> Therefore, this Final Determination concludes, in a revision of the Proposed Finding, that Rupert and Jeannette Henry Costo of the AIHS identified an unorganized group of Ohlone

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<sup>14</sup> In a letter to a scholar in 1969, Rupert Costo discussed evidence of a historical "Ohlonowit" group in the vicinity of the Mission San Jose, and added, "I take it for granted that they are referring to the same band which we know now as Ohlone" (R. Costo 8/7/1969). This ambiguous statement may have referred to the historical "Ohlonowit" group as "Ohlone," or may have referred to its descendants as a contemporary Ohlone group.

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descendants, that was larger than the Ohlone chapter of the AIHS, as an Indian entity between 1965 and 1971, and that this group was a precursor of the modern petitioner.

The petitioner, in its comment on the Proposed Finding, has reargued the merits of several specific documents as examples of external identification of the petitioner. Although a conclusion on these contentions is not necessary in view of the revised finding stated above, a discussion of some of these items may clarify that revised finding by noting that not all evidence has equal weight and that some documents are not sufficient to meet the requirements of criterion (a). In addition, the petitioner lists a large number of documents produced by the AIHS that were considered for the Proposed Finding (Chart 83.7(a), 1960s:12-18, 22-26, 37, 44, 48-53, 88, 109; 1970s:4, 8, 19-20; Vol. 83.7(a), 88-103). In general, those letters by Rupert Costo or his wife between 1965 and 1971, and various issues of the AIHS's journal *Indian Historian*, revealed an awareness that Ohlone Indian descendants were living in the Bay Area, but most of those documents did not identify those descendants as a group or entity.

For example, in 1965, Rupert and Jeannette Henry Costo referred to local "Indian people" (R. Costo 3/29/1965; J. Costo 5/31/1965), to "Ohlone Indians" (R. Costo 5/30/1965), and to "your cousins and other relatives" (R. Costo 6/21/1965) without identifying them as an entity rather than as individuals of Indian ancestry. In addition, some of Rupert Costo's references to the Ohlone placed that Indian group in the past by using the past tense. "The Ohlone were," Costo wrote in one letter, "a group of the MiWuk," and he wanted to establish that "they lived" within a certain territory (R. Costo 3/29/1965). In another letter, Costo encouraged the "Ohlone Indians" and other Indians to find a way "to revive the tribal bonds of our people," thus implying that, despite the existence of living descendants, no group had such a bond as a group in 1965 (R. Costo 5/30/1965). The *Indian Historian* referred to a group of "Ohlone Indian Historians" in 1965 (*Indian Historian* 1965), but that was a group much smaller than the petitioner. Some of Rupert Costo's letters in 1966 referred to an Indian "burial ground" rather than to a contemporary group (R. Costo 7/23/1966 (two)).

An identification sufficient to meet criterion (a) must have been made by an external observer. Therefore, knowledge of a document's author is important. This concern applies to a "Plan for the Mission San Jose." The petitioner's assumption that this document was created by the AIHS is reasonable (Vol. 83.7(a), 88; Chart 83.7(a), 1960s:7-8). This undated document probably was written between 1965 and 1971. The "Plan for the Mission San Jose" (Anonymous, n.d.), however, bears neither a signature nor letterhead, so the author of this document is unknown. This plan might have been prepared either by AIHS director Rupert Costo or by AIHS member Philip Galvan. If the author was Galvan, who considered himself to be a part of the group identified by the plan, then this document would not meet a requirement of the criterion because it would not be an identification by an external observer. If the author was Costo, he would qualify as an external observer, but his identification of a contemporary Indian group had already been accepted by the Proposed Finding based on better evidence (*Muwekma PF*,

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14-15, and Description, 13). The lack of evidence of the authorship of this document prevents its effective use as evidence relevant to this criterion.<sup>15</sup>

The Proposed Finding noted in its discussion of a document that: "The mere use of the word 'Ohlone' in any context cannot be taken as a reference to the petitioner (*Muwekma PF*, 15, and Description, 14). The petitioner highlights a reference in that document to "the Ohlone Tribe," and contends that the Proposed Finding erred by not properly considering the context surrounding the naming of a local junior college as "Ohlone College" in 1967 (Vol. 83.7(a), 102-103, citing *Indian Historian* 1967). The petitioner cites an AIHS article about the college as evidence of external identification in newspapers (Chart 83.7(a), 1960s:65). The article referred to "descendants of the Ohlone Tribe" (*Indian Historian* 1967), placing the tribe in the past. In a presentation to the college board of trustees, Philip Galvan spoke "to represent the Indian Historical Society," not a local Ohlone group. He argued for naming the college after "the first inhabitants of the Fremont-Newark area" (*Indian Historian* 1967). The available evidence indicates that the college was named for a historical tribe, and that the related discussion and context referred to a historical tribe rather than to a contemporary Indian entity.

The Proposed Finding concluded that a list of "Ohlone Members" was a list of the AIHS's own members, rather than an identification of the petitioner as a larger and independent Indian group (*Muwekma PF*, 14). The petitioner attempts to refute this conclusion by citing a May 25, 1965, letter written to Rupert Costo by five members of a Galvan nuclear family, four of whom were on that list of "Ohlone Members" (Vol. 83.7(a), 93-94). The letter described a meeting called by other people that the Galvans decided to attend (D.M. Galvan *et al.* 5/25/1965). The petitioner incorrectly claims that the Proposed Finding interpreted this meeting as consisting of the AIHS's own members (Vol. 83.7(a), 94; *c.f. Muwema PF*, 33, and Description, 44, 55-56). Thus, the petitioner's observation that the meeting attendees complained about possibly having to join the AIHS, demonstrating that they were not members of the AIHS, refutes only the petitioner's straw man. The meeting described by this letter, in which the Galvans were challenged by the attendees, illustrates the concern expressed by the Proposed Finding that the AIHS's "Ohlone Members" were not an inclusive group of ancestors of the petitioner's members or a predecessor of the petitioner's organization.<sup>16</sup>

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<sup>15</sup> The BIA staff discussed this document with the petitioner's researchers during the on-the-record technical assistance meeting held during the comment period on the Proposed Finding (BIA 11/7/2001, 155-157). In its comment, the petitioner does not respond to the issues raised during the on-the-record meeting. The petitioner's claim that this "Plan" was prepared "working in concert with the Mission San Jose Ohlone Tribal community" (Vol. 83.7(a), 88) is not supported by any evidence.

<sup>16</sup> It is not known who authored the list of "Ohlone Contacts" found among the AIHS materials in the archival collection of Rupert Costo's papers. The fact that there were two separate lists of "Ohlone Members" and "Ohlone Contacts" suggests that the AIHS, or an AIHS chapter, made a distinction between its members and a larger Ohlone group.

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The petitioner cites evidence that indicates that Rupert and Jeannette Henry Costo of the AIHS and a local newspaper in 1971 identified an Indian entity incorporated that year as the Ohlone Indian Tribe, Inc. (Vol. 83.7(a), 106-109, citing R. Costo 8/25/1971 and Newspaper 1971). These examples are consistent with the conclusions of the Proposed Finding. Indeed, the Proposed Finding cited Rupert Costo's August 25, 1971, letter as evidence of an identification of the incorporated Ohlone entity, and the newspaper clipping of 1971 as evidence that Jeannette Henry Costo had identified the newly incorporated organization as a tribe (*Muwekma PF*, 14-15, and Description, 13). The Proposed Finding concluded that, "the record contains several examples of the identification of the Ohlone Indian Tribe, Inc., as an Indian entity in the 1970's," but added that "it is not clear that those sources identified the current petitioner" (*Muwekma PF*, 15).

The petitioner portrays the non-profit Ohlone Indian Tribe, Inc., under the control of Philip Galvan and the informal Ohlone Indian Tribe "under the aegis" of Benjamin Michael Galvan as separate entities (Vol. 83.7(a), 150). The Ohlone Indian Tribe, Inc., was the organization that cared for the Ohlone Indian Cemetery acquired from the Mission San Jose through the AIHS. The petitioner describes Philip Galvan as the "sole custodian" of the cemetery (Vol. 83.7(a), 109), implying that a larger group did not control the incorporated organization. The petitioner also argues that Galvan "had very little to do with the greater Tribal community" and that the issues confronting the larger "Ohlone Indian Tribal community went unaddressed by the non-profit entity Ohlone Indian Tribe, Inc." (Vol. 83.7(a), 109). The petitioner does not describe the Ohlone Indian Tribe, Inc., or Philip Galvan, as exercising leadership over the petitioning group or carrying out decisions of the petitioning group. In these arguments, the petitioner presents itself as having been an entity distinct from, and larger than, the Ohlone Indian Tribe, Inc.

The petitioner claims to be "the successor of the Ohlone Indian Tribe, Inc.'s membership" (Vol. 83.7(a), 153), while also claiming that it has been independent of and separate from the incorporated entity (Vol. 83.7(a), 114). There is no available evidence indicating that the Ohlone Indian Tribe, Inc., had any members other than the three Galvan siblings. Nor is there any available evidence indicating that the petitioning group decided to form the incorporated entity or acted by utilizing it. The evidence does not show that the petitioner's current organization evolved from the Ohlone Indian Tribe, Inc. That incorporated entity continues to exist as an entity separate from the petitioner (see Vol. 83.7(c), 17). For these reasons, this Final Determination does not find an identification of the Ohlone Indian Tribe, Inc., to be an identification of the petitioner.

New oral history evidence shows that members of the petitioning group and their ancestors, who were among the people on the AIHS's list of Ohlone "contacts," participated in activities in the 1960's with members of the Galvan family, who were on the AIHS's list of "members." A reevaluation of the documentary evidence from the late 1960's, informed by this new oral history evidence, leads to a revised conclusion that there is a reasonable likelihood that between 1965 and 1971 Rupert and Jeannette Henry Costo of the AIHS identified an Ohlone Indian entity that was a precursor of the



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petitioning group. However, in view of evidence that the petitioning group is not a successor of the Ohlone Indian Tribe, Inc., formed in 1971, identifications of the Ohlone Indian Tribe, Inc., in the 1970's by the Costos and others were not identifications of the petitioner. The evidence of identifications of an Ohlone group, one that was larger than the incorporated entity and larger than the Ohlone chapter of the AIHS, is sufficient to meet the requirements of criterion (a) for the period between 1965 and 1971.

### 1965-1975

As part of its chart and narrative relative to criterion (a) for the decade from 1965 to 1975, the petitioner cites evidence produced by its own members, ancestors, and individuals it considers to have been members of the petitioning group. This evidence includes a Marine or Comate family history *circa* 1965; a resolution of the "Ohlone Historians" of the AIHS in 1965; letters by members of the Galvan, Ruano, and Guzman families between 1965 and 1971; a petition to the president and an open letter about Alcatraz in 1970; an article about Ohlone history by P. Michael Galvan in 1968; and interviews with members of the petitioner in 2001 (Vol. 83.7(a), 87-88, 99-100, 106; Chart 83.7(a), 1960s:1, 20, 28, 30, 32, 35, 41, 46, 86, 96, 98, 102, 104, 107, 110; 1970s:6, 11). This documentation is not evidence of observations by external observers, as required by criterion (a).

A letter relied upon by the petitioner also was in part the work of an Ohlone descendant, rather than solely the observations of an external observer. The petitioner cites a 1966 letter by Rupert Costo and Philip Galvan, officers of the AIHS, to Representative Don Edwards, and notes that the letter referred to "a statement of the Ohlone Indians" (Vol. 83.7(a), 101-102, citing R. Costo and P. Galvan 7/23/1966; P. Galvan 7/19/1966). That statement of an "Ohlone Indian" (singular rather than plural), attributed to Galvan, is not evidence produced by an external observer. The letter is an ambiguous item of evidence. To the extent that this letter was written by the AIHS and Costo, it demonstrates another reference to Ohlone descendants known to Costo through the Galvan family. To the extent that this letter was written by Galvan, it provides another example of evidence created by an individual who considered himself to be part of such an Ohlone group and therefore was not an external source of identification.

The petitioner cites a number of documents from the late 1960's and early 1970's that were considered for the Proposed Finding. For example, letters by Governor Brown in 1965, letters between Representative Edwards and the National Park Service in 1966; material by scholars C. Hart Merriam in 1967 and Sherburne Cook in 1969; articles in the *San Jose Mercury* in 1972; and a 1973 local history were reviewed but not considered to be evidence sufficient to meet the requirements of the criterion.<sup>17</sup> Therefore, a detailed discussion of each of these items is not provided for this Final Determination.

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<sup>17</sup> Gov. Brown 3/17/1965; Gordon 5/7/1966; NPS 8/9/1966; Rep. Edwards 8/11/1966; Merriam 1967; Cook 1969 letter; *San Jose Mercury* 7/23/1972, 7/31/1972, 8/6/1972; and the local history *Early Days in the Livermore-Amador Valley* 1973.

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The Proposed Finding considered a 1965 newspaper article about the petitioner's ancestor Dolores Marine Galvan and concluded that while it identified her as an individual of Indian descent, its reference to an Indian tribe was to an entity in the past, not the present (*Muwekma PF*, Description, 12; Newspaper 1965). The petitioner now shifts its argument to note that the newspaper mentioned "a society" established by Galvan's two sons for the care of a historical Indian cemetery, and to contend that this term should be evaluated according to a cultural anthropologist's definition of "society" as a group or population of people (Vol. 83.7(a), 86-87; Chart 83.7(a), 1960s:34). There is no reason to think that either the newspaper or the two Galvan sons used the term as a cultural anthropologist would. They may have used the term "society" to refer to the American Indian Historical Society. The organization's informal title, "Men of Extinction," implied that its membership would be restricted by gender and age, would not contain all the members of a social group, and thus would not be compatible with a cultural anthropologist's definition of "society." The petitioner's argument that the newspaper referred not merely to the Galvan family but to the petitioning group is not persuasive.

The petitioner implies that the BIA made an identification of an Ohlone group in 1966 because Representative Edwards indicated to a correspondent that the BIA had informed him that "the Ohlone Indians are not officially recognized as an American Indian Tribe" (Vol. 83.7(a), 102, citing Edwards 7/29/1966). In this instance, the Bureau repeated a term used by someone else in an inquiry forwarded to it. The BIA's reply took no position as to whether or not a contemporary Ohlone Indian entity existed, and thus did not identify such an entity. The BIA stated that it did not acknowledge that such an entity was a tribe. While a denial of the acknowledgment of an Indian entity, and a failure to identify one, do not prevent the petitioner from meeting the requirements of the criterion, they do not function as affirmative evidence of an identification of an Indian entity.

As new evidence of an identification by a scholar, the petitioner submits a "Sunol Regional Wilderness History," an undated, 8-page manuscript which the petitioner says was written by the naturalist for the Sunol Valley Regional Park about 1969 (Vol. 83.7(a), 84-85). The petitioner notes that this local history mentioned "a Costa Rican Indian" as the last student at a local school that closed in 1908 (Dean-Freemine ca. 1969, 2). This may be a reference, the petitioner says, to any of the five daughters of the petitioner's ancestor Rafael Marine, whose family was listed on the 1910 Federal census (Vol. 83.7(a), 85). There is not any doubt of the existence of members of the petitioner's ancestral Marine family in the Sunol area at that time. This local history's reference to a single individual "Costa Rican Indian," however, did not identify an Indian group in 1908. Nor did any other text in this historical manuscript identify any Indian entity in existence in the late 1960's, or at any other time.

As new evidence of Federal identification, the petitioner submits copies of 27 applications between 1969 and 1972 by its members or ancestors for inclusion on the roll of the "Indians of California" (Vol. III), and lists 9 of these applications in its chart for criterion (a). These applicants identified themselves as "Mission," "Ohlone," "Costanoan," or some combination of those terms. The petitioner makes the same

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argument about these applications as it did for the original applications accepted for the roll of 1933 (Vol. 83.7(a), 80-82, 105-106, and Chart 83.7(a), 1960s:76, 78, 80, 82, 84, 92, 94, 100; 1970s:1). An evaluation of the merits of that argument are set forth above in the section on "Indian Claims Applications, 1929-1933."

As new evidence of an identification of the petitioning group by a local government, the petitioner presents selected text from an interview with an unidentified local resident by an unidentified interviewer, which it says was recorded in 1970 and was later obtained and transcribed by a staff member of the East Bay Regional Park District (Vol. 83.7(a), 82-84, citing Anonymous ca. 1970). The interviewee appeared to identify himself or herself as a member of a local ranching family. The interviewee indicated that the last Indian rancheria in the area had existed in the time of "Mrs. [Phoebe] Hearst," who died in 1919 (see Howe 1986 for the death date). Rather than identifying a continuing Indian group in the present, the interviewee stated that "there's only one family left that I know of . . ." (Vol. 83.7(a), 83). The interviewee identified two individuals, Dan whose last name was "something like Cortez" and "Perfidio Sanchez." Both individuals were described in the past tense, not as 1970 contemporaries: Dan had "worked for the salt company" so the interviewer could "find out [his last name] from them," while "if he [Perfidio Sanchez] were still living he'd be about 85 or 90 years old now . . ." (Vol. 83.7(a), 83).

The petitioner claims to be able to identify these two individuals as Daniel Santos Juarez and Porfidio Sanchez (Vol. 83.7(a), 83). Sanchez did not have Indian ancestry but was married to Ramona Marine. An identification of two individuals, however, that did not link them to an existing group of Indians does not meet the regulatory requirement for the identification of a contemporaneous Indian entity. This interviewee did not identify any Indian group after 1919 and did not identify any Indians in the present. There is no reason to think that this interviewee spoke on behalf of a local government, and mere transcription by a local government employee of statements made by someone else would not constitute identification by a local government. This evidence is not sufficient to meet the criterion because the external observer did not identify an Indian entity in 1970, or at any other time after 1927.

As an example of identification by a state government, the petitioner cites a 1971 letter by the California Franchise Tax Board (Vol. 83.7(a), 107-108, citing California 1971). When the State of California approved the incorporation of Ohlone Indian Tribe, Inc., and exempted that corporation from taxation, it judged that organization to be a *non-profit* corporation, not an *Indian* entity. The State's use of the Ohlone Indian Tribe, Inc., name was not a result of the State's independent identification of an Ohlone entity but of its policy of accepting the names chosen by corporations for themselves. In this instance the State merely reflected the group's self-identification. Although it is possible for an outside observer to identify a non-profit corporation as an Indian entity, this particular State agency identified this corporation only as a non-profit entity. Other external sources, however, identified the Ohlone Indian Tribe, Inc., as an Indian entity in 1971.

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The petitioner submits excerpts from a 1973 local history by Florence Fava as new evidence (Vol. 83.7(a), 110, citing Fava 1973). In this document, Fava observed that "descendants" of the Ohlone, "though few, are still in the area." She also noted that the Ohlone descendants had "recently formed the Ohlone Indian Tribe" in order to receive the deed to an Indian cemetery (Fava 1973).<sup>18</sup> In one respect, this local history author contradicts the petitioner's view of its own history, for Fava said that it was the belief of the members of this Ohlone group that "their ancestors broke away from the MiWuk tribe and came west" (Vol. 83.7(a), 110, citing Fava 1973), not that they had evolved from an Ohlone tribe native to the Bay Area or from Indians who had been gathered at the Mission San Jose. In general, this new evidence is consistent with the conclusions of the Proposed Finding that external observers in the early 1970's identified a newly incorporated Ohlone Indian Tribe, Inc., as an Indian entity.

The petitioner cites, as new evidence, a historical resources inventory of the Ohlone Indian Cemetery prepared for the California Department of Parks and Recreation in 1974 by a local historical committee (Vol. 83.7(a), 113-114). The only evidence about a contemporary Indian entity on the inventory form was that the owner of the historical Indian cemetery was the "Ohlone Indian Tribe" (California 1974). This form adds no new information to the evidence presented in the Proposed Finding, which accepted that an Ohlone Indian Tribe, Inc., was formed in 1971 and acquired title to the Ohlone Indian Cemetery. There was no doubt that the Ohlone Indian Tribe, Inc., still held title to the cemetery in 1974. The Proposed Finding accepted that external sources identified the Ohlone Indian Tribe, Inc., during the early 1970's. Therefore, this State form is consistent with the conclusions of the Proposed Finding.

### 1975-1985

As part of its chart and narrative relative to criterion (a) for the decade from 1975 to 1985, the petitioner cites evidence produced by its own ancestors and individuals it considers to have been members of the petitioning group. For example, documents by a "Committee to Establish the Tribal Council" in 1982, and letters to the Native American Heritage Commission by Rosemary Cambra in 1981 and Dolores Sanchez Franco in 1984, to the Mission San Jose and the Catholic Church by Ruth Orta in 1983, to a county Joint Powers Agency by the Ohlone Families Consultant Services in 1984, to public officials by attorneys Kathryn Berry and Dorothy Gray on behalf of Cambra in 1984 and 1985, and to Zoe Lofgren and Kenneth Marquez by Cambra in 1985 are not evidence of observations by external observers (Vol. 83.7(a), 116-121, 127, and chart). The

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<sup>18</sup> The petitioner quotes Fava as writing that the Ohlone descendants "recently re-grouped in order to receive the deed to their cemetery in Fremont and are now recognized as the Ohlone Indian Tribe" (Vol. 83.7(a), 110). This language does not appear in the excerpts from Fava's 1973 local history submitted as a new exhibit. The petitioner's chart cites the source of this language as a 1972 newspaper article submitted for the Proposed Finding (Chart 83.7(a), 1970s:22, quoting *San Jose Mercury* 7/23/1972). The new document submitted for the Final Determination said that the Ohlone descendants "recently formed the Ohlone Indian tribe in order to receive the deed to their cemetery in Fremont" (Fava 1973).

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regulations indicate that identifications by the petitioner itself or its members do not satisfy criterion (a).

The petitioner cites a number of documents from the 1970's and 1980's that were considered for the Proposed Finding, but not cited as evidence sufficient to meet the criterion. For example, the petitioner claims an item in the *Indian Historian* in 1976 as identification, but that brief sidebar merely summarized events of 1971 when the AIHS turned over ownership of the Indian cemetery to the Ohlone Indian Tribe, Inc. (*Indian Historian* 1976). The Proposed Finding concluded that the Ohlone Indian Tribe, Inc., had been identified in the early 1970's, but this issue of the journal added no new identification of an Indian entity in existence in 1976. The petitioner also claims a 1982 obituary for Dolores Galvan as identification (Vol. 83.7(a), 126), but this evidence was discussed in the Proposed Finding and found to have mentioned a historical tribe rather than to have identified a contemporary Indian entity (*Muwekma PF*, Description, 21; Newspaper 1982).

The Proposed Finding cited a scholarly article by Richard Levy, published in 1978 in the Smithsonian Institution's *Handbook of North American Indians*, as another source that provided an external identification of an Ohlone "corporate entity" formed in 1971 (*Muwekma PF*, 11-12, and Description, 11, citing Levy 1978). As with the other identifications of that entity, the Proposed Finding observed that Levy's article did not provide detail that demonstrated a link between that entity and the petitioner. Although the petitioner contends that the Proposed Finding was based on an incomplete review of Levy's article, the petitioner's quotations from the article merely repeat, in somewhat more detail, the observations of the Proposed Finding that Levy had referred to Pleasanton as one of the "multiethnic communities" that had existed after the missions were secularized in 1834, and that in 1971 "descendants of the Costanoan united in a corporate entity, the Ohlone Indian Tribe . . ." (Vol. 83.7(a), 111, citing Levy 1978). The petitioner asserts but does not demonstrate that Levy identified continuity between the 1971 entity and earlier historical communities, or between the 1971 entity and the petitioner.

The petitioner quotes from a popular history of the Ohlone by Malcolm Margolin that was published in 1978 (Vol. 83.7(a), 112-113, citing Margolin 1978). This book had been reviewed by BIA researchers but not cited in the Proposed Finding. In general, the book is an account of an Ohlone lifestyle prior to European settlement, and thus is not relevant to an analysis of the petitioner since 1927. The petitioner quotes a passage in which Margolin concluded that: "Today the descendants of the Ohlone Indians are still among us. . . [as] a small, seldom noticed part of the Bay Area population" (Margolin 1978, 166-167). While Margolin acknowledged the existence of living Ohlone individuals, his text did not identify any Indian entity in 1978.

The petitioner submits a 1982 letter from the East Bay Regional Park District to the Native American Heritage Commission as new evidence (Vol. 83.7(a), 119-120). In order to involve California Native Americans in its land use development plans, the Park District indicated that it would contact three individuals. The fact that the Park District

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listed both Philip Galvan and Rosemary Cambra suggests that it did not consider them to represent a single organization or group of Indians. The letter implied that Cambra was the representative of an "Ohlone Tribal Council" (EBRPD 9/21/1982). This reference to a council or governing body of an Indian group constitutes an identification of a contemporary Indian entity. The identification was of a group linked to the petitioner through its current leader. Despite a lack of demonstrated continuity between this 1982 entity and the petitioner's organization formed in 1984, there is a reasonable likelihood that this entity was a precursor of the petitioner. This evidence revises the conclusion of the Proposed Finding and demonstrates that the petitioning group has been identified as an Indian entity since 1982, rather than since 1985.

A letter written by a faculty member of a local college does not constitute identification by a local government, as the petitioner contends (Vol. 83.7(a), 118), but only by an individual scholar. The letter cited by the petitioner, a 1983 letter by Nancy Olsen to Rev. Michael Norkett of the Mission San Jose, written on behalf of Rosemary Cambra, referred only to Cambra's "family," not to an Indian entity (Olsen 1/13/1983). The petitioner submits a 1985 proposal by Olsen as new evidence (Vol. 83.7(a), 121-122). Her proposal to the county transportation department sought to "satisfy a need for information about who the local Native California Indians (Ohlone) are" by studying the life histories of "Ohlone descendants" (Olsen 1985a). Although Olsen listed individual informants, she did not identify them as constituting a contemporary Indian entity. Her draft report in 1985 referred to the business firm, Ohlone Family Consultant Services, and to "[t]he family's" interest and involvement in the archaeological site (Olsen 1985b).

As new evidence of identification by scholars, the petitioner submits several documents related to archaeological research between 1983 and 1985, although some of the reports were not published until 1989 and 1995 (Vol. 83.7(a), 124-126, 134). A report in 1983 merely identified Philip Galvan as an Ohlone descendant (Breschini 1983). A letter by a local archaeological firm in 1984 merely referred to another archaeological consulting firm, the Ohlone Families Consulting Services (Basin Research Associates 11/5/1984). Two letters by academic archaeologists in 1985 were addressed to "Members of the Muwekma Families" (Bocek 6/25/1985; Huelsbeck 7/14/1985). It is not clear whether their references to "Muwekma" referred to families of descendants, an archaeological monitoring firm, or an Indian entity. The 1989 and 1995 archaeological reports of Mark Hylkema reflect the attitudes of the period after 1985 during which, as the Proposed Finding found, the petitioner's organization was identified by external sources (Hylkema 1989, 1995). His 1995 report's description of a 1983 meeting, however, reinforces the conclusion that it was the policy of the Native American Heritage Commission at that time to identify individuals as "most likely descendants."

The petitioner cites a 1985 letter by county supervisor Zoe Lofgren to Rosemary Cambra as new evidence (Vol. 83.7(a), 122). The letter was addressed to Cambra in care of her business, the Ohlone Families Consulting Service. Lofgren referred to the participation and concerns of "the Muwekma family" in relation to Native American burials and artifacts discovered along a local transportation corridor (Lofgren 2/27/1985). The letter also referred to other "Ohlone families," but did not describe these various families as

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part of a contemporary Indian entity. The petitioner also cites a 1985 letter by a county environmental specialist to Cambra as new evidence (Chart 83.7(a), 1980s:37). This letter referred to her as one of the "Ohlone spokespersons" (County of Santa Clara 6/11/1985). The only entity it identified was the Ohlone Families Consultant Service, a business firm.

The petitioner cites two 1985 letters by the Native American Heritage Commission as evidence of identification (Vol. 83.7(a), 117-118, 123-124). Although an April 1985 letter by the Commission's executive assistant referred to "Muwekma descendants," it did not refer to any Indian entity (NAHC 4/29/1985). The petitioner cites, as new evidence, an August 1985 letter from the Commission to Rosemary Cambra which included her name as one of six Ohlone representatives on the "county referral list" (NAHC 8/15/1985). Despite the ambiguous listing of Cambra's affiliation as "Ohlone/Costanoan Indian Families of Santa Clara Valley," this evidence does not alter the conclusion of the Proposed Finding that at this time the Commission's designations of "most likely descendants" constituted an identification of individuals rather than contemporary entities (*Muwekma PF*, 16, and Description, 14, *c.f.* 20).

### *Summation for the period 1965-1985*

This review of the comment and evidence concludes that Rupert and Jeannette Henry Costo of the AIHS identified a contemporary Ohlone group between 1965 and 1971. This was an identification of a group larger than the Ohlone members of the AIHS and larger than the Ohlone entity incorporated in 1971 to own and care for an Indian cemetery. The new oral history evidence submitted during the comment period provides a basis for revising the Proposed Finding and concluding that there is a reasonable likelihood that the identification by the Costos of a group of Ohlone descendants was an identification of a group consisting of members, and ancestors of members, of the petitioning group.

The Proposed Finding already noted that Rupert Costo, Jeannette Henry Costo, the AIHS, and a local newspaper identified an incorporated entity, the Ohlone Indian Tribe, Inc., in 1971. The petitioner's new evidence provides additional examples of an identification of the incorporated entity by a local historian in 1973 and the State Department of Parks and Recreation in 1974. In addition, scholar Richard Levy mentioned the 1971 incorporation of this Indian entity in a 1978 publication. The Ohlone Indian Tribe, Inc., however, is not a predecessor of the petitioning group, and continues to exist as an entity separate from the petitioner.

The petitioner's evidence shows that in 1965 a newspaper and the AIHS referred to Indian groups that were smaller than the petitioning group, such as the "Ohlone Historians" or "Men of Extinction." Other evidence from the late 1960's and early 1970's, such as the naming of Ohlone College, a regional park history, an anonymous interview, and additional claims applications, referred to a historical tribe, historical individuals, or Indian descendants without identifying a contemporary Indian entity. Representative Edwards in 1966 referred to the BIA's denial that it recognized a

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contemporary group, while a 1971 form of the State tax board referred to a non-profit corporation rather than to an Indian entity. Malcolm Margolin's 1978 popular history mentioned living Ohlone descendants, but not an existing Indian entity. Letters and reports by a professor, archaeologists, and a county supervisor in the years from 1983 to 1985 referred to "Ohlone descendants," an Indian "family," or to Ohlone or "Muwekma families," but not to a larger Indian entity. In 1985, the State's Native American Heritage Commission designated Indian descendants as individuals. None of these examples are evidence sufficient to demonstrate that the petitioner was identified as a contemporary Indian entity.

New evidence submitted by the petitioner demonstrates that the petitioning group was identified by an external source in 1982. In that year, the East Bay Regional Park District referred to the petitioner's current leader, Rosemary Cambra, as a representative of an "Ohlone Tribal Council." This document identified a contemporary Indian entity that can be linked to the petitioner. Thus, this new evidence revises the conclusion of the Proposed Finding and establishes a reasonable likelihood that the petitioning group has been identified on a substantially continuous basis from 1982 to the present, rather than since 1985. Therefore, the available evidence is sufficient to meet the requirements of criterion 83.7(a) between 1965 and 1971, and between 1982 and the present.

### Acknowledgment Precedent

The petitioner asserts that it meets the requirements of criterion (a) "predicated upon 'previous precedents' established by the Department" in past acknowledgment proposed findings and final determinations (Petitioner 2002, Vol. 83.7(a), 151). The petitioner cites various precedents, but makes no effort to explain how they apply to the Muwekma petitioner by describing how the Muwekma situation and evidence is comparable to that of the case cited as precedent (Vol. 83.7(a), 151-153).<sup>19</sup>

The petitioner notes that acknowledgment precedent has not required that identifications of the petitioner be identifications as a "tribe" or as the current name of the petitioner (Vol. 83.7(a), 151; Chart 83.7(a), 1950s:20 and *passim*). It specifically cites findings on the San Juan Paiute, Duwamish, and Match-e-be-nash-she-wish Band petitioners. Not all of the identifications of the petitioning group that have been accepted, either in the Proposed Finding or this Final Determination, as evidence sufficient to meet the requirements of criterion (a) are identifications of the petitioner as a tribe or as "Muwekma." Thus, this Final Determination is consistent with this precedent cited by the petitioner.

The petitioner notes that acknowledgment precedent states that a petitioner should be identified each decade for identification to be considered "substantially continuous" (Vol.

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<sup>19</sup> The BIA staff explained to the petitioner's researchers at the on-the-record technical assistance meeting that such a comparison and such an explanation would be necessary for the successful application of precedent (BIA 11/7/2001, 68, 71, 74-75).



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83.7(a), 151-152; Chart 83.7(a), 1940s:2 and *passim*). Although the Muwekma petitioner claims similarity to the situation of Jena Choctaw, in fact the evidence in that prior case showed that a small settlement of Choctaws in the vicinity of the town of Jena, Louisiana, was identified each decade. That evidence reveals that the situation of the Jena Choctaw is different from the Muwekma petitioner. This Final Determination disagrees with the petitioner's contention that it has been identified in every decade since 1927. Therefore, consistent with the acknowledgment precedent cited by the petitioner, the petitioner does not meet the requirements of criterion (a).

The petitioner misstates the "probative weight of census records" (Vol. 83.7(a), 152) by implying that any census record of a member or ancestor is evidence sufficient to meet criterion (a). In fact, the precedent quoted by the petitioner, from the Huron Potawatomi and Match-e-be-nash-she-wish Band petitions, shows that Federal census records have been used to meet this criterion when they specifically listed individuals as part of an "Indian colony" or an "Indian village," that is, as an entity rather than simply as individuals. This precedent informed the Proposed Finding's use of a 1910 Federal census as part of a proxy for a missing census of a historical band. No census records since 1927, however, identified the members or ancestors of the petitioning group as living in an Indian settlement. Nor does any evidence in the record for this case show that since 1927 any Federal official took a census of the petitioning group as a "band of Indians," as was done for the Grand Traverse Band petitioner in a precedent which the Muwekma petitioner quotes. Thus, this Final Determination is consistent with the precedent cited by the petitioner.

There is precedent, as the petitioner shows, for using BIA reports and studies about a group, or dealings with a group, as examples of evidence sufficient to meet this criterion (Vol. 83.7(a), 152; Chart 83.7(a), 1960s:55). The evidence provided by the petitioner does not show that any BIA official or special agent since 1927 wrote a report or study specifically about the Muwekma petitioner, or mentioned it in periodic, regular, or annual reports. Thus, the evidence about the Muwekma petitioner is not comparable to the San Juan Paiute, Mohegan, or Match-e-be-nash-she-wish Band examples the petitioner quotes. Nor does the petitioner's evidence show that the National Park Service provided services to the Muwekma petitioner in a manner similar to the Death Valley petitioner. Although the petitioner cites the use of BIA annuity rolls and censuses in the Match-e-be-nash-she-wish Band petition (Vol. 83.7(a), 152-153; Chart 83.7(a), 1920s:42, 1950s:7, and *passim*), it does not claim that the Muwekma petitioner was listed on an annuity roll or an Indian census roll. Because the evidence about the Muwekma petitioner is not comparable to the evidence about these previous petitioners, these cited precedents are not applicable to this petitioner.

On the issue of the use of BIA rolls prepared in claims cases, the petitioner argues that an acknowledgment precedent should not be applied to the Muwekma petitioner because that precedent is not required by the acknowledgment regulations (Vol. 83.7(a), 153). The cited precedent is that a Potawatomi claims roll did not identify the Huron Potawatomi petitioner because the roll was not "exclusively a description" of the petitioning group. Because the 1933 roll of the "Indians of California" was not a census

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of the Muwekma petitioner, the cited precedent does have applicability to this petitioner. While the regulations do not use the term "exclusively," they do require that "the petitioner" be identified. Because regulations cannot provide for each type of evidence and each historical situation, interpretation of regulatory principles is required, and those interpretations become precedent. The petitioner does not argue that the Proposed Finding's interpretation of the 1933 roll of the "Indians of California" was inconsistent with acknowledgment precedent, and offers no persuasive argument to change the cited precedent.

The petitioner contends that its new evidence about the attendance of three of its ancestors at Indian boarding schools can be distinguished from precedent. As stated in the Chinook case, the admission of a student to one of the Government's Indian schools on the basis of the student's degree of Indian ancestry is not evidence of the identification of an Indian tribe (Vol. 83.7(a), 153; Chart 83.7(a), 1930s:29, 1940s:9). Contrary to the petitioner's claim, the evidence in the Muwekma case does not show that the BIA "confirmed the identity of the tribe" on the student application forms which the petitioner has submitted as new evidence. The most likely explanation of this evidence is that these students were admitted to Indian schools on the basis of their degree of Indian ancestry. The evidence in the Muwekma case is thus similar to the evidence in the Chinook case, not different from that evidence. Therefore, this Final Determination's conclusion that the petitioner's evidence about Indian school attendance does not show identification of an Indian entity is consistent with the precedent cited by the petitioner.

Entries for documents listed in the petitioner's chart for criterion (a) note that prior petitioners have utilized evidence from certain sources to demonstrate that they meet the requirements of this criterion. The petitioner implies that evidence it has submitted from similar sources should meet the criterion based on these precedents. It is not the source of the evidence or the type of evidence that is crucial to satisfying the criterion, however, but the content of that evidence. In the examples cited by the petitioner as precedents, the anthropologists (Chart 83.7(a), 1920s:38, 1960s:90, 1980s:29, 40), non-Indian residents (1940s:3, 1950s:3), newspapers (1960s:34, 1970s:17), and government officials or agencies (1960s:9, 55, 1970s:33) identified an Indian entity, while in the documents submitted by the Muwekma petitioner similar sources did not do so. Because the evidence about previous petitioners is not comparable to the evidence about this petitioner, the cited precedents do not apply to this petitioner.

### Summary Conclusion under Criterion 83.7(a) as modified by 83.8(d)(1) and 83.8(d)(5)

Based on this evaluation of the comments and evidence, the petitioner has not demonstrated that it meets the requirements of criterion 83.7(a) as modified by section 83.8(d)(1) with evidence since 1927 of substantially continuous external identifications of the petitioning group as a continuation of a historical "Verona Band" or Pleasanton rancheria. Thus, as provided in section 83.8(d)(5), this Final Determination evaluated whether or not the petitioner demonstrated that it meets the unmodified requirements of criterion 83.7(a) from 1927 until the present. This review of the available evidence

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concludes that this evidence demonstrates that the petitioning group was identified as an Indian entity in the years between 1965 and 1971, and again from 1982 to the present.

Because the petitioning group was not identified as an Indian entity for a period of almost four decades after 1927, and for only a 6-year period during the 55 years between 1927 and 1982, it has not been identified as an Indian entity on a "substantially continuous" basis since 1927. Therefore, the petitioner does not meet the requirements of criterion 83.7(a) as modified by sections 83.8(d)(1) or 83.8(d)(5).

**Criterion 83.7(b)  
as modified by Section 83.8(d)(2) and 83.7(c)(3)**

- 83.7(b)** A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.
- 83.8(d) (2)** The group meets the requirements of the criterion in §83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

The section 83.8 regulations reduce the burden of evidence on previously acknowledged petitioners by requiring them to show only that a predominant portion of their group comprises a distinct community at present. All other petitioners proceed under section 83.7(b), which requires petitioners to show that they have maintained a distinct Indian community since first sustained contact to the present-day. Therefore, a petitioner must demonstrate sufficient evidence for present-day community, whether proceeding under section 83.8(d)(2) or under section 83.7(b). If a petitioner fails to meet section 83.7(b) at present, it also fails to meet community from first sustained contact to the present day.

This petitioner claims that it meets criterion (b) with evidence listed at 83.7(b)(2), which lists five specific types of evidence, each of which is sufficient to demonstrate community. Any one of these five kinds of evidence allows a petitioner to meet criterion (c), political influence or authority, by utilizing a cross-over provision of the regulations at section 83.7(c)(3) which states:

- (3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet [criterion 83.7(c)] at that point in time.

Section 83.7(b)(2) evidence may stand alone without the support of other evidence to demonstrate that the petitioner meets criterion (b). Only the presumptive evidence listed

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in section 83.7(b)(2) may be used to meet criteria (b) and (c) at the same time periods. Nine less rigorous and less specific kinds of evidence listed under section 83.7(b)(1) may be used in combination to demonstrate only that the petitioner meets (b), but are not sufficient to meet section 83.7(c).

The petitioner seeks to satisfy 83.7(b) by 83.7(b)(2) in order to utilize the cross-over provision at 83.7(c)(3), which permits use of 83.7(b)(2) evidence to establish 83.7(c). A petitioner may argue this if it does not meet section 83.7(c) as modified by section 83.8(d)(3), which requires a listing of named leaders identified by authoritative, knowledgeable external sources, and one other form of evidence. Since the petitioner did not provide this evidence of named leaders and other evidence, this case also requires an evaluation under criterion 83.7(b) from the last point of Federal acknowledgment (1927) to the present to determine if the petitioner meets criterion (c) during the same time period through use of the carry-over provision of 83.7(c)(3), or through the use of evidence of community in combination with other evidence of political authority as provided at 83.7(c)(1)(iv).

This Final Determination finds that the petitioner does not meet 83.7(b) at present, utilizing either the evidence described at 83.7(b)(2) which is sufficient in itself or evidence described at 83.7(b)(1) which must be combined. Because the petitioner does not provide evidence under 83.7(b)(2), the cross-over provision of 83.7(c)(3) to meet criterion (c) is not applicable.

A petitioner's political activities may be more fully explained if the analysis takes into consideration its social organization. The Proposed Finding pointed out that

whether or not a community lay behind the official named leaders [is] key to understanding whether leadership existed under the regulations, which require that petitioners demonstrate not only that [they] can identify leaders within their ranks, but also that these leaders actually influence a broad base of members, who in turn influence the leaders through political and social processes. (*Muwekma PF*, 22)

In the Muwekma case, the effect of new evidence pertaining to historical community provides supporting evidence for demonstrating criterion (c) during several periods when evidence for political motivation, decision-making, and participation was previously lacking. For example, recently submitted oral histories provided new evidence about historical community which helped explain the actions of people connected to the American Indian Historical Society (AIHS) in 1965-1971, the concept of an Ohlone "family," a term used by the petitioner's members, the socio-political context of godparenting, fostering, adoption, and socially created, not biological, kin relationships, and other social factors underlying the petitioner's political activities. The new evidence also describes a long-running personal dispute between sisters who founded two of the petitioner's major extended families, its effect on their collateral kin who find themselves "in the middle," and its impact on the larger community of Ohlone descendants and its capacity to take political action and function as a cohesive entity.

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### Proposed Finding: Overview of the Proposed Finding for §83.7(b)

The Proposed Finding determined that the petitioner did not demonstrate community at present, as required by criterion 83.7(b) as modified by section 83.8(d)(2) for previously acknowledged petitioners. The evidence showed that a few years before the mid-1990's, members of two extended families with descent from one common ancestor participated in activities of the petitioner's formal organization, a corporate entity performing archaeological monitoring. Most of the evidence submitted by the petitioner covering 1984 to 1992 discussed the activities of this archaeology monitoring firm, which appears to have been a family-run firm under the direction of one woman and her close kin, rather than a non-profit arm or profit-making economic enterprise of the petitioner. The available evidence neither explained nor provided documents showing the relationship between this archaeology firm and the petitioner. The evidence did not show that the current petitioner evolved from it.

For the Proposed Finding, the petitioner provided many pages of correspondence dating from 1984-1996 to outside organizations, political figures and individuals who were not members of the petitioner. The membership organization's named chairman since 1984-1985 has been Rosemary Cambra. She primarily signed these letters, which were on stationery bearing the petitioner's name. The name changed several times to reflect slightly different versions of the name of the historical tribe, and widening claims to territory. "Consulting Services" appeared on earlier documents, but later documents did not contain the phrase. The petitioner submitted little or no documentary evidence and no oral history evidence describing the social organization and processes of a community lying behind this formal organization.

After 1992, the evidence appears to show the small founding family of the firm bringing other relatives into the organization. However, the submitted evidence did not show that diverse segments of the membership participated equally in the group's activities and that a predominant portion of the membership found these activities significant to their lives, as required under the regulations (83.1, 83.7(b)). Activities were often symbolic representations of heritage organized by the same small group of people and directed at the general public, which is not considered evidence of community (83.7(b)(1)(vii)).

The petitioner performed a survey on social interaction among group members, focusing particularly on godparenting. Only ten percent of the membership replied to it. Their answers indicated that their godparents were generally limited to close family and that godparenting extended to non-Indian in-laws. The sum of these survey results did not display cross-cutting social or ceremonial relationships uniting the membership as a whole in a unified community, as required under the regulations.

For the Proposed Finding, the petitioner also submitted maps of the residence locations of its members. The residential patterns delineated on these maps showed that the petitioner lived widely distributed in the southeastern San Francisco Bay/San Jose area among several million non-Indians. A residential pattern such as this one did not allow

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the presumption that the members were in close contact with one another and interacting as a community within the meaning of 83.7(b)(2)(i).

### **The Petitioner's Comments**

#### *New Submissions as Part of the Petitioner's Response*

In response to the Proposed Finding's evaluation under criterion (b), the petitioner submitted a 128-page narrative and two volumes of charts. It also submitted some new documentary evidence, including "a series of funeral sign-in books and obituary notices, letters, memos, declarations of personal knowledge, and the like, including from non-tribal members as knowledgeable individuals." Because the new documents were the same documents or similar types of documents as had been previously submitted, they tended to be consistent with the analysis and conclusions of the Proposed Finding.

Significant new submissions are oral history audiotapes and videotapes. These audio-visual submissions provide valuable new information which revises parts of the Proposed Finding under (b) and (c), but does not change the final outcome. One of the interviews dates to 1984 and two others date to 1986, only two years after Rosemary Cambra first became involved in archaeological monitoring.

These audiotapes from the 1980's provide context to historical events and the social interactions of some of the petitioner's ancestors between 1920 and 1971. The individuals being interviewed actually observed and experienced events during these years, which increases the reliability of the information provided. Several of the individuals interviewed were not enrolled with the petitioner, although the interviews show them interacting with the petitioner's membership and their Ohlone ancestors. In fact, the individuals interviewed are close kin to current members.

The audiotapes also reference contemporary activities of Rosemary Cambra, Ruth Thompson Orta, and Philip Galvan, Ohlone descendants involved in archaeological monitoring. Side conversations reveal tensions among the families of these three Ohlone descendants. The interviewer was Nancy Olsen, a researcher from a local college. The audiotapes primarily focus on historical events. Olsen uses documents from genealogical studies she has already done as cues to elicit information. Her interview technique was neutral and not oriented to the petitioner's acknowledgment or its petition.

The petitioner, itself, also made audiotapes and videotapes of "elders," as part of an interview project undertaken after the BIA issued the Proposed Finding. The petitioner's long-term researcher and the chairwoman were usually present at the recorded interviews, which usually brought together several individuals and their relatives. The petitioner's researcher asked very few, if any, questions about the post-1971 period. He tended to focus on events that occurred before 1971 and often before 1927, and as a result these interviews did not provide useful information for demonstrating present day community. The aim of the interview project appears to be interviewing older individuals about past events. The discussions of the transfer of the Ohlone cemetery to

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Philip Galvan from the American Indian Historical Society revealed important new information concerning events around 1971.

Very little time in these interviews is devoted to the modern period (the last 15 years), the critical period for demonstrating that the petitioner meets criterion (b). People born after 1950 are not the subject of the ethnographic interviews, even though younger interviewees could establish facts about recent years. More could have been learned from interviews about events surrounding the cemetery controversy in the 1960's, about the claims period of the 1960's and 1970's and about disagreements and cooperation between extended families represented by family groups descending from Dolores, Ramona, and Trinidad Marine, and Erolinda Santos in the last two decades, if younger interviewees had been included or if the interviewers had asked questions about post 1971 events.

Finally, these recent interviews and videotapes were limited and not representative of the petitioning group's membership which also decreases their usefulness. First, Marine descendants were interviewed. Second, the Marine descendants did not appear to represent all of the different opinions in the membership. Third, no Santos, Corrales, Armijas, or Guzmans appeared on the list of individuals interviewed or present in the interviews.

The interviewees did not discuss topics such as godparenting, religious orientations, reburial and archaeological monitoring in the present day, which are areas that the petition asserts demonstrate community, and the evolution and recent governance of the petitioner's formal organization and other present day activities, which was an area suggested for additional research during the formal TA meeting. The presence of the petitioner's chairwoman, half-hour lectures by the petitioner's researcher, and the coaching of interviewees by the interviewer, gave the viewer the impression that the videotapes were not open-ended interviews using standard ethnographic methodology.

### **The Petitioner's Narrative Comments and Points**

#### *Godparenting Survey*

The Proposed Finding attempted to utilize data about godparenting extracted from a survey prepared by the petitioner. The petitioner abandoned this earlier attempt to provide survey results, that the Proposed Finding found was unrepresentative of the petitioner and methodologically flawed (Petitioner 2002, Vol. 83.7(b), 2-4). The petitioner responded that:

Although the Petitioner has acquired a number of additional surveys from enrolled tribal members since the original administration of those surveys, it has met with some reticence, due to consulting members' concerns about privacy, the actions of a former Council member's abuse of the survey process, and resurrection of conflicted emotions or painful memories. The MOIT [Muwekma Ohlone Indian Tribe] administration

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has deferred to the preferences of tribal members, and has abandoned them entirely. (Vol. 83.7(b), 4)

Because the petitioner has decided not to provide the additional survey information it referred to, it is not part of the administrative record, and the BIA was unable to evaluate it or any claims based on it. However, there is no indication that the methodological flaws in the survey as discussed in the Proposed Finding were corrected or that the additional surveys contained data which would alter the conclusions of the Proposed Finding. The 25 CFR 83 regulations read at section 83.6(d), "A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria." Lack of evidence is a justification for finding that a petitioner does not meet a criterion.

The petitioner states that its response discusses "the practice of baptizing Muwekma children since the early 19<sup>th</sup> century, through the present, based on available records" (Vol. 83.7(b), 5, fn. 3). The oral histories extended evidence concerning the actual practices and obligations of godparenting historically. The actions of Maggie Pinos<sup>20</sup>, childless herself, who godparented several children and fostered and adopted others. Her network shows that the individuals she godparented or raised continued to maintain social connections even after they left her home and even after her death in 1960. They attend funerals in the families of her godchildren, and fostered and adopted children as late as the 1980's.

Maggie Pinos created these special kin relationships with people in several generations and families and therefore it links some Marines and Santos. The petitioner repeatedly points to this single network as evidence for demonstrating interaction among its extended families, especially with families not founded by Marine siblings. In fact, only relatively small group of individuals are linked through Maggie Pinos, including Pete and Rosemary Juarez, Robert Sanchez, Mary Munoz and Virginia Munoz Archuleta, Faye Thompson and her sisters, and Eddie Thompson. However, her network of special or created kin links is really the only example that is well documented by the petitioner of a godparent/foster parent network. It was not possible, based on the available evidence, to demonstrate that similar networks created by others such as Susanna Nichols (1855-1930) functioned after the godparent's death as Maggie Pinos' network appears to have functioned. There is no evidence of such a network existing presently in the petitioner. Further, there is no evidence that a series of such networks encompassed the petitioner's membership at present or the larger "family" of Ohlone descendants after 1927.

The petitioner submitted five oral interviews which contained significant new information about specific cases of godparenting in the past, such as the example of Maggie Pinos, but not godparenting at present, which is most pertinent to their evaluation. Because these oral interviews do not discuss the present-day and the

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<sup>20</sup> The Proposed Finding discussed Maggie Pinos' relationship to one disabled child and her fostering of him into adulthood, but because of lack of evidence and context, it could not explain her actions. New evidence helped answer questions raised about her in the Proposed Finding.



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petitioner chose not to submit new survey materials, they do not demonstrate that godparenting patterns demonstrate community in the present-day. Although godparenting relationships established in the past may extend to the present day, no information in these oral histories discusses how the practices and obligations of godparenting are actually realized at present, are distinct to the group or are mediated by the group as a whole.

The Proposed Finding's basic criticism of the available survey results was that the information provided by individuals who did respond did not indicate a wide-spread utilization at present of godparenting to encompass the petitioner's members in a distinct godparenting network (Vol. 83.7(b), 5). The Proposed Finding found that godparents in recent years tended to be close relatives, both Indian and non-Indian, and this did not demonstrate widespread social connections among the petitioner's members. The survey did not delineate a network of godparenting links that was distinct from non-Indians. Godparenting patterns did not demonstrate that people reached beyond close relatives to establish godparenting links with group members, not otherwise closely related to them, and, therefore, these patterns did not demonstrate community under criterion (b).

The petitioner does not respond to the Proposed Finding that godparenting at present tends primarily to tie a child and his or her Indian and non-Indian aunts and uncles, rather than reaching beyond nuclear families to a larger Muwekma "family." As such, it does not demonstrate "community" at a level required in the regulations because the godparenting network does not encompass "most of the members" section 83.7(b)(2)(iv), and does not connect various family lines. Godparenting also extends outside of the petitioning group, and the network delineated by the combined evidence for godparenting does not encompass or circumscribe a distinct group. Additionally, the content and customs of godparenting in this case do not appear "different from the non-Indian populations with whom it interacts" as required by section 83.7(b)(1)(vii).

### *Relationship between the Santos and Marine families*

The petitioner submitted charts to explain the connection between "the Santos descendants and a predominantly Marine lineage-descendant population" (Vol. 83.7(b)), and information to show the relationship between these extended family groups, which it calls "lineages." However, the petitioner submitted almost no new documentation from approximately 1930 to 1965 and from 1971 to 1982 which would allow any evaluation of criterion (b) for those time periods. The new oral histories provide context for understanding the documents which were previously submitted and will alter the Proposed Finding in part for the years before 1950. None of this new evidence demonstrates that the petitioner meets criterion (b) at present.

The petitioner objects to the Proposed Finding's statement in the description of the evidence that described the one-by-one addition of extended families into the petitioner's corporate organization as "recruitment of unaffiliated members who have no previous relationship with Muwekma." The problem discussed in the Proposed Finding dealt primarily with the lack of involvement of many families between 1984 and 1995 and at

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present, that the activities of the petitioner centered in one family, and that new members did not have ties to the group. Statements made by the petitioner provide that even before 1984, many families had lost touch with each other since 1970 or earlier, despite historical kinship and other relationships among their ancestors. The petitioner provides documents from the "early 20<sup>th</sup> century" but does not deal with either the lack of continuity between the membership in 2000 and the decades before the 1980's and the recent evolution of the current membership organization or the statements in documents and oral histories which indicate a lack of community.

Documents in the record provide evidence of separation among some families and individuals. For example, the petitioner's newsletter advertized to locate individuals who later enrolled in the petitioner. The chairwoman described her efforts as a "revitalization" at a "first meeting" of Ohlone descendants in 1982. Their long-time researcher characterized the "main idea" of this meeting "being to introduce people to the idea of their heritage and benefits of incorporation" (Leventhal 1982). A 1986 letter signed by Nancy Olsen, who worked with both Rosemary Cambra and Ruth Thompson Orta at times between 1981 and 1986, stated that "individuals of Muwekma" have worked to "make contact with other Ohlone families and try to establish a cultural organization that would lead to finally establishing Federal recognition of the people as a tribe" (Olsen 1985b). Similar statements which imply that the families are not interacting or in close contact from 1970 to when they enrolled in the petitioner between 1995 and 2000 appear often in the recent record.

Newly submitted documents are very similar to those submitted for the Proposed Finding. The documents from 1984-1994 mention people from only a few families, primarily the families of the chairwoman and her mother's siblings. After 1994, more families join the Muwekma formal organization. This evidence reveals a clear pattern. One-by-one, families join the organization according to the evidence in the record. The new evidence did not demonstrate that these families had ties to the petitioner during the preceding decades, 1970-1990, or even earlier.

Much of the evidence provided and discussed in criterion (b) relates to "Avelina Cornate Marine, Ramona Marine, Susanna Flores Nichols, and others" who died before 1930, about the time of last Federal acknowledgment. This evidence is relevant to criterion (e) not for criterion (b) and will be discussed in the section concerning criterion (c) (Vol. 83.7(b), 7). Documents from 1971 to 2000 only rarely discuss any activities outside of those specifically planned and carried out by the membership organization, variously called the Ohlone Families, Muwekma Ohlone Tribe, etc. The evidence other than godparenting and funerals refers only to what occurs in these petitioner-sponsored events and is too limited in scope and participation to demonstrate community.

While pre-1930 historical documents may provide background, they are not evidence for the present day, in this case 1985 to the present. In past cases, analyses of evidence under (b) and (c) have not assumed continued existence of cultural practices, community, interactions, etc., without an actual showing based on contemporary documents and oral histories from first person witnesses.

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### *The Petitioner's Evidence*

The section labeled "Previous Federal Acknowledgment" of the petitioner's response to (b) does not appear to discuss previous Federal acknowledgment which is discussed elsewhere in this report; rather, it deals with its analysis of the Proposed Finding concerning periods before and after 1927, when the last point of Federal acknowledgment existed.

The petitioner did not understand the purpose of much of the analysis in the Proposed Finding. For example, it states "BAR [BIA] claims that: Ramona Marine's descendants 'show up' on archaeological digs, and further complains that non-Muwekma appear in the records, as if to require an absolute boundary in any MOIT activity." However, the use of the phrase "show up" obviously indicates when individuals appear on documents participating in their corporate organization in order to delineate the group that is interacting, not to criticize work habits or planning efforts. The petitioner is non-responsive to the stated problem of interaction being limited to the business and not being a social network indicative of a social community among the members of the petitioner.

Similarly, the Proposed Finding named non-member participants in the organization's activities referenced in the submissions by the petitioner in order to analyze non-member involvement. The BIA found that the deep involvement of non-members, particularly in areas of decision-making, policy formation, membership decisions, and constitution writing, contrasted with the non-involvement of members in these same activities. Although most petitioners have had non-members and spouses involved in their activities, Muwekma appeared to have more participation and involvement by non-members and less involvement by members than most other petitioners. The problem raised in the Proposed Finding is not the involvement of non-members, but the non-involvement of members, indicating a lack of community. Secondly, the role of non-members was raised in a council meeting by a member of the Muwekma council in 1997, and this councilperson and her family disenrolled soon after. Little other direct evidence pertains to these actions; however, the timing and tone of the argument and subsequent break off would indicate that the involvement of non-members may be a political issue within the group, which, if analyzed and documented, could provide evidence under 83.7(b) and (c) during the present day.

The petitioner also failed to address the admission of families into the petitioner who had not previously been involved. The petitioner says that the BIA "points out at page 35, 2<sup>nd</sup> full para., that the four of the descendants of Maria Erolinda Santos 'had also been listed on the membership list submitted to the BIA, dated January 15, 1995;' then, the BAR assumes they did not participate or appear until end of year, and that after 1995, the population mysteriously doubled." To address the issue identified in the Proposed Finding, the petitioner needed to document that these Santos descendants participated continuously in its organization. To show this point, it needed to submit documents or oral histories about the Santos' activities with this formal membership organization or an informal social grouping of connected Ohlone families between 1984 and the present.

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Whether the Santos descendants first interacted in the petitioner's activities in January or December 1995, does not cure the problem the Proposed Finding identified, i.e., that there is no evidence in the record that the Santos, including the Corrals and others, were consistently and continuously involved at any level whatsoever with the Marines in a community before they joined one-by-one between 1984 to 1996. In addition, the evidence for their enrolling is so incomplete and undocumented, the actual processes of their joining is unknown. Even before 1984, little or no evidence of widespread interaction among the Corrals (a Santos family) and the Marines appears in the record, although the petitioner repeatedly points to two of the Corral relatives staying with Mary Archuleta for a short stint in the early 1970's as evidence of interaction.

The only new information in the record about an important Santos family head, Robert Corral, appears in Marine descendant Virginia Massiet's interview showing that young Robert Corral interceded on her behalf with his mother Erolinda Santos when Virginia was living in Stockton in the early 1950's. Between 1952 and 1995, the petitioner submitted almost no evidence showing Robert Corral interacting with most of the other Marines.

The Proposed Finding also requested more information concerning the relationship between a Muwekma petitioner and Oblone Families Consulting Services, because the petitioner claimed to evolve from it. In its response the petitioner asserts, "the MOIT never was OFCS; OFCS did not create the cross-lineage ties and associations that have spanned lifetimes. . . and members involved in OFCS have been always accountable to the Muwekma Tribal Council and its leadership" (Vol. 83.7(b), 11). These assertions of "cross-lineage ties and associations that have spanned lifetimes" were not fully demonstrated or documented, and there is no evidence that the Muwekma Tribal council created policy for OFCS. The named leadership and staff do apparently overlap.

The Muwekma letterhead names council members and "elders." Before 1994, these office holders represented only two or three of the extended families. Other evidence would be needed to tie the remainder of the membership to these people and to show that they are active participants in the group's activities. If the people demonstrated to be involved with both OFCS and MOIT are only the chairwoman's family and a handful of other people, then community is not demonstrated. The BIA cannot assume that the petitioner's claims that this effort to reorganize involved a wide number of people are accurate without other evidence, even if the members are distant relatives. Because the petitioner primarily submitted documents about OFCS and little or no other evidence between 1984 and 1992, it was analyzed for criterion (b).

The petitioner now disowns previous claims that it evolved from OFCS but that these organizations were forerunners of the petitioning organization:

OC - AIHS, OIT, OFCS, and MICA never were – and none of them, or any combination of them, ever became (or evolved into) MOIT – but all in one way or another, with varying degrees of success and utility, served in the position of forerunners or 'handmaidens' to the present petitioning

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tribal organization. The formation and leadership of all of these above-reference organizations and non-profit entities required personal initiative on the part of groups of individual members of the MOIT, such as Dolores Marine Galvan, Trina Marine Thompson-Ruano, Dario Marine, Michael Galvan, Phillip Galvan, . . . Robert Corral.

The petitioner names some 20 individuals, many of whom were dead by 1984 and thus do not provide evidence of community for the time period at issue, 1986 to the present. As found in the Proposed Finding, the evidence provided by the petitioner on the above named entities does not demonstrate continuity with the petitioner. Further, the petitioner did not submit other evidence to document an informal community of their members. The documents from the other organizations seem to reflect those organizations members' and named leaders' activities, but are not the actual activities of the petitioner.

The oral histories have added information directly pertaining to activities which could be construed as the petitioner's community. The presence of individuals, such as Rosemary Cambra at a MICA meeting, or Philip Galvan and his siblings named on an AIHS document, however, does not provide evidence of a community encompassing the petitioner's membership.

The petitioner asserts that its members communicate and join together to make decisions, devise strategy, socialize, and care for one another but do not provide specific evidence that they do these things. Under the regulations, however, the burden of proof is on the petitioner to provide this evidence. For example, the petitioner asserts that the 20 people named in the citation above were leaders, but few examples of their leadership were documented. The petition gives an example from the Alcatraz Island takeover by the American Indian Movement (AIM) in 1969. The petitioner says the takeover "was met with several written responses by the Ohlone leadership," but the petitioner footnotes only to "An Open Letter To The Native Americans On Alcatraz Island (from the Muwekma Ohlones)." This document is signed, "Philip Galvan, an Ohlone man: Secretary-Treasurer and Director." Nothing in the letter refers to that event, and nothing refers to "the Muwekma Ohlones," although this document does refer to a "tribe" and to "Ohlones." The organization that Mr. Galvan directs is not clear, but it may be a cemetery committee or an AIHS chapter. The letter refers to "100 Ohlones still alive" but states that 23 of the "tribal members" are members of the American Indian Historical Society and 2 are members of the society's board of directors. It also refers to their "ancient MeWuk stock." As evidence under criterion (b), this document does not describe the "tribe" referred to except that there are "100 Ohlones still alive" and says that "one is full blood." There is no indication of who these people are, how they are related, and whether they support his efforts or view him as their leader. This letter cannot be considered an activity of the petitioner. The new oral history now indicates that Galvan's activities were controversial among those people personally interested in preserving the Ohlone cemetery, indicating that this letter was more probably the action of the Galvans alone or AIHS. Since the petitioner claims that it separated from AIHS,

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and since the evidence does not link this letter to the petitioner, it does not demonstrate community for the petitioner.

The petitioner specifically declines to submit evidence of community which it claims to possess. It states,

As to the Petitioner's social and ceremonial activities, the [BIA] has professed to be completely unaware of the difference between public events in which the MOIT members and representatives have been involved, and events by and for the MOIT, which necessarily excluded the uninvited, and outsiders. The Petitioner submits here that the most important ceremonial activities in which MOIT members engage are not public displays or for-profit or for-publicity displays, and detailed accounts of these events cannot be in trust to BAR in these submissions. (Vol. 83.7(b), 14)

The regulations distinguish between public displays of heritage that are merely symbolic displays and significant internal group activities (83.7(b)(1)(vii)). Publically oriented symbolic displays of heritage of recent origin have not been accepted as evidence in any previous case, especially, as in this case, when little if any evidence is produced to show how the event was organized, planned, and how the members participated in it. In the Mohegan case for example, a public harvest festival was held every year. Only after the petitioner submitted evidence for the Final Determination showing that its "women's circle" organized the event and that a predominant portion of the membership was involved in myriad ways in mounting this festival, was this evidence accepted to meet either criteria (b) or (c). The Muwekma petitioner, in contrast, did not submit comparable evidence concerning its members' role in organizing or participating in these events.

Explaining the petitioner's comment about private versus public events benefits from the concept of "social space," a term sometimes used by anthropologists. Based on the evaluations of more than 30 petitioners in 25 years, the pattern is that most petitioners put on outwardly directed public displays. Additionally, they deal with private family issues involving health care, family functions, religion and other matters. At the same time, virtually all petitioners previously acknowledged through this process have had a third kind of "space," which is the public space or presence of the petitioner. Events and interactions occur that are public within the group but are not specifically aimed at people outside of the group. This public presence includes arguing about issues of significance to the group, dealing with issues on a group basis, including drug abuse among young men (Huron Pottawatomi), governance and the public presentation of the group's policies on the Internet (Cowlitz), and a controversial divorce which caused arguments between families and interfered with group functioning (Snoqualmie). These specific issues had become significant to the group when it became clear to members that the welfare of the entire group was being affected by the problems or actions of individual members. They became public issues to the group and were discussed in the group's meetings and other public forums where all members were allowed to be present.

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The group's leaders mediated the conflicts. Comparable descriptions of these kinds of activities are absent in the evidence submitted by this petitioner.

The petitioner asserts that the decision not to submit certain evidence was in deference to the community's wishes. However, even the mechanics of how this decision was made are absent from the evidence as well. As an example of evidence the petitioner believes is too private to submit, the petitioner uses "the case of reburial of ancestral remains, sacred objects, and grave contents." However, the observation of these materials is not evidence of (b) at present, although descriptions of who participated in or discussed these events could demonstrate community. The petitioner states that they "do not display a reburial to public view any more than they would a funeral of a respected elder" (Vol. 83.7(b), 15). However, the petitioner submitted evidence from several reburial and sacred ceremonies while respecting the sacredness of these events. Evidence of who participated made up a large proportion of the record. The BIA turned to the many photographs and their captions in the submission to analyze who exactly attended such reburials. This evidence was analyzed to determine the extent and nature of the membership's involvement with significant issues and events. This analysis found that the available evidence demonstrated that the people involved were actually limited to a small segment of the petitioner, and they were generally closely related to the petitioner's named leader. In the absence of potentially useful information about how these events were organized, how decisions were made regarding their content, how invitations were sent to non-members who, despite the petitioner's denials, were in attendance, and how the group members were informed about the actual reburial so that they could choose to participate, the evidence submitted is not sufficient to demonstrate community.

The petitioner is free to select what information it will submit, but its visiting representatives to the BIA Washington office were told on several occasions, if they were to limit the evidence they chose to submit, they would run the risk of not providing sufficient evidence to meet the criteria. As provided in the regulations, a petitioner can be denied if there is insufficient evidence to establish a criterion (83.6(d)).

Concerning Dolores Galvan's presentation of her memories which appeared in a newspaper article, the petitioner states:

These traditions and belief systems provide a fundamental foundation in the MOIT ethos, so much so that some of the most conspicuous controversies and struggles within the MOIT have been precisely over the perception of accusation among the MOIT community that some individual or clique is absorbed in such vices, hubris, and greed.

The oral histories support the finding that there have been in the past "conspicuous controversies and struggles" among current members and their ancestors, however, some of the living individuals most often named in these controversies are not enrolled. Until those oral histories were submitted, the only evidence seemed to appear in newspapers which named the petitioner's chairman and individuals who were generally unidentified in the petition and not enrolled. How controversies are handled by the members, how

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they effect leadership and other aspects of the community would be good evidence for demonstrating criterion (b). However, the petitioner does not submit evidence concerning these disputes over the long-term, but only provided superficial glimpses made by outside journalists of these issues. The BIA is not responsible for the research but is dependent on the petitioner to supply the evidence.

### *Geographic Location of Petitioner's Families & Contextual Background*

Under section 83.7(b)(2), a petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

- (i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the groups, and the balance of the group maintain consistent interaction with some members of the group.

Some of the petitioner's ancestors are known to have lived at the Pleasanton rancheria until 1906. Others were associated with this Indian community. The petitioner views it as its home base. From there, it argues, out-migration began. Although this generally appears to be the case, it is not clear whether some of the petitioner's ancestors had already started to move from this area in the late 1800's, and whether others ever lived at the rancheria. Because these events occurred before 1927, the date of previous recognition, actual determination of these facts do not affect the decision.

Today, petitioner's members live dispersed in Santa Clara, Alameda, and neighboring counties. That some 400 people may live amongst several million means that they no longer live in a geographical community and do not meet section 83.7(b)(2) (see RMI reconsidered; Indiana Miami). The petitioner argues, as in its original petition, that its residence distribution demonstrates that its members are living in close enough proximity to interact with each other. It further states:

In fact, the formal enrollment process speaks to the type of communication that regularly occurs between these lineages. No advertising or deliberate recruitment takes place, at all, for tribal enrollment. Families and lineages spread the word, by mouth, and the results are that the majority of the Verona Band Population descendants (and members) have now engaged in the formal enrollment process with the Muwekma Ohlone Tribe. (75 percent as of the end of 2000) This fact alone testifies to the MOIT characteristic of keeping a tight-knit community despite an onslaught on population, whatever the ethnicity, and whatever the distance, or circumstances.

The effectiveness of this evidence in demonstrating community is undermined by a number of facts. First, the petitioner does not define the universe of Verona Band descendants it used to determine that 75 percent are in its membership today. Second,



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even if it is accepted that it has taken more than 17 years to enroll 75 percent of this unknown universe, this evidence does not indicate on-going connections and communications among members. Also, recruitment for the location of members was carried out in the petitioner's newsletter. In early 1997, the petitioner's newsletter asked:

Does anyone remember or have information of the Musquez family, or remember Minnie Higuera Guzman. Does anyone know the whereabouts of the Arellano families in the central valley? If you do, please call Alan. . . ." (Muwekma Administration 1997; vol. 1, no. 51)

Three descendants of Minnie Higuera Guzman enrolled in 2001; the Arellano descendants of Mercedes Marine enrolled between January and May 1998;<sup>21</sup> no Musquez descendants are known to be enrolled. The timing of these enrollments would indicate that the petitioner located and recruited into membership Ohlone descendants with whom it had lost touch.<sup>22</sup> Although members live within an area where interaction is possible, such interaction was not documented, and may not be assumed.

### *Significant rates of marriage within the Group*

Section 83.7(b)(1)(i) accepts as evidence of community, "Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations." The petitioner listed a number of marriages showing that, before 1927, 11 out of 19 marriages were between people it believed were part of an Indian group, the Verona Band. Indians in the petitioner's ancestry and the Verona Band married each other. However, because these early marriages were before 1927, they are not relevant to meeting criterion (b) at present or since the last point of Federal recognition. After 1920, Indian-to-Indian marriages were rare and a majority of the petitioner's ancestors and their associates married non-Indians (Vol. 83.7(b), 23-24) beginning in the 1870's-1880's. The petitioner gave only the names of Indian-to-Indian marriages after 1930 and did not attempt to compute the percentage of such marriages within the entire Indian community.<sup>23</sup>

The petitioner is correct that marriage rates are difficult to compute because the data available may not encompass an entire group. In this case, the trend demonstrated by evidence such as the Kelsey Census, the Federal Census, and oral histories is that, before 1910, the people at Pleasanton rancheria were generally married to other Indians, even though two of the petitioner's primary ancestors, Avelina Cornates (married before 1888)

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<sup>21</sup> These are the first Mercedes Marine descendants to enroll.

<sup>22</sup> The Proposed Finding discussed similar sequences of events showing families joining the petitioner one-by-one.

<sup>23</sup> The BIA has never required proof of legal marriage if other evidence indicates that couples were joined for several years and if they had children together. The issue is not so much legality of the marriage but whether individuals are socially joined so as to show interaction.

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and Erolinda Santos (married before 1915) had not married other Indians, and most of the Indian women discussed in the oral histories who were associates of the petitioner's ancestors married non-Indians. These associates include Susanna Nichols (married 1877), Maggie Pinos (married <1928), Magdalena Armija (married three times: in 1892, 1899, 1909). The petitioner did not submit documentation on marriages of many of their collateral relatives, including the kin of Erolinda Santos, who had seven siblings with no descendants in the petitioner, and of Alfred Guzman, who had eleven documented first cousins and siblings, but only two had descendants in the petitioner. The marriages were not documented of many other collateral relatives without descendants in the current petitioner, even though they are named in the oral histories interacting with the petitioner's ancestors. It is not known if people in the collateral lines to the petitioner married other Indians.

The community associated with the Verona Band is defined for analytical purposes by the proxy list created for the Proposed Finding. The individuals on that proxy appear to have primarily married other Indians before 1910. Therefore, the previously acknowledged entity provides evidence under section 83.7(b)(2)(i) to 1910. This tendency to marry other Indians may have dropped precipitously almost immediately after 1910, about the same time that the rancheria burned and was abandoned. Between 1911 and 1930, only four marriages between Indians involving six individuals were documented in the record. The combined evidence of the continuation of marriages made before 1910 and the four marriages between 1910 and 1930, is not evidence of significant rates of marriage between 1911 and 1930, especially when the lack of documentation about collateral relatives is also considered. Between 1927 and the present, one member of the petitioning group married a person from another tribe, and most of their descendants are not enrolled in the petitioner (Vol. 83.7(b), 26). This marriage does not provide evidence of "patterned out-marriage," and the petitioner did not provide evidence of Indian-to-Indian marriages within the meaning of criterion (b) after 1930.

The petitioner agreed in part with this evaluation and stated regarding section 83.7(b)(2)(i): "Although marriage interactions, between members of the group, continue until 1960, the frequency of these events fall below the required percentage. Therefore, the Muwekma Ohlone Indian Tribe meets this criterion for the period of 1900 to 1910."

### **Evaluation of Community at Present**

#### *"The Family"*

Terms used by a petitioner's members to refer to their own group may be some evidence of community. The regulations provide that "the persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name," is evidence under section 83.7(b)(1)(viii). The petitioner submitted outside identifications, most of which refer to the historical Mission Indians and earlier Costanoans and thus is not evidence of the continuous existence of the entity. A collective Indian identity put forth by the petitioner, rather than outside experts, may be

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used as evidence. However, this type of identification does not appear in the record until 1971 when Philip Galvan identified a "tribe" in reference to his "people." In 1983, Rosemary Cambra used the term "Ohlone families" to identify a group.

The oral histories show that the Marine descendants use the term "the Family," or "the Families" and seem to be referring to an entity made up of their close and distant Indian kin. The context indicates that these words may be in reference to the people who comprise the petitioner, but its usage does not appear in the record before the 1980's when the oral histories were done by Nancy Olsen. The term "family" was used in 1984 interviews by Marine descendants in the Thompson family. It is used with a variant "the families" by Rosemary Cambra and others on the recent interview audiotapes. The phrase "Ohlone families" was also used in the letterhead of the archaeological firm called OFCS of "Ohlone Families Consulting Services" and the "Ohlone Families of the Santa Clara Valley" between 1984 to 1994. One newly submitted 1983 document distinguished between OFCS and "Muwekma" and also used the term "Costanoan Ohlone tribe."

... Does the County of Santa Clara recognize the Ohlone Families of the Santa Clara Valley (OFCS and Muwekma) as viable entities and qualified representatives of the local indigenous population also known as Costanoan/Ohlone tribe? (Ohlone Conservation Services 1983)

Interviewees rarely used any other term to refer to a social entity. The exception is Ruben Calles, a man born around 1950, who recently became involved with the petitioner. He used other terms usually applied to Indian tribal governments, such as "council," "elders," and "chief." However, others on the interview audiotapes and videotapes, such as Lawrence Nichols, never referred to an organization, group, "tribe," "chief," "elder," leader, or used any other word, usually associated with Indians or not, that could be construed as referring to a grouping or someone with authority over that grouping. Rosemary Cambra and the petitioner's researcher Alan Leventhal used the term "tribe" sometimes.

The audiotape evidence indicates that some individuals utilized the terms "the family" and "the families" when referring to a kin-based entity encompassing descendants of Avelina and Raphael Marine. Certain Marine members of the Thompson family, who had step-ties and godparent ties to the Armija and Santos extended families, also extended their use to the Santos and Armija extended families in the petitioner. However, evidence was insufficient to determine the extent of the use of these terms among the petitioner's members, whether individuals used them to refer to their personal (egocentric) kin networks or to a larger "Indian entity," and whether the terms were of recent origin.

English-speakers generally view the term "family" as defining an entity smaller than a "tribe." If the term "family" was used from at least 1984 to the present for the entity that is essentially the petitioner, it does not necessarily indicate that the petitioner is not a tribe, and "only a family." If the petitioner otherwise met the acknowledgment criteria, it

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would be recognized regardless of the term used by the members to refer to their entity. It is also possible that the meaning of the term "the family" and "the families" has become specialized in the speech of the petitioner's members. In the very least, the term's use implies that certain individuals recognized the familial relationships among a large group of people.

The people in the oral interviews, however, used the term to encompass people who are not members of the petitioner but who are close kin. As one would expect in a family-based entity of whatever size, disagreements have characterized the group in the present and were discussed to some extent in the Proposed Finding. The oral histories indicated that some of these disagreements are long-term and may even have originated in the early part of the 20<sup>th</sup> century when the Marine siblings were children and young men and women. Some people most involved in these disputes have not enrolled in or have disenrolled from the petitioner, such as Michael Galvan, Ruth Thompson Orta, and Kathy Perez. They, nevertheless, appear to be part of "the family" or "the families." The term may refer to an entity which is actually larger than the petitioner.

The petitioner suggested in its original submission that the reasons for family divisions along the lines of three (now four) different cultural resource management firms run by Verona band descendants, two (now three) of whom are not on the membership list, was caused by California repatriation and cultural heritage laws. A newspaper article discussed the family disagreement:

Cambra admitted there is little or no overlap between her group and that of the Galvans, her cousins. "We are interested in different things, in different projects," she said. "I guess you could say that we are competing groups in some ways. But that should not stand in the way of tribal recognition. The question is not whether this family or that family runs the tribe, but if the tribe should be recognized at all. If the fact that there were competing factions within a nation was grounds for not recognizing that nation, we would refuse to recognize most of the governments in the world. (Medina 3/23/1995)

For the Proposed Finding the petitioner did not submit evidence that, outside of archaeology, these families interacted in a community setting that transcended the existence of these firms. In other words, no evidence indicated "competing factions *within* a nation," or factions within a tribe. The new oral histories indicated that at least two of these family divisions are long-standing and that most members considered the various actors involved in these disputes to be part of "the family." Several people acknowledged that the descendants of Trinidad and Dolores Marine (the only Marine sisters surviving after 1923) had argued. But one person stated that these same sisters together visited her mother (a Ramona Marine descendant) on at least one occasion in the 1950's. The importance of these divisions in the political activities of the petitioner is discussed in the section on criterion (c).

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In the past, some members of families with archaeological monitoring businesses have not joined the petitioner. Only the nuclear families of the owners of two archaeology firms have not enrolled with the petitioner. The nuclear families of Philip Galvan and Ruth Thompson Orta are not enrolled. Their siblings and siblings' descendants are now enrolled. However, Kathy Perez's entire line (approximately 65 people) disenrolled between the Proposed Finding and this determination. The record indicated that Perez was also interested to performing archaeological monitoring.

The use of the terms "the family" and "the families" did not appear to be used before 1984, and its meaning and usage is ambiguous because of insufficient evidence. Further, the use of this term by some ten individuals, most born before 1950, does not demonstrate widespread usage. This finding utilizes the concept of a larger Ohlone kin group than the petitioner's membership by sometimes using the term "the larger family." It is particularly useful when discussing the large group of kin who are traditionally associated with one another, but who may or may not be members of the petitioning group, now or in the recent past.

### *The Composition of the Petitioner*

Some 84 percent of the petitioner's enrolled members are the descendants of Avelina (1863-1904) and her husband Raphael (1865-1910) Marine, and the remainder descend from two other women, Magdalena Armija and her cousin's daughter Erolinda Santos. These relationships are explained in the section discussing the evidence under criteria (e). The descendants of Erolinda Santos were connected to the Marines through fostering relationships. The descendants of Magdalena Armija were connected to the Marines through a step-relationship. Three members (Guzmans) were tied to the Marines by two separate in-law relationships -- their father (grandfather)'s youngest brother married a Marine descendant and his oldest half-sister's daughter serially married two Marine siblings.

The composition of the petitioner is predominantly centered around the large Marine family. These families are further broken down into large bilateral extended families established by individual Marine siblings, by Magdalena Armija, and by Erolinda Santos. Further segments arise within these extended families, sometimes comprised of the children of one person and his or her sequential spouses.

The petitioner used the term "lineage" in reference to these bilateral kin-groupings. These kin-groups do not appear to be lineally defined through males, females, or bilateral reckoning, to be corporate,<sup>24</sup> to claim special cultural attributes, to function for specific purposes, or to have distinct names or any other characteristics often associated with "lineages," and therefore, are technically not lineages, as anthropologists normally use the term. As has been customary in acknowledgment reports, the terms "family line," "line" and "sub-line" will sometimes be used to refer to genealogical groupings to which people

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<sup>24</sup> Anthropologists use this term to indicate when kin and other groups have special rights to property or other resources, or cultural ownership of songs, stories, totems, etc.

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are assigned based on their Indian ancestor and also to maintain continuity with the genealogist's report. But it should be understood that this petitioner's large functional kin groupings are actually bilateral extended families made up of all persons descending from an Ohlone founder, usually a Marine sibling.

The Marine siblings were born between 1888 and 1903, a fifteen-year period of rapid change in the Bay area. This change is reflected in their experiences. The life of Indians in Alameda County changed precipitously between 1885 and 1920. Their children's lives (born between 1907 and 1944) also spanned a transitional time period for the Indians, and the children in this generation may have had varied childhood experiences. The descendants of the youngest siblings, Trinidad and Lucas, appear to be less tied to the rancheria Indians than older cousins (Leventhal and Cambra 2001). It appears that the children of the oldest siblings, Dolores and Elizabeth, can remember many experiences with older individuals associated with the rancherias. For instance, Lawrence Marine<sup>25</sup> (b. 1907), Elizabeth Marine Nichols' son, described in detail visiting with "old man" Jose Havencio Guzman as a boy, presumably in the late teens and early 1920's. He remembered sitting in Guzman's house at Alisal and hearing his aunt Kate Peralta speak with him and with others in an Indian dialect. Because his mother had died when he was four years old, he was raised by his grandmother (father's mother), Susanna Flores Nichols, who lived in Niles. This 1986 oral testimony described a very similar picture of the Guzman household as the anthropologist Harrington described in the 1920's. Lawrence Nichols also named his cousin Sal Piscopo, from the extended family of Dolores Marine Galvan, going with him to visit Guzman. He also had very early memories of visiting the Pleasanton rancheria with his non-Indian father before 1912. Lawrence Nichols' experiences with the older Indians could not be replicated by most of his first cousins, some of whom were born as late as the end of World War II. This information provides supporting evidence that the Marines were involved with the people who had lived at the Pleasanton rancheria before 1916.

Combined with the documentary evidence already in the record, the oral histories also show the Marine siblings and others interacting in the 1930-1960's, although the extent, significance, and degree of interaction decreased during each successive generation and did not connect all members. Soon after the death of Dario Marine in 1969, the record falls silent for about 15 years. Then, as the Proposed Finding pointed out, "[b]eginning in 1984, the record shows one small family group establishing a CRM firm, and progressively taking on an identify of the Muwekma Ohlone Tribe." The group's "revitalization" was discussed in council minutes and newsletter. Various families joined the group one-by-one after 1994 until today, the Marine descendants are well represented, and within almost all of the extended families descending from the Marines, Santos, and Armijas, there are active members. Older individuals are more active than young people, who are less connected to the petitioner.

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<sup>25</sup> Lawrence Nichols died in 1999 and never became enrolled in the petitioner. He had no known descendants. He talked to Nancy Olsen in 1986.

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### *Socializing*

The regulations at section 83.7(b)(1)(ii) allow evidence "of significant rates of informal social interactions which exist broadly among the members of a group" to meet criterion (b). The oral histories described a group of the petitioner's ancestors, who socialized often before Dario Marine's death in 1969. Trinidad Marine's husband Joe Ruano, as a young Mexican immigrant, met Dario Marine in the late 1920's. They struck up a friendship. He described how Dario would pick him up in his truck and they would "go around." Joe Ruano became a friend of other Indians in Dario's circle. He described how they used to go to a little house in Pleasanton near the graveyard, and they visited between Livermore and Niles, which was where Sunol Road and the Rancheria had been located. He regularly socialized with Marines, Sanchezes, Guzmans, and Thompsons. Lawrence Nichols also described these group social functions. He said that he often sheltered people unable to make their way home late at night or drove them home in the morning. Women family members were also present at the social gatherings.

These gatherings were also held in migrant workers' camps and were seasonal. Joe Ruano said that he and his friends "didn't know people that well, they just visited." He elaborated that they "didn't really know nobody. You never see them again, you don't remember their name unless you write it down. That's the way the times were," he said, perhaps referring to The Great Depression. He described the Indian families' visits in "summer, families used to visit around. It was too cold in the winter...the horses used to get in the mud" (Olsen 1984).

Dario Marine made wine for these occasions. He used the young boys living at Maggie Pinos<sup>26</sup> to help him carry it out of the basement and deliver it. He had a regular route. He obtained the grapes from his employers, the Trues. Joe Ruano said that the Indians "didn't bother nobody, just shoot the breeze and laugh a lot" (Olsen 12/14/1984). Yet, he also relates that violence occurred on other occasions (Olsen 12/14/1984).

A woman who was interviewed related that there were big "get-togethers with Uncle D and Uncle Lucas. . . They had these big jugs of wine on the table and they drank until they were silly. I remember that." She witnessed these events as a child between about 1940 and 1950. She said that the people in Centerville, Milpitas, San Jose, and Mt. View "would all get together at someone's house and it was the older people -- the uncles and aunts. . . Uncle Puff [Sanchez], Uncle Dar[jo Marine], Uncle Lucas [Marine]. . . ." She described the socializing of the Marine families (Leventhal and Cambra 2001).

Not everyone was interested in socializing at those occasions where alcohol was available. One person who was interviewed stated that his father and brother had been problem drinkers. After quitting, they didn't want to socialize with people who were drinking wine (12/7/1986), and they cut themselves off from some old friends in the Indian community. One woman reported that her white relatives criticized her Indian

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<sup>26</sup> Context and names in the interview indicate that both Marines and Santos children helped Dario Marine.

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relatives for their mode of socializing, which sometimes involved alcohol, but she believed that "They were just trying to protect [us]." She said that a white relative was scared of us [Indians] he was scared to meet "the Ohlones. His mom said those Ohlones are crazy. They are mean you can't go over there" (Leventhal and Cambra 2001). This indicates that at least some of these occasions were primarily attended by Indians, and that distinctions were still made between Indians and non-Indians before 1950.

By the 1950's, the third generation (the grandchildren of the Avelina and Raphael Marine) now had children whom they would take with them visiting their relatives. Having a car was important. Young children learned to drive as young as 10, in order to drive their mothers from one place to another. The Ruano's visited Cecilia Armija and her husband Dario Marine in Irvington. Later when Dario Marine moved away, he visited the Ruano's regularly.

Oral interviews give many examples of visiting. Faye Thompson (Trinidad Marine's daughter) remembered visiting Dolores Sanchez (Ramona Marine's daughter) starting in the 1930's, when she was a little child. She said, "We had little houses and very little food." Talking to one of Dolores Sanchez's daughters, she stated, "When your mom and dad came over, they always brought something. When we went to your house, we always took a bag of oranges." Others remembered stopping their car at the Lowry's ranch on their way to visit Lucas during rationing in WWII, and everyone picked cabbages or other vegetables in season along the driveway. Once at Lucas' home, they remember that the parents sat around a table talking while the children played. Sometimes, they visited a park area where they had picnics. Siblings Joel and Lydia Arellano, grandchildren of Mercedes Marine, remembered visiting Trinidad Marine, the Guzmans and Nichols. The latter two families, according to Lydia, did not visit as often as Trinidad visited them.

The visiting among the Marines in the 1940's and early 1950's included Avelina's grandchildren and their children. Thus, people in the interviews representing the fourth generation born after WWII remembered socializing with second cousins – the cousins of their parents. Predominantly mentioned were other Marines, although the Juarezes (Santos) were also mentioned rarely. When the fourth generation discussed these social events, they remembered them as children, not adults. There was little data in the record after 1965 to indicate continued contact among the members of the fourth and fifth generations. It seems quite clear that they socialized as children by virtue of the relationships maintained by their parents and grandparents. The Proposed Finding pointed out that members themselves discussed how they had been estranged before Rosemary Cambra began to provide a forum for interaction in the 1990's.

For example, a great-grandchild of Avelina Marine said that one time Trinidad and Dolores Marine visited her mother, probably in the early 1950's, but the niece did not know her great-aunt Dolores (Leventhal and Cambra 2001). Joel Arellano said that he did not remember meeting this same woman at her aunt's house, although his family visited there often. Joel said to her, "Why we never met you guys?" Pushed to remember the aunt's children's names, Joel had difficulty. This indicated that after their parents or



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even grandparents died, little regular contact between members of major extended families continued.

The Marine siblings are often mentioned in connection with such socializing, as are many other people, especially many Guzmans, who have only three descendants in the petitioner. The Santos and Armijas are mentioned rarely. For example, although Pete Juarez, the husband of Maggie Pinos, lived in Stockton, he sometimes attended these social occasions, according to those interviewed. Generally, however, the Santos were not mentioned. A foster child and a Marine descendant said that after returning from five years living with Erolinda Santos in Sacramento in the mid-1950's, she didn't recognize her sister or Marine cousins and even went out on a date with a cousin until her date realized they were related (Leventhal and Cambra 2001). Marines visited Stockton very infrequently. This anecdote may reflect visiting patterns of the Marines who seem to have visited the Santos in the Central Valley rarely, so the Marine foster child had lost touch with her family and other Marines, while the Marine cousin in Alameda County interacted at the same time and so was able to figure out that he and his date were cousins. It is quite clear that the first two generations of Marines socialized regularly at least until 1950. It is less clear how involved in and connected to these social activities were other Ohlone extended families, who were not Marines but who have descendants in the petitioner.

Based on their experiences together as young people associated with the Pleasanton Indian community, the Marine siblings and others interacted and socialized in the 1920's and 1930's. It appears that the extent and frequency of interactions diminished from one generation to the next, becoming insignificant for many of the group after 1950.

### *Godparenting and Fostering Children; Evidence of Actual Obligation*

The petitioner asserts that godparenting or "*compadrazgo*" relationships tie together their members in a network of obligations which meets the requirements of community. The Proposed Finding, however, found that these relationships were limited to close relatives, including non-Indians in-laws and did not define a separate and distinct Indian entity. The petitioner reasserted their previous arguments. Godparenting is re-analyzed with reference to new evidence, primarily the oral histories.

The founders of the Marine extended families, Avelina and Raphael Marine, to which some 84 percent of the petitioner's members can trace, had died before all of their own children reached adulthood. In addition, only four of the eight adult Marine children (born between 1889 and 1903) in the second generation survived after 1923. The Marine's four daughters died as young adults after giving birth to children, and their youngest son died in childhood. The two eldest and two youngest Marine children lived to the 1960's - 1980's. The survivors Dolores and Dario Marine were adults living on their own, and Trinidad and Lucas Marine lived in church schools in 1923. At least 43 children belonged to the second generation of Marines (Avelina and Raphael Marine's grandchildren). Almost 40 percent of those children, or 16 individuals, were orphaned under the age of 11 years.

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The oral histories provide context for the reaction the Marine family had when disease caused high mortality in their family and among their associates between 1900 and 1925. Dolores Marine Galvan told a newspaper reporter in 1965 that

tuberculosis and flu epidemics decimated the Indian population about 1915. . . There were no doctors, no medicine. Toward the end, all died from the flu. I lost five sisters [siblings would be correct] from it. They were all buried in the cemetery. They died one right after the other. They weren't tough like I was. (Smith 1965)

Lawrence Nichols implies that his mother and three sisters died of tuberculosis (Olsen 1986). The 1996 obituary of Ramona Marine's daughter Dolores Sanchez states that her mother died during the influenza epidemic of the late teens, although her death date is documented in 1921, and that Dolores Sanchez lived for a time at "St. Mary's of the Palms orphanage at Mission San Jose because her father, a vaquero [Puffy Sanchez, non-Indian spouse of Ramona Marine], was unable to care for her" (San Jose Mercury 8/24/1986). The deaths of the Marine sisters occurred before 1923.

The high mortality in this one Indian family meant that surviving members of the family and others, such as godparents, who bore some responsibility for the surviving children, encountered significant problems caring for the children orphaned by these women. This problem extended beyond 1923 and the last date for previous recognition, 1927, and provides some evidence for community before 1950.

Child care, became a significant problem for the Marines, many of whom depended on migratory agricultural work. The petitioner asserts that godparenting defined a network of obligations of godparents to children which cross-cut the petitioner's membership. The documentary record and oral histories show that some godparents did aid orphans, but it also indicates that other steps were taken to deal with child care, including placing children in foster homes and turning to government aid. The examples of individuals performing actual godparenting responsibilities are few in the documentary record, which does not mean it did not happen, only that there is no evidence. The oral histories are responsive to the Proposed Finding because they discuss actual situations in which godparenting and caring for children occurred, sometimes between extended families. However, only a single example for a current fostering situation is described by the petitioner and this involves an elderly man (non-Marine) who has been cared for by relatives since the early part of the twentieth century. The other cases described in the oral histories pertain to situations before about 1950. Therefore, the petitioner's response to the Proposed Finding on this issue can only partially cure the deficiencies pointed out in the Proposed Finding.

There is significant new historical evidence in the oral histories that imply that an older women named Susanna Flores Nichols sometimes dealt with orphans in a way that may have been on behalf of the "larger family." She placed young Indian girls who were not necessarily part of their own families with Indian and non-Indian households where they often worked as domestics. These activities occurred primarily in the 19<sup>th</sup> and early 20<sup>th</sup>

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centuries, well before 1927. As such, they only provide background to later events and not evidence under (b) and (c) after 1927 or in the modern period.

In an interview, Lawrence Nichols' wife Virginia, although not an Indian, knew her husband's father's mother Susanna Flores Nichols (b. 1855) whom the petitioner believes is their ancestress' Avelina Marine's half-sister. She related that Susanna had told her that as a young child she had been "kidnaped." Her husband Lawrence Nichols (b. 1907), however, denied the kidnapping and said that rich *Californios* (Spanish who stayed in California after it became American territory), like the "Artbrados, Arvisos, DeLayos" routinely took young girls to do housework, and that such girls "just raised themselves." He implied that the girls his grandmother had worked with were "like sisters" to her. These events, if they occurred, most likely occurred between 1865 and 1875.

Susanna was godmother to six of Avelina and Raphael Marine's children. She took in Lawrence Nichols after his own mother and her goddaughter, Elizabeth Marine, died when Lawrence was only four years old. Because Elizabeth Marine had married her godmother Susanna's son Charles Nichols, Lawrence's grandmother was also his mother's godmother. He grew up in his grandmother's house.

Lawrence Nichols' placement in Susanna Nichols' home put him in a position to observe the Indian social community that the anthropologist Harrington visited in 1921. However, married to a non-Indian, Susanna did not appear on the Kelsey Census or the 1910 Federal Census of "Indiantown." But Lawrence Nichols also visited the Pleasanton rancheria with his non-Indian father, who socialized there with other Indians. Lawrence Nichols stated that his father went "to say hello and drink a few glasses of wine," as did other Indians who did not necessarily live on the rancheria (Olsen 1986). He described the Pleasanton rancheria as having six or seven cabins located near the railroad. He described a "steam bath" or "steam wigwam" where everyone took turns and said that the women worked all day, and that old women took care of the children (Olsen 1986).

Lawrence stated "When I was three years old, I got away from that," meaning the rancheria. This would imply that between Lawrence's birth in 1907 and 1911 when his mother Elizabeth Marine died, Lawrence was socially associated or even living on the rancheria. Unfortunately, however, neither Lawrence nor his mother were located on the 1910 Federal census, although his father is found living alone in Pleasanton township and his grandmother Susanna is found living in Niles with her husband and other children, just as Lawrence describes for later years. By the 1920 Federal Census, a grandson "Warren" Nichols - probably Lawrence - lived in Susanna's household in Niles with his father and three Nichols uncles.

Lawrence Nichols (b. 1907) explained that he had seen the well-to-do residents in the communities near his grandmother's home in Niles and nearby ranches approach Susanna Nichols to find them girl domestics between 1915 and 1925. He explained that "they knew my grandmother because she worked with the DeLayos, the Starrs, and I think the Alvisos." He said that his own mother, Elizabeth, "Belle," Marine (b. 1891;

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second daughter of Avelina and Raphael) had also worked as a child domestic but did not indicate that her godmother and future mother-in-law Susanna Nichols had arranged her placement nor with whom she had lived. He said that Susanna, whose permanent residence was in Niles and not on the rancheria, was also employed in child care on ranches. She was "a helper off and on, in and out," meaning that she would "stay a month and then come home." She met her non-Indian husband who was working on one of the ranches where she was temporarily employed taking care of the children of workers.

Lawrence Nichols' description of Susanna Nichols' activities implies that non-Indians may have viewed her as a go-between in arranging these placements and finding suitable apprentices and employees, and it also implies that she may have had some stature and authority in the Indian community in order to find available girls. The evidence for such leadership is circumstantial.

Susanna Nichols' role as a godparent indicates she held a position of authority in the community. She godparented numerous children among the petitioner's ancestors and others, including several Armija children, Raymond Espinosa, Robert Marshall, Isabelle Olivares (who later married Susanna's son Joseph), and most of the Marine children, including Dario, Dolores, Ramona, Elizabeth (who later married Susanna's son Charles), Victoria, and Joseph. One of the Marine siblings, whose baptismal certificate has not been located, wrote years later "only aunt I ever knew who was half sister to my mother - Abelina Cornellias - was Susana Nichols who past [sic] away some time in the year of 1929."

Susanna, however, also dealt with the children of her godchild Victoria Marine (1897-1922) after Victoria's death. In 1924, Victoria's daughter Mary (b. 1910) went to live with Susanna Nichols after a short time in the "mission," according to Mary's daughter, Virginia Massiet (Leventhal and Cambra 2001). And Lawrence Nichols related that Susanna played a role in placing or fostering the children of godchild Ramona Marine Sanchez after their mother died in 1921. Lawrence Nichols stated that "we," implying Susanna Nichols and her family in Niles, cared for one of the young Sanchezes, "We took care of one up in Sunol...little Morgan. He was a little old man. . .He'd do anything. He'd sweep the floor." Based on the ages of the individuals involved, these events most likely occurred in the early 1920's, as Morgan's mother had died in 1921 (Olsen 1986). Thus, Susanna appears to be carrying out duties connected to her role as a godmother in these two cases dating to before 1927.

Of the children godparented by Susanna Nichols, only the Marines have descendants in the current petitioner. However, after Avelina Marine died in 1903-04, there is no record that Susanna fostered her godchildren. Faye Thompson said that her mother Trinidad Marine, the youngest living Marine daughter at Avelina's death, did not have Susanna Nichols as a godmother. Her godmother was a woman named Trinidad Gonzales. This woman took care of her only sometimes, even though she had been orphaned at three years of age. According to her daughter, Trinidad's recollections were that after her

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mother died in around 1904 and prior to moving to St. Mary of the Palms orphanage, she stayed with the Pattersons, apparently a non-Indian family (Leventhal and Cambra 2001).

The Proposed Finding described the disheartened condition of the Indian community at this time. However, whether the Marines lived in this community is not documented and there is reason to believe that the family resided in Livermore or moved around. Faye Thompson states that "after my grandmother passed away, my grandfather was [unable to care for the children] so the county or somebody came and took them. Mrs. Patterson would come and pick up my mother and sometimes, she would stay weeks or months with the Pattersons." Mrs. Patterson's daughter and Trinidad Marine were the same age. The nature of the arrangement was not clear, nor is it known whether Trinidad performed domestic duties or acted as a companion to the Patterson daughter through an informal arrangement mediated by her own godmother or Susanna Nichols, or was legally placed in that family. Mrs. Patterson may have been a county health worker. According to Faye Thompson, Mrs. Patterson was a nurse who had administered shots to Avelina Marine before she died. After a short time, Trinidad Marine was placed in a Catholic convent school/orphanage. But she spent some time with the Pattersons in Sunol (Leventhal and Cambra 2001).

The second youngest Marine sibling, Lucas, attended a Catholic school in Ukiah. Without more information, it is impossible to determine if a larger group had interceded on behalf of Trinidad and Lucas, whether the county became involved because the youngest Marines were orphaned and their welfare had come to the attention of the local government according to welfare processes automatically set in motion when a child was orphaned, or their non-Indian father acted alone (he signed their records for school/orphanage admission).

No direct contemporary statements were found in the record to indicate that Susanna Nichols was viewed as a woman of authority or a leader, although the sum of her activities and her placement at the center of godparenting networks imply that she did have a position of social importance for the Marine family, which may have been based on her claimed but as yet undocumented kinship relationship as half-sister to Avelina Marine. Even if Susanna Nichols were not Avelina Marine's half-sister, she acted as if she was obligated to Avelina and her children. Susanna Nichols, herself, had nine children, at least three died before maturity, and she has no descendants in the petitioning group. Susanna Nichols died in December 1930, and therefore, even if evidence of her activities provided in the oral history were significant evidence of leadership, it is not evidence of political authority in the post-1927 period under criterion (c). Her activities do support the petitioner's contention that Susanna Nichols and the Marines were socially close and that she and Avelina had some sort of biological or created kinship<sup>27</sup> relationship.

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<sup>27</sup> In this finding, the term "created" kinship relationships refer to those relationships created through fostering, adoption and godparenting.

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After Raphael and Avelina died, the youngest children Trinidad and Lucas, who were the only Marine children not godparented by Susanna Nichols, were left adrift, especially after Ramona Marine's death in 1923, in the view of Trinidad's descendants who were interviewed in 1984 by Nancy Olsen. Trinidad was the youngest Marine daughter, and her children expressed some resentment even in 1984 that the older Marine siblings, who themselves would have been young adults, had not come to her aid during this period. In fact, according to Trinidad's daughter, one of the older siblings did not attend their mother Avelina's funeral and that siblings' whereabouts were unknown for several decades (Leventhal and Cambra 2001). One hundred years later, one descendant sited this older siblings' absence which she perceived as a avoidance of responsibilities to support personal battles still alive in the "larger family." On the other hand, Ramona Marine is mentioned as keeping the siblings in touch until her death in 1923. She and her husband Porfidio or "Puffy" picked up Trinidad at St. Mary's and took her in a car to visit her brother Lucas in Ukiah, or they brought Lucas down to Alameda to see her.

The 1920 Federal census shows 18-year-old "Trina" working as a maid in the Castro [Holtzhauser] household in San Leandro City.<sup>28</sup> Trinidad's daughter explained that this is an old family: "Mrs. Holtzhauser was a descendant of Estidillos! . . . She was a Spaniard. . . married a German. . . elite crowd, high society, but a very down to earth lady." Her daughter continued,

they came into Newark [California] and that's where my Godmother came into the picture, because my Godmother was related in a round-about way to my Dad [Ernest Thompson who had been married to Magdalena Armija, an Indian woman]. Because *Madrina* Maggie [Pinos] and Magdalena [Armija] were related, so they were cousins to my half brothers and sisters. . . from my Dad. So my mother met my Godmother and that's where I became Godchild to my *Madrina* and she taught my Mother how to speak Spanish again.

The story according to this oral history then would imply that Trinidad Marine's connection to Ernest Thompson and her role as stepmother to his orphaned half-Indian children came about while she was living in a non-Indian household. Through Ernest and his children she then met Faye Thompson's "*Madrina* Maggie," or godmother, Margaretta Pinos, a relative of Ernest Thompson's first wife. Margaretta, or "Maggie," Pinos is mentioned often in the oral histories and the petitioner has demonstrated that she played a pivotal role in connecting some Marines and the Santos/Armija families, which lasted after her death in 1960.

In a May 1947 letter, Thomas Garcia, son of Mercedes Marine who died in 1914, wrote a letter to James B. King telling him that his godmother Phoebe Alaniz who died in 1947 raised him and recorded his name in 1933 with Baker (Garcia 1951). When Ramona Marine died in 1921, her husband Porfidio applied for aid to orphans and listed his own

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<sup>28</sup> Although her daughter said that Trina worked for the Holtzhauser family, the census indicates that this is the name of the son-in-law. The household head was named Castro.

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non-Indian relatives in Milpitas as kin in 1924 and listed non-Indians – a Mrs. Parks, a rancher and an apartment supervisor as references. When Victoria Marine died in 1922, two of her daughters, Mary and her sister Flora Freda, were also taken to the Mission, as had Trinidad Marine been taken there more than ten years earlier (Leventhal and Cambra 2001). Mary must have been about 13 or 14 years old. Her sister was about 6 or 7 years old. Mary's daughter Virginia says that the sisters soon were separated when Mary went to live with Susanna Nichols. But in 1928, when her sister Flora became ill and was admitted to a hospital, Flora's children John and Rayna were sent to Indian boarding schools until her recovery, with the county's involvement (Petitioner Ex. J, II, 1998).

Documents and oral history demonstrate that siblings (and half-siblings) sometimes cared for underage children or disabled adults. According to Virginia Massiet, Henry Marshall used to take care of his half-brother Eddie Thompson after his mother died and his father remarried. But later, Eddie went to his mother's cousin Maggie Pinos, where another child encountered him in the late 1940's. Fifty years later, one of these people who had lived with Maggie Pinos, thought in retrospect that Eddie was treated harshly: "He ate alone. After everyone else ate, he ate what was left. Maggie used to make him work, carrying all these buckets of water" for her home-based laundry business. She took in children, including Virginia Mora Massiet and her sister Jenny, and Erolinda's relatives and children Art Pena, Daniel Pena, and Alfonso Juarez.

Although Maggie Pinos took in children of the Marine and Santos/Armija extended families, the documentation and oral histories are insufficient to indicate if she was obliged to take them because she was their or their parents' godmother, aunt, or adoptive grandmother, whether she took them in as part of her role as a female leader with a responsibility to Indian children, as Susanna Nichols seems to have done; whether she took them in because of their relationship to her husband; or whether she took them in to take advantage of their labor, or a combination of several factors. Placing children with non-Indians was not mentioned in connection with Maggie Pinos.

A 2001 interview by Alan Leventhal with one of the children taken in by Maggie Pinos described her childhood experiences living at Maggie Pinos' house in Newark in about 1944. This person is a descendant of the Marines. The position of her and her sister in Maggie Pinos' home was ambiguous. It is unclear if she was fostered, adopted, apprenticed, or employed there. She was not Maggie Pinos' godchild. Her teen-age sister left Maggie Pinos' house very early in their stay complaining that Maggie forced her to work too much in her laundry operation. The person interviewed, however, implied that she, herself, was too young to work and just played in the yard with smaller children. In response to the interviewer's question asking if she were treated differently from Erolinda Santos' children and Maggie's relatives who were also there, she answered that she had been treated differently, but did not elaborate on the difference. She stayed there a year before going to Stockton to live with Maggie Pinos' sister's daughter, Erolinda Santos Juarez.

Maggie Pinos was not a godmother to the sisters who were Marine descendants she took into her house. Nor was she godmother to the sisters' mother. When Erolinda came to

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take the girl to Stockton in about 1946, Erolinda immediately baptized her and became her godmother. This action may be significant if it indicates that godparenting may have been a factor in child fostering. Erolinda also baptized her son's children Rosemary Juarez (Leventhal and Cambra 2001) and Daniel (Leventhal and Cambra 2001), who sometimes lived in her house.

When she reached her teen years, the woman interviewed found her position at Erolinda's house untenable. She ran away in the early 1950's, took refuge in a friend's home, where she came to the attention of the child welfare system and was transferred to Alameda County and reconnected to her mother and her older sister, who took her in. She soon married the brother of her sister's husband. This woman's story takes on significance to the petitioner because she is a Marine descendant who had a significant long-term relationship with Erolinda Santos. The Santos descendants represent some ten percent of the petitioner's ancestors, the Marines 84 percent.

Because of her life history, this woman's actions connect these two kin groups. The individuals named by the person being interviewed in specific interactions and events show that there were very few occasions when Santos/Armijas and Marines were at the same event, particularly in Stockton. She mentions one time when her mother visited her in Stockton, but no other time. In fact, she says that after she ran away from Erolinda's home, she had no further contact with her or with the Juarez children (Erolinda's grandchildren) whom she babysat. The connection between the petitioner's members in Stockton and those in the East Bay in mid-century was not active, at least in the memories of this woman. When she was returned by social services in Stockton to her mother's home in Oakland, she found that she did not know her Marine cousins. When in 1995, she heard that one of Erolinda's grandchildren, Kathy Perez, had joined the petitioner, she called her, and they met.<sup>29</sup>

Analysis of the people involved in interactions in this woman's interview shows that her descriptions of the two families (Marine and Santos/Armija) do not intersect except through her. For example, she lists who was at an Ohlone Cemetery clean-up in about 1963. Everyone she lists is a Marine descendant, basically Victoria and Dolores Marine descendants. She is only able to remember her family members and Galvan in-laws. When she described who visited or lived with Maggie Pinos in the 1940's, all named by her are descendants of Maggie's relative Magdalena Armija, including descendants among the Thompsons such as Eddie Thompson and Henry Marshall, and the Penas and the Juarezes (Leventhal and Cambra 2001). These relationships were also documented and were discussed in the Proposed Finding. This interview provides useful context to those documents.

Most of the fostering situations described above deal with women fostering children. However, the oral histories also contain rare references to adult men mentoring or apprenticing boys. In a 1986 interview, Lawrence Nichols discussed Jose Havencio

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<sup>29</sup> Because the woman interviewed stated she "wanted to see what Kathy looked like," it implies they had not been in contact for a long time.



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Guzman (b. 1831), whom he knew while he lived with his grandmother Susanna Nichols. He said that he felt sorry for "Old Man Guzman," because he believed that he was so lonely, he paid boys to go camping in the mountains with him, probably between 1915 and 1930. The 1920 Federal census shows a "Joe Guzman" living with his wife and three sons in Pleasanton. They lived in a farming area, surrounded by vineyards, gardens, and farms. No other Indians were identified on this census sheet. According to Harrington, who visited Jose Guzman in 1921, 1929, and 1930, he was "one of the oldest timers here. Has lived whole life around here" (Ortiz 1994). Harrington recorded 27 songs from him (Petitioner Ex. B).

"Guzman used to take us in and feed us," and according to Lawrence Nichols, "he ate everything. . . He used to stay with my grandmother [Susanna Nichols] two or three days at a time. His granddaughter Kate Peralta, who at that time was married to Lucas Marine, was there too. They would talk in their Indian language." In 1925, Harrington encountered Catherine, or Kate, Peralta and said that she and Lucas lived on a ranch where they worked near Centerville. According to Lawrence Nichols, a first cousin to Lawrence, his mother's sister's eldest son Frank Piscopo, also a Marine descendant, visited Guzman too. Frank accompanied Guzman and Lawrence (Olsen 1986) on their forays into mountains, where the older man fed them wild foods like gophers, squirrels, and raccoons (Olsen 1986).

The development of vineyards and wineries near Alameda apparently had some influence on the Indian population in the area. On the one hand, several Indians, including Dario Marine, found employment in the vineyards and developed an expertise in wine-making. On the other hand, this expertise led to a cheap source of grapes, knowledge of wine-making, and a generous supply of wine. Young Marine relatives worked in Dario's wine business. Bobby Sanchez (b. 1917) remembered loading up to "go to their area" to sell wine and moonshine made from barley and raisins and he remembers that his Uncle Dario had a run-in with the law during prohibition (Leventhal and Cambra 2001).

After the death of Maggie Pinos in 1960, no further references to these kinds of fostering or apprenticeships of children appear in the records or are discussed in oral histories. The relationship and social network described above, through godparenting and placement of children and visiting is evidence under 83.7(b)(1)(ii) "significant social relationships connecting individual members," and (iii) "significant rates of informal social interaction which exist broadly among members of the group" before 1927. After 1927, the relationships developed in childhood carried over after 1927 especially for the biological and created families of Susanna Nichols and the created family of Maggie Pinos, but by 1950 these relationships and patterns of interaction had fallen and were no longer significant under the regulations. The evidence demonstrated that only a few people, connected through Maggie Pinos' kin network, maintained connections among various extended families until as late as 1980. There is little if any evidence that other families were still connected widely to other Marines or other Ohlone descendants after 1950, and no evidence after 1980 that any of the families in the petitioner demonstrated evidence under 83.7(b)(1)(ii) and (iii).

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*Organization of response to and leadership of California Claims Activities*

Much of the information submitted by the petitioner deals with political issues. It submitted virtually no evidence for social interaction, social relationships, and other evidence described under 83.7(b)(1)(i)-(viii). In the narrative, the petitioner claims that most of the evidence under 83.7(b) is under 83.7(b)(1)(ix), "political influence," however, this kind of evidence may not be used to demonstrate community at present, only "historical political influence. . . shall be evidence for demonstrating historical community." The evidence in the oral histories about claims activities and the preservation of the Ohlone cemetery, when combined with other evidence in newspapers, documents, and other sources, is the only source of information about the petitioner's and the "larger family's" interactions and social relationships. The following discussion concerns political activities of the petitioner's ancestors but appears in a discussion under criterion (b). However, it should also be read and applied under criterion (c).

The oral histories often mentioned Trinidad Marine Ruano's name in association with activities associated with the California Judgment in the mid to late 1960's. For example, Ruben Calles remembers that people used to stop by his grandmother Trinidad's house and ask her questions about the BIA, roughly at the same time as the Ohlone cemetery transferral was an issue between 1965 and 1971. Her daughter credited her with enrolling people:

She went running around getting everyone to put their name on the Indian rolls. All of 'em. If it wasn't for my mother, none of them (family) would have their names on the Indian rolls, including Rosemary's [Cambra] mother! None of 'em, if it wasn't for my mom. . . and she didn't drive. . . she took public transportation and. . . we all drove when we were little to take my mother where she wanted to go. (Olsen 1986)

The petitioner states that in 1964, Trinidad Marine attended a BIA meeting in Salinas and voted on the California Indian Judgment fund, and that a month later, her children voted on it (Petitioner Ex. J, II, 1998). No documentation or oral history indicates that Trinidad Marine officially or unofficially represented a group larger than her immediate family and the survivors of her deceased brothers. Joel Arellano indicated that his father organized his family. He said that his father called him and said "bring the kids' [birth] certificates, and I'm going to sign you up." According to Joel, his father told him that there was land that had belonged to "our ancestors" and he said there would be a "second pay-off," but Joel believes he never received that money (Leventhal *et al.* 2000).

Trinidad wrote in 1970 that she had delivered papers in 1946 to nephews who, although they enrolled themselves, never enrolled their children. In 1966 she and her children voted to accept the California judgment. On October 23, 1970, Trinidad Marine wrote to the BIA on behalf of her siblings' children.

. . .there is about 50 nephews and nieces that are not enrolled and they don't have the sense enough in their heads to try and find out how to enroll

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themselves or to find out who the Indian ancestors were. Do you think that I should try and get them to enroll themselves if they still can, or shall I just forget about it. I know they could use the money okay, because none of us haven't any amount of wealth. (Trinidad Marine Ruano 1970)

This letter clearly showed Trinidad trying to organize her own children and the family of her deceased son Yrineo to apply for the judgment fund and helping her deceased brother's heirs. She listed these people in the first paragraph: "I thank you very much for your interest helping me to get my niece and her daughter and children enrolled & also my deceased son Yrineo's children enrolled also my daughter." She also mentioned her daughter Lola and son Lupe Ruano and her niece Beatrice Marine Teller and Dario Marine's children. Attached to the letter were the applications of her children Faye [Thompson] Quillette, Athena, Ed, and Michael Ruano and the posthumous application of her brother Dario Marine (Ruano 1970).

A memorandum in Trinidad Marine's [Ruano] BIA file (#20025) indicated that she had previously written a letter dated July 25, 1969, to the BIA "mentioning two brothers deceased but not mentioning date of death. Her letter of 10-23-70 mentions date of death as 1-4-65," in reference to Lucas Marine's death date. The memorandum noted that a return letter "to her Dec 1970 advises her the law does not permit his [Lucas'] enrollment."

Also in December 1970, the BIA wrote a letter to Dolores Galvan with forms asking her to enroll. They said that Trinidad had mentioned her and given her address to them in an earlier letter. Between 1969 and 1974 Trinidad Marine may have helped the heirs of her brother Dario Marine receive distributions in 1974 of his California Judgment Fund Estate by writing letters and obtaining documents. But her role in the heirship determination is ambiguous from the written record, and nothing in the documents mentioned that she was acting in a capacity beyond being an aunt of the heirs or sister to the deceased. Both surviving Marine siblings, Trinidad Marine and her eldest sister Dolores Marine Galvan, appear listed with Dario's living children and his deceased children's children as "Interested Parties" in the "Notice to Determine Heirs" of April 2, 1974 (Finale 1974). A month earlier, Dolores Galvan had responded to a BIA request for information that she did not know the address of Dario Marine's children. Her son Philip Galvan signed her affidavit.

Although oral histories referred in passing to pot lucks at Trinidad Marine's home to discuss claims, the petitioner did not submit detailed evidence to indicate that Trinidad was a recognized leader of the "larger family." She did not mention her Arniija stepchildren, some of whom the record shows applied individually, or any descendants of her sisters Victoria, Ramona, or Mercedes Marine in her correspondence. She did not mention a contemporary organization or group to indicate that her letters represented the efforts of an Indian entity. However, the correspondence showed that Trinidad had a long term interest in claims, and several people in the oral histories associated her with this interest and described her as a knowledgeable source to them as they attempted to fulfill the government's requirements for receiving claims.

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Dolores Galvan, with her son Philip's help, seemed to play a role very similar to Trinidad's for a different group of people. Like Trinidad, she wrote letters on behalf of her seven living children, and her grandchildren and also aided descendants of Ramona Marine. She also provided information about a deceased relative. In addition, Ramona's descendants listed Dolores Marine Galvan as a source for verifying their ancestry and Dolores Marine Galvan provided an affidavit for at least one family of Ramona's descendants. Joel Arellano (Mercedes Marine descendant) said about Rosemary Cambra's mother's (Ramona Marine descendant) family "her family was always involved....I remember her at Trini's. They had a pot luck there. Everyone in their own little families" (Leventhal *et al.* 2000). However, when Lydia, Joel's sister, and Rosemary met at the funeral many years later, they recognized each other but could not remember where they had previously met, according to Rosemary (Leventhal *et al.* 2000). This implies that they had lost contact between at least 1971 and about 1996. This reflects the post-1971 separation that characterized the major extended families which comprise this petitioner (Olsen 1984).

The evidence available indicates that families that were enrolled under the California Judgment Act organized their responses family-by-family. Although Trinidad Marine may have provided information to her nieces and nephews, there is little evidence that a single individual or a group of people organized either the Marines or the "larger family" of the petitioner's ancestors which would have included her Armija stepchildren and their relatives. The Armija stepchildren to Trinidad Marine applied on their own. Peter Juarez (a Santos who father was adopted by Maggie Pinos) applied for himself and his children and was originally rejected because he filed the wrong roll number of his grandmother. He corrected the roll number and his family eventually qualified. The various applications in the submission seem to pivot primarily around family groupings of individuals who descend from a common ancestor on previous California rolls, and who name that ancestor on their application forms. The record did not demonstrate that a person or group directed or organized this effort on behalf of the "larger family" of Ohlone descendants.

### *Record-Keeping*

During this same period in the 1950's and 1960's, Rosemary Cambra remembers that the surviving second generation Marines, her aunts Trinidad and Dolores and "the uncles" (Lucas and Dario Marine) would visit and do a headcount of everyone, including the children and babies. These visits took place in the holidays. She said that her aunts Trinidad and Dolores visited Rosemary's mother and her mother's sister Margaret. Rosemary Cambra now believes or seems to imply that these headcounts had political significance because it was "important to be tracking" (Leventhal *et al.* 2000). However, keeping count of some 50 nieces and nephews may have been a familial responsibility of aunts and uncles, rather than the political activity of the leader of a larger entity. There is

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no evidence that this information, once collected was utilized in any way or was recorded in a central location.<sup>30</sup>

### *The Events Leading up to the Transferral of the Ohlone Cemetery to the Galvan Family*

During the same period that the California Judgment Act enrolled individuals, a second issue caught the attention of the Marines and other Ohlone descendants. These activities began with the preservation of the historic Ohlone cemetery as early as 1963 and ended with the transferral of the cemetery property to the Galvan family in 1971. These events provided the only evidence that the petitioner's ancestors attempted concerted group action between 1927 and 1984.

The petitioner argued in the Proposed Finding that the Marine/Galvan and Armija/Thompson families worked with the AIHS "collectively" to protect and secure title to the historic Indian cemetery. The Proposed Finding did not find sufficient evidence that this was a collective effort on the part of the petitioner. The oral interviews provided for the Final Determination provide context for the documents previously submitted on this topic and show that long-standing personal disputes between relatives may have blocked concerted action by the "larger family" or the petitioner.

Virginia Massiet said in an interview that she went to a cemetery clean-up which she believed occurred in the summer or spring of 1962 or 1963. She based this estimate on the age of her daughter born in 1961. She named some people who were there, including "all the brothers," referring to the Galvan brothers, who were also Virginia's in-laws. The Galvan brothers' sister Dorothy Lamiera was not there, according to Virginia, because the brothers knew she was busy, but her non-Indian husband came (Leventhal and Cambra 2001). The petitioner states that Dottie Lamiera had been attempting to clean the cemetery on her own before this group clean-up occurred. Virginia Massiet said that the group at the cemetery clean-up spent the entire day there with children. In response to questions from an interviewer about the nature of the event, she remembered that they ate sandwiches (Leventhal and Cambra 2001). She said "the brothers got organizations like the boy scouts to come to the clean-up" (Leventhal and Cambra 2001). She named Ben Galvan as the leader of this effort (Leventhal and Cambra 2001). Dorothy Lamiera also named her brother Ben as the leader (Leventhal and Cambra 2001).

According to Virginia Massiet, other members of her own family in addition to Jenny Galvan were there, including Mike Archuleta, the "Apache" husband of Mary Munoz Archuleta, Lupe Mora Massiatt and her husband George Massiatt, and Virginia's husband Paul Massiet<sup>31</sup> (Leventhal and Cambra 2001). Thus, Virginia Massiet named

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<sup>30</sup> The petitioner did not show, as the Mohegan petitioner did, decades of birth, death and marriage announcements, filed in a building or "museum" housing documents and artifacts associated with the petitioner.

<sup>31</sup> Paul and George are brothers; they spell their name differently.

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descendants of her grandmother Victoria Marine, and descendants of Dolores Marine, who was the mother of the Galvan brothers.

Joel Arellano also remembered cemetery clean-ups around the mid-1960's. The petitioner's researcher interviewed Joel and his sister Lydia Arellano in 2000 (Leventhal *et al.* 2000). Joel Arellano remembered that Dario Marine (1888-1969) came to him and said, "We've got a cemetery and we need help. White people want to take over and your grandparents are there" (Leventhal *et al.* 2000). Joel said that he started taking his family to clean-ups, and he referred to a "little house there used. . . to have meetings."<sup>32</sup> He did not elaborate on these "meetings" in the interview. Based on the age of his first child, Joel Arellano believed that this meeting occurred sometime between 1958 and 1965. He was unsure of the date.

Joel Arellano, like Virginia Massiet, also remembered that Philip Galvan was present at these meetings and that Trinidad Marine, whom he visited socially, brought her family. Joel Arellano said that a Marquis family attended the meetings at the cemetery, but he seemed unsure of the name and asked tentatively "Marquis?" or "Marcus?" and wondered if anyone in the interview knew them. Ramon and Dorothea Musquez were the godparents of Mary Munoz-Archuleta, and Eddie Thompson, according to documents, and to Virginia Massiet, but little other information about them is in the record to determine if they are the same people Joel Arellano saw at the cemetery clean-up and if they are Indian.

The petitioner stated that an "Ohlone Memorial" took place in the spring of 1963 (Petitioner Ex. J, II). A newspaper ambiguously reported that the deed for the Ohlone Indian Cemetery was given to "An East Bay Indian Tribe" and also reported that Mrs. Rupert Costo stated that the "Ohlones" were "the first authentic and identifiable American Indian tribe in the Bay Area," and "about 75 of the Indians from four ancient families so far have joined the tribe formally" (unidentified newspaper article "Cemetery in E. Bay Given to Indians" in Petitioner Ex. J, II). This report appears to refer to later events and to date to 1971, even though the petitioner's "skeletal time line" dates it to 1965.

Several individuals in one interview discussed a controversial public meeting probably held in 1965 which was documented in the submissions for the Proposed Finding, and closely linked to the American Indian Historical Society (AIHS). Their descriptions agreed that there were "a lot of people" at the meeting. Some were only children or teens when the meeting occurred in 1965. Ruben Calles (b. 1951) remembered the heat of the night and Concha Rodriguez (b. 1930) remembered that there was standing room only (Leventhal and Cambra 2001). Faye Thompson remembered that Albert Arellano brought all of his children (Leventhal and Cambra 2001), but she did not believe that her Thompson cousins attended, although she elsewhere named the Thompson's half-brother Henry Marshall, an Armija descendant. Ruben Calles remembered that after the meeting was over a number of people stood in the parking lot talking. Ruben Calles said that his

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<sup>32</sup> Unfortunately, the interviewer changed the subject to earlier events and gathered no further information about these meetings.

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grandmother Trinidad Marine Ruano said to Henry Marshall and "cousin Albert,"<sup>33</sup> "I can't believe he's [Philip Galvan] getting so upset" (Leventhal and Cambra 2001). Faye Thompson stated that Mickey Juarez (Santos descendant currently active in the petitioner) and her parents [Alfonso and Pauline Juarez] were at the meeting.<sup>34</sup>

Ruben Calles asserted that even if someone did not attend, word got back to them about what had gone on at the meeting (Leventhal and Cambra 2001). The word that got back was that the Galvans, who Ruben said had called the meeting, had drawn "a line in the sand," about the cemetery. Although Ruben's statement is ambiguous, he seemed to be saying that the Galvans called the meeting for the purpose of taking control of the cemetery and others in the family objected to this plan (Leventhal and Cambra 2001). According to Ruben who was 15 or 16 when the meeting occurred, the disagreement was that "we wasn't playing along with them." Faye Thompson says that the Galvans knew that Trinidad Marine disagreed with them (and also Henry Marshall and "cousin Albert")<sup>35</sup> (Leventhal and Cambra 2001). The meeting was contentious, according to Faye Thompson. She said that Philip "made himself chairman of the board. Him and his family Andy and Michael - That was the council. None of us was included. I'd say I felt like we were just there to say, 'you're in charge, you're alone.' He never recognized any of us" at the meeting.

Faye Thompson said that this meeting did not resolve the issue of leadership of the cemetery group in the minds of several participants, but "ended the conversation and the meetings." Ruben Calles stated that "there was no other meeting. The line was driven by the Galvans." Ruben believes that there should have been another meeting but no other meetings were held. A woman whose voice was not identified but who may have been Concha Rodriguez said that her mother, Enos Sanchez and Bob Sanchez [Ramona Marine descendants] "got mad with him [Philip Galvan]. That's why [Sanchezes implied] we never went back."

Amplifying on the issues that were contentious, Ruben Calles characterized Philip Galvan's actions as self-appointed: "He was getting the cemetery and to be caretakers. He thought that he should have been the head person." Ruben remembered the people in the parking lot after the meeting, saying that while Philip Galvan wanted to be the spokesperson, he didn't really take into consideration what the other "tribal council

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<sup>33</sup> Probably Albert Arellano.

<sup>34</sup> She also said to others attending the interview, "I don't know if you guys remember them." [Alfonso Juarez is Erolinda Santo's son. Juarez's aunt Maggie Pinos, who lived in Centerville, had died in 1960. She appears to have been one of the primary connections of the Marines to her sister's family in Stockton.]

<sup>35</sup> She names her mother and two uncles.

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persons” said.<sup>36</sup> Ruben said he was personally disturbed that his grandmother Trinidad Marine whom he said was the oldest at the time was not included.<sup>37</sup> Ruben noted that his older cousins, including Henry Marshall and cousin Albert asked for Trinidad Marine’s opinion of events. Trinidad answered that “overall, she did not think Philip had the Ohlone tribe in his best interest” (Leventhal and Cambra 2001). But Ruben thought now that the cemetery should have been owned by everybody. He credited Trinidad Marine as a person of authority who was pushing for a more democratic or representative process and ownership.

Ruben Calles also stated that his grandmother Trinidad Marine believed that “with the cemetery, the Ohlone would never be forgotten.” Thus, this issue is closely tied to the heritage image projected by the Ohlone descendants. Ruben Calles connected this argument about heritage arising in 1965 onto the argument apparent in the “larger family” today when he stated that it is not true that “only the Galvans know what the history is. He is not the last Ohlone Indian.” This may be a reference to some newspaper articles which have named Philip’s mother as the last surviving Ohlone Indian when Ruben’s grandmother Trinidad was still alive. Ruben asserted that “there was a council of grandmothers. . . the same group that is still on our side. The same group that went to that meeting.” He did not name who he was referring to. It was unlikely that he meant women in the second generation which in 1965 had only two female survivors.

Philip Galvan continued his activities with the American Indian Historical Society (AIHS) after the meeting. In a letter dated July 16, 1966, he wrote:

We re-established our tribal entity under the banner of the American Indian Historical Society. We have been unwilling. . . do not now wish to engage in the usual politics of Indian groups. We wish to live in peace, to educate the public about our people, and educate ourselves in higher cultural and professional attainments. We want to maintain the remaining evidence of our culture and history. . . Two Ohlones are members of the Board of directors of the Indian Historical Society. Twenty-three of the tribal members are members of the Society. I am the secretary- treasurer . . . we have no reservation. We never made application for a reservation.

It now appears in the context of the new oral history submissions, that Philip Galvan and his family were not successful in gaining the backing of other Ohlone descendants and Philip went his separate path. He controlled the cemetery but did not organize a cohesive group to work with him. Because the points of view of Philip Galvan pertaining to the disputes in the “larger family” are not part of the record, the BIA could not determine who may have worked with him or supported his position, or even what his position was

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<sup>36</sup> Calles is one of the only persons interviewed, other than the petitioner’s researcher, who uses terms such as “tribe” and “council” when discussing these historical events.

<sup>37</sup> Dario and Dolores were still alive if the meeting was held in 1965, and both were older than Trinidad Marine.



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at the time. The limitations of the evidence submitted do not allow many conclusions about his behavior, only conclusions about how others viewed his actions. No other person was again named as leader of the "larger family" for at least the next fifteen years.

In the context of the oral histories, it appears that the Ohlone contacts list may represent a fairly accurate listing of some of the people who are known to be part of the 1965 cemetery meetings, and also discussed among themselves the California judgment activities that were going on at the same time. The individuals on the list are grouped by nuclear family. The extended families represented included the descendants of Dolores Galvan, and the Juarezes who were descendants of Erolinda Santos' son Alfonso (Erolinda was Maggie Pinos' niece). Descendants from Erolinda's other children were not on the list. Two individuals who also descended from Pinos' Armija cousin and Ernest Thompson, Sr., appeared on the list, but are not enrolled with the petitioner currently. The Arellanos, who were interviewed about attending the meeting, the Sanchezes, Lopezes, Martinezes, and Jaurequis are Ramona's descendants. Her descendants are widely represented on the list and in the petitioner. This is the current chairman's family.

Two extended families are notably absent from this list. First, the descendants of Trinidad Marine including all but two of her Thompson stepchildren are absent. Faye Thompson, Trinidad Marine's daughter, says that she never heard about the "tribe" being organized in 1965-1971 in response to a question from the petitioner's researcher concerning her family's absence. Faye says "they never contacted us. We didn't know anything about it." Secondly, virtually all of Victoria's numerous descendants are absent from the list except for Jenny Galvan and her mother. They have a relationship through marriage to the Galvans. Also no descendants or in-laws of Dario and Lucas Marine are present on the list, but are represented in the current enrollment. No descendants of Elizabeth Marine, who had only one child, and no descendants of any of her Nichols in-laws, the children of Susanna Flores (whom the petitioner believes is Avelina's sister), are on the list in 1971 or enrolled in the petitioner.

The absence of Trinidad's family in the context of their dispute with the Galvans is predictable. Ruben Calles, Trinidad's grandson, was particularly outspoken in his comments discussed above about Philip Galvan's actions at the 1965 public meeting on the Ohlone cemetery. In one oral interview, Rosemary Cambra, responded to Ruben:

When I got involved years later as a grown person -- When I started to talk to my mother about this -- about why they don't want to sit down and talk, why they want to fight. My mother said, "they don't understand that it's part of family, that it's more than them." This whole issue affects everybody. For years, people would say the fight was between me and Phil [Galvan] or between me and Andy [Galvan]. Even today, some of the Galvans will say the issue is between Phil and Rosemary and it's over money, or it's over cultural resources. Or the issue is between Ruth [Thompson] and Rosemary and its us against them. The line was drawn by my [great] aunt Dolores [Marine-Galvan] and my [great] aunt Trinidad

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[Marine Thompson-Ruano] and my mother [daughter of Ramona Marine] took a position, not being a part of it of either side. (Leventhal and Cambra 2001)

Faye Thompson responded to Rosemary Cambra's analysis which placed the latter's extended family descending from Ramona in a neutral position forced to choose one side or the other when confronted with major issues. Faye Thompson's perception of the split in the petitioner is that the Galvans have not respected the other people. Her view of the "Galvan thing" is that

they really don't know the past. Cousin Philip [Galvan], his mom [Dolores Marine Galvan] was never associated with Mom [Trinidad Marine], cousin Maggie, cousin Lola, cousin Bobby, cousin Enos [the Sanchez children of Ramona Marine], cousin Albert [Arellano], cousin Tommy [Garcia?]. [Arellano and Garcia are the children of Mercedes Marine]<sup>38</sup> They never really associated with us. They have no knowledge of who was here and who wasn't here. And they put down lines because they knew we knew what was here. Mom registered [for the California Judgment] all these people, and Aunt Lola had nothing to do with it. So they drew a line and don't let anybody in there [so that] we can't contradict any of those statements they're giving out. They do not know anything about the family.

The split between Trinidad and Dolores is long-standing, according to her husband Joe Ruano who traced the beginnings of the argument to 1938 and 1939, and an argument that occurred based on personal relationships at that time (Olsen 1984). Trinidad Marine's daughter traced it to an even earlier period. However, by the 1960's, this personally defined quarrel took on political ramifications that infected the actions of the "larger family" and may have contributed to Dolores' children, particularly Philip, taking over ownership of the cemetery.

It is difficult to determine whether the incapacity of the group to take control of the Ohlone cemetery had to do with designs on the part of the Galvans, difficulties they had in trying to get the group to meet some sort of consensus, combined with the pressure from the Costos that the AIHS 1971 offer was their last chance to own the Ohlone cemetery, or a general lack of consensus about goals in the "larger family," and a general failure of leadership. Interviews with the principal actors in this dispute about it would probably further explain events.

The quarrel was exacerbated when Dolores Galvan spoke publicly about her Ohlone heritage without support from other Ohlone descendants in the 1960's and 1970's. She and her family made statements and representations to the press, in funerals, and in public forums others viewed as inaccurate or embarrassing. One of Trinidad Marine's

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<sup>38</sup> Victoria's descendants are not on Faye's list. Her descendants have interacted with the Galvans.

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daughters believed that Dolores Marine Galvan's son Philip wanted to monopolize and control the group's image or even purposefully misrepresent. To support this assertion, another of Trinidad's daughters stated that Malcolm Margolin "said that he wanted to talk to my mother [Trinidad] when Phil Galvan got into it. But Phil Galvan told him that my mother was a very religious lady and she didn't want to talk to anyone. That's what he told him." The daughter believed that her mother's views on religion would not have kept her from talking to anyone. Her son who was present at the interview agreed. Thus, a conflicting view of Ohlone heritage and the right to represent it publically has been a significant focus of past arguments and continues to be raised at present.

Ruth Thompson Orta [Trinidad Marine's daughter], including her daughter Roberta, do not participate with this petitioner and have not enrolled. In one interview her Ruth Thompson Orta's sister Faye said that during the claims period, Philip Galvan had talked to her and said that all she had to do for claims was name his mother as a relative. Faye became outraged at this and told him that "I am not going to claim through your mother. I will claim through my own mother." More recently, another member Kathy Perez (a Santos descendant living near Stockton) parted with the petitioner, apparently unwilling to acquiesce to the authority of the petitioner's organization in areas of heritage, particularly concerning her Central Valley ancestry. The petitioner did not submit oral history on this recent argument.

Other petitioners have displayed disagreements about their history. During the 1950's, the Mohegans found it difficult to deal with a self-proclaimed leader who publically spoke about their heritage to the dismay of other members. The recent Pequot cases disagreed over basic facts about their history and years of factional dispute was justified by each faction's views of their history. The evidence available in this case, however, is too limited to determine if these arguments over heritage are significant to the membership, or are widespread and involve a representative portion of the membership.

### *Growing Distance Among Extended Families*

Apparently the disagreement profiled by the cemetery dispute may have altered interpersonal relationships within the "larger family" after 1971. During the 1970's, Philip Galvan and Trinidad Marine may have represented Ohlone descendants to the public in the area of claims and in response to the American Indian Movement (AIM) takeover of Alcatraz. But no evidence demonstrated that they were part of a cohesive grouping or were cooperating with one another. It also did not show that they were leaders of separate groups. Other events, including the deaths of Maggie Pinos in 1960, Erolinda Santos in 1963, Lucas Marine in 1965, Dario Marine in 1969, Dolores Marine in 1982, and Trinidad Marine in 1986, also created distance among the Marine and Armija extended families. Contact between second, third, and fourth cousins, which older relatives previously maintained, grew less frequent and less significant over the years, especially after most individuals who had been associated with the rancherias as children died. For example, one woman (b. 1930) who was 18 years older than her sister (b. 1948) said that she had seen many family members as a child, but her younger sister rarely saw her Ohlone relatives. This indicates that after 1950, her family members were

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in less frequent contact than previously. After the cemetery meetings in 1971 until 1984, the lack of documentation in the record appears to reflect the growing social distance among the major extended families. In a 1984 speech to the California Heritage Commission, Rosemary Cambra's mother Dolores Sanchez, indicated that the extended families were separated. She said that she represented "my family," and explained that "this is only one lineage of many of our people. The Galvans, our first cousins, have their separate lineage."

In Faye Thompson's view, the cemetery dispute soured the relationships among the family segments comprising the "family." Before the dispute, Dolores Galvan visited and socialized with her brothers and others. Her husband, Filipe, visited Trinidad Marine and her family. Faye Thompson said that "even Philip" [Galvan] used to come visit her mother Trinidad and the kids," and Trinidad Marine's Thompson daughters spent several weeks each summer with Dolores Galvan's daughter. But, after the land was transferred, the situation between some of the Galvans and others in the family changed. According to Faye Thompson, her mother "liked to take flowers to cemeteries but after the Galvans took over the Indian cemetery, they weren't allowed up there" (Leventhal and Cambra 2001). Virginia Massiet indicated that her in-law Ben Galvan had never been friendly, even in the 1950's: "Ben [Galvan] wouldn't go visit with anyone else. He didn't like visiting, even with his wife's family. . . Ben was cordial, though." Virginia said that she only remembered visiting her in-laws a couple of times, although the evidence indicates that she attended many events with the Galvans.

### *Events Following the Deaths of the Marine Siblings*

Joel Arellano says that before her death in 1986, Trinidad Marine said, "don't give up on recognition and land funds," but no documentation in the petitioner's submission deal with recognition and funds in the early 80's. Joel Arellano believes that her daughter Ruth Thompson wanted to take up leadership after her mother died in 1986. "She wanted to take up after her mother as head of the family. They [unidentified] were clashing among themselves." Ruth Thompson and her immediate family are not enrolled in the petitioner. The remainder of Trinidad's descendants and stepchildren [Armijas/Thompsons] are enrolled, even Faye Thompson who is outspoken in her criticisms. No interviews discussed whether Ruth Thompson Orta may be involved with the Galvans but it seems unlikely.

The petitioner gives credit to Trinidad Marine, particularly in reference to claims work, but names Dolores Marine Galvan when discussing the cemetery:

It was the American Indian Historical Society who worked beginning in 1964, with Dolores Marine Galvan and her family and the other related Ohlone families to save the Ohlone Indian Cemetery from destruction. This is why Dario Marine came to the gathering of the families on August 8, 1965 and spoke about which family members were buried at the cemetery. (Newsletter 1997)

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Even as Philip Galvan's authority was being questioned by other Ohlone descendants, an outside source identified him as the Ohlone leader. In 1971, Philip Galvan's name was listed on an archaeology proposal for the South Bay area seeking "a grant to cover PR and promotional work by Phillip Galvan, active leader of the Ohlone Indians."

### *Activities leading Up to the Founding of the Petitioner's Formal Organization*

It is not until 1982 that the activities of Rosemary Cambra begin in the record. The petitioner's current researcher attended a meeting January 23, 1982. He has submitted notes from that meeting as new evidence. This note is the earliest date documenting the current chairwoman's activities. As hurriedly scribbled notes, the phrases are sometimes disjointed but they are informative. He wrote that Rosemary Cambra spoke in an almost "altered state" with "deep emotional appeal." She mentioned "dedication to her mother" and "revitalization." Alan Leventhal describes Rosemary as the "real driving force behind this movement." He says it is the "first meeting" and that the "main idea was to introduce people to the idea of their heritage and benefits of incorporation -- eg. BIA college grants." He writes that 25-30 people were at the "Ohlone-Costanoan" Indian Center..several families attended." He describes these peoples' issues, mentioning "SC1-128 artifacts," in reference to an archaeology site. He also writes "Many of the people present were rejected as California Indian, Costanoan or Ohlone with the BIA as early as the late 1940's - 1950's California Claims decision and 1960's -- People rejected apparently were eligible for hunting and fishing licences for free until this year."

Alex Ramirez, not a part of the current petitioner, attended this meeting and used a map from Galvan's publication from the AIHS publication *Indian Historian* to document some of the Ohlone "triblets." He also put together a series of by-laws in order to establish a "tribal council." The petitioner's researcher writes, "Some people had problems with calling themselves Ohlone or Costanoan. It was decided that because of contemporary trends and the naming of the cemetery, college and Ohlone Way and the new trends in local socio-political structure, people agreed to identify themselves as Ohlone (Costanoan) on formal letterhead." Alan noted that the individuals present at the meeting were not political, and were nice to him "even though" introduced as an archaeologist. He also noted a "healthy interaction" among the attendees. The people reviewed the bylaws and offered amendments.

Alan Leventhal related a discussion he had with Rosemary Cambra a week later about the "problems confronting the Ohlone and Chairman Alex Ramirez." They also talked about a "site near golf course." Alan writes, "Rosemary told me that Roy Marquez had a dream he told his mother. As he climbed up he saw unfriendly people walking down. His mother warned him and his two sisters not to go near the site. Anyway Ray did visit the circle of circles and according to Rosemary shortly afterward -- the cultural association got busted and dissolved."

In October of 1992, Philip Galvan attended a meeting for input from Ohlone and other local Native Americans on land use of the Ohlone Village and burial site. This meeting

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was sponsored by the East Bay Regional Park District. Rosemary Cambra and her mother Dolores Sanchez-Franco also attended this meeting.

In 1983, Nancy Olsen wrote that she and Rosemary were denied use of the mission records. By 1994 she appeared to be working with Ruth Thompson Orta, whom she interviewed in the same year. Ruth and Rosemary seemed to be working together, not only because they were both connected to Nancy Olsen, but also because of a draft report which stated,

Rosemary Cambra and Ruth Orta of the Ohlone Families Consultant Services, who are descendants of the Indians who had lived in the Sunol-Pleasanton area, have told me their grandparents were living in that area until 1911, at which time they and others of their group were forced to move. Because of the hardships involved, the younger children of the Cornate and Sanchez families were placed at the Mission San Jose until they reached maturity. Today, there remain several extended families who can trace their ancestry to the Mission Period, since the family names of both Cornate and Sanchez appear on the early mission registers. Ohlonean people, possibly descendants of the Tuibun and other local tribelets, have not disappeared, but are still living in their former tribelet homeland.

This report made no mention of a Muwekma organization, or any other organization other than "several extended families."

### *Political Activity 1990 to 2000 as evidence under criterion (b)*

The BIA analyzed the patterns of activities of individuals in their involvement with the petitioner for the period 1990 to 2001 in an attempt to determine whether new information or evidence supplemented or changed the Proposed Finding. The information available in the record for the Final Determination continues to demonstrate that the petitioner in a formal sense has evolved since 1984 when a small handful of individuals founded an archaeological resource monitoring firm, so that today the membership is more than 400 individuals from various family lines. Groupings of the petitioner's membership do seem to communicate with the petitioner's office. This organization, and the many other organizations discussed in the Proposed Finding, is only the formal organization of an entity the group's members informally refer to as the "family" in conversation.

The "family" in the sense the petitioner uses this term is actually larger than the petitioner, as defined by its membership list. Several major players are not members of the petitioner. With the exception of oral histories, the voices representing other positions are muted in the petition materials. The petitioner's narrative states that making these contrary positions and this argument public would endanger the integrity of the petitioner itself. The petition narrative and documents discuss the disputes using

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generalities only. No one is named, the issues and sides are not explained, and events internal to the "larger family" are not described.

It is difficult to analyze the petitioner's social and political organization because discussion and evidence internal to the petitioner concerning the disputes or even diverse points of view have been systematically left out of the petition, with the exception of newspaper articles. Some of the most promising evidence of socio-political activity is treated in only the most general narrative discussion. Newspaper articles referring to the dispute from an outside perspective of these arguments were presented in the submissions for the Proposed Finding. People generally argue or discuss issues that they find important and significant to their lives. Thus, these arguments and how they are processed could be important in demonstrating that the petitioner meets criteria (b) and (c). Oral histories were submitted for the Final Determination which revealed not only the social context of interactions among the various extended families and the "larger family" members, but also the existence of personal disputes, which appear to be long-term. This evidence generally pertained to events before 1971. The petitioner submitted little if any current evidence about these political processes and conflicts.

The Proposed Finding questioned the relationship between the archaeological monitoring firm established by a small segment of the descendants of Avelina and Raphael Marine in 1984, and asked how that organization transformed itself into the petitioner. The petitioner's response was overly general. It contained no discussion or new evidence of decision-making, the role of the "council," and the representation and process for selecting the leadership which would demonstrate that the leadership has followers, to the extent that there is a bilateral political relationship in which the leaders are influenced by the membership and vice versa.

Those with views most antithetical to or competitive with the petitioner's leadership leave or do not join the membership of the petitioner. Processes for dealing with alternate ideas and political positions without breaking apart do not exist in the petitioner. Thus, the petitioner resembles a family owned firm, not a community with decision-making processes. Little if any evidence was submitted to show that the leaders consult the membership before embarking on new activities, and incorporate the views of members into the functioning of the petitioning group. Therefore, although the petitioner is led by a handful of office-holders who claim to act on behalf of the entire group, there is insufficient evidence that they actually make decisions after consulting the membership. Such petitioners, without evidence of bilateral political decision-making, including the Miami of Indiana, have been rejected in past acknowledgment decisions.

No new evidence indicates that a widely representative group of individuals was participating in the petitioners' activities in the first half of the 1990's. The new evidence continues to indicate that two family segments of the "larger family" and fewer than a dozen individuals controlled the activities between 1984 and 1994. Most active were the immediate family members of the chairman of the group Rosemary Cambra, including her sisters, her mother, an aunt and two first cousins. These eight individuals descend from Ramona Marine, who established an "extended family" representing just under 25

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percent of the petitioning group. Also involved continuously with this segment are three individuals from a second extended family line descending from Avelina and Raphael Marine, that of Dolores or "Lola" Marine Galvan.<sup>39</sup> No evidence indicated that, before 1994, individuals representing any other part of the current membership were involved in activities of this organization. What the oral histories contributed, however, is a sense that many of the petitioner's active members, generally 50 years old and older, know each other. The new evidence revealed little contact among younger members.

Since 1994, the record shows that a great effort has been made to bring into the formal organization representatives from other parts of the "larger family." After 1996, the descendants of Dario Marine and Catherine Peralta attended a few events and 13 enrolled. Some of Mercedes Marine's descents, including the family of Joel Cota Arcellano, Sr., became very active since about 1998 and since then, a woman in that family took a job with the petitioner. Victoria Marine's descendants are extremely numerous and constitute roughly one third of the membership today. A flurry of activity among some of this group in 1998, however, has waned in recent years and this very large extended family is now less involved than previously. Lucas Marine and Elizabeth Marine have no descendants in the current membership, and may not have living descendants. Elizabeth's son, Lawrence, died in 1999. He never enrolled during his lifetime.<sup>40</sup> At least forty of Trinidad Marine's descendants enrolled after the Proposed Finding. Her descendants have apparently had a simmering feud going on with some of the petitioner's named leaders.<sup>41</sup> While on the current membership list, they are not shown participating in group activities as much as some other extended families. In the last two years, Trinidad Marine's stepchildren by her second husband Ernst Thompson Sr., gained representation by the appearance of Karl Thompson on the council. His siblings and their children and grandchildren enrolled in the membership. The Thompsons descend from Magdalena Armija; they are not Marines. Half of the Santos extended family, which began enrolling in 1996, left the petitioner after the Proposed Finding, leaving approximately half of their members still enrolled in the petitioner's organization.

### *Lack of Evidence*

Lack of evidence is a major problem for the petitioner in demonstrating it meets either (b) or (c) in the present-day. Rosemary Cambra made statements on one oral history audiotape that indicated that she did not want to expose arguments within the "family" to

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<sup>39</sup> Philip Galvan does not participate. His sister Dorothy has been extremely active at times. It should be noted that this small group overlaps significantly with the people Dolores Galvan dealt with in the California Judgment Act Activities, and they appear on the AIHS contacts list.

<sup>40</sup> Lawrence Marine was interviewed by Nancy Olsen and was part of the "larger family."

<sup>41</sup> Trinidad's descendants were interviewed by Nancy Olsen and by the petitioner.



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the BIA. Upset that BIA researchers had discussed these disputes with a non-Indian local government employee familiar with the Ohlone descendants, Rosemary Cambra stated, "I told Philip that what he did in the 1960's would come out. There are witnesses. He'll never change." She believed that Philip Galvan would blame her for raising these issues with the government which she had not done. This quote implied that Rosemary had chosen not to submit evidence concerning these arguments with the petitioner's submissions. However, because no documentation about how even the decision to submit or withhold evidence was made appears in the petition, it is impossible to determine that the group actually followed a decision-making process on this issue.

The presentation of image, heritage, and history of the Ohlone descendants is a bone of contention. Ruth Thompson Orta believed that the history presented not only by Philip Galvan but also by Rosemary Cambra (at the time of her interview, there wasn't really a formal Muwekma organization) was erroneous. In 1984 she said that she did not believe the Indians of the Bay Area existed any more. She referred to blood degree as a source of her authority, pointing out that she was of the third generation of Marines and had a higher blood degree than fourth generation Marines. Philip Galvan was not interviewed. The only source of information about him is what others say. One family group believed that his point of view has changed and that he has been inaccurate when representing Ohlone history.

Authority to represent heritage for Ohlone clearly rested at least in part on the activities and services Ruth Thompson Orta, Philip Galvan, and Rosemary Cambra's parents performed for the Ohlone descendants or the "larger family." Cambra claimed to represent a larger family than just her own in the early 1990's. The Proposed Finding laid out how these claims were met by the general public, archaeologists, and other Ohlone descendants working in the archaeological monitoring field. At present, however, Rosemary Cambra also claims the authority to represent Ohlone heritage based on the 400 members, including Philip Galvan and Ruth Thompson Orta's close relatives, enrolled in the petitioner and her position as chairwoman of the petitioner.

When Nancy Olsen interviewed Ruth Thompson in 1984, there were several references to Rosemary's Cambra's archaeological work and problems they had obtaining documents and vital records from the San Jose Mission archives. They blamed these problems on Philip Galvan's influence on a San Jose Mission priest. Rosemary began genealogical work in 1981. On January 23<sup>rd</sup> of that year, she drafted a letter seeking a grant. She stated, "I sincerely believe my family history is needed in the field of education and that it will also be beneficial to the Ohlone family as well. By giving Ohlone people a clear understanding of the visions of what our ancestors saw in their time, we can find our heritage again" (Cambra 1981).

### *Funerals*

The petitioner submitted information about several funerals which they say show interactions among the major extended families. These include the 1960 Memorial book for the funeral of Margaret Juarez (Vol. 83.7(b), 32) and the 1961 Memorial Record for

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Fred Guzman; the 1998 funeral book of Alice Mora and assertions are made about the content of the Memorial book for Trinidad Marine, but that book was not submitted as evidence. Also, the funerals for Dolores Sanchez and Robert Corral were discussed but no documents were submitted as evidence.

The books that were submitted as new evidence show that these funerals were well attended. They show that close relatives were primarily the attendees at funerals as would be expected and that those people who had in-law and step relationships between the Marine families and Santos families, particularly the Thompsons, were most likely to attend a funeral of individuals whose ancestry differed from their own. However, the attendance among the major extended families was very small, often only two or three percent of those in attendance, which is not significant evidence that the group as a whole has wide-ranging social relations among the extended families.

The three memorial books, in contrast, show that members of major extended families attended funerals for others in their family. For example, Alice Mora had no children of her own and died at the age 66 years. More than 250 people attended her funeral. Approximately 150 attendees were associated with the petitioner, almost all in Alice Mora's extended family. Her sisters were prolific and many of those who attended descended from a common ancestor, Victoria Marine.

The funeral attendance patterns demonstrated by evidence in 1960 and 1998 provides supporting evidence under 83.7(b)(1)(ii), but not at a level to meet criterion (b) at present, even when combined with other evidence. First, the evidence is infrequent and does not encompass a predominant portion of the petitioner's membership. Second, the petitioner did not submit evidence to show that the petitioner as an entity was involved in the organization of the funeral. It does not show group involvement in bereavements, organization of wakes or other receptions. The funerals were held in Catholic Churches. Finally, much of this evidence predates the present day. Even when combined with all other evidence in the record, there is insufficient evidence to meet criterion (b) at present.

### *Rite of Roman Catholic Baptism and the Co-Parenting Relationships Established through the Institution of Godparenting/Compadrazgo*

The baptism and godparenting institution has been discussed in other contexts. In its response, all examples of godparenting actually being utilized to deal with the welfare of the godchild or the godchild's child pertain to examples before 1946 (Vol. 83.7(b), 36-38). Evidence of godparenting combined with other evidence provides supporting evidence of community until 1930 and perhaps until 1950, although at decreasing levels. This determination is based in part on the evidence in the oral interviews which demonstrated that godparenting ties established in vital records carried actual obligations and these obligations involved significant interaction among individuals. After 1950, evidence of actual obligation related to godparenting declined in the record. The practices of godparenting revealed in the documents and the oral histories do not demonstrate after 1911-1913 that godparenting defined a distinct community or may be used as evidence standing alone under 83.7(b)(2) to meet criterion (b).

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The petitioner makes general assertions about the importance of what they call "*compadrazgo*," a term used in Latin America to describe a community-wide network of obligations created by numerous intertwined godparent-godchild links. Because many of the godparents named since 1950 and even earlier are not members of the petitioning group, any network defined by godparent-godchild links would not be distinct to the petitioner, as required by the regulations. The petitioner did not respond to this point, which was made in the Proposed Finding.

Section 83.7(b)(1)(ii) pertains to "significant social relationships connecting individual members." The evidence presented by the petitioner does not provide evidence under sections 83.7(b)(1)(vi) "shared sacred or secular ritual activity encompassing most of the group" or 83.7(b)(1)(vii) "[c]ultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. . . may include. . . religious beliefs and practices." This evidence does not meet these latter sections of 83.7(b)(1) at present even though godparenting involves religious/sacred obligations because the network of godparenting relationships is not separate and distinct, is not under the control or design of the group, and is not different from the non-Indian population with whom they live, marry, and socialize. This is not to deny that the petitioner practices a religion, but only to note that evidence of its religious practices does not demonstrate that "the petitioning group comprises a distinct community," as 83.7(b) requires.

### *Indian Custom Marriages and Roman Catholic Marriages and Weddings*

The petitioner, by counting the sacramental records for birth, death, and marriage in its submission show that a high percentage of its membership practices Roman Catholicism (Vol. 83.7(b), 336-339). The petitioner states that this association with a single religion meets section 83.7(b)(2), "A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate. . . (iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to , language, kinship organization, or religious beliefs and practices." It asserts that the "collection of this data demonstrates that the shared religious beliefs and practices, of the Muwekma Ohlone Indian Tribe, has been predominantly Catholic in every decade. Therefore, the Muwekma Ohlone Indian Tribe meets this criterion for every decade from 1900 to 2001" (Vol. 83.7(b), 41).

This provision requires that the religious beliefs and practices be a "distinct cultural pattern." In past acknowledgment cases, this provision has been applied only when the religious orientation was distinct to the group and involved the administration of a church which a predominant portion of the membership attended and/or the group controlled. Very often, church leaders have overlapped with the petitioning community's leaders in past cases. Thus, the Mohegan petitioner owned and controlled the Mohegan Indian Church. It financed its upkeep and virtually all members were buried in a nearby cemetery also maintained by the tribe. The group was able to oust a minister who in its view attempted to open the church to the non-Indian community and cut back its connection to the Mohegan. A high proportion of the Huron Pottawtomi petitioner's

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members attended a Protestant Indian church where a tribal leader ministered, and where many programs benefitting its membership, including individuals who were not on the church's membership list but who were tribal members, were administered. The church building was financed and built by the Indians themselves. A related congregation of this church was established in a city where tribal members had migrated and it served the needs of young families living away from the Indian community where they had grown up.

The Muwekma petitioner's evidence does not show similar group control of a religious institution and does not demonstrate a distinct religious practice. The petitioner's members, although closely associated with the San Jose Mission in historical times and even in recent years, have not for many decades attended a single parish church. No church building is under its control and is the center of programs designed by and for its members. Even if a predominant portion of the membership follows a single religion, the fact that they attend at least twelve different parish churches (Vol. 83.7(b), 44) where people may not even be aware of one's association with the petitioner does not qualify as "maintaining [a] distinct cultural pattern" within the meaning of sections 83.7(b)(1) or 83.7(b)(2).

### *Feasts and Fiestas, and Casual Social Interactions:*

The petitioner submits, as evidence, documents and interviews showing that individual members attended and volunteered in intertribal Indian organizations in Oakland and the San Francisco Bay Area (Vol. 83.7(b), 45). Participation in such organizations has never been accepted as evidence under sections 83.7(b)(1) or 83.7(b)(2) because such activities are not undertaken by the petitioner's organization. Thus, this kind of evidence has been rejected when submitted by petitioners who were later recognized, such as the Snoqualmie, and those that were later denied recognition, such as the Duwamish. The participation of individuals in pan-Indian organizations or in other tribally sponsored events such as feasts put on by other California petitioners and Federal tribes, are not petitioner events and therefore not evidence under (b).

Similarly, sending delegations of groups or individuals from the petitioner to state commissions and other organizations is not evidence in itself under section 83.7(b). If group members participate in decisions concerning who should act as delegates to such an organization or what issues should be raised at such an organization then that decision-making evidence would be evidence under section 83.7(c), if it demonstrated political processes incorporating a predominant portion of the membership. This petitioner did not submit evidence to demonstrate how such decisions were made and whether they were made by a petitioner or by an individual. Evidence was not submitted to show that decision-making about representation at outside organizations, whether MICA or the state heritage commission or other organization, involved political processes involving a predominant portion of the petitioner's membership.

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### *Application Process for Participation in Claims of the Indians of California, as Members of the San Jose Mission Tribe.*

Claims evidence contained in the oral histories indicated that people worked together or consulted with a particular person about claims. This has been taken into consideration in a previous section discussing the newly submitted oral histories and social interaction indicated in them. However, the mere participation of the petitioner's members in claims does not provide evidence under sections 83.7(b)(1) or 83.7(b)(2). The new evidence shows that individuals such as Trinidad Marine Thompson and Dolores Marine Galvan, with her son's help, provided information to their relatives and attempted to aid the children of deceased siblings. No evidence, however, indicated that various extended families acted in concert or even that these two surviving Marine sisters consulted. The evidence indicates that each family mounted its own application process.

### *Participation in Tribal Activities through Generations, Under Guidance of Elders, Family Heads, and Finally, Elected Leaders for the Period 1900-2001.*

The petitioner does not define the term "elder," but it implies that an "elder" is a leader. However, only age appears to designate who is an "elder" and who is not in the materials submitted. It does not appear that the petitioner considers that there are older people who are not "elders." The petitioner seems to be claiming that all old people are, by definition, leaders. The petitioner named older individuals in each decade and called them "elders," but often did not provide evidence of why it believed the individual named had authority within the group. In the discussion of 1911-1920, the petitioner named fifteen individuals as "elders." The accompanying evidence named individuals not in that list as performing social functions such as taking in a grandchild. The accompanying evidence points out that Dario Marine took care of a niece, but he is not named on the elder's list. Similar functions are not attributed to others on the list, including Jose Binoco, Francisca Nonessi-Guzman, Celsa Santos, Jose Guzman, and so forth. One cannot assume that a person plays a particular social or political role merely because he or she is old. In addition, isolated cases of taking care of a close relative are not evidence for special social or political status within the larger group.

Other people, such as Susanna Nichols, have been discussed above. Even where evidence existed showing activities of possible elders, they did not appear to rise to the level of a community leader. Rather, she acted as a grandmother and godmother to specific children to whom she had obligations, and she acted as a go-between for local non-Indians looking for domestic help.

### *Family Heads*

That extended family heads perform duties on behalf of their families and close relations is not group leadership. However, family heads may also hold positions of authority within their community. In such cases, the petitioner must show that these family heads communicate and coordinate their activities with the entire group's welfare in mind. They must show that the family heads consulted not only with their families but with

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other family heads and the group's leadership. Here, the petitioner did not demonstrate that family heads consulted with one another and acted together on behalf of the entire group's welfare. What has been shown is that elderly individuals, such as Dolores Galvan and Trinidad Marine, monitored the welfare of their own family members.

As a comparison, the Snoqualmie submitted oral history evidence and their researcher's analysis attempting to demonstrate that families played a political role in their organization. They analyzed the composition of the elected leadership, statements made in council meetings, and the positioning of families during arguments and disputes that occurred on a tribal-wide basis. The BIA evaluation found that the analysis was forced and did not accept the evidence. Although the Snoqualmie were ultimately acknowledged based on other evidence, the BIA evaluation found that even though Snoqualmie families tended to vote in blocks and take similar positions in controversies, the purported evidence of family meetings, leaders, and political structures underlying group social and political structure was overly formalized and without a factual basis. The Muwekma petitioner submitted little or no evidence that the families and family heads worked together in any way, and as in the Snoqualmie case, the role of family heads did not provide evidence under 83.7(c). Evidence that would be accepted under criterion (c) includes demonstrating that family heads held elected office in part based on their position as family heads, that statements in council meetings referenced a system where family heads consulted with family members and carried their wishes to the council, that family heads exerted authority on people beyond their immediate families, or that family heads played special roles during arguments and conflict resolution, such as lobbying other family heads to make a specific behavioral change from his counterpart's family members, etc. Similarly, if the Muwekma evidence demonstrated that family heads had influence on a tribal-wide basis, this evidence would be accepted under criterion (c). However, such evidence is not in the record.

The petitioner argues that it is organized along family lines, but did not submit any evidence to show that these family connections and groupings are instrumental in decision-making and conflict resolution at a group level. This is especially true about the present-day. Some evidence in the oral histories indicated that family affiliations were instrumental in defining the conflict between the Galvans and the Thompson/Ruanos between 1965 and 1971 and its lingering consequences since then. No further information about these arguments, other than that they continue to exist in a general way, is given that would allow a determination that these allegiances define political activities and social interactions at a group level today. There is insufficient information about family alliances and activities and how they influence the entire group's actions after 1971 to allow the petitioner to meet criterion (c) using evidence of family leaders.

The petitioner apparently does not discuss these controversial issues publicly. The petition and oral histories imply that revealing this information in the petition would conflict with this belief. The petition states the following unattributed opinion about the oral histories:

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Among other things, the interviewees provided frank, strongly worded opinions, based on claimed personal knowledge of the reputations of certain individuals in the tribe, describing gossip in detail, naming places, . . . dates, and characterizing conduct in a heated and sometimes derisive manner. The interviewees suggested that interactions and conflicts within the community, personal favoritism and grudges of long standing, remained in force and governed opinions and conduct, determining who was on cordial terms, and who remained in opposing camps. This interview has not been distributed or exposed to general examination, because its content is potentially damaging to personal reputations, and could itself be divisive in tribal politics.

The evidence that members had opinions, belonged in "camps," and had "grudges of long-standing," etc., may be the evidence that would demonstrate that the petitioner is more than a self-appointed leader and a few other people. However, without this evidence, the body of the membership appears uninvolved and disinterested. The current record shows a voluntary association of individual members based on kinship. This association is run by a handful of people, who may be volunteers or may be paid employees, who are involved in all activities, from planning to implementation. According to Rosemary Cambra, her mother Dolores Sanchez, during her lifetime, took the position, and advised her children and those within her sphere of influence in the tribe, "to never oppose a family member in public, wait until all the lineages are together," and "teach your children to share what they know and share what they have" — but always with the highest discretion.

The chairwoman's low tolerance for public discussion of conflict is reflected in the way the organization seems to run. The petitioner alleges that the people being interviewed eagerly discussed these conflicts, knowing they were being recorded, and knowing that non-members and non-family were in the room. However, the chairwoman apparently has chosen not to reveal information which she finds controversial or may reflect opinions with which she disagrees. An unsubstantiated claim that the members argue, discuss topics of importance to the membership, have factional disputes, resolve conflict, make decisions, etc., as a group, but for personal reasons, they cannot show the BIA evidence of it, is not evidence under the regulations. It is petitioner's burden to document their claims, and without such documentation, a petitioner may be denied if there is insufficient evidence that it meets one or more of the criteria, according to section 83.6(d) of the acknowledgment regulations.

The petitioner makes an argument that its organization sponsors informal activities (Vol. 83.7(b), 77). However, the activities it uses as examples are not the kind of "informal activities" generally accepted as evidence under 83.7(b)(1)(iii), which refers to "informal social interaction," that is activities and interactions initiated by the petitioner's members and NOT sponsored by the formal organization. They say

Some of the informal activities since 1984 have included Christmas parties, birthday parties (Mary Archuleta celebrated her 90<sup>th</sup> birthday at

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the Fairgrounds in Pleasanton during the summer of 2000, over 200 people attended including Paula Corral and her daughter Margaret Corral), summer camps, cook-outs/barbecues, baby showers, and similar activities.

Most of the evidence for these kinds of activities, which are formal in that they are sponsored by the organization, were analyzed and evaluated for the Proposed Finding. What they show is that, in the last fifteen years, the organization has slowly incorporated families into its membership and this is reflected in participation at these events. Thus, the participation shows an evolution of an organization. The evidence submitted does not show members interacting without the central leadership present. For example, the delivering of turkeys to people by the Muwekma leadership and staff, while obviously appreciated, did not demonstrate a network of informal social relationships maintained by the individual members among themselves. It showed only the named leaders and paid staff planning and carrying out an activity. Participation levels between the extended families are highest among the elderly who had established relationships before the 1950's, but even those relationships are shown only in the formal activities organized by the petitioner.

### *Political Functioning to meet criterion (b)*

The petitioner states that at "the tribal level, Muwekma interaction as a whole consists primarily of political functioning" (Vol. 83.7(b), 86). This statement is unexplained. However, the petitioner also argued that it meets criterion 83.7(b)(2) and therefore may apply that evidence to meeting criterion (c). The petitioner has submitted little if any evidence of "political functioning" of the membership. It submitted the political activities of only the chairwoman and a handful of other people directed outside of the petitioning group. Information about how the group itself functions is not contained in the evidence.

### *Mediation*

The petitioner stated: "The Tribal Council only has had to mediate among different Christian orientations of its members." But no evidence was submitted concerning this purported mediation, and the unsubstantiated assertion is not evidence of political influence or authority (Vol. 83.7(b), 86). The petitioner did not even describe what "different Christian orientations" existed in the petitioner and submitted no specific evidence of a dispute or mediation. The petition states, "Other disagreements have related to such things as the disposition of Indian burials discovered within East Bay and San Joaquin Counties, protection of ancestral Muwekma cemeteries, and a variety of other cultural and political issues. . . ." But while arguments among individuals, some petitioner's members, some unenrolled members of the "larger family," and other unidentified individuals are discussed in the newspapers submitted, nothing in the tribal council minutes or oral histories, other than one, mention these disagreements and illustrate how the council deals with them. There is no other evidence that the council or the group is dealing with these disagreements. It is not required that disputes be



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successfully resolved in a way which is acceptable to all parties. However, without any evidence of political behavior, these disputes are not evidence for either criterion (b) or (c). Lack of evidence is grounds for not meeting a criterion 83.6(d) (Vol. 83.7(b), 86).

For example, Rosemary Cambra in 1981 was interested in conducting genealogical work at the missions. Her interests were initially joined by her mother's cousin Ruth Thompson Orta and her uncle Robert Sanchez. They wrote letters to the diocese to gain access to the Mission records. Nancy Olsen, a non-Indian researcher working with Ruth Orta and Rosemary Cambra, believes that their access was blocked Philip Galvan. After writing letters, Rosemary and Ruth succeeded in overturning Philip Galvan's influence in the Mission and gained access to the archives and records (Vol. 83.7(b), 89). This evidence demonstrates only that two or three individuals dealt with the Mission. No information was submitted showing how the "larger family" dealt with this issue or even if it was aware of it. No evidence was submitted to show attempts to contact Philip Galvan directly about this problem. No evidence demonstrated that they approached intermediaries — the "elders" for example — to intercede, or what resulted from such attempts if they were made. No evidence indicated that other members of the group supported their efforts and attempted to influence the mission. Without showing such patterns of informal group political activities, the evidence about accessing the mission records is merely three individuals dealing with San Jose Mission to find genealogical documents. It does not show a group banding together to force a result and thus is not evidence for meeting criterion (c).

### Summary Conclusion under Criterion 83.7(b) as modified by 83.8(d)(2) or 83.8(d)(5)

The petitioner has not demonstrated that it meets the requirements of criterion 83.7(b) as modified by section 83.8(d)(2) which requires the petitioner to demonstrate that it comprises a distinct community "at present," but need not demonstrate its existence as a community historically. In response to the proposed finding, the petitioner submitted documents pertaining to godparenting, funerals, and the petitioner's activities from 1982 to 1991. It also submitted oral interviews taken by an academic researcher in 1984 and 1986 and by the petitioner's researcher, chairman, and staff since the issuance of the proposed finding. The oral histories, combined with documentary evidence both in the record and newly submitted, demonstrated: some informal social relationships and interactions of the petitioner's ancestors from 1910-1950; actual practices of godparenting, fostering, and adoption before 1950; the informal group involved in preserving an historic Ohlone Cemetery from 1963-1971; an application process organized by individual extended families in 1967-1971 to apply under the 1928 claims act; and previously unknown efforts in 1982-1984 to establish an Ohlone membership organization.

While this new evidence helped demonstrate limited aspects of community which marginally existed as late as 1950 for the petitioner's members and even later for smaller segments, the petitioner did not submit documents or oral histories dealing with the present day, which is the only requirement under community for previously acknowledged groups such as this one. The oral histories did not deal with events after

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1971, and the newly submitted documents were generally very similar to the documents which had been submitted for the proposed finding and tended to support those previous findings under criterion 83.7(b). Thus, the petitioner does not meet criterion 83.7(b) "at present" and therefore does not meet criterion 83.7(b) as modified by 83.8(d)(2) or 83.8(d)(5).

**Criterion 83.7(c)  
as modified by Section 83.8(d)(3) and 83.8(d)(5)**

- 83.7(c)**      **The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**
- 83.8(d)(3)**      **The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with one form of evidence listed in § 83.7(c).**
- 83.8(d)(5)**      **If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7(a) through (c) from last Federal acknowledgment until the present.**

**The Proposed Finding**

The Proposed Finding concluded that the Muwekma petitioner did not meet criterion 83.7(c) as modified by section 83.8(d)(3) because it had not demonstrated substantially continuous historical identification, by authoritative, knowledgeable external sources, of named leaders who exercised political influence or authority within the group, or of a governing body which did so, between 1927 and the present (*Muwekma PF*, 28, 39). Because section 83.8(d)(3) requires both such identifications and one other form of evidence, the available evidence was insufficient to meet the criterion. The regulations provide, in section 83.8(d)(5), that the petitioner may demonstrate alternatively that it

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meets the unmodified requirements of criterion 83.7(c) from last Federal acknowledgment until the present, in this case from 1927 until the present.

The Proposed Finding concluded that the petitioner did not demonstrate that after 1927 the petitioning group maintained informal political influence over its members. Prior to the 1990's, the Proposed Finding found that the few sporadic actions by "elders" that were documented were generally taken on behalf of close family members, rather than on behalf of a larger entity, and that no informal political process for the group was shown to exist. During the 1990's, the available evidence showed that the organization called the Muwekma Ohlone Tribe was run by a small group of individuals, without evidence of broad participation by members or evidence that members considered the organization's activities significant to them (*Muwekma PF*, 27-40). Therefore, the Proposed Finding concluded that the petitioner did not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(5) since 1927.

In view of the conclusions of the Proposed Finding, the petitioner needs to demonstrate for this Final Determination that it meets the requirements of criterion 83.7(c) historically, either by a demonstration that it satisfies the streamlined requirements of section 83.8(d)(3) or, alternatively, as provided by section 83.8(d)(5), that it meets the unmodified requirements of criterion 83.7(c) between 1927 and the present. The petitioner also needs to demonstrate that it meets the requirements of criterion 83.7(c) "at present."

### General Comments on the Proposed Finding

The petitioner has submitted both a 63-page narrative and a chronological chart of evidence it contends meets the criterion (Petitioner 2002, Vol. 83.7(c)). The petitioner's comment covers the entire 20th century. The petitioner's chart of specific documents relating to criterion (c) since 1927 consists of about one-fourth new evidence and three-fourths previous evidence. In the petitioner's comment on criterion (c), there is little overlap between the analysis of evidence in its narrative and its chart, as its narrative provides little discussion of specific documents. Because the petitioner's narrative and chart are in some sense separate presentations, rather than a supplement to each other, this evaluation sometimes considers them separately.

A portion of the petitioner's comment on the Proposed Finding concerns time periods for which no evaluation is necessary for this Final Determination. The Proposed Finding was made in accordance with a preliminary finding that the petitioner had previous Federal acknowledgment as late as 1927, and that, as provided in section 83.8(d) of the regulations, the petitioner therefore needed to demonstrate that it met criterion 83.7(c) only for the period since 1927. The petitioner's comment on this criterion, however, includes extensive materials on the years prior to 1927 (Vol. 83.7(c), 1-11, and one-quarter of the chart). Neither the petitioner nor any third party challenged the conclusion of the Proposed Finding that the petitioner met the criterion before 1927. It is only necessary for this Final Determination, under criterion (c), to respond to the petitioner's

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discussion for the period before 1927 to the extent that it may modify presumptions made by the Proposed Finding, under criterion (e), about a connection of the important Marine family to the historical Verona Band, or provide context after 1927 for evidence presented to meet criterion (c). Therefore, the evaluation under criterion 83.7(c) for this Final Determination will review the evidence and arguments for the years since 1927.

The narrative portion of the petitioner's comment on the Proposed Finding, arranged as a decade-by-decade presentation, lists "elders" living in each decade (Vol. 83.7(c), *passim*; see also Chart 83.7(c), 1990s:289). The petitioner presents no evidence that these "elders" were identified by knowledgeable external sources as leaders, and makes no explicit argument that it meets the requirements of section 83.8(d)(3). As evidence that it meets the requirements of criterion 83.7(c), the petitioner claims that some of these "elders" were involved in mobilizing members to file claims applications in 1929-1933, 1951-1955, and 1969-1972, and that some of them worked cooperatively to save an Indian cemetery in the late 1960's and early 1970's. The petitioner's narrative, however, does not discuss or cite the specific evidence that would support such conclusions.

Throughout its comment, the petitioner uses the word "elder" as a special term to imply that a person plays a political role or holds a special position of authority, without specifically describing and evaluating the person's behavior and position in the group. In general, then, the petitioner's narrative names people whom it believes are "elders." It then asserts their influence without providing direct evidence, analysis, and explanation of how those individuals exercised political influence in an informal manner within the group between 1927 and 1984, when the petitioner formed a formal organization.

The petitioner's chart of its evidence, as part of its comment on the Proposed Finding, lists specific documents or sources, claims that most meet criterion 83.7(c)(1)(iii), and implies that some of those items were created by authoritative, knowledgeable external sources for purposes of section 83.8(d)(3). The petitioner's chart emphasizes what it claims were "patterned practices," the use of a "shared system," interaction across family lines, and the influence of "elders" as leaders. It presents the applications for Indian claims by its members and their ancestors as evidence of widespread participation and communication among members. In general, however, rather than providing an explanation of how each item or group of documents demonstrate that informal political influence was maintained over members by "elders," the chart entries continually repeat these few assertions.

The four third-party letters submitted before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(c).

### Section 83.8(d)(3)

The regulations, in section 83.8, modify the evidentiary burden for petitioners that had been previously acknowledged by the Federal Government. The regulations provide that the petitioner still must demonstrate that it meets the requirements of criterion 83.7(c) "at

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present.” The reduced evidentiary burden for criterion 83.7(c), set forth in section 83.8(d)(3), is that the petitioner may provide sufficient evidence to meet the criterion between last Federal acknowledgment and the present by demonstrating that “authoritative, knowledgeable external sources” identified leaders who, or a governing body which, exercised political influence or authority over the petitioning group. In addition to demonstrating that such identifications were made by knowledgeable sources on a “substantially continuous” basis, the petitioner also must demonstrate one form of evidence listed in section 83.7(c).

The Proposed Finding concluded that the petitioner had not demonstrated that it met the requirements of the criterion as modified by section 83.8(d)(3) between 1927 and the present. The Proposed Finding found that the petitioner had not presented evidence that any external source had identified either the leaders or a governing body of an Indian group or entity that consisted of the petitioner’s members or ancestors between 1900 and 1989. Because no external sources made such an identification of leadership or political organization, no “authoritative” or “knowledgeable” external sources did so. Identifications of leadership after 1989 were made by people who, because they had brief contacts with the petitioning group, would not meet the standard for “knowledgeable” sources of having had extensive contact with the group. Although the Proposed Finding found that Rupert Costo, a knowledgeable source, had identified the leaders of an Ohlone group in 1971, it noted that this identification may not have been of the petitioner, because the petitioner had not demonstrated that it was a successor to the Ohlone Indian Tribe, Inc., or a larger Ohlone group (*Muwekma PF*, 27-29).

The petitioner’s comment on the Proposed Finding implies that a series of historical individuals or organizations could be considered as “authoritative, knowledgeable” external sources for purposes of an evaluation under section 83.8(d)(3) (Petitioner 2002, Chart 83.7(c), *passim*). The petitioner presents some documents as responsive to section 83.8(d)(3) without offering an explanation of how each specific piece of evidence satisfies the requirements of that section. Asking whether or not an external source is “authoritative” and “knowledgeable” is only part of the test posed by section 83.8(d)(3). This section of the regulations also asks whether an external source identified a leader or governing body of the petitioning group. If that source did not make such an identification, then it is irrelevant whether or not that source was authoritative and knowledgeable.

For example, the petitioner claims that the Proposed Finding “rejected J. P. Harrington as an authoritative, knowledgeable external source, because he did not find them [his Indian informants] in a village-like setting” (Chart 83.7(c), 1920s:7-8).<sup>42</sup> The Proposed Finding included no such statement about Harrington and no rejection of him as an “authoritative,

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<sup>42</sup> The BIA researchers pointed out to the petitioner’s researchers during the on-the-record technical assistance meeting that the Proposed Finding had not used the term “village-like setting” in this context, as a requirement for an identification of the petitioning group under either criteria (a) or (c), but had used that phrase only in the context of an evaluation under criterion (b)(2) of residential or geographical concentration (BIA 11/7/2001, 115-118).

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knowledgeable" source. Rather, the Proposed Finding concluded, and this Final Determination concludes, that in his field notes Harrington identified no leaders or governing body of a contemporaneous Indian group in the late 1920's or early 1930's (*Muwekma PF*, 28, and Description, 39, 41). Because Harrington made no such identification, it is not necessary to inquire whether he made such an identification as an authoritative and knowledgeable source.

This same analysis and conclusion applies to all of the other individuals whom the petitioner suggests are authoritative, knowledgeable sources before 1965. Local resident Charles Wauhab in 1945 identified an individual Indian, but did not identify an Indian leader or governing body of local Indian descendants (Chart 83.7(c), 1940s:15; Wauhab 2/3/1945). Anthropologists Alfred Kroeber and Robert Heizer contended in 1955 that individual descendants of historical Indian groups had survived until the present, but did not identify leaders or governing bodies of existing Indian groups (Chart 83.7(c), 1950s:28; A. Kroeber and Heizer 1955). Letters by a city official and the governor of California that mentioned the Ohlone Indian Cemetery did not mention any leaders or governing body of Ohlone Indians (Chart 83.7(c), 1960s:4, 34; Reese 7/15/1964; Brown 3/17/1965). The Indian claims roll produced by the BIA in 1933 listed individual Indians but did not identify group leaders or governing bodies (Chart 83.7(c), 1920s:9, 1930s:36, 1940s:33, 1950s:1; BIA 1933)

After 1965, the petitioner implies that a member of the local Audubon Society was a knowledgeable source, although he requested information rather than provided it (Chart 83.7(c), 1960s:56; Gordon 5/7/1966). The petitioner implies that Representative Don Edwards and the National Park Service were knowledgeable sources, but their routine correspondence did not identify Indian leaders or governing bodies (Chart 83.7(c), 1960s:68, 69, 71; Edwards 7/29/1966, 8/11/1966; NPS 8/9/1966). An anonymous "Plan for the Mission San Jose," probably from the 1960's, identified no existing leaders or governing body for local Ohlone Indians, and its reference to leadership by the American Indian Historical Society (AIHS), a national organization, did not identify leaders of a local group (Chart 83.7(c), 1960s:28; Anonymous n.d.). An additional problem for the "Plan for the Mission San Jose" is that, since its author is not known, it cannot be stated that its author was an external source. Although the State of California recorded information in 1971 about leaders of the Ohlone Indian Tribe, Inc., as a non-profit corporation, its Franchise Tax Board was not an authoritative source with independent knowledge about Indian groups (Chart 83.7(c), 1970s:15; California 1971).

The Proposed Finding, noting that Rupert Costo of the AIHS referred to three siblings of the Galvan family as the leaders of a "Native group" of Ohlone descendants, concluded that "Costo's identification of the Galvans as leaders in 1971 was an identification of leaders by a knowledgeable source" (*Muwekma PF*, 28, citing R. Costo 3/8/1971; see also, Description, 13). Costo's reputation as an Indian scholar and his extensive contact with at least a portion of an Ohlone group over a period of years qualifies him to be considered a "knowledgeable" source. The evaluation for criterion (a) found that a letter by Costo in 1966 identified an Indian entity, but it did not identify leaders or a governing

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body other than a "Director" and a "Council . . . of this [American Indian Historical] Society" (R. Costo 5/20/1966).<sup>43</sup>

New oral history evidence demonstrates that participants in activities involving the Ohlone Indian cemetery and the AIHS in the mid-1960's were members and ancestors of members of the petitioning group and establishes a reasonable likelihood that Costo's identification of a "Native group" in 1971 was an identification of a precursor of the petitioning group. To further inquire whether or not this "knowledgeable" external source was accurate in his statements about the leadership of that group would defeat the purpose of the reduced evidentiary burden on the petitioner. For the purposes of section 83.8(d)(3), regardless of whether the Galvans exercised political influence over the group or were rejected as leaders by the group after being designated by Costo, this knowledgeable external source identified leaders and attributed to them political influence over an Ohlone group.

The petitioner's comment implies that several publications after 1965 should be considered as authoritative and knowledgeable sources. Although ethnographic field notes of scholar C. Hart Merriam were published in 1967, they described his observations in 1910 and did not identify any leaders or governing body after 1927 (Chart 83.7(c), 1960s:76; Merriam 1967). A popular history of the Ohlone published by Malcolm Margolin in 1978 noted that Ohlone descendants were still living in the Bay Area, but he did not describe them as having leaders or a governing body (Chart 83.7(c), 1970s:60; Margolin 1978).

Both a local history published in 1973 by Florence Fava and a scholarly article published in 1978 by Richard Levy mentioned the Ohlone Indian Tribe organization formed in 1971 (Chart 83.7(c), 1970s:28, 56; Fava 1973; Levy 1978). Although Levy was an authoritative source on Ohlone history, it is not known that he had any extensive contact with an Ohlone group in the 1970's. Fava's local history articles did not exhibit extensive contact with, or authoritative knowledge of, contemporary Indians (Fava in *San Jose Mercury* 7/23/1972, 7/31/1972, and 8/6/1972; Fava 1973). Although it has not been demonstrated that these two sources were knowledgeable about the Ohlone Indian Tribe, Inc., their identifications are consistent with the identification by Rupert Costo, who was a knowledgeable source. The Ohlone Indian Tribe, Inc., however, is not a predecessor of the petitioning group, and continues to exist as an entity separate from the petitioner.

Correspondence and reports during the 1980's of local archaeologists, whom the petitioner implies should be considered as authoritative and knowledgeable sources, did not refer to any governing body or leaders of a contemporary Indian group. An archaeological report in 1983 merely identified an Ohlone descendant (Chart 83.7(c), 1980s:37; Breschini 1983). A letter by a local archaeological firm in 1984 merely referred to another archaeological consulting firm, the Ohlone Families Consulting

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<sup>43</sup> This evaluation has considered all of Costo's letters which the petitioner implies are examples of an identification by an authoritative, knowledgeable source (Chart 83.7(c), 1960s:35, 45, 52, 58, 59, 64, 67, 122; 1970s: 1, 4, 18).

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Services (Chart 83.7(c), 1980s:43; Basin Research Associates 11/5/1984). Scholar Nancy Olsen did not identify a governing body or group leader, but referred to a business firm, to a "family," and to Ohlone descendants (Chart 83.7(c), 1980s:29, 55; Olsen 1/13/1983, 1985a, 1985b).

Local newspaper articles since 1989 have often identified a leader of the petitioning group (*Muwekma PF*, 28). This was in contrast to newspaper articles from 1971 and 1972 and an obituary from 1982 that did not identify Indian leaders or a governing body (Chart 83.7(c), 1970s:17, 23, 25, 26; 1980s:21). Newspaper articles have not been accepted in previous findings as constituting identification by "knowledgeable" sources. There is no evidence in this case, including the content of the articles themselves, suggesting that local newspaper reporters had any extensive contact with or knowledge of Indian leaders or entities. The same could be said for local government agencies and officials in the 1980's who were beginning to deal with local Indians for the first time (Chart 83.7(c), 1980s:17, 19, 51). The State's Native American Heritage Commission in 1985 was identifying individuals as "most likely descendants," not as group leaders (Chart 83.7(c), 1980s:54, 57; see also *Muwekma PF*, Description, 14, *c.f.* 20). At the Federal level, a BIA letter in 1985 cited by the petitioner provided information about individual ancestry, not about group leaders or governing bodies (Chart 83.7(c), 1980s:49).

The available evidence does not demonstrate that the petitioner meets the requirements of section 83.8(d)(3) since 1927. Rupert Costo has been accepted as an "authoritative, knowledgeable" source who in 1971 identified leaders of an Ohlone group that likely included members and ancestors of members of the petitioning group. A conclusion that the available evidence does not contain any identifications of leaders or a governing body by an authoritative, knowledgeable external source for four decades after 1927 means that such identifications were not made on a substantially continuous basis. Since there is insufficient evidence of identifications of leaders or a governing body by "authoritative, knowledgeable external sources" on a "substantially continuous" basis, the petitioner does not meet one of the requirements of section 83.8(d)(3). Thus, for the purposes of an evaluation under section 83.8(d)(3), there is no need to ask whether or not the petitioner has additionally demonstrated one form of evidence listed in section 83.7(c). Based on this conclusion, the petitioner does not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(3).

If a petitioner cannot meet the requirements of section 83.8(d)(3), the acknowledgment regulations provide, in section 83.8(d)(5), that the petitioner may demonstrate alternatively that it meets the unmodified requirements of criterion 83.7(c) since the date of last Federal acknowledgment. Therefore, this Final Determination will evaluate, as provided in section 83.8(d)(5), whether or not the petitioner has demonstrated that it meets the requirements of criterion 83.7(c) from 1927 until the present.



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Transfer of Conclusions from Criterion (b) to Criterion (c)

The explicit argument of the petitioner's narrative for criterion 83.7(c) is not that it meets the criterion historically by providing evidence of actual informal political influence by "elders," but that it meets criterion 83.7(c) because, under section 83.7(c)(3), a group that has met the requirements of 83.7(b)(2) at a given time shall be considered to have provided sufficient evidence to meet criterion 83.7(c) at that time (Vol. 83.7(c), 12-13, 14, 16, 17, 18, 18-19, 19, 22-23, 23-24). Thus, presumably as a contention that it satisfies section 83.7(b)(2), the petitioner repeats its assertions about evidence of godparenting at baptisms, "cross-lineage" witnessing of applications, and attendance at funerals for each decade of its narrative presentation for criterion 83.7(c) (Vol. 83.7(c), 12, 13, 15, 16, 17-18, 18, 19, 20, 23). The petitioner also presents an argument about these practices in its chart entries for birth and death certificates (Chart 83.7(c), 1970s:29, 33; 1980s:1, 3).<sup>44</sup>

The petitioner places great emphasis on the practice of baptism. It argues that the godparenting that accompanied baptism is evidence of a "patterned activity" (Chart 83.7(c), 1920s:16-21). The petitioner argues that its evidence about baptism meets criterion (c) directly, satisfying section 83.7(c)(1)(iii) by demonstrating "widespread knowledge of [the] custom of baptism of members." The petitioner asserts that "all persons" in the group before the 1960's, and "nearly all persons" in the 1960's, "acquiesced to baptism, as a requirement for living in the community" (Chart 83.7(c), 1920s:19, 1960s:10). The petitioner further contends that its oral history evidence shows that "elders and family heads set examples for comportment and behavior for tribal members" (Chart 83.7(c), 1920s:16, 1960s:7). The regulations at section 83.7(c)(1)(iii), however, require that widespread "knowledge, communication and involvement" among a group's members relate specifically to "political processes." The petitioner does not explain how knowledge of the custom of baptism relates to political processes except to assert that "elders" enforce the practice of baptism and set examples for behavior within the group. The petitioner submitted no specific evidence to support these assertions.

The petitioner contends that other evidence related to participation in the Catholic Church meets criterion (c) indirectly, as a result of meeting the requirements of criterion (b). In its presentation of the evidence for criterion (c), the petitioner explicitly claims that evidence of Catholic marriages meets section 83.7(b)(1)(ii) as significant social relationships. It explicitly claims that its evidence meets the requirements of section 83.7(b)(1)(vi) because evidence of its members' shared sacred ritual is found in their widespread participation in the rite of baptism, burials in Catholic cemeteries, and marriages in the Catholic Church (Chart 83.7(c), 1920s:16-21). It notes, however, that rates of Catholic marriages and burials declined over the course of the 20<sup>th</sup> century, and that godparenting was "not necessarily cross-lineal" by the 1960's (Chart 83.7(c), 1960s:9). The petitioner then argues that it has demonstrated that it meets criterion (c)

<sup>44</sup> The petitioner's data about these activities are presented in a "population table" (Chart 83.7(c), 1920s:16, 1930s:5, 1940s:17, 1950s:15, 1960s:7, 96; 1970s:39, 1980s:242, 1990s:220).

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because, as provided by section 83.7(c)(3), meeting the requirements of section 83.7(b)(2) also meets the requirements of criterion 83.7(c) for the same time period (Chart 83.7(c), 1920s:20, 1960s:10). The petitioner presents its evidence about religious practice, however, as meeting the requirements of section 83.7(b)(1), not 83.7(b)(2).

The petitioner also argues that it meets criterion (c) because it meets criterion (b) with evidence that members of Avelina Cornate Marine's "lineage" joined with other Verona Band "lineages" in 1965 and the following years to protect the Ohlone Indian Cemetery. It contends that this evidence shows that group members acted together based on their personal knowledge of burial places, that their care for burials demonstrates "significant sharing of labor," and that the "funerary rites" at Ohlone Indian Cemetery and other cemeteries represent "significant shared ritual activity" (Chart 83.7(c), 1960s:32-33). The petitioner claims to meet criterion (c) because the provisions of section 83.7(c)(3) provide that the criterion is met at a given time if the petitioner meets the requirements of section 83.7(b)(2) at that time. The petitioner's explicit argument, however, is that this evidence about ritual activity and care for the cemetery meets the requirements of section 83.7(b)(1), not 83.7(b)(2) (Chart 83.7(c), 1960s:32-33).

Even if the petitioner had argued that this evidence met section 83.7(b)(2), the petitioner would not meet criterion (c) using evidence described in that section. The relevant requirements of the regulations are found at 83.7(b)(2)(iii) for distinct cultural patterns and 83.7(b)(2)(iv) for distinct community social institutions. First, the petitioner's assertions are not directly supported by evidence, and second, the petitioner did not demonstrate cultural patterns and social institution that were either distinct or encompassed the membership. Furthermore, the submitted evidence for burials, funerals, and other activities, even when evaluated in combination, did not demonstrate that such activities were continuous and did not demonstrate widespread cooperation among the major extended families, as the petitioner claims.

As explained in the evaluation of the petitioner under criterion 83.7(b), neither the petitioner's argument in its comment on criterion 83.7(b) nor the available evidence demonstrate that the petitioning group meets the requirements of criterion 83.7(b)(2) at any time after 1927. For this reason, section 83.7(c)(3) is not applicable. The petitioner therefore must demonstrate that it meets the unmodified requirements of criterion 83.7(c) from 1927 to the present without benefitting from the carryover provision of section 83.7(c)(3).

Under section 83.7(c)(1)(iv), a petitioner may carry over to criterion 83.7(c) evidence used under criterion 83.7(b) to demonstrate the existence of a distinct community, if the evidence for community under section 83.7(b)(1) is more than "minimal." Such conclusions from criterion 83.7(b) may be used as one form of evidence in combination with other forms of evidence to meet criterion 83.7(c) for a certain period of time. The best examples of the application of 83.7(c)(1)(iv) are found in the proposed findings on the Huron Potawatomi and the Match-e-be-nash-she-wish Band petitions (*Huron Potawatomi PF 1995*, 10-11, 18; *Match-e-be-nash-she-wish PF 1997*, 6-8, 13, 16).

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Those two cases interpreted meeting section 83.7(b)(1) "at more than a minimal level." They found that for periods after the evidence fell below the "50 percent" levels stated in section 83.7(b)(2), the evidence demonstrated that those petitioners continued to meet similar, but less demanding standards, such as that 50 percent of adults, rather than all members, continued to speak an Indian language, or that 50 percent of marriages were patterned out-marriages, rather than marriages within the group. Those cases also found that some of the evidence sufficient to meet section 83.7(b)(1) did so at a level significantly greater than required, such as that the group maintained a named collective entity over 150 years rather than 50 years, or that the petitioner met criterion (b) using many of the forms of evidence described in section 83.7(b)(1) rather than with a simple combination of evidence. By significantly exceeding the requirements of the criterion, those petitioners were determined to have met criterion 83.7(b) "at more than a minimal level" of evidence.

The evidence relating to the Muwekma petitioner does not fit this model. Although the petitioner's submission of a few oral history interviews increased the evidence under criterion 83.7(b) for the period from 1927 to 1971, it did not provide "more than a minimal level" of evidence that a community continued to exist after 1927. While older individuals may have stayed in touch until their deaths with people with whom they had relationships based on childhood interactions, the evidence indicates that few people born after 1950 maintained significant social interaction with other Ohlone descendants who were not their close kin and part of their own extended family. Because the evidence is not sufficient to meet criterion 83.7(b) "at more than a minimal level," it does not carry over to criterion 83.7(c) as one form of evidence under section 83.7(c)(1)(iv).

### Comments on the Proposed Finding for the Period 1927 to 1964

The new evidence which the petitioner cites as meeting criterion (c) for the period between 1927 and 1964 consists of school records for Domingo Marine from Sherman Institute in the late 1930's, school records for John and Rayna Guzman at Chemawa Indian School in the 1940's, a 1949 local history, 21 applications in the 1950's for inclusion on the Indians of California judgment roll, a 1955 paper by anthropologists Alfred Kroeber and Robert Heizer, a 1960 funeral book for an ancestor, and two oral history interviews of members (Petitioner 2002, Chart 83.7(c)). The petitioner also cites the evidence it submitted for the Proposed Finding, especially the field notes of anthropologist J. P. Harrington in 1929-1930 and the individual applications made between 1930 and 1932 to the BIA to be included on the judgment roll of California Indians.

Some of the evidence cited by the petitioner in its comment already has been evaluated in the discussion of section 83.8(d)(3) above. These documents also were discussed in the Proposed Finding. Neither the 1945 affidavit of local resident Charles Wauhab nor the 1964 letter of Howard Reese, the city manager of the City of Fremont, described any political process, political influence, or political leaders within any group of Ohlone Indian descendants. These documents do not present any evidence of "interaction across

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family lines," "patterned practices," or "influence of elders as leaders" (Chart 83.7(c), 1940s:15, 1960s:4).

The Proposed Finding concluded that J. P. Harrington's field notes in 1929 "did not contain any descriptions of Indian leaders, informal influence, group decision making, or any political process existing within a group" (*Muwekma PF*, 29). The petitioner has not directly responded to this conclusion. Rather, the petitioner states only that Harrington identified 12 Indian individuals, including individuals whose descendants are enrolled in the petitioning group (Chart 83.7(c), 1920s:7). The fact that some individuals from the former rancheria at Pleasanton were still living in the area does not in itself demonstrate that a group existed that exercised political influence over its members. Harrington's notes corroborate other evidence in oral histories that suggests that a social grouping of the petitioner's ancestors and Verona Band descendants lived in Niles and Pleasanton after the dissolution of the rancheria settlement and before 1930. However, none of this evidence, either singly or combined, reveals a pattern of political authority or leadership by individuals Harrington mentions. The petitioner does not contend that Harrington provided examples of political influence or a political process within a contemporary Indian group.

For criterion (c), the petitioner advances the same arguments about the application process for the claims of the "Indians of California" under the Act of 1928 that it made for criterion (a). Therefore, for a discussion of the petitioner's contentions about an alleged requirement of tribal affiliation, alleged rejections of applicants because of a lack of tribal membership, and the alleged use by the Government of the 1933 roll of the "Indians of California" as base rolls for determining the membership of federally recognized tribes (Chart 83.7(c), 1920s:9, 10, 24, 25), see the discussion of "Indian Claims Applications, 1929-1933" in the evaluation of criterion (a) above.

The Proposed Finding concluded that the petitioner's evidence about the claims application process did not show any political influence of a group over its members, but rather the activities of individuals on behalf of their own families (*Muwekma PF*, 30-31, 39-40, and Description, 42-43, 50-51). The petitioner has not submitted new evidence about the activities of the ancestors of its members in that application process to merit reconsideration of that conclusion. The petitioner contends that "elders and family heads" were influential in urging members on a "cross-lineal" basis to assert claims, and that leaders "provided information and support" to members to assemble documentation. These alleged activities, the petitioner claims, are an example of "patterned practices" and demonstrate the use of a "shared system" (Chart 83.7(c), 1920s:12-13, 1930s:36). This political influence and these activities are asserted rather than demonstrated by the petitioner. The recent Chinook reconsidered final determination has reaffirmed the precedent that claims activity is not *inherently* a political activity (*Chinook RFD*, 4, 41-42). Therefore, meeting the requirements of criterion (c) requires specific evidence of political influence rather than the mere existence of claims applications.

The basis of the petitioner's argument about the claims application process between 1929 and 1933 is its contention that "cross-lineal witnessing" occurred on applications (Chart

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83.7(c), 1920s:9). The petitioner lists 8 examples, out of 18 applications, of "cross-lineal witnessing" (Chart 83.7(c), 1930s:40-41). Only 3 of the 10 individuals named in these examples have descendants in the petitioning group. The Marine families are notably absent from this list, with the exception of Lucas Marine who at that time was married to Catherine Peralta, a Guzman descendant. Other evidence indicates that at least some of the Marines knew the people named in the petitioner's examples as witnessing for each other, but the absence of this large and important component of the petitioner's membership from this particular set of data is problematical. Even if the petitioner's contention that these specific claims applications show "cross lineal" political influence were accepted, a significant part of the petitioning group would not be included.

Combining this evidence of witnessing with other evidence that applicants knew one another also does not demonstrate that individuals applied as the result of being influenced by a group, its leader, or its "elders." The existence of political leadership might be inferred from evidence that most applications were witnessed by one individual, or from actual content in the documents describing individuals as leaders, "elders," or other phrases to indicate their authority. Witnessing by a variety of persons or by relatives does not support such an inference. The petitioner's presentation of the evidence (Chart 83.7(c), 1920s:27-38, 1930s:1-31) shows that no individual witnessed more than 3 of the 18 applications. For purposes of criterion (c), this evidence of witnessing does not demonstrate the existence of the political influence of a group over its members.

The petitioner repeatedly presents data and documents pertaining to Maggie Pinos and her close associates to demonstrate that the petitioner's four major extended families interacted with one another. Maggie Pinos' claims application contained the names of individuals in the petitioner's Marine, Armija, Santos, and Guzman extended families that comprise the current petitioner's membership. Newly submitted oral histories and documents concerning Maggie Pinos' adoption of Juarez (Santos line) children and her fostering of other children, including Marines, further explains some of the evidence submitted and discussed under criterion (b) in the Proposed Finding (*Muwekma PF*, 51). Her claims application and other oral history and documentary evidence show that because she adopted, fostered and godparented many children, she had created kinship links to the petitioner's various families.

Maggie Pinos' personal network reaching to the Marine, Guzman, Armija, and Santos families, however, is distinctive to her and does not characterize the networks of other ancestors of the petitioner in 1933 or later. Only the children who were raised by Maggie Pinos continued to interact along the lines of kinship she had created through fostering, godparenting and adoption. For example, the composition of the group attending the funeral of Miguel Archuleta in 1970 demonstrates the continuation of created kinship links she had established. During the claims application process of 1929-1932, Maggie Pinos applied for those children she had adopted and who lived in her home as if they were her natural children. Thus, Maggie Pinos' personal network does not necessarily demonstrate that she and other family heads consulted with one another and played a joint leadership role in the claims application process, or that she played a solo leadership

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role in the application process. Rather, her actions may merely show her acting on behalf of her own immediate family as others did for their natural children.

The petitioner submits, as new evidence, Indian school records from Sherman Institute in California for Domingo Marine in the 1930's and Chemawa Indian School in Oregon for John and Rayna Guzman in the 1940's (Vol. II, tabs:1931-1940, 1941-1950). This evidence consists of application forms, report cards, and some correspondence. The petitioner claims that this evidence meets criterion 83.7(c)(1)(iii) by showing "interaction across family lines" and "patterned practices" of behavior (Chart 83.7(c), 1930s:33-34, 1940s:12-13). The correspondence was not written by "elders." No group leader vouched for the students' degree of need or Indian heritage. The application forms were not signed by any witnesses, and therefore do not demonstrate witnessing between the major extended families. The petitioner provides no explanation of specific evidence demonstrating "interaction" or "patterned practices," and no explanation of how such interaction or patterns would demonstrate the "widespread knowledge, communication and involvement in political processes by most of the group's members" mentioned in section 83.7(c)(1)(iii). These documents contain no evidence of a political process within the petitioning group or the group's political influence over its members.

The petitioner submits a one-page excerpt from a 1949 local history of the town of Pleasanton, California, as new evidence (Soito 1949). This imaginative account described an "Indian menace" to the local ranchos, their dons, and their "women folk" about 1840. It mentioned Indian rancherias as having been a part of Pleasanton "up until 1914," and referred to a "King Philip" as the Indians' "last leader." This exhibit does not discuss the years since 1927. The petitioner's conclusion that this local history meets criterion 83.7(c)(1)(iii) by demonstrating "widespread knowledge, communication and involvement" in the Indian claims application process by most of the group's members "due to intervention and leadership of Elders through family heads" (Chart 83.7(c), 1940s:31) bears no relationship to this document. This exhibit does not demonstrate any form of evidence listed under section 83.7(c) for the period since 1927.

The petitioner submits, as new evidence, 21 claims applications filed between 1950 and 1957 (see Chart 83.7(c), 1940s:29, 1950s:4). Twenty of the 21 applications are listed in the petitioner's chart for criterion (c) (Chart 83.7(c), 1940s:33-39, 1950s:1-44). The petitioner claims that these applications demonstrate the "use of a shared system" during the years 1948-1955 and show "widespread knowledge, communication and involvement" in the application process by most of the group's members "due to intervention and leadership of Elders through family heads" (Chart 83.7(c), 1940s:29). In contrast to the earlier claims applications, these forms were all witnessed, with perhaps one exception, by unrelated persons not considered part of the petitioning group. Therefore, they do not show interaction across "lineages" or between the petitioner's major extended families by witnessing. The forms themselves do not provide information about leadership or influence in persuading people to apply. Widespread communication and intervention by "elders" or leaders in the application process is asserted, rather than demonstrated, by the petitioner.

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The petitioner cites a report by anthropologists Alfred Kroeber and Robert Heizer as new evidence (A. Kroeber and Heizer 1970). This report was published in 1970, was written in 1955, and was about 1933 data. The petitioner contends that this report identified the "survivorship" of a "Mission San Jose / Pleasanton" group (Chart 83.7(c), 1950s:25). The report actually identified the number of individual survivors of a historical group. The petitioner contends that the report demonstrates interaction across family lines and "patterned practices" (Chart 83.7(c), 1950s:28-29). Since the report did not identify any individuals, an analysis of the report's data cannot identify extended families nor describe any interaction between extended families. Kroeber and Heizer provided no description or analysis of any group practices by the descendants of a historical group, or of any group leadership or decision-making process. In short, the report is absent any description of any group's political influence over its members in either 1933 or 1955.

The petitioner submits the funeral book for Margaret Pinos Juarez in 1960 as new evidence. This document consists of a cover page and two pages of signatures of "friends who called" at the funeral (Vol. II, tab: 1951-1960). The petitioner contends that this evidence shows the "influence of Elders as leaders, in that family heads were persuaded to provide support to [a] tribal effort," in this case "attending [the] ceremony of [an] important and influential elder" (Chart 83.7(c), 1950s:48). This funeral book does not contain evidence about any persuasion or political influence used by any persons to produce attendance at this event. With the exception of one woman's request for transportation from relatives to events similar to this one (Olsen 1984, 1986), other evidence including oral histories also does not indicate that individuals persuaded or organized others to attend this event

### *Summation for the period 1927-1964*

This review of the comments and evidence concludes that the field notes of ethnologist J. P. Harrington and a publication of anthropologists Alfred Kroeber and Robert Heizer do not describe any contemporary political process or political influence of a group over its members. Claims application records do not show that "elders" had "cross-lineal" influence nor demonstrate that "elders" organized or influenced the claims applications of a group. Indian school records do not show group involvement in the school application process, and a funeral book does not show the influence of leaders to assure participation in an activity such as a funeral. A 1949 local history does not discuss the post-1927 period. These documents also do not corroborate other evidence in the record. Therefore, the combined record of documentary evidence and the new oral history evidence does not reveal patterns of behavior which demonstrate the existence of political processes or a bilateral political relationship between leaders and followers. Because this evidence, when considered in combination, does not demonstrate that the petitioning group maintained political influence over its members, the available evidence is not sufficient to meet the requirements of criterion 83.7(c) between 1927 and 1964.

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Comments on the Proposed Finding for the Period 1965 to 1983

The new evidence which the petitioner's chart cites as meeting criterion (c) for the period from 1965 to 1983 consists of a 1965 issue of the journal *Indian Historian*, some applications between 1969 and 1972 for inclusion on the Indians of California judgment roll as well as a 1971 letter from the BIA to an applicant, a 1970 funeral book for a member's spouse, a historical resources inventory prepared for a State agency in 1974, minutes of a 1982 meeting, two letters to the Native American Heritage Commission in the early 1980's, two letters by the regional park district in 1982, interviews conducted by Nancy Olsen in the mid-1980's, and a 1987 obituary for B. Michael Galvan (Petitioner 2002, Chart 83.7(c)). The petitioner's textual response mentions no additional documentary evidence (Petitioner 2002, Vol. 83.7(c), 17-21). The petitioner also includes in its chart all of its previously submitted documents and contends that this evidence, especially documents produced by the American Indian Historical Society, meets the criterion.

The petitioner's comment on the Proposed Finding argues that it meets criterion (c) during the 1960's because of evidence that the petitioning group sought to protect an Indian cemetery and to submit claims application forms for its members. The petitioner contends that "elders" and leaders contributed "to mobilizing the community" to submit applications and "to attend meetings [about the cemetery] and obtain a consensus on future action" (Vol. 83.7(c), 17). The petitioner does not support this contention with any discussion of any evidence in the record. The available evidence contains little evidence about informal activities, such as personal diplomacy by a respected informal leader to deal with conflicts among the petitioner's extended families. The new oral history interview evidence submitted by the petitioner, however, demonstrates some group activities by some of the petitioner's members concerning the cemetery during the 1960's.

The oral history interviews provide evidence that those individuals who participated in a meeting about the cemetery, probably in 1965, considered the cemetery dispute to be an issue of importance to them. The available evidence does not demonstrate, however, that any ongoing factional dispute existed within the group over the cemetery and related issues. Although the petitioner suggests that consensus was a goal of the 1965 meeting, and may imply that it was obtained, the petitioner itself notes that "the attempt to organize the tribe formally under the Ohlone Indian Tribe, Inc., failed (for lack of consensus on its operation and leadership control) . . ." (Vol. 83.7(c), 19). The divisiveness of the cemetery issue between 1965 and 1971 may have precluded further group activities and group organization until the 1980's, and discouraged the enrollment and participation in the petitioner's organization of some members and their families until recently. The available evidence indicates that a group meeting about the cemetery issue was a limited occurrence, and does not demonstrate that group meetings or activities continued after this brief period of activity in the 1960's.



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The petitioner argues that during the late 1960's the petitioning group "focused on protecting the Ohlone Indian Cemetery where their ancestors had been buried . . ." (Vol. 83.7(c), 18). The petitioner claims that two oral history interviews provide new evidence of group efforts to clean up the Indian cemetery of the Mission San Jose, and evidence that those activities began as early as 1962 and 1963 (Chart 83.7(c), 1960s:2). According to the petitioner, Dolores Marine Galvan learned of the neglected condition of the cemetery from a newspaper account in 1962 and insisted that her daughter mow and weed the cemetery. The petitioner argues that this shows leadership by Dolores Marine Galvan. It claims that other families joined in, but the families listed by the petitioner were the families of Dolores Marine Galvan's three children and their spouses (Chart 83.7(c), 1960s:2-3). The review of the new oral history interviews, however, finds wider participation by the petitioner's members and their ancestors in cemetery clean-up efforts in the mid-1960's than is cited by the petitioner.

The new oral histories provide evidence that information about the cemetery was relayed from one individual to another which resulted in their attendance at an undetermined number of cemetery clean ups and at least one public meeting in the mid-1960's. One woman said that her son-in-law Benjamin Michael Galvan had telephoned her, about 1965, to ask her to attend a cemetery clean up. One of Trinidad Marine's grandchildren said that Dario Marine had asked him to attend a meeting. Because of the lack of additional evidence, general patterns of communication or attributions of leadership may not be drawn from only two examples. It does appear, however, that the Ohlone descendants informally came together in the mid-1960's on an ad hoc basis around a specific issue, in this case the Ohlone cemetery's condition and ownership.

The petitioner again contends, as it did for the Proposed Finding, that actions of the American Indian Historical Society (AIHS), a national, intertribal organization, should be accepted as evidence of the actions of the petitioning group. The petitioner claims that a series of letters in 1965 and 1966 by Rupert Costo and his wife Jeannette Henry Costo, on behalf of the AIHS, demonstrate that the petitioner meets the requirements of criterion (c) because they show "interaction across family lines" and "participation" by the petitioning group (Chart 83.7(c), 1960s:35, 38, 42, 59, 64, 67; citing R. Costo 3/29/1965, 5/20/1966, 7/23/1966 (two); J. Costo 5/17/1965, 5/31/1965). Since these letters mentioned no members or ancestors of the petitioner by name, however, they cannot show interaction between the petitioner's extended families or participation by any individuals.

The petitioner also claims that Rupert Costo "was representing the interest" of the petitioning group (Chart 83.7(c), 1960s:34). Although Jeannette Henry Costo described the position of "the Indians," the letters cited by the petitioner did not claim that the Costos or the AIHS were acting at the request of any group. Additional evidence is needed to demonstrate that the Costos were acting as the petitioner's representative at the request and with the knowledge of the petitioning group. The advocacy of the Costos does not by itself demonstrate that the petitioning group had an internal political process or that it had decided as a group to seek external advocates.

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The petitioner claims that several letters written by Rupert Costo of the AIHS demonstrate the "influence of Elders as leaders" (Chart 83.7(c), 1960s:45, 88, 122). In a 1965 letter to [Benjamin] Michael Galvan, Costo gave Galvan instructions on how to represent the interests of the AIHS at a public meeting scheduled by the AIHS (R. Costo 6/21/1965). A 1969 letter to scholar Sherburne Cook did not mention "elders" of the petitioning group (R. Costo 8/7/1969). A 1970 letter to Philip Galvan appeared to break off relations with Galvan and asked that he return AIHS property (R. Costo 7/8/1970).<sup>45</sup> Although the 1965 letter urged [Benjamin] Michael Galvan to control his relatives at the public meeting, none of these letters referred to any individual as an "elder" or described any individual's leadership over the petitioning group.

The newly submitted oral histories discuss a meeting held about 1965, which may have been the public meeting referred to in Costo's letter or which may have been an earlier meeting that produced controversy leading Costo to warn Galvan to control his relatives at the later public meeting. Unfortunately, little in the oral histories describes what happened in the meeting. What occurred at this 1965 meeting was implied only by individuals remembering the event more than 30 years after it occurred. One woman said:

[Philip Galvan] made himself chairman of the board. Him and his family Andy and Michael [Galvans] that was the council. None of us was included. I'd say I felt like we were just there to say you're in charge, you're alone. He never recognized any of us. (Leventhal and Cambra 2001)

What transpired after the meeting was also discussed in the oral histories (Leventhal and Cambra 2001). Individuals who had attended the meeting met in the parking lot and complained to one another that they believed that the Galvans, particularly Philip, were taking control of the cemetery and ignoring their position that the cemetery should be owned or controlled by all the Ohlone descendants in the best interest of everyone. Trinidad Marine Ruano's grandson and several of her family members believed that she was the leading proponent of this position and that others in the various families, including Marshalls, Thompsons and Arellanos, consulted and deferred to her.

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<sup>45</sup> An example of the disjunction between the evidence and the petitioner's claims for that evidence is this 1970 letter from Rupert Costo of the AIHS to Philip Galvan, an AIHS officer. The petitioner claims that this letter shows "the influence of Elders as leaders" because external "agents" had "appealed to Elders[,] and family heads joined in efforts to preserve [the] cemetery in cooperation with [an] advocacy organization . . ." (Chart 83.7(c), 1960s:122). Rather than an example of an appeal by the AIHS to the petitioning group for its participation, or an example of the petitioning group joining in a cooperative effort with the AIHS, however, this letter reveals a temporary break in relations between Costo and Galvan. In this letter Costo asked Galvan to "[p]lease return to us your files of all minutes . . . and the key to the Cemetery." Costo closed the letter with the dismissive, "[w]e'll be seeing you" (R. Costo 7/8/1970).

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This view is not corroborated by documentary evidence, however, and the oral histories are too few and too limited to use them to cross-check and validate facts by comparing similar descriptions and facts found in other interviews according to standard anthropological methods. It appears that rather than push their position further, however, the dissidents and others, including Ramona Marine's descendants, preferred to withdraw from the argument and purportedly did not return to subsequent meetings in anyone's memory (Leventhal and Cambra 2001). Whether this withdrawal occurred because the issue was not significant to individuals or for other reasons cannot be determined by the available evidence. The oral histories rarely discussed events after about 1971. Whether other meetings occurred is not known.

The new oral history evidence indicates that there were differences of opinion about the cemetery events and the Galvans' activities. Trinidad Marine Ruano's extended family attended the cemetery clean up, according to her family members who were interviewed. They say that they did not support the Galvan brothers' activities after a 1965 meeting at which the Galvans may have presented a plan that would have given the Galvans control of the cemetery and recognized their leadership of the Ohlone descendants. Trinidad Marine Ruano's extended family also did not appear on the "Ohlone Contacts" list produced by AIHS around this same time. There is evidence in the retrospective interviews that some middle-aged or older individuals did not support or participate in the efforts of the Galvans or the AIHS to take control of the cemetery.<sup>46</sup> Other individuals, however, such as Ramona Marine's extended family, appeared on the "Ohlone Contacts" list and later used the Galvans as witnesses on their claims applications. The petitioner submitted little documentary evidence to explain the activities of a group whose members called it "the family" or "the families," or their reactions as a group to the Galvans' activities in the AIHS at this time.

The petitioner submits, as new evidence, a 1965 issue of the *Indian Historian*, a journal published by the AIHS. This issue of the journal referred to a group of "Ohlone Indian Historians" and identified [Benjamin] Michael Galvan as its chairman (*Indian Historian* 1965). The petitioner notes that this historians' group was represented at a public hearing held by a city committee. The petitioner argues that this evidence shows the "influence of Elders as leaders" because they had persuaded family heads to support the "tribal effort" of preserving an Indian cemetery (Chart 83.7(c), 1960s:44). The leaders of this new historians' organization, however, were two brothers from a single family, Michael and Philip Galvan. The four representatives at the public meeting were three sons of Dolores Marine Galvan plus Mack Whitfield, who has no known genealogical connection to the petitioning group. This evidence, then, concerns a single Marine sibling and part of her own nuclear family comprised of her youngest sons.

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<sup>46</sup> For example, Trinidad Marine Ruano; Enos, Robert, Margaret and Dolores Sanchez; Tommy Garcia; and Albert Arellano. Because the oral interviews did not include last names, these individuals were identified by cross referencing the kin terms used by the speakers, e.g. "Aunt," "Cousin," etc., birth dates and ages, and documentary evidence showing these people on the AIHS contacts list.

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The petitioner's attempt (Vol. 83.7(a), 101-102) to make a letter co-signed by Rupert Costo and Philip Galvan, as president and secretary of the AIHS (R. Costo and P. Galvan 7/23/1966), and the letter's reference to "Ohlone Indians," into a request by an Ohlone group or a "Muwekma Tribe" is unpersuasive. The statement referred to by the letter was entitled a "Statement of an Ohlone Indian," and thus was presented as an individual statement rather than a group position. No supporting documentation suggests that the letter had been written in response to a group decision by the petitioning group, and Representative Edwards and the National Park Service treated the letter as a request by the AIHS, not by an Ohlone group.

The petitioner claims that the requirements of criterion (c) are met by a variety of evidence from the period between 1965 and 1970 that was considered for the Proposed Finding and found not to be sufficient to meet the criterion (Chart 83.7(c): 1960s:31 and 51, 39, 60 and 62, 77, 119, 121). A family history *circa* 1965, a resolution of the "Ohlone Historians" in 1965, a statement by Philip Galvan in 1966, an article by 17-year-old P. Michael Galvan in 1968, and a petition and open letter in 1970 did not demonstrate that these documents or actions were the result of an internal decision-making process of the petitioning group (*Muwekma PF*, 32-35, and Description, 44-46, 54-66).<sup>47</sup> Contrary to the petitioner's claims, this documentary evidence, even when reviewed in the context of the new evidence contained in the newly submitted oral histories, does not demonstrate widespread participation in a political process by members of the petitioning group, interaction among the major extended families, or the influence of group "elders" over members. The petitioner provides no new explanation of this evidence that requires a revision of the conclusions of the Proposed Finding.

The petitioner submits the 1970 funeral book for Miguel Archuleta as new evidence. This document consists of 13 pages of signatures of persons who attended the funeral (Petitioner Vol. II, tab: 1961-1970). The petitioner contends that this evidence shows the "influence of Elders and family heads, in organizing attendance" at the funeral "across lineages" (Chart 83.7(c), 1960s:118). As in the example of the previous funeral book, this document does not contain evidence about any persuasion or political influence used by any persons to organize attendance at this event. The petitioner also cites this document as evidence of the group's significant sharing of labor in the care of burials at Catholic cemeteries (Chart 83.7(c), 1960s:119), although this burial was in New Mexico and the petitioner presents no evidence that group members travel to New Mexico to care for that cemetery. No evidence indicates that the group as a whole played a role in organizing the funeral or in providing shared labor for any purpose.

Attendance at this funeral appeared to be based on close kinship relationships within an extended family and on a long term friendship that developed in a foster family in the

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<sup>47</sup> The questions raised by the Proposed Finding about the Marine or Cornates "family history," *circa* 1965, were not, as the petitioner supposes, about the "authenticity" of the document (Petitioner 2002, Vol. 83.7(c), 17), but about who had created the document and how it had been used. Understanding the context in which a document was produced helps a reader or reviewer evaluate its meaning and significance.

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1920's when the Verona Band descendants were still in close contact.<sup>48</sup> Miguel (or Mike) Archuleta, reportedly an Apache or Pueblo Indian, was the husband of Mary Archuleta, a Victoria Marine descendant. He had one child with her and raised her other children. The funeral book shows that his step children and step grandchildren and half-siblings to his daughter attended the funeral. Among his relatives were the Galvan in-laws of the Archuletas. Also attending was the family of Alfonso Juarez. According to the petitioner, Alfonso Juarez was raised by Maggie Pinos, whom Mary Archuleta knew well, based on childhood relationships. At least 25 people from the large extended families of Victoria Marine and Erolinda Santos attended. Thus, the attendance at this funeral shows sharing and support among extended family members, but it does not extend beyond extended families that are linked through kinship, marriage and fostering/adoption relationships.

The Proposed Finding discussed the incorporation of the Ohlone Indian Tribe, Inc., in 1971, as a means to acquire title to the Indian cemetery of the Mission San Jose from the AIHS (*Muwekma PF*, 28, 32-35, and Description, 45-46, 64-66). The petitioner presents the correspondence in 1971 between the AIHS and the Galvan family, and AIHS meeting minutes, that resulted in formation of the non-profit corporation as evidence that meets the requirements of the criterion (Chart 83.7(c): 1970s:1-5, 13-14, 19). The petitioner, however, does not seek to rebut the evaluation in the Proposed Finding, and its comment provides no basis to revise the conclusions of the Proposed Finding about the formation of the Ohlone Indian Tribe, Inc. The evidence cited by the petitioner shows that the AIHS dealt only with the Galvan family to form the incorporated entity in 1971. Therefore, contrary to the petitioner's claims, this documentary evidence does not show widespread participation in a group political process, interaction among the major extended families, or the influence of group "elders" over members.

In 1971, Rupert Costo and the AIHS dealt with the Galvans as group leaders and required them to form a corporate body to acquire the cemetery, which they did as the Ohlone Indian Tribe, Inc. This evidence of the treatment of the Galvans as leaders differs from the oral history evidence that describes a 1965 meeting of Ohlone descendants about the cemetery as one that challenged the leadership claimed by the Galvans and resulted in a failure of the group to coalesce behind them. The petitioner itself says that, after 1971, the Ohlone Indian Tribe, Inc., did not address the issues confronting the group, and describes its acting leader Philip Galvan as having "had very little to do with the greater Tribal community" (Vol. 83.7(a), 109). The petitioner concludes that "the attempt to organize the tribe formally under the Ohlone Indian Tribe, Inc., failed . . ." (Vol. 83.7(c), 19). Thus, despite Rupert Costo's reputation and familiarity with the group, it appears from the available evidence that the Galvans were not accepted as leaders by the group after being designated by Costo and the AIHS. The available documentary evidence is not sufficient to demonstrate that the Galvans or the Ohlone Indian Tribe, Inc., exercised political influence or authority over the petitioning group.

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<sup>48</sup> These same links involving the Galvans, Maggie Pinos, the Juarezes, and Mary Archuleta are mentioned in several contexts including claims, funerals, fostering, and adoption. However, these examples repeatedly involved the same group of people.

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The petitioner cites, as new evidence of a reference to the "Ohlone Indian Tribe," a historical resources inventory of the Ohlone Indian Cemetery prepared for the California Department of Parks and Recreation in 1974 by a local historical committee (Chart 83.7(c), 1970s:32; California 1974). This inventory form indicated that the owner of the historical Indian cemetery was the "Ohlone Indian Tribe." The existence of this organization was not in doubt. The Proposed Finding detailed its formation and incorporation in 1971, noting that its board consisted of three Galvan siblings. The historical resources inventory form itself does not provide evidence of an internal political process within that organization, or evidence about how widespread participation in the organization may have been. The petitioner emphasizes the form's reference to "tribal chiefs," but that was explicitly a reference to persons of "historical importance," not to any existing leaders in 1974 (California 1974).<sup>49</sup>

The Proposed Finding did not find continuity between the petitioner and the Ohlone Indian Tribe, Inc., organization formed in 1971. It appears that the petitioner's comment does not disagree with that conclusion. The available evidence about the Ohlone Indian Tribe, Inc., specifically mentioned as participants in that organization only the three Galvan siblings who incorporated that entity and served on its board of directors. Despite the petitioner's genealogical connections to that Galvan family, the petitioner's evidence does not show that most of its members or their ancestors were part of the incorporated Ohlone Indian Tribe, Inc., or participated in its activities. Evidence that many of the petitioner's members are relatives of the Galvan family does not establish that the petitioner has evolved as a group from an organization led by the Galvans. Instead, the petitioner presents itself as having evolved as a group from an Ohlone group larger than the AIHS chapter of the 1960's or the entity incorporated in 1971 (see Petitioner 2002, Vol. 83.7(a), 150).

The petitioner submits, as new evidence, copies of applications between 1969 and 1972 by its members or ancestors for inclusion on the roll of the "Indians of California," and cites 7 of those 27 applications in its presentation of the evidence for this criterion (Chart 83.7(c), 1960s:80-85, 90-91; Vol. III). The petitioner claims that these applications demonstrate "mobilizing significant numbers of members and significant resources from its members for group purposes" (Vol. 83.7(c), 18). The forms themselves do not provide information about leadership or influence in persuading people to apply. Any judgment awards would be made to individuals, and the petitioner does not explain how this situation constituted achieving "group purposes." A 1971 letter cited as new evidence for criterion (c) about the application process was a form letter to applicants sent by the BIA to an ancestor of a member of the petitioner, and does not demonstrate any actions by the petitioning group or any political influence within the group (Chart 83.7(c), 1970s:6; BIA 4/7/1971).

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<sup>49</sup> The form named no tribal chiefs. Other evidence indicates that no burials occurred at the Indian cemetery after 1926. Thus, any reference to historically important tribal chiefs buried at the cemetery would not include any post-1927 political leaders of the petitioner.

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The petitioner contends that claims activities, which in past acknowledgment cases have not been treated as being inherently group political activities, should be treated as such for this petitioner because of the "special circumstances" in this case of "cross-lineal witnessing" of applications over decades and the alleged claims requirement of tribal affiliation (Chart 83.7(c), 1960s:27). The evidence, however, shows that "cross-lineal witnessing" did not occur on the applications in the 1950's and that "tribal affiliation" was never required. The petitioner argues that "Elders and family heads, such as Dolores Galvan, Maggie Thompson, and Trina Marine, were influential in urging and supporting other members on a cross-lineal basis to support one another in the process of asserting claims, . . . informing other families and providing affidavits" (Chart 83.7(c), 1960s:23). The existence of such activities, such communications, and such influence by these "elders" between 1969 and 1972, however, is asserted rather than demonstrated by the petitioner in its comment on the Proposed Finding.

In its discussion of evidence relating to criterion (a), the petitioner presents the new argument that Benjamin Michael Galvan was its chairman and leader from either 1965 or 1971 until 1984, when the petitioner formed a formal organization and Galvan "stepped down" as chairman (Vol. 83.7(a), 109, 114-115). This claim is evaluated under criterion (c). The petitioner's narrative for criterion (c) for the period between 1966 and 1984 does not provide any examples of Galvan's leadership (Vol. 83.7(c), 18-21). Galvan is included in the petitioner's list of "elders" for these decades, but he is not included in the petitioner's discussion of the "traditional leaders" of the 1980's. The petitioner's statement about the formal organization of the petitioning group in 1984 does not mention any role by Galvan (Vol. 83.7(c), 21). The source for the statement that Galvan had been "chairman of the Ohlone Indian Tribe for 13 years" was Galvan's 1987 obituary (Vol. 83.7(a), 109 n.59, citing Newspaper 1987; see also Chart 83.7(c), 1980s:198). The AIHS's journal *Indian Historian* had identified Galvan as chairman of the "Ohlone Indian Historians" in 1965 (*Indian Historian* 1965). No primary document other than his obituary is known to have referred to Galvan as a tribal chairman.

The petitioner explains, in its narrative for criterion (a), that many outsiders mistakenly identified Philip Galvan as the leader of Ohlone Indians because he had "high visibility as a result of being the sole custodian of the Ohlone Cemetery . . ." (Vol. 83.7(a), 109). It was actually his brother Benjamin Michael Galvan, however, who "was still considered the Chairman of the Tribe by the tribal community," the petitioner claims, citing Galvan's obituary as its source (Vol. 83.7(a), 109). The petitioner contends that "Ben Michael Galvan maintained the authority of the Ohlone Indian Tribal community as chairman of the tribe until 1984," and that this informally organized entity "had separated itself" from the Ohlone Indian Tribe, Inc., by 1971 (Vol. 83.7(a), 114). The petitioner, however, provides no documentary evidence from the period between 1971 and 1982 with examples of Benjamin Michael Galvan's leadership, or the ongoing activities of an informal group. Perhaps to explain this lack of evidence, the petitioner argues that the "weaknesses inherent" in the "informally organized Ohlone Tribe under the leadership of Benjamin Michael Galvan" help explain the attempt in the 1980's to achieve a "reorganization" and formal organization of the petitioning group (Vol. 83.7(a), 114).

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Activities of Benjamin (Ben) Michael Galvan are discussed in the oral histories, but only for the period including the cemetery clean up activities and the transfer of title to the cemetery between about 1965 and 1971. He was married to a Victoria Marine descendant, Jenny Mora, the daughter of Mary Archuleta. In the oral histories, no one named him as chairman or as a leader of a group whose members called it the "family" or any other entity. His mother-in-law and another person merely said that he organized the cemetery clean up. His sister gave credit to all of her brothers for organizing the cemetery events. Evidence indicates that within the "family" Ben Galvan played a role associated with overseeing the Ohlone cemetery; thus, his role was limited to a single function. Ben Galvan and his brothers were not mentioned in the oral histories as leaders in any non-cemetery endeavor before 1965 or after 1971.

No oral history dealing with the period after 1971 to the present was submitted by the petitioner. The absence of information about the period from 1971 to 1982 is a major weakness of this petition because the existing evidence in the record is insufficient to document group activities, if they occurred, during this period. It is possible that missing oral history evidence could flesh out the activities, inherent "weaknesses," and involvement of the "family" in the "informally organized Ohlone Tribe under the leadership of Benjamin Michael Galvan." If attempts were made by the Galvans or others to undertake actions on behalf of the "family," and those actions were stymied by internal political processes, including informal processes such as gossip, shunning, and behind-the-scenes visiting, that could be valuable evidence under criterion (c). Alternatively, it is possible that oral history evidence is missing for this period because few actions were attempted on behalf of the "family" for some 20 years between 1971 and the mid-1990's when the petitioner's membership began to grow.

The petitioner states that "between 1980 and 1984 the Muwekma Ohlone families began to formally reorganize the Tribal community and to encourage the different families . . . to form a distinct tribal entity called at first the Costanoan/Ohlone Families of the Santa Clara Valley, and later, the Muwekma Ohlone Indian Tribe" (Vol. 83.7(a), 116). According to the petitioner, Rosemary Cambra, with the "blessings" of her mother, uncles, and great aunts, "embarked upon the effort to organize the Muwekma lineages into a cohesive group and for a tribal government" (Vol. 83.7(c), 20). The record shows that Rosemary Cambra's mother and several of her mother's siblings became involved in her archaeological monitoring activities in the 1980's. The first evidence that Cambra's mother was involved in her efforts was a draft document which the petitioner dates as 1984 (Franco n.d.). The involvement of Cambra's "great aunts" is in doubt. After Dolores Marine Galvan died in 1982, Trinidad Marine Ruano was the last surviving Marine sibling and the only one alive throughout this time period.<sup>50</sup> The only available evidence that Trinidad Marine Ruano cooperated with Rosemary Cambra is one letter from 1984 (Cambra *et al.* 5/25/1984).

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<sup>50</sup> Oral interviews in 1984 imply that Trinidad Marine was incapacitated at the time of the interviews.



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Although not directly discussed by the petitioner, the available evidence indicates that a split among the petitioner's extended families arose after the cemetery clean ups and meeting in 1965-1971. Trinidad Marine Ruano's family members stated that their mother became estranged from the Galvans around that time, and an unidentified woman, perhaps Concha Rodriguez, said that Enos and Robert Sanchez (Rosemary Cambra's uncles) never "went back" after the 1965 meeting because they were angry at Philip Galvan. Thus, the petitioner's view, that efforts were undertaken "to organize the Muwekma lineages into a cohesive group," may imply the petitioner believes a separation existed among the extended families that had been caused by the cemetery events in the 1960's and which these organizing efforts after 1980 sought to cure. Without direct evidence, however, it is not possible to evaluate that argument, if that is the petitioner's argument.

Some evidence from the early 1980's indicates that Rosemary Cambra did not work on behalf of a group. An example is a letter from Cambra to the state's Native American Heritage Commission in November 1981, submitted by the petitioner as new evidence. The petitioner argues that this document provides an example of "the exercise of political authority by some of the leadership" of the petitioning group, that it shows "interaction across family lines" and the "influence of Elders as leaders," and that it provides evidence under section 83.7(c)(1)(iii), presumably by demonstrating the widespread involvement in political processes by most of the group's members mentioned in the regulations (Chart 83.7(c), 1980s:5). In the letter, however, Cambra indicated that she "would like to write a family history . . ." (Cambra 11/23/1981).<sup>51</sup> Although she portrayed this effort as offering benefits "for Ohlone people" as well as for her children and her mother, she did not claim to be acting other than as an individual. She mentioned no persons outside her immediate family. This letter provides no evidence of widespread involvement by any group members or of interaction among the petitioner's main extended families, and no evidence that Cambra was acting on behalf of a group or the "family" as a leader.

Some of the oral histories indicate that in 1981-1982 Rosemary Cambra began doing genealogical research at Mission San Jose. It may be that she wanted, in view of other evidence from that period, to use this research to become certified as a "most likely descendent" in California. While doing this research, with the help of Nancy Olsen, Cambra and Ruth Thompson Orta became involved in a dispute about what they believed was Philip Galvan's intervention to deny them access to Mission records (Olsen 1/13/1983; Orta 2/20/1983). The petitioner does not explain why Galvan would have taken such action. No statements in the oral histories indicate that group leaders were called upon to resolve this conflict among members of three extended families, comprised of Dolores, Ramona, and Trinidad Marine descendants. No evidence in the record indicates that the actors in this quarrel among the Marine families turned to informal political processes in an attempt to deal with the problem. Orta indicated in an

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<sup>51</sup> The same evaluation applies to an undated draft letter or statement by Cambra's mother, which speaks to a lack of support or recognition from the Native American Heritage Commission (Franco n.d.; Chart 83.7(c), 1980s:40).

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interview that she went around the priest in charge who was denying access to records by dealing directly with an elderly Catholic sister who remembered her mother as a girl. Her correspondence at the time called upon non-Indian church leaders to resolve the problem.

During the early 1980's, the petitioner says, "the Muwekma Ohlone families . . . explored the creation of a committee to formalize a Costanoan/Ohlone Tribal Organization" (Vol. 83.7(c), 20). The petitioner lists the "traditional leaders" who were involved "with the problem of formal organization," but that list does not include Benjamin Michael Galvan. The petitioner neither explains why he was not involved, nor explains how authority and leadership were transferred to others, or were assumed by others. Rather, the petitioner states that Richard Martinez and Rosemary Cambra "took on a leadership role" during these meetings (Vol. 83.7(c), 20). Richard (or Ricardo) Martinez appears in available documents only in 1984 and 1985, while Rosemary Cambra has been active since 1982. An organizational meeting was held in January 1982, and was attended by unnamed families (Leventhal 1982).

The petitioner submits, as new evidence, a draft constitution on the letterhead of the "Committee to Establish the Tribal Council of the Costanoan Indians," and dates it as *circa* January 1982 (Committee 1982). The petitioner describes this document as providing an example of "the exercise of political authority by some of the leadership" of the petitioning group (Chart 83.7(c), 1980s:10). This is not a claim that this was a draft constitution or new governing body for the petitioning group. An organization of Costanoan Indians was potentially a group much larger and more inclusive than the petitioning group. A voluntary organization of all Costanoan descendants was not necessarily equivalent to the petitioner, and evidence about it is not necessarily evidence about a petitioner's organization. The petitioner describes no evidence about participation in this organizational effort to demonstrate that this was an attempt to formally organize its members. This draft constitution, without other documentary or oral history evidence of participation by members in a process to adopt a constitution for a group, or debate among members about its provisions, does not provide evidence of political participation, political leadership, or political influence within the petitioning group.

The petitioner's exhibit is an excerpt of a draft constitution, consisting only of page two and missing all of Section I of the constitution (Committee 1982). Enclosed with this document is a separate draft constitution, not on letterhead paper, and also undated. It proposed to create an organization known as the "Costanoan (Ohlone) Tribal Council" (Committee 1982). According to the provisions of this draft constitution, the organization's "tribal council members" would be Costanoan Indians with applications "registered" with the BIA. Its "tribal members," it appears, would be the descendants of the "registered" Costanoan Indians. The petitioner's narrative does not explain either of these draft constitutions, or relate them to what it claims was the formal organization of the petitioning group two years later in 1984.

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The letterhead of the "Committee to Establish the Tribal Council of the Costanoan Indians" lists three officers. In addition to chairman Alex Ramiez [sic], the vice-chairman was Manuel Martinez and the secretary-treasurer was Rosemary Cambra. The document does not show any participation by Benjamin Michael Galvan, whom the petitioner claims was the leader of the petitioning group at this time, or immediately preceding this event. Rosemary Cambra is the current leader of the petitioner. Manuel Martinez may be her brother. He has not held office in the petitioner's organization, and is recorded as having attended only one event involving either the petitioner's organization or Cambra's archaeological consulting firm since 1984.<sup>52</sup> The petitioner's narrative for criterion (c) makes no mention of the "chairman" of this committee, Alex Ramiez [or Ramirez], and no attempt to place him in the context of the petitioning group or its members (Vol. 83.7(c), 20-21). Alex Ramiez [or Ramirez] has no known genealogical connection to the petitioning group.

In contemporary field notes about a meeting of January 23, 1982, at the "Ohlone-Costanoan Indian Center," the petitioner's researcher Alan Leventhal named Rosemary Cambra as "the real driving force behind this movement" (Leventhal 1982). A week after this meeting, Leventhal wrote that in a private discussion with Cambra, she raised the "problems confronting the Ohlone and Chairman Alex Ramirez [sic]." Since 1982, Alex Ramirez [or Ramirez] has not been involved in the petitioner's activities, according to the available evidence. As the Proposed Finding pointed out, the petitioner did not submit information documenting and explaining how officials were placed in their positions in the petitioner's organization (as officers, board members, or "elders"), or describing the sequence of events leading to a change of the people in those positions. Nor did the petitioner submit information indicating that the petitioner's membership was involved in such decisions. The succession and transition of named leaders has neither been explained nor documented by the petitioner for this Final Determination.

One topic of discussion at this 1982 meeting may have been the protection of archaeological sites, because the meeting was attended by archaeologists. Alan Leventhal's field notes also imply that other topics may have motivated Indian individuals to attend. Included in the discussion were education benefits and a recent change in hunting and fishing laws, which Indian descendants apparently had received free until that year (Leventhal 1982). It appears that this meeting was an unsuccessful attempt to organize a confederation of several Ohlone descendant groups. However, without more documentation, the relationship of this group to the petitioner remains unknown.

The petitioner submits two 1982 letters written by a staff member of the East Bay Regional Park District as new evidence. The petitioner offers its standard argument that these documents provide examples of "the exercise of political authority by some of the leadership" of the petitioning group, show "interaction across family lines" and the "influence of Elders as leaders," and meet the criterion with evidence described in section 83.7(c)(1)(iii), presumably by demonstrating the widespread involvement in

<sup>52</sup> This may have been Manuel Martinez, Jr.

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political processes by most of the group's members mentioned in the regulations (Chart 83.7(c), 1980s:17, 19). These letters indicated that the park district consulted with "local Native Americans" in developing a land use plan (EBRPD 9/21/1982, 10/26/1982). Those consulted included Rosemary Cambra, representing the Ohlone Tribal Council, and Philip Galvan, as well as a representative of the "Tri-City Native Americans" and other individuals outside the petitioner's membership or ancestry. These letters provide no evidence about any internal political process of the petitioning group, no evidence of widespread participation within the group, and no evidence of the influence of group leaders over members.

Entities identified as "Muwekma" and "OFCS" (Ohlone Families Consulting Services) were named in documents in the record for this petition for the first time in an agenda for an October 21, 1983, meeting described as an "Ohlone Consultant Services Organizational Meeting" (Ohlone Consultant Services 10/21/1983). Item #6 on the agenda asked, "[d]oes the County of Santa Clara recognize the Ohlone Families of the Santa Clara Valley (OFCS and Muwekma) as viable entities and qualified representatives of the Local Indigenous Population also known as Costanoan/Ohlone tribe?" This agenda item, in mentioning "OFCS and Muwekma," implied that two distinct entities or organizations existed at that time. The record does not contain contemporary evidence about the composition and purpose of either of these organizations, if they were distinct organizations, or information about their differences from each other or their relationship to one another.

Some information about the "OFCS and Muwekma" organizations in 1983 is revealed by the content of the document itself. For example, the Galvans were not involved in "OFCS and Muwekma" because item #5 on the agenda asked:

What will the policy be towards a. other Ohlones from out of the area? (Phil Galvin, Michael Galvin, Watsonville group) b. other California Indians from other localities? c. out of state Indians?" (Ohlone Consultant Services 10/21/1983)

The fact that the chairman's mother's first cousins, the Galvans, were not part of "OFCS and Muwekma" indicates that the people involved in the 1980-1983 activities associated with Rosemary Cambra and her mother Dolores Sanchez may have been limited to their own extended family, Ramona Marine's descendants. With the exception of participants in the January 1982 meeting, the only individuals named in the record working with Rosemary Cambra between 1980 and 1984, outside of her own extended family, were non-Indian researchers, mostly archaeologists (Cambra 11/23/1981; Leventhal 1982; EBRPD 10/26/1982; Olsen 1985b), and Ruth Thompson Orta (Trinidad Marine's daughter) who did genealogical research with Cambra in 1981.

When researcher Nancy Olsen interviewed Ruth Orta in December 1984, a disagreement between Orta and Cambra was apparent from several statements Orta made, and the tone she used, when discussing Cambra's activities, even though earlier they had worked together (Orta 1984). This interview, combined with other evidence from this time

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period, could be interpreted to mean that Cambra's group was made up of Ohlone descendants living in Santa Clara County, as distinguished from the Galvans in Alameda County and Patrick Orozco or others in Santa Cruz County. Other documents imply, however, that several extended families had their own family organizations or archeological site monitoring firms. Whether the "OFCS and Muwekma" were family based, regionally based, or both, is unknown, because there is no direct evidence indicating their compositions.

The petitioner presents an introduction to a 1989 archaeology report as a 1983 document, because it referred to events in 1983 (Chart 83.7(c), 1980s:38). In that report, archaeologist Mark Hylkema wrote:

We want to thank Mrs. Rosemary Cambra and all of her relations from the Muwekma Ohlone Tribe who helped screen the excavated materials and feed many of the tired crew members. The Muwekma Ohlones expressed deep interest in this project, and they have been in the process of documenting their lineages through the Mission San Jose and Santa Clara record. The Muwekmas are the Chocehnyo descendants of the Mission San Jose/Pleasanton Rancheria. They desire to have their people learn more, and participate in future archeological excavations concerning their heritage. (Hylkema 1989)

Because this document was produced in May 1989, it may not be viewed as contemporary with earlier 1983 documents. The description of the organization Hylkema dealt with agrees generally with the characteristics of the petitioner's organization in 1989, as described in other documents in the record.

#### *Summation for the period 1965-1983*

This review of the comments and evidence concludes that the new oral history evidence shows that the issue of the Mission's Indian cemetery was an issue of importance to some of the petitioner's members and their ancestors, and that they participated in clean-up activities and at least one meeting about the issue for a brief period in the 1960's. The information discussed under 83.7(b) about the involvement of various individuals and families in the cemetery and claims activities during this same time period provides further context for events. The activities of the American Indian Historical Society cannot be substituted for activity of the petitioner. The AIHS was not the petitioner, but a distinct organization separate from the petitioner, despite the active involvement in the AIHS of some individuals from at least one of the petitioner's major extended families. Although the sum of the documentary and oral history evidence indicates that an attempt to organize a group called the "family" into a cemetery association may have been pushed forward by the AIHS, other evidence indicates that group ownership was never contemplated by Philip Galvan, and this development deeply split the extended families. The available evidence discussed here and under 83.7(b) does not demonstrate continuing participation by the petitioning group relating to the cemetery issue or other issues after 1971.

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The available documentary and oral history evidence does not demonstrate the existence of an informal political process within the petitioning group between the mid-1960's and mid-1980's. The available evidence does not demonstrate leadership of the petitioner by Benjamin Michael Galvan in those decades. A few oral history interviews mention only that he led some cemetery clean-up activities during the 1960's. The Ohlone Indian Tribe, Inc., formed by the Galvan family in 1971 was not a predecessor of the petitioner's current organization. The claims applications of members and their ancestors in the late 1960's have not been shown to have been coordinated by the petitioning group. Rather, each of the extended families submitted their own documents. Trinidad Marine dealt with her brother Dario Marine's descendants, and Dolores Marine, with the assistance of her son, may have helped some of her sister Ramona Marine's descendants. That evidence of their interest and involvement, however, does not demonstrate group leadership. Because this evidence, when considered in combination, does not demonstrate the petitioning group's political influence or authority over its members, the available evidence is not sufficient to meet the requirements of criterion 83.7(c) for the period between 1965 and 1983.

### Comments on the Proposed Finding for the Period since 1984

The new evidence which the petitioner's chart cites as meeting criterion (c) for the period since 1984 consists of some correspondence and newspaper clippings, a 1984 letter by an archaeological consulting firm, several anthropological studies, a 1992 funeral book, a 1996 obituary, and some oral history interviews and interview summaries. New evidence concerning the petitioner's organization consists of a 1989 membership list, a 1991 list of council officers, a 1991 mailing list, a 1995 constitution, and a videotape of an interview on historical events occurring well before 1984 with Mary Archuleta while members of an "elders' council" listened and commented (Petitioner 2002, Chart 83.7(c)). The petitioner also includes in its chart all of its previously submitted documents and contends that this evidence when combined meets the criterion.

Most of the documentary evidence cited by the petitioner as meeting criterion (c) was reviewed in preparation of the Proposed Finding. The discussion of the evidence in the Proposed Finding and the Description and Analysis of the Evidence that supported that finding described in some detail a pattern in which only a small group of persons was involved in attending meetings of the petitioner's organization or preparing correspondence on its behalf in the years since 1984. The petitioner's comment on the Proposed Finding has not directly rebutted that analysis or those conclusions. The petitioner repeats an argument for every document without providing an analysis of specific items of evidence or an explanation of how the evidence may be combined to meet the regulatory criterion (Chart 83.7(c), *passim*).

The newly submitted oral history interviews provide almost no evidence about the period since 1984, but information in the oral histories about earlier periods provides some context for understanding the documentary evidence after 1984. An analysis of the persons involved in events or activities mentioned by either the documentary or oral

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history evidence, however, demonstrates that the patterns of social interaction and authority in the modern petitioner described in the Proposed Finding remain essentially unchanged by the consideration of this new evidence.

In 1984, Rosemary Cambra attempted to organize an agreement about monitoring archaeological excavations with Ella Mae Rodriguez,<sup>53</sup> Rose and Rick Martinez, and Ben and Philip Galvan. The petitioner asserts that Philip Galvan has been the sole proprietor of the Ohlone cemetery and the Ohlone Indian Tribe, Inc., and that his older brother Ben Michael Galvan had split from him and that organization to lead the informal Ohlone group. A 1984 document, however, appears to group Ben and Philip Galvan as a pair, as if they were together in a firm comparable to the named leaders of other Ohlone monitoring firms (Martinez and Cambra 9/4/1984). The available evidence does not show that these archaeological monitoring activities were directly connected to the petitioner's organization.

The petitioner claims to have formally organized in 1984. Ricardo Martinez was listed as the "President of Muwekma" and Rosemary Cambra was listed as the "Proprietor of O.F.C.S." in a 1984 letter to the Santa Clara County Transportation Agency (Cambra *et al.* 9/4/1984). They were the two main authors of the letter that also was signed by 30 "family members." In 1985, Richard Martinez was listed as a "representative" on stationery for "Muwekma (The People): Ohlone/Costanoan Indian Families of Santa Clara Valley" (Cambra 9/15/1985). Martinez may be a close relative of the petitioner's chairman Rosemary Cambra. He is not mentioned again in the available evidence for the petition, and the petitioner says that his work and family require his attention as an explanation for his disappearance from the record and from the organization (Martinez *et al.* 2/27/1985). No one named him as a leader or mentioned him in any other capacity in any oral history interview. The petitioner also makes no explanation of how Rosemary Cambra took his place as the Muwekma chairman.

This 1984 letter to the Santa Clara County Transportation Agency said that the "Muwekma families have met" and the signers would like to be notified of Ohlone burials. While Ramona Marine's descendants made up the predominant proportion of the signers, also listed were Trinidad Marine and some of her descendants. Philip Galvan, Loretta Allen of the NAHC, Ella Mae Rodriguez, and Bea Woodward, who was not identified, received a copy of the letter. No other evidence shows directly that Trinidad Marine was involved with Rosemary Cambra's efforts to create an organization at this time, even though her daughter cooperated with Cambra on genealogical studies in 1981. Because Rosemary Cambra's relatives were predominant, she may have been leading an effort to unite disparate groups, but evidence is insufficient to confirm this. In light of the entire record and evidence concerning subsequent events in which these people were described as antagonistic to each other, it does not appear that this letter represented a single organization. It is at least equally possible that this letter represented an effort of

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<sup>53</sup> Rodriguez is identified elsewhere as an "Ohlone from Carmel Valley" (*Peninsula Times Tribune* 7/2/1989).

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several Ohlone extended families led by "most likely descendants" who were independently interested in, or already performing, archaeological monitoring.

Although Ruth Thompson Orta revealed, in a 1984 interview by Nancy Olsen, a spirit of rivalry with Rosemary Cambra's efforts, Orta's name was included among five "representatives" of the "Indian Families of Santa Clara Valley" in a letter written January 10, 1985, to the BIA requesting genealogical information in their personal files. The four other "representatives" were from Cambra's extended family. The stated purpose of these representatives was "to participate in the process of tribal incorporation and also Santa Clara Valley representation" (Franco 1/10/1985). The petitioner states that the listing of Ruth Thompson Orta (a descendant of Trinidad Marine) on this 1985 letter impeaches the Proposed Finding's conclusion that no interaction was indicated beyond 20 core family members as of 1995.

This new evidence of the 1985 letter complements Olsen's 1984 oral history interview with Ruth Thompson Orta which indicated that Orta, Cambra, and Olsen were working on genealogies in 1981, but the new evidence does not indicate that Orta was involved later in the petitioner's organization after formal organization occurred, even though Orta, her children Robin, Ray, and Roberta, and half-brother Frank Ruano appeared on an archaeological proposal in 1985 (Cambra *et al.* 5/25/1984; Cambra 2/27/1985, 9/15/1985; Olsen 1985a; Franco 1/10/1985). Combined with oral histories, this document shows that between 1984 and 1986 this family did appear to be working on this archaeological excavation with Cambra's relatives. Olsen reported that after Trinidad Marine died in 1986, however, her family no longer wished to do genealogy or be interviewed. The record indicates that by 1986 Ruth Thompson Orta withdrew from any involvement with Rosemary Cambra and did not appear on documents produced by other Indian associations such as MICA. She and her immediate family are not members of the petitioner's current organization even though her siblings and their families joined since the Proposed Finding was issued.

The petitioner's new evidence includes an unsigned sheet listing 56 people in family groups. "Muwekma Tribal Mailing List 1/91" is typed on the bottom of one of the sheets (Anonymous 1991). Not including spouses, 25 of the listed individuals descended from Ramona Marine, 2 only from Dolores Marine, and the remainder from Victoria Marine. Among the latter group, eight also descended from Dolores Marine. Missing from the list are Trinidad Marine's descendants (Ruth Thompson Orta's family), and any of the living descendants of Lucas, Dario, or Mercedes Marine. No Santoscs, Armijas or Guzmans appear on this list. Also missing are many other people who were alive and part of the extended families that today comprise the petitioner. The petitioner does not explain their absence. Also unexplained are the presence on the list of the family of Ben Michael Galvan and the absence of other Galvans.<sup>54</sup> Most of the Galvans on this list are

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<sup>54</sup> The name of Ben Michael Galvan's son, Albert Galvan, appears on a "Muwekma Indian Tribal Council" list, also dated "1/91" and apparently accompanying this mailing list. Albert Galvan did not sign a Resolution of March 1991 and did not attend a meeting of April 21, 1991. The record shows him at an event of the petitioner in 1992, 1994, 1995, and 1998, but his



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also descendants of Victoria Marine. Hank Alvarez, who descends from Dolores Marine, is on this list. This 1991 mailing list agrees with other documents previously evaluated for the Proposed Finding because it shows that a small group of Ramona Marine's descendants was joined by a select and overlapping group of Dolores and Victoria Marine's descendants, and then later grew family-by-family to the composition the current petitioner has at present.

In response to the Proposed Finding's conclusion that the petitioner's original submission did not reveal how its constitution was developed or who was involved in its adoption, the petitioner relates that the "Muwekma Ohlone Tribal Constitution" was initially developed:

by the tribal administrator with the assistance of Allogan Slagle and input of the Muwekma Tribal counsel. [T]here were many drafts before the Muwekma Tribal council adopted the constitution on 4/21/91. The constitution adoption of 4/2/1994 was to adopt the amended constitution. (Chart 83.7(c), 1990s:177)

By submitting evidence about the people who developed its constitution, the petitioner is responsive to deficiencies pointed out in the Proposed Finding. The people writing the constitution included the administrator, Allogan Slagle, and the tribe's counsel. None of those individuals were identified as tribal members. The Proposed Finding pointed out the lack of sufficient evidence of the petitioner's members' involvement with issues of significance to them. That the petitioner's paid or volunteer employees, consultants, and counsel developed its constitution is not a problem for acknowledgment. But their activities alone do not demonstrate widespread involvement of the members in the constitution's development.

Useful evidence for showing the involvement of members would be documented expressions of concern by members about membership, elections, leadership, and other constitutional issues which the members had to deal with before the constitution could be passed. A record of changes made as a result of the group's involvement would also constitute useful evidence. However, evidence showing that an employee presented a document and that it was accepted by a small group of people, without other evidence of widespread discussion or collaboration involving most of the membership, is not evidence sufficient to meet criterion (c) because it does not show political influence flowing back and forth between a predominant portion of the group's members and the group's leaders. Such evidence does not describe a decision-making process involving a predominant portion of the membership. Since most of the actions taken by the petitioner's council has been patterned very similarly to the acceptance of its constitution, the combination of this type of evidence does not provide evidence of significant widespread political activity and authority deemed to be significant by most members.

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participation was sporadic and it is unlikely that he actually performed as a councilman.

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The petitioner submits, as new evidence, the 1992 condolence book from the funeral of Pauline Carol Juarez, the non-Indian wife of the petitioner's member Alfonso Juarez. The petitioner claims that this list of signatures provides evidence under sections 83.7(c)(1)(iii) and (c)(2)(iii) in that it shows the "influence of elders as leaders, in that family heads were persuaded to provide support to [a] tribal effort" (Chart 83.7(c), 1990s:43). However, the funeral book itself does not show this. The vast majority of individuals attending were closely related to Alfonso Juarez and were descendants of Erolinda Santos or godchildren of Pauline Juarez (Irene Ruano), step-relations and in-laws to her family (Trinidad Marine's children). An evaluation of the relationship between Trinidad Marine and the Santos extended family, incorporating new oral history evidence, appears under criterion (b).

Only Robert Sanchez, Ramona Marine's son, did not fit into the basic categories of other attendees. His godmother however was Maggie Pinos. Alfonso Juarez grew up in Maggie Pinos' household as her son. There is reason to believe that the two men had a personal relationship, and may have viewed each other as brothers based on their common relationship with Maggie Pinos. This funeral book evidence alone does not demonstrate that Robert Sanchez's attendance was based on more than a personal relationship with the deceased. Mary Archuleta's presence may also be explained by her personal relationship with Maggie Pinos, which was demonstrated by other documents in the record and the oral histories. Maggie Pinos had fostered Mary Archuleta's daughter. Whether her attendance was as a family representative or on her own behalf cannot be demonstrated based on this funeral attendance without other corroborating evidence that she was there as a group representative rather than for or in addition to personal reasons.

The petitioner seems to place great emphasis as evidence under criterion (c) on the 1996 obituary of Lawrence Nichols (son of Elizabeth Marine), one of the people interviewed by Nancy Olsen in the 1980's. Nichols never enrolled in the petitioner, but had been an active part of the Indian population near Niles and Pleasanton from 1907 until at least the 1940's, and knew many of the petitioner's ancestors well. Despite considerable information in the record about Nichols' life story, none of it indicates that he was influenced by the petitioning group or its leaders or participated in any way in the petitioner's formal organization. In his interview in the mid-1980's, he never referred to an organization or used a word which could be interpreted as referring to an Indian entity or a group leader or leaders at that time. The petitioner believes that his 1996 obituary demonstrates evidence under sections 83.7(c)(1)(iii) and (c)(2)(iii) by showing strong influence on the behavior and norms of the group (Chart 83.7(c), 1990s:218). However, nothing in the obituary implied that Nichols influenced or was influenced by group leaders or group members, that other Ohlone individuals organized his funeral or provided his obituary, or that he had participated in an Indian entity. Thus, in itself, and in combination with other evidence, this evidence does not contribute to meeting criterion (c).

The petitioner suggests that its situation and evidence is similar to that of several successful past petitioners. The petitioner compares its non-profit status to the existence of the non-profit organization of the Grand Traverse Band petitioner, which had actual

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governmental functions. One task the Grand Traverse non-profit had was to assign lots on the group's land. This evidence demonstrated that their organization performed functions of great importance to people's everyday lives, such as determining where they lived and protecting their fishing rights. The petitioner has not demonstrated that the Muwekma formal organization has performed these types of significant functions in the lives of a predominant portion of their membership. Another organization, OFCS, whose relationship with the petitioner has never been adequately explained, provided sporadic employment to a small group of people doing archaeological monitoring, but the available evidence does not show widespread involvement in that organization. The evidence does not demonstrate that the monitoring activities of OFCS affected the lives of a predominant portion of the membership, as the Grand Traverse non-profit did.

The petitioner notes the kinds of evidence described in section 83.7(c)(1)(v) which requires demonstrating internal conflicts, and cites the Snoqualmie petition as precedent. However, the Snoqualmie case found that, "[t]hese conflicts have taken a form which indicates that a broad spectrum of public opinion among the Snoqualmie is involved rather than just the actions and opinions of particular individuals" (*Snoqualmie PF* 1993, 29-30). In the Muwekma case, there are internal conflicts which are important to some segments of the "family," but there is little evidence in the record about these disputes that reveals that the petitioner has internal political processes, or reveals how community cohesiveness supports those processes. Furthermore, there are indications that some of the disputes within the petitioning group may have been personal to an individual and their close relatives and did not involve distantly related people in the membership.

In this context, the petitioner raises the issue of "factional divisions" discussed in the Tunica-Biloxi decision, but does not identify actual factions in the Muwekma petitioner which would be similar to those identified in the Tunica-Biloxi petitioner. There is simply not enough evidence to support a conclusion that such disputes inform political activity and behavior of the membership of the Muwekma group. In past decisions, the existence of factions has been demonstrated by a showing that factions reflect long-term distinct orientations to various issues the group deals with, and thus have political repercussions. The petitioner's chairman's statements in oral histories and other statements in the petition narrative indicating that the petitioner has withheld certain kinds of evidence may explain a lack of evidence about disputes, long term factions, and political processes, but such justifications cannot excuse an absence of evidence and allow a positive determination based on unsupported assertions.

The petitioner points to "Chief Kanim's personal leadership," in the Snoqualmie petitioner, as precedent to its own case. That leadership "took the form of counseling members and settling disputes between individual Snoqualmie" (Vol. 83.7(c), 61, citing *Snoqualmie PF* 1993, 25). The Muwekma petitioner, however, submitted no evidence that its named leaders actually counseled members and settled disputes among its individual members. The Muwekma petitioner's enrollment of previously estranged families over time may have resulted from the efforts of someone, or several people, but the details of such efforts are not in the record. No information or evidence indicates that personal leadership was involved in settling disputes and cajoling individuals to enroll

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who may have been disinterested, estranged, or angered over past events. The record indicates that at least three notable individuals are estranged from the group, including Kathy Perez, Ruth Thompson Orta, and Philip Galvan. All would meet the petitioner's membership qualifications, but do not care to enroll. No evidence indicates that any leaders of the petitioner have attempted to deal with these apparently disgruntled members of the "larger family."

Even if efforts were unsuccessful in resolving these conflicts, information about them and descriptions of the quarrels showing the main actors and how they attempted to influence the behavior of other members in these arguments could provide valuable evidence of informal political influence and power brokering. Descriptions and evidence concerning enrollments and disenrollments would be an excellent topic for oral history interviews with those living individuals actually involved during the last ten years in the membership growth of the petitioner. Evidence showing actual examples of such political influence connected to changes in membership, however, were not submitted by the petitioner.

The petitioner also notes evidence in past cases showing that a group's interests were promoted outside the band, and cites the Grand Traverse and Snoqualmie cases. Rosemary Cambra has represented herself as the petitioning organization's leader to the outside world on numerous occasions. In fact, most of the evidence submitted by the petitioner shows her dealing with persons outside the group. The new evidence submitted by the petitioner, however, does not cure the major deficiency raised in the Proposed Finding: the absence of evidence about internal decision-making and internal processes for determining policy and making these presentations to the outside. Such internal processes generally involve influence from leaders to members, and vice versa. Petitioners should have direct evidence of such decision-making and influence. Past decisions have never accepted the named leaders' presentations, letters, and other evidence of dealings with outsiders as evidence by itself sufficient to demonstrate political influence. Past decisions have required direct evidence in oral histories, meeting minutes, or other sources that such influence actually exists. The applicable precedent is one of leaders representing the group to outsiders with the support of the group.

The petitioner (Vol. 83.7(c), 62) quotes the following text from the Snoqualmie finding:

Attendance at [general council] meetings ranges from 10 to 35 percent of the membership, depending in part on the importance of the issues to be discussed. The fact that not all adult Snoqualmie can be shown to be directly participating in the general councils does not conflict with this conclusion, given that a significant portion of the membership participates and that participation is broadly distributed among the membership.  
(*Snoqualmie PF 1993, 29*)

This quote points out a critical problem of the Muwekma petition. The Snoqualmie had a formal organization, and a minority of members attended general council meetings. A comparable percentage of Muwekma members have attended recently instituted

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Muwekma annual meetings. The quote cited from the Snoqualmie case, however, actually views this low percentage of participation as a problem. In itself it is not enough to meet the requirement that a predominant proportion of the membership is involved in a petitioner's political process. Only when weighed with other evidence not tied to the general council meeting that showed "a significant portion of the membership participates and that participation is broadly distributed among the membership," did the Snoqualmie meet the criterion.

The BIA researchers attempted to measure participation of the Muwekma membership by creating a database of 4,575 entries in which individuals were mentioned in documentary or oral history evidence related to the petitioner's activities, whether representing the petitioner to the outside or dealing with one another. A rough analysis of these data was done. The pattern of all of these discrete pieces of evidence compiled from the record showed that the most active persons were over 45 years of age in 2000 and most family lines had an older person involved in the group's activities, although some merely because the person was repeatedly listed as an "elder" on the petitioner's letterhead.

This analysis showed that between 1990 and 2001 the evidence contained at least 1,065 instances of a member participating in a group activity or with other group members or appearing on behalf of the group in some way. However, only 20 individuals (5 percent) of the entire membership were responsible for 805 (or 76 percent) of the documented instances of participation during this 11 year period. Almost 75 percent of the group's membership were never documented as participating in any group activity between 1990 and 2001. Thus, the percentage of Muwekma members participating does not constitute a predominant proportion of members as required by the regulations.

There is no expectation that large percentages of members would attend events, such as the annual meeting. But, some data or combination of data needs to show that the activities of the group were important to its members and that a predominant number were involved in group activities. Even more problematical is that five out of six of the highest participating members were part of Ramona Marine's extended family. These five individuals were responsible for 481 of the 1065 incidents of participation, or 45 percent of them. While it is not unusual for, and indeed expected that, certain enthusiastic leaders and members may represent an important core group, that a high number of these intense actors come from a single family does not indicate widespread, significant participation of members.

The presence of the older people on the petitioner's letterhead may not indicate that they were influential as claimed by the petitioner. While older people in the various major extended families appeared on a letterhead during this period, this is not very good evidence for widespread participation. No direct evidence demonstrates that the "elders' council" met or performed significant functions. The activities of the "elders' council" were not explained in the petitioner's documents. The petitioner did not submit meeting records, or indicate what special role this body may have performed. It is not known whether it was an honorary position or one that involved actual performance of duties. The single example of a videotape of an "elders' council" meeting was for the purpose of

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interviewing an elderly woman, rather than passing on policy or strategy as the petitioner claims. While other evidence corroborates the active participation in events and fund raising of some of the members of the "elders' council," including Hank Alvarez and most recently Joel Arellano, their role in setting policy and in decision-making is only asserted and not demonstrated by the available evidence.

### *Summation for the period 1984 - present*

This review of the comments and evidence concludes that the available evidence does not demonstrate the existence of a political process or decision-making process within the petitioning group since 1984, or of a bilateral political relationship between the group's leader and members. For example, the submitted evidence provides no description of the process by which the petitioning group formed a formal organization in 1984 or adopted a constitution in 1991. The available evidence indicates that since 1990, participation in the petitioner's activities has been mostly by a core group of 20 individuals, especially by five individuals from one extended family. A predominant portion of the petitioner's membership has not participated in the group's activities. These conclusions do not result from an inability to provide documentary evidence of such activities, for the petitioner's newly submitted oral history interviews provide almost no evidence about the period since 1984. Because this evidence, when considered in combination, does not demonstrate that the petitioning group maintained political influence or authority over its members, the available evidence is not sufficient to meet the requirements of criterion 83.7(c) for the period between 1984 and the present.

### Acknowledgment Precedent

The petitioner asserts that it meets the requirements of criterion (c) "predicated upon 'previous precedents' established by the Department" in past acknowledgment proposed findings and final determinations (Petitioner 2002, Vol. 83.7(c), 61). In general, the petitioner cites various precedents, but does not persuasively explain how they apply to the Muwekma petitioner by describing how the Muwekma situation and evidence is comparable to that of the case cited as precedent (Vol. 83.7(c), 24-25, 47-48, 61-63).<sup>55</sup>

Some of the precedent cited by the petitioner appears to have some relevance to the evidence in this case, although the petitioner does not make an explicit argument explaining that relevance. The petitioner cites as precedent an example, from the Snoqualmie petition, of a leader dealing with external authorities on behalf of the group or its members (Vol. 83.7(c), 62). This precedent is applicable to the Muwekma petitioner only since the mid-1980's, as the evidence in this case does not demonstrate that such activities occurred earlier except within families. However, in contrast to this precedent, the evidence does not show that a Muwekma leader represented the group to

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<sup>55</sup> The BIA staff explained to the petitioner's researchers at the on-the-record technical assistance meeting that such a comparison and such an explanation would be necessary for the successful application of precedent (BIA 11/7/2001, 68, 71, 74-75).

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outsiders with the support of a group decision-making process. The precedent of a petitioner acting as a community to defend its land, as in the Tunica-Biloxi petition, may apply to the cemetery issue in the Muwckma case (Vol. 83.7(c), 62), but only during the 1960's and early 1970's. This applicability of this precedent is limited because of the actions of one family to gain title to and control over the cemetery as a non-profit organization separate from the petitioner.

The petitioner cites as precedent, from the Grand Traverse Band petition, that an amalgamation of bands can produce an autonomous entity (Vol. 83.7(c), 61), but does not explain the relevance of that precedent to its case. The petitioner does not explicitly describe itself as a historical amalgamation of various bands. Although the petitioner's extended families may trace to several different historical bands that existed prior to the creation of the mission system, the available evidence does not show that a political amalgamation of the governing bodies of various bands took place before 1927. The issue of band amalgamation would appear to be irrelevant to this petitioner because any amalgamation would have predated the previous acknowledgment of a Verona Band. The issue of amalgamation was not raised for the Proposed Finding and was not evaluated by that finding. This issue may be applicable to the Muwckma petitioner prior to 1927, but there is no indication that an amalgamation of various bands has occurred since 1927. Thus, this cited precedent is not applicable to the evaluation since 1927 of the Muwckma petitioner.

Neither the regulations nor acknowledgment precedent require petitioners to demonstrate the existence of a formal political organization. The Muwckma petitioner cites precedent that other petitioners, such as Narragansett and the Grand Traverse Band, have demonstrated that they have exercised political influence through a church organization or a non-profit corporation (Vol. 83.7(c), 61). The evidence in the Muwckma petition, however, does not demonstrate that its members or ancestors utilized a specific church or used the church to meet regularly, control an annual meeting, or build a community building as the Narragansett petitioner did, or that they used a church as the Mohegan petitioner did. The evidence in the Muwckma petition also does not demonstrate either that a non-profit corporation or a for-profit business firm associated with members or ancestors of the petitioner's members performed the functions of a tribal government as a non-profit corporation did for the Grand Traverse Band petitioner. Therefore, these cited precedents are not applicable to the evidence available about the Muwckma petitioner.

The definition of "political influence or authority" in the regulations (section 83.1) refers to a group's use of an "internal process." Acknowledgment precedent has stressed the importance of evidence of a functioning political process, whether formal or informal, among a petitioner's members and their ancestors. The petitioner cites the Grand Traverse Band petition as precedent that evidence of the existence of a "decision-making process" demonstrates political influence (Vol. 83.7(c), 61). The petitioner also cites the Snoqualmie petition as precedent that political influence can be demonstrated by evidence of a "lengthy political process of meetings and discussion among a substantial portion of the membership" (Vol. 83.7(c), 62). The available evidence, however, shows the petitioner's chairman and a few members and employees presenting resolutions and

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plans without evidence of widespread knowledge and participation of the petitioner's membership. Thus, in contrast to the cited precedent, the evidence does not show that the Muwekma petitioner has had such a decision-making process, or such a lengthy process of meetings and discussions among members, so those precedents do not lead to a conclusion that this petitioner meets the requirements of criterion (c).

The petitioner cites as precedent that evidence of leaders "settling disputes between individual" members, as in the Snoqualmie petition, can demonstrate political influence (Vol. 83.7(c), 61). The available evidence, however, does not contain examples that the Muwekma petitioner has had leaders who have settled such disputes. Thus, the cited precedent is not applicable to this petitioner. Group meetings may demonstrate the existence of a political process, but do not necessarily do so. The petitioner cites as precedent that the Narragansett petitioner held a large tribal meeting on a crucial issue (Vol. 83.7(c), 62). In contrast to the cited precedent, however, the evidence in the Muwekma petition does not indicate that a meeting about the cemetery issue in the 1960's was "called by the council of the tribe" (Vol. 83.7(c), 62). The Muwekma petitioner has not demonstrated that this cited precedent applies to its situation or its evidence.

The petitioner cites as precedent that evidence of the participation of a substantial portion of the petitioner's membership has been used to demonstrate widespread involvement in a group political process, as in the Snoqualmie petition (Vol. 83.7(c), 62). The petitioner presents a response to this precedent. The petitioner measures members' or ancestors' participation by their application for Indian claims or their appearance on a list of the AIHS. However, neither of those sources shows actual participation in a political process *within* the petitioning group. Thus, this evidence does not show that the situation of this petitioner is comparable to that of the cited precedent. In addition, the BIA's evaluation of membership participation did not find that there was widespread involvement in the Muwekma petitioner comparable to this precedent.

The petitioner notes that precedent requires the existence of a "bilateral political relationship" between leaders and followers to demonstrate the existence of a petitioner's political influence over its members as part of a political process (Vol. 83.7(c), 62). The petitioner has asserted but not demonstrated, however, that its "elders" widely distributed information to members and communicated with a broad segment of the membership. Although the petitioner asserts that its leadership acts according to the direction of its membership, the available evidence for the Muwekma petition, both historically and at present, does not show that members brought public opinion to bear on leaders and that leaders were responsive to the concerns of members. Thus, the evidence on the Muwekma petitioner is not comparable to the evidence required by the cited precedent.

### Summary Conclusion under Criterion 83.7(c) as modified by 83.8(d)(3) and (d)(5)

Based on this evaluation of the comments and evidence, the petitioner has not demonstrated that it meets the requirements of criterion 83.7(c) as modified by section



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83.8(d)(3) because there is insufficient evidence of identifications of leaders or a governing body of the petitioning group by "authoritative, knowledgeable external sources" on a "substantially continuous" basis since 1927. Thus, as provided in section 83.8(d)(5), this Final Determination has evaluated whether or not the petitioner has demonstrated that it meets the unmodified requirements of criterion 83.7(c) from 1927 until the present.

The petitioner does not meet criterion 83.7(c) at any time based on meeting criterion 83.7(b) with sufficient levels of evidence described in section 83.7(b)(2). Thus, the provisions of section 83.7(c)(3) are not applicable in this case. Nor is there any carry over to criterion 83.7(c) of evidence described in section 83.7(b)(1), because the available evidence is not sufficient to meet criterion 83.7(b) "at more than a minimal level" at any time. Therefore, there is no such evidence that, under the provisions of section 83.7(c)(1)(iv), can be combined with other forms of evidence to meet the requirements of criterion 83.7(c).

A review of the available evidence concludes that this evidence is not sufficient to meet the requirements of criterion 83.7(c) since 1927. The available documentary and oral history evidence does not demonstrate the existence of informal political processes within the petitioning group at any time, or a political process or a bilateral political relationship between leaders and followers within the petitioner's current organization. Since 1990, participation in the petitioner's activities has been mostly by a core group of 20 individuals, especially by five individuals from one extended family. A predominant portion of the petitioner's membership has not participated in the group's activities. The available evidence, when considered in combination, does not demonstrate that the petitioning group has maintained political influence or authority over its members since 1927. Therefore, the petitioner does not meet the requirements of criterion 83.7(c) as modified by sections 83.8(d)(3) or 83.8(d)(5).

**Criterion 83.7(d)**

**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.

**83.8(d)(4)** The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

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### The Proposed Finding

The Proposed Finding concluded that the petitioner met the requirements of criterion 83.7(d) insofar as it "provided its present governing document, and its present enrollment ordinance, both of which describe its membership criteria and the procedures through which it governs its affairs and its members" (*Muwekma PF*, 42). Submitted minutes showed that the current enrollment ordinance and constitutional amendments were proposed, but not voted on, at the meeting held on April 18, 1998. The Proposed Finding continued by stating:

The subheading of the petitioner's constitution includes adoption and amendment dates which are not supported by petition documentation. The petitioner's enrollment ordinance lacks an approval date. The constitution and the enrollment ordinance lack clear definition of qualifying ancestors from whom prospective members must show descent. The inconsistencies and discrepancies noted here, if unchanged, may cause significant problems should the petitioner become acknowledged. Prior to the F[inal]D[etermination], the petitioner should have this constitution, or a new constitution, formally certified by the governing body. (*Muwekma PF*, 42)

### Comments on the Proposed Finding

The petitioner did not prepare comments or submit evidence in response to the Proposed Finding on criterion 83.7(d). However, the petitioner referred to the "Muwekma Ohlone Tribal Constitution and Enrollment Ordinance 0001, adopted on October 21, 2000," in its response to section (e)(2) issues (Petitioner 2002, Vol. 83.7(e), tab: MOIT Roll 19 Jan 2002),<sup>56</sup> and cited its constitution's "2<sup>nd</sup> amendment" dated October 21, 2000, in its response to criterion 83.7(f) issues.<sup>57</sup> The date of October 21, 2000, post-dates the final submission of documentation considered for the Proposed Finding, but were not submitted for the Final Determination.

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<sup>56</sup> The passage refers to the Muwেকma Enrollment Committee's recommendation that the council adopt and certify the January 19, 2002, enrollment list, and approve the "disenrollment" list amendment "in compliance with" the constitution and enrollment ordinance adopted on October 21, 2000.

<sup>57</sup> The portion of the constitution changed as a result of this "2<sup>nd</sup> amendment" is cited as "Article III - Membership; Section 2, Limitation," and reads "No person shall qualify for membership in the Muwекma Ohlone Tribe who is a member of any other organized tribe, band, or Indian community officially recognized by the United States congress [*sic*], unless he or she has relinquished in writing his or her membership in such tribe, band or community" (Petitioner 2002, Vol. 83.7(e), tab: §83.7(f)).

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The four third-party letters submitted before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(d).

### Response

The BIA obtained copies from the petitioner of both the amended constitution and the enrollment ordinance which were adopted on October 21, 2000 (Petitioner 2000a, 2000b). Each document was separately certified by ten of the eleven members of the petitioner's governing body (one member on excused absence).

The membership provision of the constitution recognizes "all persons whose names are on the list of members, dated April 10<sup>th</sup>, 1998, . . . who met the following membership criteria as specified here within and the Enrollment Ordinance" (Petitioner 2000a, Article III, Section I(a)). Section I(b) requires that "descendants can prove blood descendancy of the Muwekma Ohlone Tribe formerly known as the Verona Band" (Petitioner 2000a).

The enrollment ordinance provides definitions of terms, but not the same terms which appear in the constitution's membership section. For example, the enrollment ordinance provides no definition of "Verona Band," but gives a definition of "base roll," as "[t]hose persons identified as members of the Verona Band as referenced in the Muwekma Ohlone Tribal petition, Exhibits B, H, L and J" (Petitioner 2000b, Article I (F)).<sup>58</sup> The "current certified roll" is defined as "[d]escendants of the Verona Band and or Kelsey's Report" (Petitioner 2000b, Article I (G)).

The amended constitution and the enrollment ordinance adopted on October 21, 2000, still lack a clear identification of the individuals comprised by the Verona Band from whom members must prove descent. The October 2000 adoption of these governing documents likely predates the petitioner's reconstruction of the "1927 Verona Band Base Roll," as submitted during the comment period (see next section of the Final Determination, for criterion 83.7(e)). It is possible that more recent amendments, not submitted to or reviewed by the BIA during the comment period, remedy this problem by identifying the historical band individuals from whom a member must prove descent.

Among the other changes reflected in the amended constitution is the change in the group's legal name from "Ohlone/Costanoan Muwekma Tribe of Indians of the San Francisco Bay" to "Muwekma Ohlone Tribe of the San Francisco Bay." The group's letterhead stationery since October 21, 2000, carried the name "Mukema Ohlone Indian Tribe of the San Francisco Bay Area."

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<sup>58</sup> However, in Article VII, Section 2, the enrollment ordinance appears to use the term "base roll" to denote the 1933 "Census Roll of the Indians of California under the Act of May 18, 1928."

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**Summary Conclusion**

The petitioner has a constitution and an enrollment ordinance, certified by most members of its governing body. These governing documents describe its membership criteria and the procedures through which it governs its affairs and its members. Therefore, the petitioner meets the requirements of criterion 83.7(d).

**Criterion 83.7(e)**

- 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.**
  
- 83.7(e)(2)**    **The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group.**
  
- 83.8(d)(4)**    **The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).**

**The Proposed Finding**

The evaluation under criterion 83.7(e) in the Proposed Finding raised four issues for which the AS-IA solicited a response prior to the Final Determination: (1) further genealogical or anthropological evidence demonstrating the inclusion of Avelina (Cornates) Puente Marine or her children in the historical band, (2) access to the petitioner's membership files to verify ancestry documentation, (3) certification of the petitioner's membership list by all members of its governing body, and (4) a description of the circumstances surrounding the preparation of current and past membership lists. The Proposed Finding concluded that the petitioner met the requirements of criterion 83.7(e) based upon the assumption that these four issues would be resolved satisfactorily in the comment period, but stated that the solicited additional data could strengthen or rebut the assumptions upon which the positive finding was based.

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### General Comments on the Proposed Finding

The petitioner's comments offered an analysis which deduced identities for some Verona Band proxy<sup>59</sup> members that differ from those appearing in the Proposed Finding, and submitted its own Verona Band Base Roll of 1927 in the context of its response to the Proposed Finding's comments on potential growth. It responded to the Proposed Finding's suggestion to supplement the evidence of Avelina (Cornates) Puente Marine's family's inclusion in the historical band by providing additional historical context for the early mission records, some new evidence from church records, an argument for the receiving end of godparenting as a type of participation, and a presentation of activities of Avelina (Cornates) Puente Marine's children. In response to the Proposed Finding's observation that few vital records appeared to be cited as evidence in documenting members' ancestry, the petitioner obtained and submitted 16 birth certificates, 1 marriage certificate, and 59 death certificates, according to its "List of Supporting Documents and New Evidence Submitted to BAR 27 Jan 2002" (Vol. 1).<sup>60</sup> The petitioner furnished an updated genealogical database into which information from these new records had been added.

The four third-party letters submitted before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(e).

### (1) Background on the Historical Band and Avelina (Cornates) Puente Marine

In cases proceeding under section 83.8(4), for groups with unambiguous previous Federal acknowledgment, the "historical tribe" in 83.7(e) refers to the tribe or band previously acknowledged, in this case, the "Verona band."

As no extant enumeration has been located of "the Verona Band" for any time period, the Proposed Finding relied upon two enumerations, made close to the last period of previous Federal acknowledgment (1914-1927), of Indian settlements in the area of the Verona railroad stop south of Pleasanton to develop a proxy list of the Verona Band: the Alameda County portion of the 1905-1906 "Schedule showing non-reservation Indians in Northern California" made by C. E. Kelsey (see Appendix A) and the Indian Population

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<sup>59</sup> See "Background on the Historical Band and Avelina (Cornates) Puente Marine" which follows this section for definition of the Verona Band proxy.

<sup>60</sup> This list included marginal columns in which each document is noted as "old" (i.e., submitted to the BIA prior to the Proposed Finding) or "new" (i.e., submitted for the first time during the comment period following the Proposed Finding) with totals given at the end of the list. The petitioner's total indicated 1,347 new documents were submitted with its comments; however, a sampling of church baptism and marriage records characterized here as "new" showed that at least 95 of them had been submitted previously. Federal Census records which had been obtained by the BIA and furnished to the petitioner after the issuance of the Proposed Finding also appear on this list as "new" submissions. Conversely, some photocopies of baptisms from St. Augustine's Church that were listed as "old" had not been submitted before.

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schedule of "Indian town" in Pleasanton Township in the 1910 Federal Census (see Appendix B).

Since Kelsey recorded few individuals by name, interpretations varied as to just how many persons on the Kelsey Census also appeared in the 1910 Indian Population schedule. The petitioner viewed these two lists as comprising 51 persons, whereas the Proposed Finding viewed the total as 53 persons (see Appendix C). Thirteen persons from this "Verona Band proxy" have descendants in the current membership: Joe/Jose Guzman, Francisca Nonessi, John Paul (a.k.a. "Jack") Guzman, Maria Celsa Santos, Catherine Peralta, Dario Marine, Magdalena Armija, Francisco Santos, George Santos, Maria Peregrina Pinos, Maria Erolinda Santos, Mercedes Marine, and Albert Arellano.

The 1910 Indian Population schedule included a household headed by the 60-year-old widow Jacoba Antonio, recorded somewhat phonetically as "Ocavio" Antonio. Jacoba's household included, among others, Catherine Peralta, Catherine's child Beatrice by Dario Marine, Dario Marine, and one of Jacoba's godchildren (and Dario's sister) Mercedes Marine, whose infant is enumerated in another Indian Population schedule household. The evidence evoked the question of whether the Marine siblings were there because they were members of the group, or because they each had a separate relationship with someone who was part of the Indian group. Answering the question is crucial because most of the petitioning group (209 of 400 members on the 1998 membership list evaluated for the Proposed Finding; 264 of 419 members on the 2002 membership list evaluated for the Final Determination) traced its Verona Band ancestry solely to the siblings of Dario Marine and Mercedes Marine who were not enumerated on either the Kelsey Census or the 1910 Indian Population schedule of Pleasanton Township.

Baptism records furnished by the petitioner showed Jacoba godparenting for many Indian infants, including some whose names do not later appear on the Kelsey Census or the 1910 Indian Population schedule. The petitioner's genealogical and anthropological evidence did not present a reasonable case demonstrating whether the Marine siblings' Indian mother Avelina had been part of the historical band before her death in 1904, or whether the Marine siblings were members of the group after her death. That evidence included a church record of her first marriage in 1877 which gave Pleasanton as the residence of the bridal couple and witnesses, and baptism records for most of Avelina's children, identifying some of the children as "Indian" and identifying their godparents, some of whom appeared on the Kelsey Census and 1910 Indian Population schedule. Recollections of two of Avelina's adult children claim that Avelina was raised by the chief of the rancharia, and refer to their own childhood attendance there.

On the basis of the limited genealogical and anthropological evidence, the Proposed Finding made the assumption that Avelina (Cornates) Puente Marine "was part of the Indian group at the Alisal rancharia prior to Kelsey's census of 1906" (*Muwekma PF*, 46). This assumption provided the rationale for the appearance of her children Dario and Mercedes Marine on the 1910 Indian Population schedule.

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The Proposed Finding stated, "Past decisions have assumed that parents, children, and siblings of members who can demonstrate involvement with tribal activities are also involved in those activities through their close kin" (*Muwekma PF*, 46). Therefore, the Proposed Finding made the assumption that "the siblings of her [Avelina's] children on the 1910 Federal Census of 'Indian town' were non-resident members of the Verona Band . . ." (*Muwekma PF*, 47). The Proposed Finding then stated that those assumptions could be rebutted or strengthened by the submission of new evidence during the comment period.

### Comments on the Proposed Finding's "Verona Band Proxy"

The petitioner presented arguments for reinterpreting the identities of some individuals whose names were incompletely or misleadingly recorded in the Kelsey Census and the 1910 Indian Population schedule, the result of which would reduce the overall number of identified individuals from 53 (as presented in the Proposed Finding's Appendix C) to 51, and increase the number of historical individuals with descendants in the current membership from 13 to 15. This, the petitioner contended, improved the Proposed Finding's calculation of 24 percent (13 of 53) representation of the Verona Band proxy in the current membership to 29 percent (15 of 51).

### Response

Only two of the Verona Band proxy changes advocated by the petitioner (Trinidad Marine and Alfred Guzman) affect the descent of the current membership, which is the focus of criterion 83.7(e), and are therefore addressed here. A third change (Elizabeth Marine), with one of the first two (Trinidad Marine), responded to the request for more evidence on Avelina (Cornates) Puente Marine and her family, and is also addressed here even though it does not affect the descent of any current members.

The petitioner now theorizes that two Marine siblings are on the 1905-1906 Kelsey Census, represented by the last two individuals: "Kid Small," listed as a "mixed blood" head of family, and "Bell" [no surname], listed as an "Indian" head of family. The petitioner views "Kid Small" as Trinidad Marine (born circa 1901), and "Bell" as Elizabeth Pontiana (a.k.a. "Belle") Marine (born 1891), the sister who, according to the petitioner, was caring for Trinidad.<sup>61</sup>

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<sup>61</sup> The petitioner stated, "According to Faye Thompson-Frei (Trina's daughter), her mother recollected that, after her mother's death, she was taken to get inoculations and then sent to live with her sister, Bell" (Petitioner 2002, Vol. 83.7(e), tab: §83.7(e) Summary, 53). That is, after Avelina's death in 1904, three-year-old Trina was sent to live with her own sister, Belle. The source footnoted at the conclusion of this paragraph is "'Muwekma Ohlone Tribe Video Summary Sheet, MOIT Elder Interview,' 27 Oct 2001, page 8."

## Muwekma: Final Determination - Summary under the Criteria

The lack of basis for the first advocated change was given in the Proposed Finding, although in response to a different theory. As noted in Appendix C, footnote 2, of the Proposed Finding, "Kid Small" was listed as a head of a household (Kelsey's term was "head of family"), that is, not as a child and not as a resident in someone else's household.<sup>62</sup> Thus, "Kid Small" is not likely to be the young child Trinidad Marine (nor Maria Rosa Armija, born in 1901, as the petitioner theorized in its earlier submission, Petitioner Ex. J, 1:52). For an example of how Kelsey enumerated a "mixed blood" child in the household of an "Indian," see "Mary McGill Hart and 1 child" on page 3 of Kelsey's schedule for El Dorado County (Petitioner Ex. H, 1, app. B). For these reasons, this Final Determination does not concur that Trinidad Marine is "Kid Small."

Because the Proposed Finding requested additional evidence on Avelina (Cornates) Puente Marine and her family, a response is warranted to the petitioner's theory that Kelsey's "Bell" was Trinidad's sister Elizabeth Pontiana Marine, even though no current members descend from her. The petitioner's first two theories as to the identity of Kelsey's "Bell" were Isabella (Stokes/Olivares) Nichols (born 1890)<sup>63</sup> and Isabelle (Villanen) Armija Nichols (born circa 1873).<sup>64</sup> Elizabeth Pontiana Marine (born 1891) was known as "Bella" or "Belle," as documented by her son's 1907 baptism and her own 1911 death certificate. Thus, there is evidence which makes this new theory plausible; however, there is no compelling evidence which makes this new theory more plausible than the earlier two. No current members trace ancestry to any of these three "Bell" candidates, so the lack of reasonable conclusion about "Bell's" identity does not affect the evaluation under criterion 83.7(e).

The petitioner's argument for Alfred Guzman being one of the unidentified "2 children" of "Joe Gooseman" recorded by Kelsey is reasonable. Alfred was born in 1896 (Petitioner Ex. A, II, tab: Msn. San Jose Baptisms), and appeared in his father's household in the 1900 Federal Census (Petitioner Ex. B, app. B). Recognizing Alfred as one of the two unidentified Guzman children in the Kelsey Census would increase by one the number of Verona Band proxy individuals represented in the current membership, now that three descendants of Alfred Guzman have become members. Both parents of Alfred Guzman appear in the Kelsey Census, so Alfred's descendants can trace to the Kelsey Census regardless of whether Alfred is determined to be one of the two unidentified Guzman children.

Irrespective of whether this change slightly raises the percentage of Verona Band proxy individuals who can "trace forward" to current members — up from 24 percent (13 of 53) to 26 percent (14 of 53) — this argument does not affect whether the petitioner

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<sup>62</sup> A workpaper providing a more detailed description of the BIA's analysis of "Kid Small" was referenced in the Proposed Finding's Description and Analysis of the Evidence on page 137 (fn. 115), and furnished to the petitioner following issuance of the Proposed Finding.

<sup>63</sup> See earlier genealogical database and Petitioner Ex. B (rev.), 100.

<sup>64</sup> Petitioner Ex. J, I, 52.



## Muwekma: Final Determination - Summary under the Criteria

meets criterion 83.7(e), the objective of which is to demonstrate that current members can "trace back" to the historical band. The percentage of current members who claim descent from the Verona Band proxy or siblings thereof, as defined in the Proposed Finding, remains unchanged at 100 percent.<sup>65</sup>

### Comments on the Petitioner's "Verona Band Base Roll"

The petitioner created and presented a "Verona Band Base Roll," or "1927 Verona Band Base Roll," not in direct refutation of the Proposed Finding's "Verona Band proxy," but rather in response to the Proposed Finding's comments about the potential for future growth of this group. In so doing, the petitioner stated that "this reconstruction effort has taken on additional significance in that this exercise falls well within the sovereign rights of the tribe to determine its own membership" (Vol. 83.7(e), tab: §83.7(e) Summary, 55). Further, "[t]he reconstruction of the Verona Band population is virtually the establishment of a base roll, a roll of persons from which all other tribal members must descend or demonstrate a social relationship" (Vol. 83.7(e), tab: §83.7(e) Summary, 56).<sup>66</sup>

The petitioner contended, as it did in its original submissions, that there were "eight family clans and one group, composed of unrelated individuals, who participated within the Verona Band Population" (Vol. 83.7(e), tab: §83.7(e) Summary, 57). The petitioner describes the individuals in each of these eight families, beginning around the mid-1800's. Their appearances in the Kelsey and Federal censuses are mentioned, as are their marriages, burial locations, and other evidence establishing their whereabouts up through 1927. If descendants of each family were yet living as of 1927, their names are included in the petitioner's 1927 Verona Band Base Roll. The end result of the petitioner's reconstruction is a listing of 67 individuals yet living in 1927.<sup>67</sup>

After eliminating the names of "those 1927 survivors who did not leave any known living descendants," the petitioner arrived at a listing of 41 persons representing potential membership growth (Vol. 83.7(e), tab: §83.7(e) Summary, 78-79). On the issue of

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<sup>65</sup> Although the petitioner claimed all of its members trace their ancestry to individuals in the Verona Band proxy or siblings thereof, analysis of the evidence in the petitioner's membership files showed that documentation was insufficient in a few cases. See discussion under "Response" following "Comments on the Membership Files."

<sup>66</sup> This Verona Band Base Roll, from which all other tribal members "must descend or demonstrate a social relationship," is not part of the petitioner's current constitution or enrollment ordinance.

<sup>67</sup> The June 23, 1927, letter from Indian Field Service Superintendent L. A. Dorrington to the Commissioner of Indian Affairs, which established the last point of previous Federal acknowledgment for purposes of this petition review, stated "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 . . ." (Petitioner Ex. H, I, app. B).

## Muwekma: Final Determination - Summary under the Criteria

estimating potential growth, the petitioner contended that a more realistic approach is to "utilize the number of 1927 survivors who were known to have descendants (41) than it is to utilize the number of 1906/1910 persons (51) who did not, in their entirety, survive to 1927" (Vol. 83.7(e), tab: §83.7(e) Summary, 80).

A third listing furnished by the petitioner pared the 1927 group of 41 survivors down to 25 persons alive in 1927 "who are, or have descendants, currently enrolled in the MOIT" (Vol. 83.7(e), tab: §83.7(e) Summary, 80). The petitioner wished to use this third list to recalculate representation of the historical band in the current membership. Instead of 15 of 51 [petitioner's totals] historical band members (29 percent) being represented by current members, the petitioner recalculated that 25 out of 41 historical band members (61 percent) are represented by current members.

### Response

The petitioner described its exercise of reconstructing the "Verona Band Base Roll" as falling "well within the sovereign rights of the tribe to determine its own membership" (Vol. 83.7(e), tab: §83.7(e) Summary, 55) and cites legal precedents it contends support its point (Vol. 83.7(e), tab: §83.7(e) Summary, 83-85).<sup>68</sup> Tribes have the authority to determine membership of persons actively maintaining a political relationship with their tribes, and the legal precedents cited by the petitioner refer only to a tribe's determination of its contemporary membership. The cases cited do not refer to a tribe's reconstruction of the past membership of a historical entity from which it claims descent.

The petitioner's disagreement with what it called the Proposed Finding's "assessment of the tribal composition based on a 'listed' or 'unlisted' status," and "concept of sibling separation" also indicates a misinterpretation of the Proposed Finding's analysis of Marine siblings in the construction of a Verona Band proxy. The Proposed Finding identified Dario Marine and his sister Mercedes Marine, both of whom appeared on the Indian population schedule of the 1910 Census, as "listed siblings" (on the proxy list) and their six then-surviving siblings, who did not appear on the Indian population schedule nor on the Kelsey Census, as "unlisted siblings" (not on the proxy list). However, the Proposed Finding did not attempt to declare the "listed siblings" Dario and Mercedes as Indian or as Verona Band members and declare their "unlisted siblings" as non-Indian or as non-members. To the contrary, the Proposed Finding made the assumption that

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<sup>68</sup> The term "base roll" was not used in the Proposed Finding in reference to the proxy list because the proxy list was not meant to be a contemporary official listing, or roll, of all enrolled members of the Verona Band 1906-1910. No such official enrollment has been located for the Verona Band. Such an enrollment may not be recreated 90 years after the fact. The acknowledgment regulations at 83.12(b) provide that "the list of members submitted as part of the petitioner's documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes." That is, the "base roll" for each petitioner is its membership roll at acknowledgment. The "proxy list" created for the Proposed Finding served as an analytical tool to aid in determining whether the Muwekma petitioner descended from the Verona Band.

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"descent from a historical band at the Verona station can be calculated through siblings who were not actually listed on either the Kelsey Census of Pleasanton and Niles or the 1910 Federal Census of 'Indian town' in Pleasanton Township" (*Muwekma PF*, §2). Rather than dividing the "listed" from the "unlisted" siblings, the Proposed Finding treated them in the same manner for calculating descent from a historical tribe for purposes of criterion 83.7(e).<sup>69</sup>

The basis for the petitioner's contention that the Verona Band comprised eight families or clans is not stated. These families or "clans" as described by the petitioner do not comprise all individuals noted as "Indian" in the Mission San Jose church records, yet, the petitioner did not state the specific type or level of interaction that took place before or during the period of last Federal acknowledgment (1914-1927) it used to determine an individual Indian's inclusion in or exclusion from the petitioner's reconstruction of its "Verona Band Base Roll." The 1927 survival of 67 descendants of specific families does not equate to their participation in an entity in 1927.

Evidence identifying Indian individuals residing in Indian settlements in the area of the Verona railroad stop near Pleasanton in 1905-1906 and 1910 provided the basis for the Proposed Finding's Verona Band proxy. Allowing for non-resident and unlisted siblings of those individuals enumerated in the settlement lists to be considered part of the historical band for purposes of criterion 83.7(e), the Proposed Finding found that all current members (100 percent) claimed descent from individuals in the "Verona Band proxy" or their non-resident and unlisted siblings. This descent from the historical band, in this case previously acknowledged, is part of the requirement of criterion 83.7(e).

The petitioner's efforts to identify individuals who did not have descendants does help in defining and narrowing the general potential for future growth. The analyses of potential growth, much like the analyses of representation of the historical band in the current membership, are presented in Proposed Findings to provide context for the reader. A petitioner may comment on those factual statements in the Proposed Finding, and present evidence and arguments challenging them; however, changes in calculations made in statements that provide only context do not affect the overall determination of whether the petitioner descends from the previously acknowledged band.

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<sup>69</sup> The alternative interpretation, not taken by the Proposed Finding, is that Dario and Mercedes Marine were not members of the band in 1910, but were present in "Indian town" at that time because (1) Dario Marine had a relationship with, and child by, band member Catherine Peralta and (2) 15-year-old Mercedes Marine (bereft of her mother, and then a young mother herself) resided in the household of her godmother Jacoba (who godparented many Indians not considered to be members of the Verona Band by the BIA or by the petitioner). In this alternative interpretation, neither the Marines present in "Indian town" nor the Marines absent from "Indian town" would be considered members of the band. The Proposed Finding's request for further documentation sought to settle the question of whether all the Marine siblings were part of the group because their mother had been or through demonstrated participation.

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Comments on Avelina (Cornates) Puente Marine

The Proposed Finding stated:

The assumption that Avelina (Cornates) Marine was a part of the Indian group at the Alisal rancharia prior to Kelsey's census of 1906, and that the siblings of her children on the 1910 Federal Census of "Indian town" were non-resident members of the Verona Band, are assumptions that can be rebutted during the comment period for this finding. These assumptions may also be strengthened, and the petitioner should provide additional evidence during the comment period to do so. (*Muwekma PF*, 46-47)

The petitioner's response to the solicitation of further evidence of Avelina (Cornates) Puente Marine's inclusion in the Verona Band included historical context for the variations in church recordings of Indian names, additional church records, and a presentation of evidence and analysis designed to substantiate statements attributed to Dario Marine as memorialized, apparently by Philip Galvan, in the 1960's, "adding credence to his testimony" (Vol. 83.7(e), tab: §83.7(e) Summary, 25).

Among the additional documentation the petitioner provided during the comment period was one "new" record in which Avelina Marine was named: Avelina's burial record. This record had been cited in the petitioner's original submission but not provided at that time. The attested transcription of Avelina's 1904 burial record states (in Latin) that the deceased "Avelina Codenta Marin," an Indian, was brought from Pleasanton to Mission San Jose where she was buried in the cemetery belonging to Mission San Jose on October 5, 1904 (Mission San Jose n.d.).<sup>70</sup>

Response

This burial record, documenting Avelina (Cornates) Puente Marine's presence in Pleasanton in 1904, places her closer in time and place to the known Indian settlement Kelsey enumerated there than did the published recollections of her daughter Dolores (born 1890), which placed the family in Livermore during Dolores' childhood (Newspaper clipping 1965). The burial record evidence tends to support the Proposed Finding's assumption that Avelina was part of the Indian settlement near Pleasanton at some time.

The Proposed Finding asked whether "Anita Flores," who is listed among the "Ohlones of California" identified by Dario Marine in the 1960's, could be the Anita recalled as a sister of Avelina (*Muwekma PF*, 129). The petitioner had no response on this point, except to state: "Independent verification of this list of 'Ohlones of California' has been conducted and much of it can be substantiated by external and objective primary

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<sup>70</sup> It is not clear whether the entry refers to the Mission San Jose cemetery, or to the Indian cemetery one mile west, where Dario Marine recalled Avelina was buried.

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evidence" (Vol. 83.7(e), tab: §83.7(e) Summary, 34). Whether the identity of Anita Flores was substantiated by the petitioner remains unknown and unexplained.

The petitioner stated: "The genealogy of Avelina Cornates has been achieved through a compilation of all available evidence" (Vol. 83.7(e), tab: §83.7(e) Summary, 7). However, one piece of available evidence was not submitted by the petitioner. The Proposed Finding provided the petitioner with information about the existence of the civil marriage record of "Abelina Cordalis" to Jose Puente(s) which an unpublished index listed with a date of January 2, 1877. The Proposed Finding cited it as one example of a record which might provide additional evidence of Avelina's parentage (*Muwekma PF*, 128, 132-133).

For the Final Determination, the BIA obtained an uncertified photocopy of the civil marriage license and marriage return on file in the Alameda County courthouse for Jose Puente and "Abelina Cordalis" (Alameda County 1877). The marriage license, issued on January 2, 1877, identifies the groom Jose Puente as a 45-year-old native of Mexico residing in Centerville (not Pleasanton as the church marriage record implied), and the bride as Abelina Cordalis, a 15-year-old native of California residing in Pleasanton. Annotated to the license is the statement, "And the consent of the uncle of said minor Abelina Cordalis, an orphan with whom she has been living for a long period of years consenting to said marriage." The uncle is not identified in the recorded license, and it is not known whether a separate "loose paper" consent may be on file. The marriage return, signed by John F. Cassidy, Priest of the Mission San Jose, states that he married the couple on January 17, 1877, with Inigo Uinise and Rita Salio, both residents of Pleasanton, present as witnesses.<sup>71</sup> The marriage return was recorded on August 6, 1878.

A photocopy and transcription of the church record of this marriage had been provided by the petitioner earlier, so the names of the parties involved were already known to the BIA researcher. However, this civil record provides the first evidence attributing an age to the Avelina who married first Jose Puente, and later Rafael Marine. It also places her in Pleasanton.

A church baptism record previously submitted by the petitioner showed that an Indian "Avelina" [no surname] was born on November 10, 1863 (to Pamfilio and Maria), and baptized at the Mission San Jose on January 17, 1864 (Ex. A, II, tab: Msn. San Jose Baptisms). The BIA's review of the 1870 Census of Murray Township (where Pleasanton was located) found no "Avelina" but revealed a 7-year-old female Indian "E Uline" or "E Vline" [no surname], residing in the household with a "Maria F." [or "Y." no surname], who could be reasonably construed as the Avelina born in 1863 (Census 1870). However, no records pertaining to the Avelina who married Jose Puente and Rafael Marine were furnished or found that included an age for her. Such age information could be used to compare to the ages documented for the earlier Avelina, and thereby confirm whether it was reasonable to conclude that all the records pertained to

<sup>71</sup> The church record gives the marriage date as January 13, 1877 (Petitioner Ex. A, II, tab: Msn. San Jose Marriages).

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just one Avelina. The bride "Abelina" was 15 years old in January 1877, a good (although inexact) match for the "Indian" Avelina born in November 1863, who would have just passed her 13<sup>th</sup> birthday by the marriage date. Thus it seems reasonable to conclude that the Avelina who was born in 1863 is identical to the Avelina Cordalis/Cornates who married first Jose Puente and second Rafael Marine.

The baptism record for the Avelina born in 1863 not only identified her as an Indian of Mission San Jose, but listed as her godfather the man who in 1880 was recorded as "chief" among 14 Indians enumerated in Washington Township, where Niles was located (Census 1880, ED 25, 27).<sup>72</sup> Being able to connect the Avelina who married Jose Puente and Rafael Marine to the Avelina born in 1863 by virtue of this age-at-marriage evidence further strengthens Avelina's connection to an Indian band in the Pleasanton area at some time.

The January 2, 1877, civil marriage license, unlike the church marriage record two weeks later, recorded a separate place of residence for the groom, the bride, and each of the witnesses. "Abelina" then resided in Pleasanton, which places her close, geographically, to the known Indian settlement Kelsey would enumerate there circa 1905-1906. This evidence tends to support the Proposed Finding's assumption that Avelina (Cornates) Puente Marine was part of the Indian settlement near Pleasanton at some time.

This civil record also confirms that the "Abelina" marrying Jose Puente was an "orphan," and reveals that she had been living with her unidentified uncle for a "long period of years." The family tradition, presented in 20<sup>th</sup> century records, claimed that Avelina had been orphaned. The consent of Avelina's uncle and guardian provides contemporary evidence that Avelina's parents were deceased before 1877.

### Comments on the Interaction of Avelina's Children

The petitioner submitted a compilation of facts in response to questions raised in the Proposed Finding about the relationship of Avelina Marine's children and grandchildren to the previously acknowledged tribe, as defined by the Verona Band proxy. These factual claims pertain to godparenting, funerals, fostering, and residence information. The Proposed Finding discussed godparenting, and found that 8 out of 39 grandchildren had godparents on the Verona Band proxy, that children of only 3 of the Marine siblings, Dario, Mercedes, and Ramona, had such godparents, and that all of these godparenting relationships were established before 1920.

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<sup>72</sup> The Avelina baptized in 1864 had as her godparents "Jose Ropaldo" and "Paula" (Petitioner Ex. A, II, tab: Msn. San Jose Baptisms). The petitioner made the case that "Jose Ropaldo" is one of many priest-recorded variants (including "Pardos Leyo," "Leopoldo Leyo," and "Lopardo Jose") for the Indian chief who is recorded in the 1880 Federal Census as "Perdo Concayo" (Census 1880, ED 25, 27). Other examples of the variations in the recorded versions of this man's name appear in the petitioner's genealogical database.

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### Response

The petitioner submitted new documentation, and this finding analyzes again the godparenting patterns, particularly before 1920. This analysis finds that the number of Avelina's grandchildren with godparents on the Verona Band proxy is revised upward. Now, at least 14 of 41 grandchildren have godparents on the proxy listing, 2 have a godparent whose mother was on the proxy listing; and 1 has a godparent whose husband was on the proxy listing. Thus, 17 of 41 grandchildren of Avelina and Raphael Marine, or 42 percent, show a link to this listing through godparenting relationships established between 1907 and 1943. The petitioner submitted no godparenting information for 17 individuals, and the remainder (seven) appeared to have no Indian godparents. The children of six of eight Marine siblings who lived to adulthood, including Dario, Mercedes, Ramona, Elizabeth, Lucas, and Trinidad, have godparents linking to the Verona proxy. The children of Victoria and Dolores do not. The godparenting relationships between Avelina's grandchildren and individuals on the proxy were established between 1907 and 1943.

The Proposed Finding also found that five, or 20 percent, of Avelina's 25 grandchildren born before 1920 had godparents on the proxy. Now 11, or 42 percent, of Avelina's 26 grandchildren born before 1920 had proxy band godparents, a significant difference for the period before 1920. In addition, six, or 40 percent, of Avelina's 15 grandchildren born in 1920 or later had a godparent on or linked through kinship of marriage to the proxy list.

Dario Marine had married Catherina Peralta and was living with her on the rancheria when his parents died. It is possible that his family gained access to the rancheria and connected to its community through their brother's wife, not necessarily through their own mother. In addition, Trinidad Marine's daughter said in an interview that her mother Trinidad met Maggie Pinos through Trinidad's stepchildren, whose mother Magdalena Armija was related to Maggie and was herself on the proxy. This seems to imply that Trinidad chose Maggie Pinos as a godmother for her children based on the older woman's relationship to the stepchildren, and not because Trinidad had a long term relationship to Maggie Pinos through her own mother Avelina. Nevertheless, the genealogical record now supports a finding that Avelina was part of the Verona band community when she was alive. Thus, as a part of a larger record tracking a variety of individual social interactions, this revised godparenting analysis corroborates the finding that Avelina and her children were socially associated with the previously acknowledged band. In itself, this evidence of social interaction cannot determine whether Avelina had genealogical ties to the community, only that it is possible.

The petitioner submitted in its response other evidence concerning burials at the San Jose Mission. Unfortunately, this information is unclear because it does not adequately indicate whether the Ohlone Indian cemetery or the San Jose Mission cemetery was the burial site on many of the documents. More information, including a mapping of the burial plots of not only the Marines but also the Santos, Guzmans, Armijas, Paredeses, Peraltas, Gonzaleses and others named on the proxy list would be needed to use this

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evidence to show a relationship between the children and grandchildren of the Marines and the individuals on the proxy listing, as was done for part of the Chinook population in a recent final determination (*Chinook Reconsidered FD 2002, 83*).

Finally, the petitioner listed several fostering relationships. Only a few are documented or discussed in oral histories. Some of the assertions made, about Trinidad Marine for example, do not appear to be supported by other evidence. Time was not available to make a closer inspection of this evidence at this time. However, a fuller discussion of some specific fostering situations is made in the section discussing criterion (b) which indicates that godparenting and fostering involving a small number of children, and a small number of foster parents may be used as part of a compilation of all the facts and evidence showing informal social interactions among the Marines, Santos, Armijas, Guzmans, and others on the Verona Band proxy until at least 1930.

### (2) Background on Descent

The Proposed Finding for criterion 83.7(e) contained a second assumption. It had not been possible to make a site visit to the petitioner to conduct an audit of its membership files, the purpose of which would be to evaluate whether the documentation in those files satisfactorily demonstrated members' ancestry back to qualifying ancestors. Seven sample enrollment or membership files had been provided prior to active consideration, and the petitioner's genealogical database included citations to vital records and other documents, thereby providing some evidence of how members' ancestries were documented by the group. Thus, the second assumption of the Proposed Finding was that the eventual audit of the petitioner's membership files would support the members' ancestry as depicted in the genealogical database.

### Comments on the Membership Files

Photocopies of the petitioner's membership or enrollment files were made available to the BIA for inspection at the office of the petitioner's attorney in Washington, D.C. The petitioner described the files as pertaining to (1) current members, (2) "disenrolled" members, (3) deceased enrolled members, (4) deceased ancestors "relative to the composition of the Verona Band," and (5) "connective individuals whom are known to be living but not enrolled" (Petitioner Vol. 83.7(e), tab: §83.7(e) Summary, 85-86).

### Response

The BIA found a total of 219 folders for current adult members, with records on any minor children found in the parent members' folders. Also provided were 58 folders for "disenrolled" adult members (again with records on any minor children found in the parents' folders), and 31 folders for deceased members or ancestors of members. The



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"files of connective individuals whom are known to be living but not enrolled" were not located.<sup>73</sup>

The BIA review found the majority of file folders for current members to contain signed applications, signed declarations that they were not enrolled in another Indian group or federally acknowledged tribe, birth or baptism records identifying their parents, and a descendancy chart for the qualifying ancestor (listing all descendants). Only five instances were noted in which the vital records fell short of documenting the parentage of the member. These instances included incomplete birth certificates or hospital birth records which did not provide a given name for the child (and lacked corroborating evidence elsewhere in the member's file), did not provide the parents' names, or identified the non-Indian parent only (such as "Mr. and Mrs. Bob Smith").

The BIA researcher searched for the names of the five members whose membership files did not contain adequate proof of parentage, and the one member whose father's ancestry is not documented in her membership file or elsewhere, in the 1972 BIA "Applications for Enrollment to Share in the California Judgment Funds" (Vol. III). The BIA descendancy charts found in these applications included and confirmed the birth information and parentage for two of the five members with incomplete birth certificates. The remaining three members with incomplete birth certificates did not appear on the 1972 BIA charts, although their parents do. In the case of the one member with a non-member father, that father appeared on the 1972 BIA charts, as identified on the member's birth certificate, so that descent problem was resolved.

Cross-referencing the 1972 BIA charts provides the necessary connection for the member with a non-member father, but still leaves three members unconnected. One of these three has a child who is a member, so that a total of four members could not be verified, on the basis of submitted records, to descend as illustrated from the historical band. This number represents about 1 percent of the current membership. The situation is not one in which the evidence proves they do not descend from Verona Band individuals, nor one in which evidence proves they descend from individuals who are not Verona Band individuals; rather, the evidence is simply insufficient in these three cases to connect members to their Verona Band-descendant parents, and in one case to connect a member to his grandparents.

The "disenrollment" files show that 99 individuals were removed from membership since the May 1998 membership list. Three written requests for "disenrollment" are in the files. The remainder of "disenrollments" resulted when members failed to send properly executed documents to the petitioner's office in time to update the members' files prior to the close of the comment period. Some mailings were returned to the petitioner's

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<sup>73</sup> This meant the membership files were insufficient to verify the ancestry of a member whose living parent is not a member, and whose own membership or enrollment folder did not include documentary evidence on that parent's ancestry. This member's ancestry was ultimately confirmed by 1972 BIA descendancy charts.

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office marked "return to sender" due to incorrect addresses, returned marked "refused," or returned unopened. Some certified mailings were signed for but not returned.

The review showed that the petitioner's membership files contain evidence sufficient to document members' descent from individuals in the Verona Band proxy, or their siblings, with the few noted exceptions. Ninety-nine percent of the current members descend from the Verona Band proxy or siblings as defined in the Proposed Finding.

### (3) Background on the Certification of Membership List

The membership list evaluated for the Proposed Finding contained 400 names and was dated May 29, 1998. It lacked the separate certification by all members of the governing body required by criterion 83.7(e)(2). Analysis of the list showed that about 70 percent of the members (281 of 400) descended from Avelina (Cornates) Puente Marine (including 4 percent from the marriage of her son with Catherine Peralta, and 1 percent from the marriage of her granddaughter with Jack Guzman; Peralta and Guzman are both listed as Indians on the Kelsey Census), 25 percent (100 of 400) from Erolinda Santos, and about 5 percent (19 of 400) from Magdalena Armija.<sup>74</sup>

### Comments on the Membership List

During the comment period, the petitioner submitted an updated membership list containing 419 names, dated January 19, 2002. The list was separately certified by Resolution No. MOT-02-1031, which was signed by all 11 members of the governing body. Also submitted was a "disenrolled membership list" containing 99 names, also dated and certified on January 19, 2002, by the same resolution.

### Response

A comparison of the 2002 membership list and its accompanying list of 99 "disenrolled members," to the 1998 membership list showed the following changes: the enrollment of 120 new members, the "disenrollment" of 99 members, and 2 deaths. Of the 120 new members, 50 had a parent on the 1998 membership list, and 33 of those were born since

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<sup>74</sup> The petitioner's comments incorrectly claimed that the Proposed Finding said 70 percent of the petitioner's 400 members descended from the "unlisted siblings" of Dario Marine and Mercedes Marine (Petitioner 2002, 83.7(e), tab: §83.7(e) Summary, 83), whereas that percentage referred to members descending from all of Avelina's children: "About 70 percent of the petitioner's members descend from an Indian woman, Avelina (Cornates) Marine" (*Muwekma PF*, 5), and, "[s]eventy percent (281 of 400) of the current members claim descent from Avelina (Cornates) Marine (*Muwekma PF*, 45). "The Marine siblings who do not appear on the 1910 Indian schedule ["unlisted siblings"]... were ancestral to 52 percent (209 of 400) of the current members" (*Muwekma PF*, 45).

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1998. The distribution of these changes among the historical ancestors they represent is reflected in Appendix D.

A total of 46 new members were descendants of Avelina (Comates) Puente Marine's youngest daughter Trinidad Marine (circa 1901-1986), 4 of whom were subsequently "disenrolled." No descendants of Trinidad Marine were members on May 29, 1998.

The current membership list includes three members who are descendants of Alfred Guzman who was born in 1896 to Jose Guzman and Francisca Nonessi. Alfred was 9-10 years old at the time of the Kelsey Census, and, as mentioned previously, could be one of the unidentified "2 children" Kelsey attributed to "Joe Gooseman." Like his father Jose Guzman, Alfred (or "Fred") did not participate in the 1928 California Indian Act application process, although both men were living at that time.

A major change in membership since 1998 is the decrease in members who descend from Erolinda Santos. The 1998 membership list included 100 descendants of Erolinda Santos. Since then, 8 of her descendants became members (all born since 1997), but 65 became "disenrolled," three by written request. Therefore, the overall representation of Erolinda Santos within the membership has dropped from 25 percent in 1998 (100 of 400) to 10 percent in 2002 (43 of 419).

There is a small gain in the number of members representing Magdalena Armija (up from 19 to 23). However, the significant change is not the increase in their numbers but the addition of members to whom Magdalena's descendants are related. According to the 1998 membership list evaluated for the Proposed Finding, the members descending from Magdalena Armija had only distant cousins in the membership then, those being descendants of Magdalena's cousin Erolinda Santos. The updated membership list evaluated for the Final Determination shows that the descendants of Magdalena Armija now have other relatives in the 2002 membership: the descendants of Magdalena Armija from Magdalena's marriage to Ernest Thompson. Following Magdalena's death, Ernest Thompson became Trinidad Marine's second husband, making Trinidad a stepmother to Magdalena's children by Ernest, and making Trinidad's children by Ernest half-siblings to Magdalena's children by Ernest.

The petitioner's submission during the comment period included a different conclusion about the parentage of Maria Benedicta/Benita Gonzales (1862-circa 1895) than that in its original submission (Vol. 83.7(e), tab: §83.7(e) Summary, 60).<sup>75</sup> The effect of this change is that Magdalena Armija's children are now understood to be more closely related to Erolinda Santos (second cousins) than they had been for the Proposed Finding (half second cousins), and, similarly, the descendants of Magdalena Armija and Erolinda

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<sup>75</sup> Benedicta Gonzales (grandmother of Erolinda Santos) was first thought to be the younger half-sister to Delphina Guerrero (mother of Magdalena Armija), but re-evaluation of an 1862 baptism led the petitioner to conclude Benedicta and Delphina were full sisters.

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Santos in the current membership are now understood to be more closely related than they had been for the Proposed Finding.

Analysis of the January 19, 2002, membership list showed that 84 percent of the current members (350 of 419) descend from Avelina (Cornates) Puente Marine (including 4 percent from the marriage of her son with Catherine Peralta, and 1 percent from the marriage of her granddaughter with Jack Guzman,) about 5 percent (23 of 419) from Magdalena Armija (all of whom are related to Trinidad Marine's descendants), 10 percent (43 of 419) from Erolinda Santos (who are distant cousins of Magdalena Armija's descendants), and less than 1 percent (3 of 419) from Joe Guzman and Francisca Nonessi. All current members on the 2002 membership list claim descent from Verona Band proxy individuals or their siblings, although evidence in their membership files is insufficient to document that claim for one percent of the members.

### (4) Background on the Membership List Preparation Statement

The petition evaluated for the Proposed Finding did not include statements describing the circumstances surrounding the preparation of the membership lists dated January 15, 1995; January 12, 1998; April 10, 1998; or May 29, 1998. Such statements are required under criterion 83.7(e)(2).

### Comments on the Preparation of Membership Lists

The petitioner described the preparation of its current membership list of January 19, 2002, as being "in concert" with its amended Constitution and Enrollment Ordinance which were both adopted on October 21, 2000, specifically the aspects pertaining to (1) ensuring no member is already enrolled in an organized tribe, band, or Indian community recognized by the U. S. Congress, and (2) updating membership records annually (Petitioner Vol. 83.7(e), tab: MOIT Roll 19 Jan 2002). The petitioner stated that the development of the "disenrollment" list resulted from the non-compliance of former members in submitting their dual enrollment "Declaration Form" or "other required supporting documents as specified in the Muwekma's Enrollment Application" (Petitioner Vol. 83.7(e), tab: MOIT Roll 19 Jan 2002).

The petitioner described earlier lists dated December 1989 (not reviewed for the Proposed Finding) and January 15, 1995, as developmental efforts made in response to the group's petition for Federal acknowledgment. The petitioner's comments characterized the January 12, 1998, list as a "preparatory document for the actual formal list printed on May 29, 1998," the latter of which included new members approved at meetings held on February 14 and March 15, 1998. The petitioner asserted that the opening and closing of its membership lists reflected its efforts to "keep the record concise" for submissions in response to the "constant interruption" of requests for "further supplemental documentation" in its Federal acknowledgment petition process (Petitioner Vol. 83.7(e), tab: MOIT Roll 19 Jan 2002). The petitioner concluded:

## Muwekma: Final Determination - Summary under the Criteria

Therefore, any submission of membership list developed over the years, were only submitted to satisfy the 83.7e(2) is to be disregarded. The current official membership list was adopted and certified by the Muwekma Ohlone Council on January 19, 2002. (Petitioner Vol. 83.7(e), tab: MOIT Roll 19 Jan 2002)

### Response

The April 10, 1998, membership list (which is identical to the May 29, 1998, membership list) is not mentioned in the petitioner's comments, even though the petitioner's constitution (as amended on October 21, 2000) specifies being on or able to prove descent from someone on this list as the first criteria of membership. Otherwise, the petitioner has responded to the requirement of 83.7(e)(2) by providing descriptions of the preparation of its current membership list and previous membership lists.

### Summary Conclusions

The Proposed Finding concluded that the petitioner met criterion 83.7(e) based upon several assumptions, and the petitioner was encouraged to submit additional evidence during the comment period to support those assumptions. Evidence submitted by the petitioner and obtained by the BIA strengthened the assumption that Avelina (Cornates) Puente Marine and her children were part of the historical band. The petitioner provided an updated and separately certified membership list, and statements describing the circumstances surrounding the preparation of the current membership list and previous membership lists. The BIA review of the petitioner's enrollment files concluded that the petitioner had sufficient evidence documenting that 99 percent<sup>76</sup> of current members can trace their ancestry to the historical band defined in the Proposed Finding as the Verona Band proxy individuals or their siblings. Therefore, the petitioner meets the requirements of criterion 83.7(e).

### Criterion 83.7(f)

**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.**

**83.8(d)(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).**

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<sup>76</sup> Four current members lacked sufficient evidence in their membership files to confirm their descent from the historical band.

## Muwekma: Final Determination - Summary under the Criteria

### The Proposed Finding

The issue of how the petitioner gathered information on dual enrollment appeared in two places in the Proposed Finding. Under criterion 83.7(d), the Proposed Finding stated:

Neither version of the petitioner's application form, as submitted in its petition, presented the constitution's stated policy forbidding membership to persons who were already enrolled in a federally recognized tribe. Neither version of the petitioner's submitted application form included a space for the prospective member to confirm or deny enrollment elsewhere. The petitioner stated that enrollment in a federally recognized tribe is investigated during the enrollment process (Petitioner 2001, att. A, 50); however, that investigative activity was not specified in its enrollment ordinance (Article IV, Sections 1 and 3), nor described further elsewhere. (*Muwekma PF*, 41)

Under criterion 83.7(f), the Proposed Finding added:

The petitioner claims in 2001 that "[n]o members of the Muwekma Tribe are currently enrolled in other federally recognized tribes" (Petitioner 2001, 26). The petitioner further states, "Enrollment practices of the MOIT [the petitioner] include checking for possible dual enrollment on the part of the applicant" (Petitioner 2001, att. A, 50). However, the evidentiary basis for the petitioner's 2001 claim is unclear, since the sample application form furnished by the petitioner does not require the prospective member to provide a written statement disavowing or relinquishing enrollment elsewhere. Therefore, the accuracy of the petitioner's claim cannot be determined on the basis of submitted evidence. (*Muwekma PF*, 54)

### Comments on the Proposed Finding

The petitioner undertook two approaches to substantiate its claim that none of its members are currently enrolled in other federally recognized tribes. The petitioner stated that it mailed to each member, enrolled as of August 2001, a "Declaration Form for Confirmation of Exclusive Muwekma Ohlone Tribal Affiliation" which poses the question, "Do you, or any of [your] minor children, have current membership in any other North American Indian tribe, band, or Indian Community, whether recognized or unrecognized?" (Petitioner 2002, Vol. 83.7(e), tab: §83.7(f), 1). Failure to return this declaration form to the petitioner's office, properly signed and dated, and answered in the negative, resulted in "disenrollment."

The second approach taken by the petitioner to document its lack of dual enrollment was to revise its membership application. The new application cites the petitioner's policy

**Muwekma: Final Determination - Summary under the Criteria**

against dual enrollment, and poses five questions about a prospective member's enrollment elsewhere.

The four third-party letters submitted before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(f).

Response

Photocopies of the dual enrollment declaration forms, and of approved applications on the revised application form requesting that information, were seen by the BIA in its review of the petitioner's membership files. These documents presented dual enrollment information obtained from each adult member. The petitioner asserted that these documents served "to prove that the petitioner's claim, as previously stated, is accurate" (Vol. 83.7(e), tab: §83.7(f), 2), that is, that "[n]o members of the Muwekma Tribe are currently enrolled in other federally recognized tribes" (Petitioner 2001, 26). Although an ambiguity in one member's file may threaten that statement's technical accuracy,<sup>77</sup> the regulations do not require 100 percent compliance. The regulation requires only that the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe.

Summary Conclusion

The BIA's review of the petitioner's membership files confirmed that the petitioner is composed principally of persons who are not members of any acknowledged North American tribe. Therefore, the petitioner meets the requirements of criterion 83.7(f).

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<sup>77</sup> One current member indicated he belonged to a federally acknowledged tribe, and was sent a letter advising him he would be "disenrolled," yet his folder (and name) continued to be categorized as "current" rather than "disenrolled."

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**Criterion 83.7(g)**

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

**83.8(d)(4)** The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

The Proposed Finding

The Proposed Finding concluded that a review of termination legislation for California, reports of the Bureau of Indian Affairs on termination in California, and *Federal Register* notices of the termination of California tribes and rancherias has revealed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe (*Muwekma PF*, 55).

Comments on the Proposed Finding

The petitioner's comment did not discuss criterion 83.7(g). The four third-party letters received before the close of the comment period on January 27, 2002, did not contain any evidence pertaining to criterion 83.7(g).

Summary Conclusion under Criterion (g)

In the absence of any evidence or argument contradicting the conclusion of the Proposed Finding, that conclusion is affirmed. The petitioner meets the requirements of criterion 83.7(g).



Muwekma: Final Determination - Appendix: 1905-1906 Kelsey Census

Appendix A

1905-1906 Kelsey Census  
 Schedule showing non-reservation Indians in Northern California  
 by C. E. Kelsey

Alameda County

Name	Indians		Mixed bloods	
	Heads of families	Number	Heads of families	Number
Miwok Stock				
<u>Pleasanton</u>				
Without land				
Ben Gooseman & wife 2 children grandmother	1	5		
Billy Peralta	1	1		
* Joe Gooseman & 2 children	1	3		
Martin Gooseman	1	1		
* Mrs. Joe Gooseman & child	1	1 [sic]		
Trinidad Gonzales 1 adopted child Old Pablo	1	3		
Angela Colos & grandson	1	2		
* McGill Santos & wife ? 1 grand-child	1	3		
Marthelina	1	1		
Jose Maria & wife	1	2		
Cosmos Santo	1	1		
Rafaella Padedis	1	1		
Manuel Pastor & wife 1 child	1	3		
Joe Wenoco	1	1		
<u>Niles</u>				
Without land				
* Marthelina Marshall 1 child	1	2		
* George Santos & wife * 4 children	1	6		
Crhysanto [sic] Amigo	1	1		
* Santos Tharesa & 1 child	1	3	1	1
Kid Small	1	1		
Bell				
Without land	18 [sic]	42	1	1

\* = has direct descendants in the current membership, as reasonably verified by BIA  
 ? = petitioner now concludes this is Jennie Flores rather than Catherine Peralta; unresolved for FD

Source: Kelsey 1906

Muwekma: Final Determination - Appendix: 1910 Indian Schedule

Appendix B

Indian Population, 1910 Federal Census  
Indian town, Pleasanton Township, Alameda Co., California

Name	Relationship to head of household	Sex	Color/race	Age	Single, married, widowed, divorced	Place of birth
Colos, Angel	head	F	Ind	77	Wd	California
Garcia, Joe	nephew	M	Ind	20	[Wd crossed out?]	California
Antonio?, Ocavio	head	F	Ind	60	Wd	California
* Peralta, Catherine	boarder	F	Ind	19	s	California
* Marin, Merced	boarder	F	Ind	15	s	California
Peralta, Beatrice	boarder	F	Ind	1 4/12	s	California
Gooseman, Frank	boarder	M	Ind	12	s	California
* Marie, D.	boarder	M	Ind	22	s	California
Kazoos, Jose M.	head	M	Ind	70	s	California
Scott, A.	boarder	M	W	51	wd	California
Santos, McGill	head	M	Ind	60	Md. [for] 40 [years]	California
* Selsa	wife	F	Ind	60	Md. [for] 40 [years]	California
Flores, Jennie	granddaughter	F	Ind	12	s	California
* Marin, Albert	boarder	M	Ind	1 6/12	s	California
Inigo, Phoebe	head	F	Ind	32	s	California
Spinosa, Scareus	head	M	Ind	32	s	Mexico
Alsilas, Granad	head	F	Ind	54	s	California
Rayes, Jose	head	M	Ind	47	s	California

\* = direct descendants in current membership as claimed by petitioner and as reasonably verified by BIA

Source: 1910 Federal Census, Indian Population Schedule, NARA T-624, roll 72, ED 152, p. 19-A, taken May 14, 1910.

Muwekma: Final Determination - Appendix: Verona Band Proxy

Appendix C

Verona Band Proxy  
reconstructed from residence lists  
(1905-1906 Kelsey Census and the Indian Schedule of 1910 Census)

Number of Individuals:		Individual	Petitioner's findings:		1910 residence
Petitioner/BIA			KC#	KC residence	
1	1	Antonio, Jacoba	#5	Pleasanton	Pleasanton
2	2	Armija, Isabelle (Villanea) <sup>1</sup>	#42	Niles	
3	3	Armija, Joseph Christanto	#38	Niles	
*	4	Armija, Magdalena	#30	Niles	
	5	Armija, Maria Rosa <sup>2</sup>	#41	Niles	
*	6	Arellano, Albert "Marin"	--		Pleasanton
	7	Bautista, Ciriaca/Josefa (Nonessi)	#23	Pleasanton	
	8	Bautista, Jose Maria Pastor <sup>3</sup>	#22	Pleasanton	
	9	Colos, Maria de los Angeles	#16	Pleasanton	Pleasanton
	10	Espinosa, Candelaria	#12	Pleasanton	
	11	Espinosa, Jesus "Spinosa"			Pleasanton
	12	Garcia, Joe / [Colos grandson]	#17	Pleasanton	Pleasanton
	13	Gonzales, Trinidad <sup>4</sup>	#13	Pleasanton	
	14	Guzman, Ben	#1	Pleasanton	
*	15	Guzman, Francisca (Nonessi)	#11	Pleasanton	
	16	Guzman, Francisco	#4	Pleasanton	Pleasanton
*	17	Guzman, John "Jack"	#9	Pleasanton	
*	18	Guzman, Jose	#7	Pleasanton	
	19	Guzman, Lucas	#3	Pleasanton	
*	20	Guzman, Alfred <sup>5</sup>	#8	Pleasanton	
	21	Guzman, Martin	#10	Pleasanton	

<sup>1</sup> This may be Isabella Stokes/Olivares (daughter of Margarita Armija) who married Joseph Nichols. The petitioner suggests this elsewhere in petition (Petitioner 1995, 32; Ex. B, 84; Ex. J, v. II:2 "Skeletal Outline"). In the comment period, the petitioner theorized this is Elizabeth Pontiana (a.k.a. "Belle") Marine. The Final Determination finds the evidence is inconclusive as to which of the three candidates is the "Bell" recorded by Kelsey.

<sup>2</sup> Maria Rosa Armija (born 1901) cannot be the "mixed blood" head of family "Kid Small" on the Kelsey Census (KC#41). In the comment period, the petitioner theorized "Kid Small" is Trinidad Marine (born circa 1901); however, since Trinidad was then a child of age four or five, Trinidad is not a match for the head of family status of "Kid Small." ["Kid Small" may have been Jose Alcas (born 1893; father "Incognito" on baptism), who was a child of Margarita Armija (died circa 1900); the "Bell" who follows "Kid Small" in the Kelsey Census may be Isabella Stokes/Olivares (born 1890), another child of Margarita Armija.]

<sup>3</sup> In the comment period, the petitioner presented a rationale for interpreting Jesus Maria Kasoos (see #50 on this list) as identical to Jose Maria Bautista Pastor. Time was not devoted to evaluating this for the Final Determination as it does not affect whether the petitioner meets criterion 83.7(e).

<sup>4</sup> See footnote 11.

<sup>5</sup> The petitioner's theory that Alfred, rather than Maria, was one of the "2 children" Kelsey listed for "Joe Gooseman" is reasonable. Maria was not listed with her parents in Federal Census records after 1900 whereas Alfred was enumerated with his parents as late as 1920.

Muwekma: Final Determination - Appendix: Verona Band Proxy

Number of Individuals:			Petitioner's findings:		1910 residence
Petitioner/BIA	Individual	KC#	KC residence		
22	22		#2	Pleasanton	Pleasanton
23	23				Pleasanton
24	24		--		Pleasanton
*	25	25	#20?	Pleasanton?	Pleasanton
*	26	26			Pleasanton
*	27	27			Pleasanton
	28	28	#14	Pleasanton	
	29	29	#31	Niles	
	30	30	#40	Niles	
	31	31	#25	Pleasanton	
	32	32	#26	Pleasanton	
	33	33	#27	Pleasanton	
	34	34	#28	Pleasanton	
	35	35	#6	Pleasanton	
	36	36	#15	Pleasanton	
	37	37	#21	Pleasanton	Pleasanton
	38	38			
	39	39	#24	Pleasanton	
*	40	40	#34	Niles	
*	41	41	#32	Niles	
	42	42	#36	Niles	
	43	43	#37	Niles	
	44	44	#35	Niles	
*	45	45	#19	Pleasanton	Pleasanton
	46	46	#18	Pleasanton	Pleasanton
*	47	47	#33	Niles	
	48	48	#39	Niles	
	49	49	#29	Pleasanton	
	50	50			Pleasanton
	51	51	#20?	Pleasanton?	Pleasanton

<sup>6</sup> In the comment period, the petitioner submitted its theory that Celsa Santos's "grand-child" in the Kelsey Census is not Catherine Peralta (who is her great-granddaughter), but likely Jennie Flores, who is listed as Celsa's granddaughter in the Indian Population schedule of the 1910 Census.

<sup>7</sup> The petitioner originally identified the unnamed Indian male or female "adopted child" in Trinidad Gonzales' household as Trinidad Marine. In the comment period, the petitioner concludes that "it is not yet possible to make a conclusive identification" of the "adopted child" (Petitioner 2002, Vol. 83.7(e), tab: §83.7(e) Summary, 75).

<sup>8</sup> In the comment period, the petitioner concluded that the "4 children" attributed to George Santos and Maria Peregrina Pinos by Kelsey in 1905-1906 are most likely identical to the four eldest children identified with the couple in the 1910 Census, and therefore changed the identification of child Joseph Santos to Marie Santos. Time was not devoted to evaluating this for the Final Determination as it does not affect whether the petitioner meets criterion 83.7(e).

<sup>9</sup> See footnote 3.

<sup>10</sup> See footnote 6.

**Muwekma: Final Determination - Appendix: Verona Band Proxy**

Number of Individuals:		Petitioner's findings:		
Petitioner/BIA	Individual	KC#	KC residence	1910 residence
	Alsilas, Grenad <sup>11</sup>			Pleasanton
*	52	#43	Niles	
	53			Pleasanton
	"Santos"[, Francisco] <sup>12</sup>			
	Scott, A. [non-Indian]			

For the Proposed Finding, the petitioner calculated the total number of individuals on the combined Kelsey Census and 1910 Census Indian schedule as 51 (excluding the one non-Indian), and the BIA calculated the total number of individuals as 53 (the BIA added "Santos" from the Kelsey Census, and viewed Trinidad Gonzales KC#13 and "Granad Alsilas" of 1910 to be two individuals rather than one). In the comment period, the petitioner submitted analyses which would leave the total number of identified individuals the same (51), but would increase the number of individuals with direct descendants in the current membership from 13 to 15 (adding Alfred Guzman as KC#8 and Trinidad Marine as KC#41). Of the two analyses which affect criterion 83.7(e), Alfred Guzman and Trinidad Marine, the evidence supports the reasonable identification of Alfred Guzman as one of Jose Guzman's two unnamed children. However, the fact that Kelsey recorded "Kid Small" with the status of "head of household" precludes the reasonableness of concluding he was recording four- or five-year-old Trinidad Marine.

**Legend:**

- = not born at this time
- \* = has direct descendants in current membership, as reasonably verified by BIA

**Proposed Finding: 400 members total**

Descent: 191 of 400 members (48%) claim descent from this proxy of the Verona Band;  
 209 of 400 members (52%) claim descent from siblings of Dario and Mercedes Marine (and from no other individual on this list);  
 265 of 400 members (66%) trace ancestry to a Marine with no other ancestor on this list.

**Final Determination: 419 members total**

Descent: 155 of 419 members (37%) claim descent from this proxy of the Verona Band;  
 264 of 419 members (63%) claim descent from siblings of Dario and Mercedes Marine (and from no other individual on this list);  
 337 of 419 members (80%) trace ancestry to a Marine with no other ancestor on this list.

Note: the above totals do not reflect the four members (or one percent) whose membership files did not contain sufficient evidence to document their descent from the Verona Band proxy or siblings.

Source: Branch of Acknowledgment and Research

<sup>11</sup> Petitioner claims "Grenad Alsilas" (age 54, female) on the 1910 Indian schedule is identical to Trinidad Gonzales (KC#13; no age or gender), but there was insufficient evidence to support this claim. In the comment period, the petitioner presented more information on this identification. Time was not devoted to evaluating this for the Final Determination as it does not affect whether the petitioner meets criterion 83.7(e).

<sup>12</sup> Another possibility is that #43 "Santos" on the Kelsey Census with wife Tharesa and one child represents "Santos Jacob Suares" born 1884 to Francisco and "Maria Jesus Isabella," found in the Mission San Jose baptismal records.

Muwekma: Final Determination - Appendix: Membership Distribution

Appendix D

Distribution of Membership by Ancestor(s)

This chart updates the Proposed Finding's Appendix D, and shows the total number of members arranged by (1) the ancestor from whom they descend, and (2) the date of the membership list on which they first appeared. The "KC Numerals" are numerals assigned to each person on the Kelsey Census by the petitioner before the Proposed Finding, except for #43 [Francisco] Santos, whose appearance on the Kelsey Census, and assigned numeral, were determined by the BIA. The petitioner's comments suggested #20 may not be Catherine Peralta, who was also on the 1910 Indian Schedule. Dario Marine and Mercedes Marine (and her son Albert Arellano) were not on the Kelsey Census, and thus have no numerals here. Their names were on the 1910 Indian Schedule. The ancestors are grouped into families without further definition of their interrelationships here.

<u>Verona Band Proxy</u> KC Numeral and Name	1/15/1995 list	1/12/1998 list adds:	5/29/1998 list adds:	1/19/2002 list change:	Total on 1/19/2002 list
#7 Jose Guzman } #11 Francisca Nonessi } #8 Alfred Guzman } #9 "Jack" Guzman }		1	3	+16	20
#19 Maria Celsa Santos } #20? Catherine Peralta } --- Dario Marine }		12		+1	13
#30 Magdalena Armija	4	11	4	+4 (+6, -2)	23
#43 Francisco Santos } #32 George Santos } #33 Maria Peregrina Pinos } #34 Maria Erolinda Santos }		94	6	-57 (+8, -65)	43
--- Mercedes Marine } --- Albert Marine Arellano }			56	0 (+7, -7)	56
<b><u>Siblings of the two Marines on the Verona Band Proxy</u></b>					
Dolores Marine	12	4		+2	18
Ramona Marine	76	11		-6 (+13, -19)	81
Victoria Marine	62	9	22	+15 (+19, -4)	108
Dolores + Victoria	13			+2	15
Trinidad Marine	--	--	--	+42 (+46, -4)	42
<b>Totals</b>	167	142	91	19	419

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