United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

Tribal Services - AR
MS 4603-MIB

FEB 16 1999

Ms. Irene Zweirlein
789 Canada Road
Woodside, California 94062

Dear Ms. Zweirlein:

The Bureau of Indian Affairs (BIA), Branch of Acknowledgment and Research (BAR) has completed an initial review of the Amah/Mutsun Tribal Band of Ohlone/Costanoan Indians' (A/MTB) petition for Federal Government acknowledgment as an Indian tribe. This review is provided for under §§ 83.10(b) and (c) of the acknowledgment regulations, 25 CFR Part 83.

This technical assistance (TA) letter is issued under section 83.10(c) of the acknowledgment regulations 25 CFR 83. It describes obvious deficiencies or significant omissions apparent in the A/MTB documented petition, submitted in numerous installments between January 25, 1995, and July 10, 1998. A cover letter signed by you as the petitioner's chairperson accompanied each installment. All materials submitted during this period are considered in this TA review. Enclosed with this letter is an inventory of the submitted documents.

The Federal Government acknowledgment regulations provide this TA review to ensure that a case is not adversely affected because of technical problems. The goal of the acknowledgment process is to clarify a petitioner's status based on the historical, anthropological and genealogical merits of its case. After reading this TA review, your group may (1) withdraw your petition for further work, (2) submit additional information to clarify already-submitted materials, or (3) tell us that you are ready for active consideration.

We understand that you were encouraged to submit your petition by BIA staff in order to receive feedback, and that some of the problems that will be treated below have been discussed with you in person on several occasions. We lay them out here in writing as an aid to you. The length reflects our desire to give you meaningful feedback. It also results from the inclusion of an answer to arguments that your entity was previously recognized and eligible for acknowledgment under 25 CFR 83.8. Usually the comments on previous recognition and the TA letter are separate documents.

I. A Preliminary Analysis of Previous Recognition under 25 CFR 83.8

In your original request for acknowledgment dated January 25, 1995, you laid out on pages six through eight, 13 events or actions which you believe show that the Amah-Mutsun were previously acknowledged under §83.8. You also imply that these items, taken in total, show that the petitioner was continuously acknowledged.

A. To show previous acknowledgment the petitioner must satisfy the following:

1. APPROPRIATE ACTION BY THE FEDERAL GOVERNMENT: The petitioner must show that the Federal Government has taken action, such as a treaty, approval of a legal contract, or acceptance of tribal lands into trust, which constitute unambiguous Federal acknowledgment; and

2. CONNECTION WITH GROUP ACKNOWLEDGED BY GOVERNMENT: The petitioner must establish on a preliminary basis that it is the same, or was part of, the tribe that existed at the last point of acknowledgment. To do this, the petitioner must show not only ancestry from the previously acknowledged tribe, but also show, by some means short of demonstrating tribal existence under the regulations, continuity of existence from that tribe as a group or organization.

B. Unfortunately, your petition has failed to meet the above requirements for any of the 13 items you have put forward. We have had several TA meetings since the previous recognition part of your petition was written in 1995, and we believe that much of what is stated below has already been discussed with you and your researchers. However, this TA letter is an official response to the arguments made in your petition. (Excerpts of quotes from your submission are shown in italics. Our response is not italicized).

1. Treaty of Guadalupe Hidalgo 1848

In order for this Colonial treaty between Spain and the U.S. to show previous recognition of the A/MBT, you would have to show that an A/MTB historical tribe was a party to this treaty, or that there was a specific provision in this treaty that acknowledged or made provisions for an A/MTB historical tribe, if one existed.

2. The President of the United States authorizes three commissioners. . . to 'Treat' with the California Tribes...The Muwekma Tribe of the San Francisco bay, Amah-Mutsun Tribe and Esselen Nation, were party to and intended beneficiaries of the following Treaties:

E. Treaty of Dent's and Ventine's Crossing, May 28, 1851;
M. Treaty of Camp Fremnont, March 19, 1851;
N. Treaty of Camp Barbour, April 29, 1851.

You write in your cover letter dated July 10, 1998, to Exhibit K that members of your group were party to and the intended beneficiaries of the above listed treaties. These treaties were never ratified by Congress but are available in published sources. Each treaty was negotiated and signed by a number of Indians and their names are listed by band at the end of each treaty. In some cases, a "chief" is designated at the head of the listing for each band. It is not clear in your petition which of these bands and which of the individuals named on the treaties you believe are your ancestors. You do not claim to descend from any specific

individuals who signed the treaties with the United States. Even if your specific A/MBT ancestor is not on the treaty, you may be able to show that your ancestors were related to signers and others named on a treaty, and living in community with the signers. We encourage you to try to make these connections. This lack of specific knowledge about your relationships to treaty signers and the tribes covered by the treaties is a critical deficiency. Clearly, if your group does descend as a group from one or an amalgamation of bands which was party to any one of these treaties, then you would be able to claim previous recognition and utilize the §83.8 provisions which would reduce the evidence required to become acknowledged. However, you have not done so at this time.

3. Our families were documented as Indians in all of the Post-1852 Federal censuses.

Identification of specific A/MBT individuals as "Indian" on a Federal Census or any other Federal document, does not demonstrate that individual belongs to a sovereign entity with a government-to-government relationship with the United States, or that such an entity exists. It merely shows that an individual was identified racially as "Indian" by the enumerator or self-identified as "Indian" to the enumerator.

4. Formal requests and petitions had been made on behalf of our tribes and families for land and other benefits to President T. Roosevelt, the United States Congress, Department of the Interior, and the Bureau of Indian Affairs during the years 1903 and 1905...

Is there actual evidence that the A/MTB asked for land? Or are you using the phrase "our tribes" to refer to California tribes generically. If you have evidence that your ancestors were involved in the formal requests and petitions, you should submit it and explain as much as possible what is known about their participation.

The Kelsey census, and many other censuses, are a method for counting and collecting data about individuals. Such censuses are not a form of acknowledgment of a government-to-government relationship between Tribes and the Federal government. Inclusion of A/MBT ancestors on a census does not imply or confer acknowledgment to the A/MBT today or in the past. Rather, the kinds of services and rights conferred on tribes determines whether the A/MBT was previously acknowledged.

You refer to "the Muwekma relations." You may not use actions toward another tribe, even a neighboring or culturally related one, to demonstrate that the A/MBT was acknowledged. Even today, Indian descendants who do not belong to an Indian sovereignty may have cousins or other relations who are members of tribes. Having collateral kin who are members of recognized tribes does not mean that an individual belongs to that or any other recognized tribe.

5. As a result of Kelsey's partially successful efforts, however, Congress did move and passed the Acts of 1906 (34 Stat. L., 325-333), and April 30, 1908 (35 Stat. L., 70-76)...

If you have documents showing that your A/MBT ancestors received lands under this act, please submit them. Government actions applying to other California Indians and not clearly applying to your tribe and its members may not be used to demonstrate previous acknowledgment for the A/MBT.

6. The Muwekma Tribe was reaffirmed by the United States government in the following letters concerning funding for land acquisition for the "Verona-Sacramento Bands"...

It is not clear what relationship the A/MBT has to the Muwekma and Verona-Sacramento Bands or Sacramento-Verona Bands. If you are the successor in interest to these bands, then you may have been previously recognized in 1916 or even later. However, nowhere in your petition do you claim descent from these bands or that your ancestors were in them. Therefore, this evidence cannot be accepted as demonstrating previous recognition for the A/MBT.

7. As mentioned above, our men served in the United States Armed Forces...

Service in the Armed Forces by individuals does not demonstrate a government-to-government relationship between a tribe and the United States. Indians and non-Indians alike have served in the Armed Forces and such service in itself does not demonstrate that Indian members of the armed services are in tribal relations when they serve.

8. Our various direct tribal ancestors had provided cultural and linguistic information from 1921-1939 to J.P. Harrington, Cultural Anthropologist/Linguist for the Smithsonian Institution, ***funded by the Federal Government.***

The actions of an individual government researcher in interviewing an Indian individual does not demonstrate in itself that the Indian is in tribal relations or that a tribal sovereignty existed with a government-to-government relationship, even if the research is funded by a Federal institution.

9. Our families were ***enrolled and approved by the Bureau of Indian Affairs*** *during the 1928-1933 enrollment census under the Jurisdictional Act of 1928.*

The 1928 California Claims Act (25 U.S.C. §651) authorized the Attorney General of California to bring suit on behalf of the Indians of California. Payments of claims awarded were, under the Act, to be paid to all Indians residing in the State of California in 1852 and their descendants living in the state. The Act was not based on Federal recognition of a tribal entity and did not establish a government-to-government relationship with Indian tribes. Approval of an application was recognition of Indian ancestry, not tribal acknowledgment.

The 1928 applications which you have provided demonstrate that the Indian ancestry of the forbears of your members was accepted by the Federal Government. Under the 1928 Act the Government dealt with your ancestors as individuals, not as members of a tribal entity. Therefore, the 1928 claims did not establish a government-to-government relationship with a tribal entity representing your ancestors. We must conclude, then, that this evidence does not meet the definition of previous Federal acknowledgment as set forth in the acknowledgment regulations in §83.1.

10. The 82nd Congress reaffirmed their relationship with the Costanoan tribes in their House Report No. 2503...

We have consulted the pages that you refer to. Summaries of Federal Censuses which describe in general the populations on the censuses are not useful in identifying a Federal relationship between tribes and the United States. The Federal government frequently made such studies for purposes other than recognition, and a listing in these studies does not indicate that a government-to-government relationship existed. The documents cited in #10 refer to individuals whose race is Indian. The identifications are not specific tribal identifications. Pages 716-717 list California counties where there are trust lands. Trust lands can be allotments, Indian schools, rancherias and/or reservations. Without indicating the exact lands, which tribe these lands were associated with, and which individuals were using these lands, the document is not useful in demonstrating previous acknowledgment for A/MBT.

11. Our families continued to participate in the ***California Claims Settlement*** *from 1930 up until disbursement of the checks for $668.51 for eligible tribal recipients in 1972.*

See response to item nine.

12. Costanoan/Ohlone Amah-Mutsun tribes have been succinctly named and identified by the U.S. Army and Navy for purposes of having input under PL 100-526, the Base Closure and Realignment Act of 1988...

See the answer in item 13.

13. Amah-Mutsun has been formally named and recognized by the U.S. Army Corps of Engineers in accordance to the Native American Graves and Repatriation Act (NAGPRA) of 1990...

Many Federal agencies do deal with Federal petitioners for acknowledgment or with groups that may not be continuously existing tribal entities, even though they identify as tribes. The actions of these Federal agencies do not demonstrate a government-to-government relationship with the petitioners. These agencies do not make historical studies and evaluate claims of continuous tribal existence. They deal with petitioners as they deal with any other

community development organization in carrying out their programs. The BIA, however, is tasked with maintaining the trust relationship with Indian tribal sovereignties and is the lead agency in making acknowledgment decisions. Therefore, the BIA only deals with tribes which have continuously existed as tribal entities. Dealing with Federal agencies does not in every case demonstrate that a tribal entity is a federally recognized tribe. The examples you have submitted do not demonstrate a government-to-government relationship.

In summary, the information submitted to us at this time does not demonstrate that the A/MBT was previously acknowledged as an Indian tribe with a government-to-government relationship with the United States because either the event or action cited does not demonstrate previous recognition of a tribe and/or the petitioner has not demonstrated a connection to the specific tribe that was previously recognized. The rest of this TA is written with the assumption that you have not met §83.8. If you are able to show previous acknowledgment through future submissions, then the following TA would also change in some respects.

II. General comments about the format of your petition

A. The A/MTB submission consists of some 18 inches of materials, including 21 bound documents, two computer disks and one video tape.

B. Our review indicates that there are significant omissions in the petition in criteria 83.7 (a)-(g). For this reason, we recommend that you review the acknowledgment criteria 25 CFR 83.7 (a)-(g) carefully and direct your additional research toward providing the evidence that will demonstrate that your group meets these criteria. The approach of the submitted petition does not focus on a particular historical tribe, does not show the institutional history of that tribe to the present, nor highlight your ancestors' involvement in this tribe. The petition presents documents that refer to any Indians in Monterey County, San Benito County and other areas, or to any group of Indians identified as "Costanoan" regardless of location, without showing that these citations refer to groups or individuals who are the petitioner's ancestors or directly related to the petitioner.

C. We recommend that your petition include a full "narrative," or other documents which present your complete case and cites to the submitted documents. Submit photocopies of actual documents, not typescripts. In several areas in your petition you submit annotated indexes of materials in various archives. It is impossible to use these typescripts to understand the full meaning of the documents.

D. Site each document on its face. Many of the documents you have submitted are not clearly cited. There are also many duplicate copies. Make clear notations on the face of each submitted document indicating bibliographic information and where the original is located. If it is a copy of a document from your group's or an individual's archives or personal papers, make clear where BIA evaluators may view the original. It is sometimes necessary for BIA researchers to validate documentary submissions by viewing the original.

E. We recommend that the documentary evidence accompanying the narrative, and cited in it, cover all time periods. We routinely advise petitioners in informal TA meetings to write a chronological narrative of their case and to demonstrate for each period how their case meets criteria 83.7(a), (b), and (c). By arranging a case chronologically and by criteria, areas and time periods for which evidence is weak or missing become immediately apparent.

F. The genealogy appears to be complete and well organized using the PAF genealogy software. Its accuracy cannot be verified until the BIA puts your case on active consideration and makes an in-depth evaluation. However criterion 83.7(e) requires that 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." Without clearly designating a historical tribe, your case may not meet the genealogy criterion, §83.7(e), even if all of your members trace to Indian, or even Costanoan, ancestors.

G. What is missing in the petition is how your ancestors from these varied bands, tribes. ranches and missions came together in the A/MBT. To show that your members are not only descendants, but also are participants in a continuously existing tribe, you need to show your group doing things together, such as making decisions, having arguments and resolving disputes, perhaps marrying one another or living in close proximity in a settlement identified as Indian, following their leaders, maintaining property such as a cemetery or any number of other activities which show the tribal members acting together. Your petition implies that the A/MTB descend from many different tribes and bands, which is very confusing to readers. The specific identification of the historical tribe of each petitioner is central to every acknowledgment case. Using different names and referring to various groups with assorted names confuses your argument. Documents dealing with other Costanoan or Ohlone groups which are not your historical tribe and do not refer to your ancestors cannot be used as direct evidence that the A/MTB continued to exist or meets the acknowledgment criteria.

H. How do you determine what your historical tribe is? We advise petitioners to begin their analysis with the present members and their genealogies. Use the genealogies to determine which of the grandparents were living together and interacting as a group, and which of the great-grandparents were doing the same, and so forth. By finding your ancestors in the past, assuming there is an ancestral tribe, you should soon be able to designate a group of ancestors "traveling" or moving through history together. While individual members may die, they are replaced by newborns, and the tribe as a whole continues. Because you have already done your genealogies, you should be able to designate easily your historical community or communities, if they exist, by determining where some of your ancestors were living together or interacting.

I. A few of your ancestors, such as Barbara Sierra Solarsana and Ascensión Solarsana de Cervantes, have made important contributions to the anthropological study of California through their work with anthropologists such as Merriam and Harrington. Harrington's notes from his sessions with Ascensión Solarsana describe a group of interacting Indians she came into contact within her childhood and perhaps in later years. Make a careful analysis of all of the interactions detailed in

the notes and a careful cross reference with your genealogies to determine which individuals discussed in the field notes are ancestral to your group. This type of analysis may assist in describing your community during this time period. Photographs can be analyzed in the same way.

J. A number of petitioners are also claiming to descend from the Costanoan or Ohlone Indians in your region, and it sometimes appears that documents concerning these other petitioners are presented in your petition. These groups include: Costanoan Band of Carmel Mission Indians, Ohlone/Costanoan Muwekma Tribe, Indian Canyon Band of Costanoan/Mutsun Indians, Salinan Nation, Esselen/Costanoan Tribe of Monterey County, Ohlone/Costanoan-Esselen Nation and Salinan Tribe of Monterey County, Costanoan-Rumsen Carmel Tribe, Costanoan Ohlone Rumsen-Mutsen Tribe and perhaps several others. A quick overview of some of their petitions and statements about their histories show that some of these other petitioners claim histories similar to yours. If you share ancestors and specific history with other groups, please explain how you became separate petitioners today.

K. Confusion concerning your historical tribe also arises because you tend to conflate language groupings with tribes.[1] You present the names of language dialects, families and linguistic regions as if they are tribes, and then assume that any mention of "Costanoan or Ohlone" refers specifically to your historical tribe. In fact, such references may be referring to much larger groupings. Even though you focus primarily on the aboriginal language groupings historically found in the areas surrounding the modern communities of Gilroy and Carmel, the historical existence of these languages does not imply in itself that the A/MBT were a tribe, without further understanding of the community that spoke these languages. Language groupings are not necessarily tribes under the meaning of the regulations.[2]

L. In summary, a critical deficit of your petition is that you do not focus on your particular group's history. Rather, your analysis scatters to numerous California Indians and tribes. At times, it discusses the current political environment for California petitioners. Some of these discussions are not directly relevant to meeting the criteria.

III. Specific comments about criteria (a) through (g)

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[1]A tribe is a political and social entity. A language group is people who speak the same language. A language group, depending on how it is defined, may contain people from several tribes.

[2]You may misunderstand the regulations at 83.7(b)(2)(iii), which allows for groups who still speak their aboriginal language to use that fact alone to demonstrate community. However, in your case, the three individuals who have learned Amah did not learn it by virtue of growing up in a linguistic community. Rather, they have learned it after the language became extinct and no native speakers were still alive. This, therefore, could not be used to demonstrate that your community has continued to exist.

It is important that you direct additional research toward providing the evidence that will demonstrate that your group meets each criterion. Below is a discussion of what you can do next to improve your petition under the specific criteria.

A. Criterion 83.7 (a): External identification of the group as an American Indian entity on a substantially continuous basis since 1900

This criterion requires evidence of the external identification of your group as an American Indian entity since 1900. The criterion is intended to exclude from acknowledgment those entities which have only been identified as being Indian in recent times or those whose "Indian identity" is based solely on self-identification. The materials you have submitted are deficient for the Assistant Secretary - Indian Affairs (AS-IA) to make an evaluation of your group under criterion 83.7(a).

1. It is important to demonstrate that any identifications submitted refer to your group specifically and not to other Indian groups that may have resided in the same general geographical area and may have had a name similar to yours. For example, one document refers to a small, 1920's community called Verona. This community is claimed as ancestral to the Muwekma petitioner. It may be that you share ancestors with these other Costanoans. However, if your ancestors were no longer in tribal relations with the Verona Band in 1920, you may not use their activities after 1920 to demonstrate that your group continued to exist.

2. You submitted several letters written in 1997 and 1998, intended to be letters of support. These letters are not useful evidence under criterion (a) because they are very recent and do not appear to be based on any long-standing knowledge or interaction with your group.

3. Finally, the regulations require that the identifications be continuous. Generally speaking, you should submit at least one type of evidence from each decade (ten-year period) since 1900 which shows that an external observer identified the A/MTB or a predecessor community of the A/MTB as a North American Indian entity. You should also demonstrate that this identification did pertain to the group which you represent by showing that A/MBT members' ancestors were the entity being identified. It is also important to show that essentially the same group of people are represented in each decade. To accomplish this, most petitioners have found that they must cross reference historical documents with vital records, genealogies, and census records which document their ancestors' locations, movements, interactions and activities during all time periods.

B. Criterion 83.7(b): A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

Criterion 83.7(b) requires you to show that the petitioning group has been a community from historical times until the present. The material that you submitted falls far short of the documentation needed by the BIA to begin to evaluate your petition under criterion 83.7(b). To strengthen your petition, you will need to supply a much more detailed written "narrative," with

copies of documents, to support your case for community, as outlined in 25 CFR §83.7(b). Furthermore, there is some indication that you are viewing your group as an association or club of lineages rather than as a tribe. A tribe also may be made up of lineages; however, tribal lineages have a continuous history of interaction.

1. The analysis you did on several individuals showing their relationships to all other members of the petitioner was very interesting. Clearly, these individuals were closely related to many other members and related to virtually all other members. However, some of the relationships are very distant--five and six degrees of separation. This would indicate that the connecting ancestors lived together in an intermarrying community some five or six generations ago, perhaps in the 1840's. However, these charts do not demonstrate high rates of marriage within the group during more recent decades.

2. If you cannot demonstrate that your group's members continued to marry one another to the present, lived together in a geographical community, maintained an institution such as a church or cemetery or undertaken joint economic endeavors such as owning land or working together, you will need to provide alternative evidence that your members have actually interacted. Other petitioners have used correspondence, diaries, sign-in sheets at reunions, condolence books, wedding books, or similar kinds of items as evidence for actual interaction of members. The analysis of these materials should show continuous interactions throughout history among a predominant portion of the membership.

3. Exhibit J is an analysis of the places of residence of your current membership. Your membership does not live in a geographical community which would allow the BIA evaluators to assume that community exists presently under 83.7 (b)(2)(i). The membership is scattered throughout a large and densely populated and predominantly non-Indian area to a degree that we cannot assume that interaction exists among the membership based on these data. Therefore, you will have to provide evidence of actual interaction or other data to demonstrate that your community has continued to exist. The distribution of your members is not being used to disprove you meet 83.7(b). However, it is not sufficient in and of itself to show that you do meet 83.7(b).

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

Criterion 83.7(c) requires a demonstration that a petitioning group exercises political influence over its membership now, and that it has done so in the past. This means that there were in the past, and are now, leaders with followers whom they influence, and who influence them in significant ways. This criterion does not require a formal structure with a chief and council. It does require information concerning who led the group and how leadership was exercised.

1. If you cannot document a chain of leadership, you will probably have other crucial problems in meeting the criteria. At a minimum, the A/MTB should identify its leaders over

time from European contact to the present with primary emphasis on whom the leaders were during important events. We advise petitioners to make a list of all-important leaders and show how their leadership has been exercised in every decade and over whom political authority was exercised. The form of politics exercised by leaders does not have to be coercive, and leaders do not have to be elected as long as there is evidence that the leaders' authority is generally recognized by the members of the group. Very informal, often kin-based leadership, has been accepted as evidence for political authority under the regulations.

2. You may show that the A/MTB made decisions in matters of consequence and maintained a consensus among its members even without a formal government structure. Witnessing land purchases and sales, performing or arranging funerals, adopting children of other tribal members and similar actions often leave a trail of documents to indicate which individuals in a group were providing important leadership. You may also present evidence that your group's leaders were authorized to represent it to outsiders or mediate with outsiders in matters of significance. You need to document their activities and discuss other important leaders, including women leaders, who may have been important in the past or who are important today.

3. You say that one of your members, A. Eloiza Ardaiz, "represented the group," and you further state that "Her mother Mrs. Martha Ardaiz was a strong force in the Indian community." However, nowhere is the nature of that community clarified. The phrase "Indian community" may refer to a group of Indians such as all Indians living in an urban area or a collection of Indians from a number of tribes who have formed an organization for a specific purpose. What does it mean that Mrs. Ardaiz "represented" the group? Did she act in this capacity only on land claims or on other issues as well? What does it mean that Mrs. Ardaiz was a "strong force?" You should give specific examples of leadership, including names of individuals involved, the specific action or activity undertaken and the date of the activity, and the decision-making processes associated with it.

4. We understand that the mission period may present some problems for you in documenting a chain of leadership. However, the only way to deal with this is to face the issue head on. It cannot be ignored. We suggest that you look at what happened immediately after the closure of the missions. This may be a key to understanding how and if your ancestors were able to maintain political authority and establish a political organization after leaving the missions. Many scenarios are possible, and the history most likely differs from one petitioner to another and from one mission to another. However, you need to utilize evidence specific to your ancestral group to understand what happened to your particular ancestors.

5) Try to describe in detail how the A/MTB has responded to important issues in the past. Be very specific in describing the issues involved and how the group managed each issue. Describe in detail how group events have been organized and carried out in the past.

Answers to the following questions may explain political processes: Did your group hold meetings, events, powwows, parties, classes, memorials, or similar events? What happened at these events? Who attended? Are there sign-in lists, minutes, documents or photographs to demonstrate that these get-togethers occurred and were tribal events rather than family reunions or social get-togethers? What kind of tribal business was discussed at meetings, if meetings occurred. How did one become a leader? How were decisions made and what were the decisions? Did disagreements arise? How were conflicts resolved?

6. We suggest that you collect oral recollections from your members to assemble information about important political and social events during their lifetimes. You have not submitted any oral histories from A/MTB members. Especially valuable are eyewitness accounts. You may consider bringing together individuals in "focus groups" who can talk informally about past events and issues. For example, you may bring together people to discuss leadership in the 1950's and 1960's. Ask them not only who the leaders were, but also how they were selected, whether there was competition, what issues were taken up, and what decisions resulted, whether there were disputes, whether any individual or factions played an important behind-the-scenes role.

7. At the same time, you should be searching for documents out of your members' personal archives--those boxes and suitcases full of photos taken at group events, sign-ins at weddings or funerals, letters and legal documents, diaries and any other documents that could be evidence to show your members interacting. If you find such documents, obtain photocopies from their owners and carefully include bibliographic information on where they were located and anything that the current owner may know about the document. This kind of information is very important in verifying the authenticity of documents.

8. We also note that you have not submitted any tribal documents. Most successful petitioners have historical rolls, meeting minutes, vote tallies, correspondence files, and general documentation of tribal activities. Some petitioners' archives are large and complex and are similar to those records you would expect to find for a recognized tribe. But many others are small and incomplete, which is expected because they have been passed from one individual to another, often without the benefit of a permanent home. However, if you do not have tribal documents because you have not had any group activities in 80 years, your group cannot meet criterion (c).

9. Because you have submitted some materials concerning other petitioners who are also Costanoan, and because some of your ancestors are claimed by other petitioners, we will look into the relationship between your group and other Costanoan groups when your case is evaluated. You may want to discuss your group's relationship to other Costanoans in your narrative so that the BIA has your analysis before them when they undertake the evaluation. The BIA does not as a policy recognize parts of tribes. If a tribe is actually larger than the petitioner, we may issue a proposed finding that the petitioner is a splinter of a larger grouping. If you find that many brothers and sisters, parents and children, and other close

relatives are in different tribes or petitioners, you may represent a splinter of a larger tribe. We do understand that children of parents representing different tribes, may routinely select to join one parent's tribe over the other parent's tribe.

D. Criterion 83.7(d): Governing document

This criterion underscores the importance of tribal political status. The United States, in the Federal Government acknowledgment process, extends acknowledgment to political entities, not merely to individuals, groups of unaffiliated individuals, or historically unrelated families who have Indian heritage. The regulations, therefore, require that you submit your group's governing documents or a written description of how you govern yourselves. It also requires that you fully describe your membership criteria. This requirement is found at 25 CFR §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.

1. The A/MTB Constitution does not fully describe the membership criteria. You have included in your January 25, 1995, submission a copy of the "Enrollment Ordinance to the Ohlone/Costanoan Amah Mutsun Tribal Band." It shows that it was approved June 9, 1991, by a vote of ten to zero in the council. The copy of a constitution that you submitted indicates that it also was voted on and ratified on June 9, 1991. An amendment was voted on January 18, 1992. You have not submitted any minutes or other documentation concerning the creation and acceptance of these documents by your members. This kind of information may be very useful in demonstrating tribal political activity for your modern community. Most petitioners include this kind of documentation in their petitions, and we suggest that you also submit it. You may want to redact certain portions of the minutes, and you are free to do that if you so choose. Do any earlier governing documents exist? If so, they should also be submitted. If your group is acknowledged, this document will be used to organize the tribe and hold elections.

E. Criterion 83.7(e): Current membership list

The purpose of this criterion is to show that the members of a petitioning group descend from a historical Indian tribe, or from historical Indian tribes which combined and functioned as a single autonomous entity. You have submitted the A/MTB's current membership list. However, it is unclear what your historical tribe is, and in order for the BIA to determine if you meet this criterion, you will have to clarify this. Part of this clarification would be submission of any official or unofficial lists, rolls, or other compilation of your group's membership that were created in the past. Petitioners are required to submit such lists in §83.7(e)(2):

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

1. We were not able to identify any such former lists in your submission. We cannot overemphasize the importance of a petitioner's membership list. It identifies those people who make up the community. If a group is acknowledged, the list of members submitted with the petition will become the group's base roll for BIA purposes, and, as such, will be binding on the group after acknowledgment, except for minor corrections.

2. The BIA evaluators will focus on the community defined by the membership list, in evaluating other criteria such as (a), (b), (c), and (f). Thus, a petitioner runs the risk of failing to meet other criteria because the group, as defined by its membership list, represents only a portion of a community or, conversely, includes a large number of people who are not demonstrably part of a community.

3. You have included a membership list, however you have not included any information about how this membership list was put together and whether it was certified by the governing body of your group. The membership list may be supplemented and updated during the acknowledgment process. After you have responded adequately to this TA letter, you will be notified when the petition is being placed on active consideration. At that time, it will be appropriate to submit a supplemental list. The supplemental list should include additions to the membership, such as new births and individuals who were inadvertently omitted from the list submitted with the petition, and also identify members on the original list who are deceased at the time the petition is placed on active consideration.

4. Your enrollment files should be consistent with your submitted membership list. How the A/MTB maintains its files for each member is its decision; however, an enrollment file should contain some application form which is signed in ink by the adult applicant, parent, legal parent (cases involving custody), a legal representative, or legal guardian of a minor or incompetent applicant. The documentation in the enrollment file should include, but not be limited to, clear legible records that are certified copies of birth, marriage, divorce, death, and any other legal document(s). Each generation must be documented. The enrollment file should also contain information about when the member was accepted into membership and through what enrollment process.

5. The BIA will audit your files during the active consideration phase to make sure that the files are current, accurate, and consistent with the "certified" final roll before a Proposed Finding is made. There must be evidence, such as application forms, consent forms, and/or relinquishment forms, that the individual clearly intends to be a member of the petitioning group.

6. Your enrollment process must identify exactly those who descend from the historic tribe, and those who do not descend. The governing body of the petitioner may take action by either adoption, constitutional revision, membership ordinance, or removal of individuals who do not meet your own criteria for membership or who do not descend from the historical tribe.

F. Criterion 83.7(f): Members of the petitioning group may not be enrolled in any already acknowledged tribe.

This criterion prohibits the BIA from acknowledging groups which are composed principally of members of already acknowledged tribes. A statement from the current members of the A/MTB, perhaps included on the application for membership, that the applicant is not an enrolled member of an acknowledged Indian tribe would assist in evaluating this criterion. If more than half of your members appear on the tribal rolls of another tribe, you would not meet this criterion. We have no reason at present to believe that your group would not meet this criterion.

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

Though neither The A/MTB nor its members appear, from the materials you have sent, to be part of a group that is the subject of congressional legislation that has expressly terminated or forbidden a Federal relationship, please include a formal statement to that effect in the petition materials.

IV. Summary

A. In order to make this letter as useful to you as possible, the BIA has raised many possible problems detected reviewing your submission; however, these are only obvious problems that were identified during this limited review, and there may be others which may be revealed after a more in-depth review is conducted.

B. In this TA letter, the BIA has identified deficiencies in criteria (a), (b), (c), (d), (e), (f) and (g). The A/MTB must provide additional documentation and analysis in these areas for its petition to be given full consideration. If A/MTB decides not to address these concerns, the BIA may issue an expedited finding under §83.10(e) before your petition is placed on active consideration.

C. The 25 CFR Part 83 regulations limit the kinds of tribes acknowledged by the Department to continuously existing tribes. The Government has not made a decision concerning your case, and this TA review is not a preliminary determination of your case. At this point in the process, the BIA does not make conclusions that an evaluation of your petition will result in a positive or negative decision. In addition, you should not assume that positive conclusions are made about portions of the petition that are not discussed in this letter. Finally, do not presume that your group will meet the seven mandatory criteria by simply submitting additional data; the data must be relevant to and support the requirements of a particular criterion.

D. One purpose of this TA letter is to request information or documentation not currently in the petition which the BIA experts believe they need to evaluate your case when it is placed on active consideration. The BIA's research during the active consideration period is to verify an already completed and certified documented petition. The staff's caseload no longer permits it to do extensive additional research to fill in gaps in the petition.

E. After a TA review, petitioners may choose one of these options: (1) respond in part or in full to the TA review; (2) withdraw the petition; or (3) request in writing that the AS-IA proceed with the active consideration of the documented petition using the materials already submitted. The BIA will determine whether or not your petition is ready to be placed on active consideration. In the absence of these required materials it would be impossible to issue a positive determination. At the same time, you have not submitted key information which would make it impossible for the AS-IA to conclude that your group meets the seven mandatory criteria.

F. If your group asks us to evaluate any materials you submit in response to this review, we will do that. However, you must request a second TA letter in writing to obtain this review under 25 CFR §83.10(c)(1). When more materials are received from you, we will do one of the following: we may evaluate your petition and issue an expedited finding under §83.10(e) of the acknowledgment regulations; we may place your petition on the list of petitioners waiting for active consideration if the A/MTB has indicated that it thinks its petition is ready; or, we may request further documentation.

After you have had an opportunity to review this letter thoroughly and share its contents with your researchers and general membership, we recommend that you contact the BIA staff so that we can make arrangements to provide additional assistance to you and your researchers. We also invite you to visit the BAR's home page at http//:www.doi.gov/bia/ack_res.html. There, you will find an assortment of findings, guidelines, the regulations, and decisions which should be helpful in completing your petition. You may write the BIA, Branch of Acknowledgment and Research, 1849 C Street, N.W., MS 4603-MIB, Washington, D.C. 20240, or call (202) 208-3592 for information.

Sincerely,

/SGD/ DEBORAH J MADDOX

Director, Office of Tribal Services

cc: Interested and Informed Parties

bcc: Surname,Chron;400;Hold
HR:x4686;K/share\ots\bar\t-a.let\amahmut.t-a,11/19/98,12/2/98;K/share\ots\bar\correspondence\Holly\amahmut.t-a;12/11/98prerec.SLAcomments:1/4/99;CJM revisions:1/13/99\jkc:2/3/99