

(7) Federal Register Notice of Final Determination

- September 17, 2002

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final **Determination** To Decline To Acknowledge the Muwekma Ohlone Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final **determination**.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary--Indian Affairs declines to acknowledge the Muwekma Ohlone Tribe petitioner, 1358 Ridder Park Drive, San Jose, California 95131, as an Indian tribe within the meaning of Federal law. This notice is based on a **determination** that the group does not meet all seven criteria set forth in 25 CFR 83.7, as modified by 25 CFR 83.8.

DATES: This final **determination** is effective December 16, 2002, pursuant to 25 CFR 83.10(1)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208-3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary--Indian Affairs (Assistant Secretary) 209 DM 8.

A notice of the proposed finding to decline to acknowledge the Ohlone/Costanoan Muwekma Tribe (now renamed Muwekma Ohlone Tribe) was published in the Federal Register on August 3, 2001 (66 FR 40712). An order of the United States District Court for the District of Columbia, dated January 16, 2001, set the close of the period for comment on the proposed finding as October 29, 2001; however, following two extensions granted by the Court in response to the petitioner's motions, the end date for the comment period was set as January 27, 2002, and the end of the period for the petitioner to respond to third-party comments was set as March 28, 2002. The Muwekma Ohlone Tribe petitioner submitted comments on the proposed finding, but did not submit a response to the public comments. The Court granted the Department's request for a 30-day extension to the August 8, 2002, due date for the issuance of a final **determination** to September 9, 2002. This final **determination** is made following a review of the petitioner's comments and the public comments on the proposed finding, and is based on all of the evidence in the record.

The Muwekma petitioner has been evaluated under modified requirements provided in section 83.8 of the regulations on the basis of a **determination** that it had unambiguous Federal acknowledgment as the Verona Band between 1914 and 1927.

Criterion 83.7(a): 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. Therefore, as provided in section 83.8(d)(5), this final **determination** evaluated whether the petitioner has demonstrated that it meets the unmodified requirements of section 83.7(a) from 1927 to the present. The review of the available evidence concludes that the 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): 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 1967-1984 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 criterion (b) for previously acknowledged groups such as this one. The oral histories did not deal with events after 1971, and the newly submitted documents were generally very similar to the documents that 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): The petitioner has not demonstrated that it meets requirements of criterion 83.7(c) as modified by section 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

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levels of evidence described in section 83.7(b)(2). Also, because the available evidence is not sufficient to meet criterion 83.7(b)(1) ``at more than a minimal level,' such evidence cannot be combined, under the provisions of section 83.7(c)(1)(iv), 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 otherwise 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 since 1927, 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): This final **determination** affirms the proposed finding's conclusion that the petitioner submitted a governing document describing its membership criteria and its current governing procedures. Although the petitioner did not submit a comment on this criterion, its comments on other aspects of the proposed finding referenced a version of its constitution and enrollment ordinance amended and adopted later than those reviewed for the proposed finding. The Department obtained copies of the referenced governing documents amended and certified on October 21, 2000, which describe its

membership criteria and its current governing procedures. The October 21, 2002, amendments affecting membership requirements did not, however, identify the specific Verona Band individuals from whom descent must be documented. Because the petitioner has a constitution and an enrollment ordinance, certified by most members of its governing body, that describe its membership criteria and the procedures through which it governs its affairs and its members, the petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e): This final **determination** affirms the proposed finding's conclusion that the members of the petitioning group descend from the historical band. In the absence of a membership list of the Verona Band during the 1914-1927 period of last Federal acknowledgment, the proposed finding relied upon two residence lists of Indian settlements, the 1905-1906 Kelsey census of landless Indians living in Pleasanton and Niles and the Indian population schedule of "Indian town" on the 1910 Federal Census of Pleasanton Township, to approximate the composition of the Verona Band.

The proposed finding assumed that, for purposes of descent, non-resident siblings of individuals in the Pleasanton or Niles settlements could be considered members of the Verona Band by virtue of their close interaction with those resident siblings. Most of the petitioner's members at the time of the proposed finding (209 of 400) claimed descent from three non-resident Marine siblings who had two siblings on the 1910 Indian population schedule of "Indian town." By the time of this final **determination**, most of the petitioner's members (264 of 419) claimed descent from four non-resident Marine siblings.

The proposed finding solicited evidence to strengthen or rebut its assumption "that Avelina (Cornates) Marine was a part of the Indian group at the Pleasanton 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." Since the issuance of the proposed finding, the Department obtained the civil record of Avelina (Cornates) Marine's first marriage in 1877, to Jose Puente, that identified the bride as 15 years old, thereby providing a reasonable basis to conclude she was the same "Avelina" [no surname] identified in a Mission San Jose baptism record as a Mission San Jose Indian born in 1863. The petitioner supplied Avelina (Cornates) Puente Marine's 1904 burial record, which placed her in Pleasanton at the time of her death. These two records supported Avelina's genealogical link to the Mission San Jose Indians, a precursor of the Verona Band, and her geographical proximity to the Pleasanton rancharia enumerated by Kelsey shortly after her death, thus strengthening the assumption expressed in the proposed finding that Avelina and her children were part of the Verona Band.

The petitioner submitted an updated membership list dated January 19, 2002, identifying 419 members. This updated list showed the addition of 120 members, the "disenrollment" of 99 members, and the deaths of 2 members since the May 29, 1998, membership list reviewed for the proposed finding. The petitioner's governing body certified the updated membership list by resolution, and provided a description of the preparation of this and earlier membership lists, as required under criterion 83.7(e).

A review of the petitioner's membership files concluded that 99 percent of its current members have satisfactorily documented their descent from individuals on the Verona Band proxy list, or siblings thereof. The membership files for the remaining 1 percent lacked adequate evidence linking the member to his or her Indian parent or, in one case, grandparent.

Criterion 83.7(f): This final **determination** affirms the proposed finding's conclusion that this group is not principally composed of members of another acknowledged North American Indian tribe. Since the proposed finding, the petitioner obtained dual enrollment statements from all of its members, which BIA researchers reviewed in their audit of the membership files. Only one member who indicated membership in a federally acknowledged tribe remained on the petitioner's most current membership list.

Criterion 83.7(g): This final **determination** affirms the proposed finding's conclusion that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

This **determination** is final and will become effective December 16, 2002, unless a request for reconsideration is filed pursuant to Sec. 83.11. The petitioner or any interested party may file a request for reconsideration of this **determination** with the Interior Board of Indian Appeals (Sec. 83.11(a)(1)). The petitioner's or interested party's

request must be received no later than 90 days after publication of the Assistant Secretary's **determination** in the Federal Register (Sec. 83.11(a)(2)).

Dated: September 6, 2002.
Neal A. McCaleb,
Assistant Secretary--Indian Affairs.
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