

Phase I – Negative Proposed Finding  
Fernandeño Tataviam Band of Mission Indians

Prepared in Response to the Petition  
Submitted to the Assistant Secretary – Indian Affairs  
for Federal Acknowledgment as an Indian Tribe

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(Date)

  
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## ACRONYMS AND ABBREVIATIONS

AS-IA	Assistant Secretary – Indian Affairs
ECPP	Early California Population Project website and mission record database: <a href="http://www.huntington.org/Information/ECPPmain.htm">http://www.huntington.org/Information/ECPPmain.htm</a>
FTB	Fernandeño Tataviam Band of Mission Indians (Petitioner)
LPC	Los Angeles Plaza Church, also known as Iglesia Nuestra Señora Reina de Los Angeles
NARA	National Archives and Records Administration
OFA	Office of Federal Acknowledgment
PF	Proposed Finding
SBV	San Buenaventura Mission
SD	San Diego Mission
SFR	San Fernando Rey de España Mission
SG	San Gabriel Arcangel Mission
TA	Technical Assistance
TST	Timbisha Shoshone Tribe

## INTRODUCTION

The Office of the Assistant Secretary – Indian Affairs (AS-IA) within the Department of the Interior (Department) issues this negative Proposed Finding (PF) in response to the petition the Department received from the group known as the Fernandeño Tataviam Band of Mission Indians (FTB), headquartered in San Fernando, California. The petitioner seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), “Procedures for Federal Acknowledgement of Indian Tribes.”

Based on the evidence submitted by FTB and evidence Departmental staff obtained through its verification and evaluation process, FTB meets only three of the four mandatory criteria under the Phase I review, as defined by the regulations, effective July 31, 2015 (2015 Revisions): criteria 83.11(d) *Governing document*, 83.11(f) *Unique membership*, and 83.11(g) *Congressional termination*. FTB has not met criterion 83.11(e) *Descent*. An explanation of the Department’s evaluation of each criterion is presented in full in sections that follow this introduction.

### Regulatory Procedures

The Department’s regulations under 25 CFR Part 83 establish the procedures and criteria by which a group may seek Federal acknowledgment as an Indian tribe, establishing a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States under § 83.5, the petitioner must submit evidence documenting that the group meets § 83.11(a) *Indian entity identification*, § 83.11(d), § 83.11(e), § 83.11(f), and § 83.11(g) and must either:

- (a) demonstrate previous Federal acknowledgment under § 83.12(a) and meet the requirements of § 83.12(b); or
- (b) meet criteria 83.11(b) *Community* and 83.11(c) *Political influence or authority*.

Section 83.26 describes the two phases of the process for reviewing the criteria in § 83.11. During the Phase I review, the Office of Federal Acknowledgment (OFA) determines if the petitioner meets criteria § 83.11(d), § 83.11(e), § 83.11(f), and § 83.11(g). OFA has completed its Phase I review, and OFA is issuing a negative proposed finding (PF).

OFA will publish notice of this PF in the *Federal Register*, which initiates a 120-day comment period under § 83.35(a). During this comment period, the petitioner or any individual or entity may submit comments and evidence to OFA to rebut or support the PF. Any such individual or entity must provide the petitioner with a copy of its submission pursuant to § 83.35(b). If OFA has received comments on the negative PF, then the petitioner will have 60 days to submit a written response to these comments, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response, pursuant to § 83.37. After the expiration of that comment period, the petitioner will have 60 days to elect to challenge the PF before an administrative law judge as outlined in § 83.38–39.

A petitioner can withdraw its documented petition at any point in the process but the petition will be placed at the end of the numbered register of documented petitions upon resubmission and may not regain its initial priority number, pursuant to § 83.30.

### Summary of Administrative Action

On April 24, 1995, OFA received a letter of intent to “become Federally recognize[d]” from the “Fernandeño/Tataviam Tribe” located in Sylmar, California.<sup>1</sup> The letter was signed by FTB’s governing body, which included (at that time) Edward A. Ortega, Rudy J. Ortega Jr., Jimmie Ortega, Joe (signed “Jose”) Ortega, Rita Rivera, and Ted Garcia. The OFA sent a letter of receipt dated May 3, 1995 and assigned the petitioner number 158. Notice was published in the *Federal Register* on June 7, 1995.<sup>2</sup>

FTB began the Department’s process under the 25 CFR Part 83 acknowledgment regulations, as revised on February 25, 1994, entitled “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” The OFA received FTB’s first submission of petition materials on January 16, 1996. The OFA sent its first technical assistance (TA) review letter to FTB on March 3, 1997. The FTB submitted claims for previous Federal acknowledgment beginning in 2005.<sup>3</sup> The FTB submitted supplemental materials in 2009 and 2011. On September 6, 2011, OFA placed the petitioner on the “Ready, Waiting for Active Consideration” list, meaning that the petition satisfied the requirements of a complete “documented petition” under § 83.6 of the 1994 version of the Part 83 regulations.<sup>4</sup> The FTB submitted additional materials in 2012. On March 10, 2015, OFA notified the petitioner that OFA planned to begin active consideration of FTB on May 10, 2015. On April 14, 2015, OFA received a letter from FTB requesting that active consideration begin on September 10, 2015.

On July 1, 2015, the Department revised 25 CFR Part 83 and issued a new final rule.<sup>5</sup> Section 83.7 of the revised Part 83 states that OFA will notify each petitioner that, as of the time of the revision, had submitted complete documented petitions but had not yet received a final agency decision that it must proceed under the 2015 revisions unless it elected by September 29, 2015, to complete the petitioning process under the previous version of the acknowledgement regulations that were published in 1994. The petitioner elected to proceed under the revised regulations by letter received on September 15, 2015, and OFA published notice of this decision in the *Federal Register* on November 27, 2015.<sup>6</sup> The OFA posted the petitioner’s narrative to its website by November 28, 2015, when an opportunity for third parties to submit comments and

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<sup>1</sup> By 2009 the petitioner was referring to itself as the Fernandeño Tataviam Band of Mission Indians.

<sup>2</sup> 60 FR 30168.

<sup>3</sup> The FTB’s letter of July 21, 2005, stated that the petitioner was composed of descendants and “political successor[s]” to signatories of the June 10, 1851, Fort Tejon Treaty. The OFA sent FTB technical assistance regarding this claim by letter dated November 14, 2005, which determined that the above-mentioned treaty signed at Camp Persifer F. Smith on June 10, 1851, did not pertain to Fernandeños or Tataviams but to Chumash speakers that lived in and around the Tejon Pass area and at Fort Tejon. The descendants of these peoples have since been federally recognized (2012). Subsequent to OFA’s November 14, 2005, letter, FTB has not pursued this claim for previous Federal acknowledgment based on the Fort Tejon Treaty.

<sup>4</sup> OFA to Ortega, September 7, 2011.

<sup>5</sup> 80 FR 37862–95.

<sup>6</sup> 80 FR 74123.

evidence supporting or opposing the petitioner's request for acknowledgment within 120 days began.<sup>7</sup>

The OFA received additional FTB petition materials on June 28, 2016. On October 17, 2016, OFA provided FTB with a Phase I TA Review Letter under § 83.26(1)(i). The OFA received response materials on August 23, 2017; October 28, 2017 (certified copy of August 23, 2017 submission); July 11, 2018 (copy of August 23, 2017 submission); August 20, 2018; and September 17, 2018. The FTB requested a teleconference which was conducted with OFA staff on September 18, 2018. On November 20, 2018, OFA transmitted documents providing “evidence OFA may consider that the petitioner does not already have” as required by § 83.26(a)(2)(i). Following receipt of those documents, which was acknowledged by letter dated December 19, 2018, the petitioner requested that OFA proceed with the Phase I review by letter dated June 13, 2019.

### Membership Lists

Under §83.21(a)(4), the documented petition must include a copy of the petitioner's most recent membership list, as well as any other previous membership lists, if applicable. The petitioner must also provide explanations regarding the preparation of all the membership lists, current and former, insofar as possible. The current membership list must be separately certified by the petitioner's governing body and include each member's full name (including maiden name, if any), date of birth, and current residential address.

The October 17, 2016, TA Review Letter acknowledged receipt of FTB's official current membership list, dated August 16, 2015, as well as four previous membership lists, as required by § 83.21(4)(iii): November 4, 1995, September 2003, November 20, 2008, and July 13, 2010. All five versions were certified by the petitioner's governing body, as required by § 83.21(4)(i) and a brief history and description of the lists was submitted in 2015 with an “Overview of Citizenship Rolls,” as required by § 83.21(4)(ii) and § 83.21(4)(iv). The “Official Tribal Roll” of August 2015 included a total of 693 individual members of FTB. As of the August 2017 submission, OFA identified three of these individuals as deceased. The OFA identified ten others who had relinquished their enrollment with FTB and enrolled with a federally recognized Indian tribe. Once these individuals and all duplicates were removed, the total number of members was 680.<sup>8</sup>

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<sup>7</sup> Nine parties commented on the documented petition and OFA posted those comments on its Web page, and FTB responded accordingly, pursuant to § 83.24. The OFA considered these comments and the petitioner's response. The petitioner and third parties have an opportunity to comment on this Phase I PF after the publication of the *Federal Register* notice.

<sup>8</sup> Eleven members provided only a P.O. Box address on the 2015 membership list; seven members left the address field blank. All missing addresses were provided by the petitioner by the date of this report through alternate membership forms or through separate submissions by the petitioner made in 2017 and 2018.

**CONCLUSIONS UNDER THE CRITERIA (25 CFR PART 83.11)**

This negative Phase I PF reaches the following conclusions for each of the mandatory criteria evaluated during the Phase I review under 25 CFR Part 83.11:

Criterion 83.11(d) requires that the petitioner provide a copy of the entity's present governing document, including its membership criteria or, in the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures. The FTB submitted a governing document that describes its governing procedures and its membership criteria. Therefore, the petitioner meets the requirements of criterion 83.11(d).

Criterion 83.11(e) requires that the petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. With its October 17, 2016, TA Review Letter, OFA notified the petitioner of "deficiencies that would prevent the petitioner from meeting" criterion 83.11(e) as required by § 83.26(a)(1)(i). FTB did not respond with information or clarification sufficient to address the deficiencies relating to criterion 83.11(e) that OFA highlighted in its Phase I TA Review Letter. Additionally, OFA is issuing this negative PF under § 83.33(a) because the petitioner did not meet the regulatory requirements of criterion 83.11(e). The petitioner does not meet criterion 83.11(e).

Criterion 83.11(f) requires that the petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. Based on its review of the evidence, OFA has determined that the petitioner's membership is composed principally of persons who are not members of federally recognized Indian tribes. Therefore, the petitioner meets the requirements of criterion 83.11(f).

Criterion 83.11(g) requires that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. Based on its verification research, OFA did not find that the petitioner or its members are the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.11(g).

**Criterion 83.11(d)**

- 83.11(d) *Governing Document.* The petitioner must provide:**
- (1) A copy of the entity’s present governing document, including its membership criteria; or**
  - (2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.**

*Introduction*

The petitioner has submitted a governing document that describes the group’s governing procedures and membership criteria, thus meeting the requirements of criterion 83.7(d). This section will discuss FTB’s current governing document.

*Governing Document*

On November 9, 2009, OFA received petition materials including two copies of FTB’s governing document.<sup>9</sup> The governing document was certified by FTB’s governing body.<sup>10</sup> The governing document contains a preamble and eleven “chapters,” as well as a “Transitional Chapter.” These chapters include various sub-headings, or “articles,” covering lands and territory, “citizenship,” and self-governance.<sup>11</sup> The “Transitional Chapter” discusses the final process of amending the governing document and, afterwards, the removal of the “Transitional Chapter” once said amendments become effective.

The FTB submitted supplementary materials that OFA received on August 23, 2017 (duplicated in materials received by OFA on October 25, 2017), which included a copy of the group’s amended constitution dated June 11, 2017. The FTB’s “Election Summary” shows that the constitutional amendments were made “through general election.” The Election Summary also discussed the procedure for these amendments. The summary did not include information about what specific changes were voted on other than to say that two elections (held in April and June) were held to “amend corrections of previously generated errors in the Governing Document that were contradictory or grammatically incorrect (a list of enclosures included a sample ballot, which was not included in the electronic files). However, a separate document entitled, “Election Memorandum” for the June 11, 2017, election stated that Articles 9 (“General Meetings of Citizens”), 44 (“Proposal” of Constitutional amendments), and 45 (“Adoption” of Constitutional amendments) were adopted by the group by the results of the voting tally.

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<sup>9</sup> FTB August 2017 Submission, FTB Doc. 90129.FTBMI, FTB Doc. 80449FTBMI.pdf.

<sup>10</sup> The letter of certification for this copy of FTB’s governing document is dated November 20, 2008; see FTB August 2017 Submission, FTB Doc. 600001.FTO.

<sup>11</sup> In its governing document, FTB refers to its members as “citizens” and “citizenship.” The acknowledgment regulations use the term “members” and “membership.” This PF will use the term “members” and “membership” in accordance with the regulations.



### *Governance*

Chapters 4, 5, and 6 define FTB’s governing body. The governing body comprises 13 elected positions: a President, Vice-president, Treasurer, Secretary, and nine Senators. Chapter 4, Article 20 defines a quorum as two-thirds of the Senate to conduct business for the petitioner.

### *Membership*

Under Chapter 3, Article 6 (“Citizenship Requirements”), the governing document opens membership (or “citizenship”) to persons who are not enrolled in “any other tribe.” Additionally, the governing document states that members must be:

- descended from “one or more Indian Rancherías (Villages) within boundaries of Article 3 associated with Mission San Fernando registers”
- “lineal descendant[s] of an enrolled citizen of the Tribe maintaining tribal relations.”<sup>12</sup>

There is no distinction as to whether an applicant for membership needs to meet both of the requirements outlined in Article 6, or just one to be eligible for membership. This could have a considerable effect on the membership, either broadening or narrowing membership eligibility significantly. The petitioner may wish to clarify its membership requirements during the comment period. The OFA notes that Article 6 differs markedly from the claims relating to its historical Indian tribe offered by the petitioner in its petition narratives, which focuses primarily on the petitioner’s three primary “lineages” of Ortega, Garcia, and Ortiz.

Article 3 defines its “ancestral lands” as the lands extending “north to south, from the lower Antelope/Leona Valley to the San Fernando Valley, and from west to east, from Piru to the western arm of the San Gabriel Mountains.”<sup>13</sup> This Article also establishes a base list of villages and rancherías located in “the known parts of Los Angeles, and Ventura Counties in the State of California, as referred in the Indian Rancherías of San Fernando Mission, United States Indian Affairs report of May 1920.” The referenced 1920 report includes an introductory page stating that Stella R. Clemence compiled a list of villages and rancherías in 1919 from the original first “Book of Baptisms of San Fernando Mission, California.” This original *Book of Baptisms*, according to Clemence, contains 3,126 entries spanning from 1797 to 1855. This document contains information about villages and rancherías with Indian baptisms from the original baptismal entries.<sup>14</sup> The book also includes entries for *gente de razón*.<sup>15</sup>

The OFA cautions that basing membership on the 1920 Clemence report might open up membership to non-Indians. The report appears to have taken locations named in Indian baptisms and extracted them into a list, and then the compiler counted how many Indians came from those locations. Since the San Fernando Rey de España Mission (SFR) baptism registers include gente

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<sup>12</sup> FTB August 2017 Submission, “FTBMI Constitution,” 3.

<sup>13</sup> *Ibid*, 2.

<sup>14</sup> FTB 2009 Submission, FTB Doc. 00090.FTO. This document is not a United States Indian Affairs report, but rather a 10-page report compiled by Ms. Clemence under the direction of C. Hart Merriam.

<sup>15</sup> *Gente de razón* is a Spanish term for non-Indians, which literally means “people of reason.”

de razón, it is unclear from this document alone whether these extracted villages were exclusively Indian villages or rancherías, or simply locations with mixed populations.

Further, Section 2 of the same article on “Citizenship Requirements” states that “Any applicant for citizenship bears the burden of proof to establish eligibility for enrollment and not [be] enrolled with any other tribe/band.”<sup>16</sup> The governing document itself does not address the process for membership; however, an introduction to the material submitted for criterion 83.11(d) included with the petitioner’s 2009 materials states that “[t]he Citizenship Enrollment Process is administered by the Office of Tribal Citizenship” and an outline of the procedure follows:

- completion of the Tribal Citizenship Enrollment Application (available online) and payment of \$24.00 fee;
- applicants must have filed a Letter of Relinquishment with any other tribe prior to acceptance with FTB;
- an “Open Enrollment” period is followed by a “Review” period;
- during a review period, applicants are notified of deficiencies (such as incomplete information) and given 2 months to complete/fix their application. This period may be initiated by a Notice of Failure to Complete;
- the Office of Tribal Citizenship then reviews document submitted during this period;
- the Office of Tribal Citizenship submits names of qualifying applicants to the Tribal Senate;
- the Tribal Senate reviews the list of names and votes on tribal “citizenship.”

It is unclear whether this is the current membership procedure, and the FTB may wish to submit a copy of its current membership procedure if it is different from its 2009 procedure. Additionally, in light of the concerns OFA raises above, FTB may wish to further refine and clarify its membership requirements.

#### *Conclusions under Criterion 83.11(d)*

Criterion 83.11(d) requires that the petitioner provide a copy of the entity’s present governing document, including its membership criteria or, in the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures. The FTB submitted a governing document that describes its governing procedures and its membership criteria. Therefore, the petitioner meets the requirements of criterion 83.11(d).

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<sup>16</sup> The August 23, 2017, submission also included further FTB membership files which address the issue of potential dual enrollment by requiring members either to confirm their membership—clearly stating that they do not belong to any federally recognized Indian tribes—or to relinquish their membership.

**Criterion 83.11(e)**

**83.11(e) *Descent.* The petitioner’s membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).**

*Overview*

In evaluating a petitioner under criterion 83.11(e), OFA considers several issues, including whether a petitioner has *identified* a historical Indian tribe for the purpose of calculating descent under criterion 83.11(e); whether a petitioner has *demonstrated* that this historical Indian tribe existed at a particular point before 1900; and whether a petitioner has *documented* that its current members descend from individuals who belonged to that historical Indian tribe.

Although the regulations do not define “historical Indian tribe” in the § 83.1 “terms” section, the regulations provide basic requirements for what may constitute a “historical Indian tribe.” In the § 83.1 “terms” section, the term “historical” means “before 1900,” and the term “tribe” means “Indian tribe, band, nation, pueblo, village or community.” All versions of the acknowledgment regulations reflect that an “Indian tribe” is a “distinct community” (criterion (b)) of Indians (criterion (e)) that exercises “political influence or authority” over its members (criterion (c)). The preamble to the 2015 acknowledgment regulations states that the revised acknowledgment regulations require “evidence of descent from a historical Indian tribe that existed prior to 1900.”<sup>17</sup> A petitioner must demonstrate that its members descend from the historical Indian tribe using evidence as described in § 83.11(e)(1) and § 83.11(e)(2), and should be able to demonstrate the existence of its historical Indian tribe using historical evidence. Furthermore, a petitioner needs to document the names or identities of the individuals who belonged to the claimed historical Indian tribe; otherwise, it would be difficult to demonstrate that a petitioner’s members descend from people who belonged to that historical Indian tribe. Historical documentation should support that the members of the claimed historical Indian tribe were in tribal relations, were being treated by the Federal Government as an Indian tribe (if the petitioner is making a claim of unambiguous previous Federal acknowledgment pursuant to § 83.12(a)), or were otherwise a tribal entity.

In its submissions, the petitioner identifies several native villages from which it claims its current members descend, but focuses primarily on four native villages—*Suitcanga*, *Tujunga*, *Cabuepet*, and *Chaguayanga*.<sup>18</sup> As noted in the reference to § 83.1 in the preceding paragraph, a native village that existed prior to 1900 may constitute a historical Indian tribe. However, the petitioner did not claim its historical Indian tribe as any one native village—the existence of which is documented in the sacramental registers of SFR—for the purpose of calculating descent under

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<sup>17</sup> 80 FR 37863.

<sup>18</sup> See, for example, FTB 2009 Submission, Criterion (e), 1–11; *Ibid*, Introduction, [unpaginated] 2; *Ibid*, Historic Narrative, Description of Current Group, [unpaginated] 2; FTB 2015 Submission, Criterion (b), 6–7, 18.

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criterion 83.11(e).<sup>19</sup> Furthermore, the petitioner did not demonstrate that the aforementioned native villages combined and functioned as a single autonomous political entity, from which the petitioner could claim descent for the purpose of satisfying criterion 83.11(e). The petitioner uses the concept of a “lineage” to link its current members to members of native villages, asserting that its “lineages” managed to “survive” the San Fernando Mission period (1797–1834) and pass through one of three Indian “progenitors”: “Rita,” “Leandra,” or “Rosaria.”<sup>20</sup> The petitioner claims that, after the mission period, its three “progenitors” married men with the surnames of *Ortega*, *Garcia*, and *Ortiz*, respectively, and that the resulting three “lineages” became associated with these three surnames.<sup>21</sup>

The petitioner discusses the Indian population at SFR, and OFA’s October 17, 2016, TA Review Letter suggested that FTB might be able to satisfy criterion 83.11(e) by calculating descent from a historical Indian tribe at SFR. However, in its August 23, 2017, TA Response Letter, in response to OFA’s suggestion, FTB stated that OFA’s “conception of the Tribe as an amalgamation” of Indians at SFR “is inconsistent with contemporaneous evidence and subsequent ethnographic analyses.”<sup>22</sup>

Instead, the petitioner retained the claims of its historical Indian tribe. These claims do not meet the requirements of the regulations. Across its submissions, the petitioner claims descent from an “arrangement,” “coalition,” or “network” of “villages,” “lineages,” or “family groups.”<sup>23</sup> Criterion 83.11(e) requires that the “petitioner’s membership consists of individuals who descend from a historical Indian *tribe* (or from historical Indian *tribes* that combined and functioned as a single autonomous political entity) [emphasis added],” not from “arrangements,” “coalitions,” or “networks.”

The evidence in the record does not demonstrate that any of these surname “lineages” was an Indian tribe between the end of the mission period and 1900. Furthermore, the petitioner did not demonstrate that its three aforementioned “lineages” combined and functioned as a single historical Indian tribe. Ultimately, the petitioner did not identify a historical Indian tribe for the purpose of calculating descent under criterion (e)<sup>24</sup>

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<sup>19</sup> There is limited information about these villages; much of it comes from historical records created by the Spaniards and Mexicans who lived in or near the missions. Particularly valuable are the registers in which the missionaries recorded information about the people receiving sacraments—baptisms, marriages and burials—at the missions. When an Indian received a sacrament in a mission, the missionaries often recorded the birthplace of the recipient, and sometimes the birthplace of the recipient’s parents. The missionaries recorded that some Indians were born in a mission, while other Indians were born in a native village. From these mission registers, some Indians can be connected either directly to a native village or indirectly—through his or her ancestors—to a native village. For an analysis of the petitioner’s ancestors’ links to various villages, based on such mission records, see Appendix.

<sup>20</sup> See, for example, FTB 2009 Submission, Criterion (e), 1–11; *Ibid*, Criterion (b), 3; *Ibid*, Historic Narrative, [unpaginated] 19; FTB 2015 Submission, Criterion (b), 16–24; *Ibid*, Criterion (c), 6.

<sup>21</sup> FTB 2009 Submission, Criterion (e), 1–11; *Ibid*, Criterion (b), 4–7. See also FTB 2015 Submission, Criterion (b), 19–24; *Ibid*, Criterion (c), 14–27.

<sup>22</sup> FTB Response to OFA Phase I TA Review Letter, August 23, 2017, 11.

<sup>23</sup> See, for example, FTB 2009 Submission, Criterion (e), 1–2; *Ibid*, Criterion (b), 1–4, 7, 26; *Ibid*, Historic Narrative, [unpaginated] 1–2; FTB 2015 Submission, Criterion (b), 1, 5–6, 8–9, 14, 16, 17, *passim*; *Ibid*, Criterion (c), 5–7, *passim*; FTB Response to OFA TA Review Letter, 10, 12, 15, 19–20, 25.

<sup>24</sup> As the acknowledgment regulations state, the petitioner must “thoroughly explain[] how the petitioner meets each of the criteria in § 83.11, except the Congressional Termination Criterion (§ 83.11 (g)),” § 83.21(2), and “OFA will not be responsible for the actual research on behalf of the petitioner.” § 83.6(c).

OFA alerted the petitioner to deficiencies with its historical Indian tribe claims in the Phase I TA Review Letter as required by § 83.26(a)(1)(i).<sup>25</sup> The petitioner did not respond with information or clarification sufficient to address the deficiencies in its TA Response. Therefore, pursuant to § 83.26(a)(3) and § 83.33(a), OFA is issuing a Phase I negative PF.

*Overview of the Petitioner’s 2009 Historical Indian Tribe Claim*

In its 2009 narrative, in addressing criterion (e), the “descent” criterion, the petitioner claimed that its current members descend from at least one of three “progenitors” with “Indian ancestry.”<sup>26</sup> The petitioner further claims that:

Each of the three progenitors is from a family group or lineage that participated in a cooperative social, economic, and political arrangement that predated the San Fernando Mission, maintained itself during the Mission period, and reconstituted itself after the Mission was secularized in the decades preceding California statehood.<sup>27</sup>

The three “progenitors” whom the petitioner claims are Maria Rita Alipas (1830–aft. 1868), Leandra Culeta (1840–aft. 1865), and Rosaria Arriola (1840–1911?).<sup>28</sup> The petitioner claims that each of these “progenitors” descends from an Indian who lived in one or more historical native villages: Rita from an Indian who lived in the Suitcanga native village; Leandra from an Indian who lived in the Tujunga native village; and Rosaria from an Indian who lived in the Cabuepet native village.<sup>29</sup> The petitioner calls lines of descent from inhabitants of these three villages the Suitcabit, Tujubit, and Cabuepet “lineages,” respectively.<sup>30</sup>

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<sup>25</sup> OFA Phase I TA Review Letter, October 17, 2016, 1–5.

<sup>26</sup> FTB Narrative 2009, Criterion 83.7(e), 1.

<sup>27</sup> *Ibid.*

<sup>28</sup> The surnames claimed by the petitioner for these individuals do not appear on contemporary baptismal records. Therefore, this PF will refer to these individuals by their given names of Rita, Leandra, and Rosaria. See Appendix for further biographical information about Rita, Leandra, and Rosaria.

<sup>29</sup> In the criterion (e) section of its 2009 narrative, the petitioner presents three ancestry charts depicting the claimed ancestry of its three “progenitors.” These charts claim that the “progenitor” named Rita has ancestral ties to at least four different native villages and that the “progenitor” named Leandra also has ancestral ties to at least five different native villages. FTB claims that both Rita and Leandra had ancestors who lived at the native village of Chaguayanga. The charts also claim that the “progenitor” named Rosaria has ancestral ties to at least one native village, which FTB does not claim for the ancestors of the other two “progenitors.” FTB Narrative 2009, Criterion 83.7(e), 2, 9–10.

<sup>30</sup> It is unclear from the petitioner’s materials whether 19th century people actually used the terms “Suitcabit lineage,” “Tujubit lineage,” or “Cabuepet lineage,” or whether the petitioner created these terms *de novo* to assist with the preparation of its petition materials. Sources indicate that marriages tended to be exogamous at the village level; however, it is unclear whether, if these terms were used at all in the 19th century, the terms “Suitcabit lineage,” “Tujubit lineage,” and “Cabuepet lineage,” endured for multiple generations after these villages ceased to exist.

The petitioner describes the suffixes *-pet*, *-bet*, and *-bit* as indicators of “the community or lineage kinship group,” (FTB 2015 Submission, Criterion (b), 6) while other documents in the record describes these suffixes as an indicator that a person was from a particular village. According to scholar John R. Johnson “Typically rancheria names in these Takic languages appear either as a referent to the place itself (with the suffix *-nga*) or to a person of that place (with a *-bit* or *-pet* suffix) (Johnson 1997, 264). Archaeologist Robert F. Heizer, commenting on the mid-19th

The petitioner further claims that each of these “progenitors” and their “lineages” became associated with a particular surname at some point in the 19th century. The petitioner calls descendants of Rita, through her marriage to Fernando Ortega, the “Ortega Line”; descendants of Leandra, through her marriage to Isodoro Garcia, the “Garcia Line”; and descendants of Rosaria, through her marriage to Miguel Ortiz, the “Ortiz Line.”<sup>31</sup>

Rather than claiming that its current members descend from a single historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity, the petitioner’s 2009 submission attempted to demonstrate that its current members descended from three mid-nineteenth century “progenitors” (Rita, Leandra, and Rosaria), who themselves descended from ancestors from numerous native villages. The 2009 submission did not demonstrate that these three nineteenth century “progenitors” belonged to a particular historical Indian tribe that existed in their lifetimes.

#### *Claims Relating to Criterion 83.11(e) in FTB’s 2015 Narrative Supplements*

The OFA received three narrative supplements on September 15, 2015: one on criterion (a) the “Indian entity identification” criterion; one on criterion (b), the “community” criterion; and one on criterion (c), the “political influence” criterion. The petitioner did not submit a new narrative for criterion (e), the “descent” criterion. OFA reviewed these narrative supplements to see if FTB presented a new claim for its historical Indian tribe that superseded the claims in the 2009 narrative that the petitioner’s members descend from three historical “progenitors.” The 2015 narrative supplements did not direct the Department to replace the claims for criterion (e) it made in its 2009 narrative and remained focused on historical “lineages.”<sup>32</sup>

#### *OFA’s Phase I Technical Assistance Review Letter*

According to § 83.27, the purpose of a TA Review Letter is to serve as a preliminary review in which OFA notifies the petitioner where there appear to be evidentiary gaps for the criteria that will be under review in a particular phase. If such gaps exist, then the petitioner has an opportunity to supplement or revise its documented petition. Section 83.26(a)(1)(i) requires OFA to notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting the Governing Document, Descent, Unique Membership, or Termination criteria. In its Phase I TA Review Letter to FTB, OFA made recommendations to help the petitioner address deficiencies with criterion 83.11(e), the Descent criterion.<sup>33</sup> The TA Review Letter also addresses deficiencies regarding the petitioner’s claim to previous Federal acknowledgment.<sup>34</sup>

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century writings of Hugo Reid, a Scottish immigrant to California who married a Gabriellino woman, states, “[t]he locative suffix *-nga*, *-ngna*, is Gabriellino and is affixed to the village name. The suffix *-bit*, *-vit*, *-pet*, *-bet*, etc., is the Serrano locative. Where both groups came together each applied its locative suffix to the village name. Johnston (1962: 10), however, quotes information from J. P. Harrington that the ending *-vit*, *-bit* or *-pet* ‘indicated the habitat of an individual, much as a New Yorker adds the ‘er’ to his city’s name’” (Heizer 1968, 13).

<sup>31</sup> FTB 2009 Submission, Criterion (e), 1, 8–9, *passim*.

<sup>32</sup> See, for example, FTB 2015 Submission, Criterion (b) 7–11; 16–24; *Ibid*, Criterion (c), 1, 4–26.

<sup>33</sup> OFA TA Review Letter, 1–5, 12–17.

<sup>34</sup> *Ibid*, 5–10.

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On October 17, 2016, OFA issued a Phase I TA Review Letter. For criterion 83.11(e), OFA provided TA to FTB about identifying a historical Indian tribe and demonstrating its existence for the purpose of calculating descent under criterion 83.11(e).<sup>35</sup> Because there were deficiencies with FTB’s claims regarding its historical Indian tribe, OFA included a discussion on historical Indian tribe issues in the TA Review Letter.<sup>36</sup>

To address the petitioner’s problem relating to its claimed historical Indian tribe OFA, in the TA Review Letter, suggested that the petitioner consider one of two general paths forward:

- 1) The petitioner could: a) provide new historical evidence demonstrating “the existence of three distinct social and political entities named Suitcabit, Cabuepet, and Tujubit, as they moved through time separately, and also came together as a coalition at various points in time”; b) identify “distinct entities in historical documents” from Mexican secularization in 1835 and up to 1900 that were identified as Suitcabit, Cabuepet, and Tujubit; and c) provide evidence that “shows when and why its claimed ancestors made the change” from the claimed native “lineage” names to the family names of Ortega, Garcia, and Ortiz.<sup>37</sup>
- 2) The petitioner could consider an “alternate theory” based on OFA’s observation in the TA Review Letter regarding a historical Indian tribe at SFR, to which the petitioner’s three claimed historical “progenitors” (Rita, Leandra, and Rosaria) might be connected via their parents or grandparents. In the TA Review Letter, OFA mentioned a further possibility for a historical Indian tribe: an Indian entity that may have existed on five land grants within the boundaries of Rancho Ex-Mission San Fernando.<sup>38</sup>

Thus, OFA fulfilled its regulatory responsibility to notify the petitioner of “deficiencies that would prevent the petitioner from meeting” criterion 83.11(e) as required by § 83.26(a)(1)(i). As the next part explains, the petitioner’s response did not sufficiently address the deficiencies in its submissions.

### *The Petitioner’s Response to the Phase I TA Review Letter*

On August 23, 2017, OFA received FTB’s 40-page response to the Phase I TA Review Letter (response). The FTB addressed the deficiencies raised by OFA’s TA Review Letter regarding its descent from multiple “lineages.” However, in its response, the petitioner did not demonstrate that either one or all of its claimed “lineages” constituted a historical Indian tribe. The petitioner’s response stated that its surname “lineages” of Ortega, Garcia, and Ortiz had ancestral ties to native villages. However, the petitioner did not identify any one of those native villages as its historical Indian tribe, nor did the response demonstrate that some specific combination of the

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<sup>35</sup> The TA Review Letter also highlighted several deficiencies relating the identities of the petitioner’s claimed “progenitors” and the relationship of those “progenitors” to the Indian population at the San Fernando Mission. Based on material provided and additional verification research that OFA conducted, it appears that the deficiencies raised in the TA Review Letter with regard to the identities and descent of the “progenitors” were clarified.

<sup>36</sup> OFA TA Review Letter, 1–5.

<sup>37</sup> *Ibid*, 3–4.

<sup>38</sup> *Ibid*, 5. *Rancho* is a Spanish word that means a ranch, usually specializing in the raising of sheep and cattle.

native villages combined and functioned as a single autonomous political entity. Additionally, the petitioner did not accept OFA’s identification of a possible historical Indian tribe at SFR. Furthermore, the petitioner did not provide an alternative description of a historical Indian tribe from which to calculate descent under criterion 83.11(e).

The petitioner’s response presents claims regarding characteristics of pre-1900 “lineages,” the “existence and continuity of the lineages” through the mission period, and the “survival” of these “lineages” to the end of the 19th century.<sup>39</sup> The petitioner’s TA response retains the claims it made in its 2009 and 2015 submissions, stating:

The tribal entity was a coalition of politically autonomous lineage villages, but interrelated through shared rules of exogamous marriage, shared rules of land usage, and voluntary participation in local and regional ceremonies. This “tribal” web of political independence and social/ceremonial ties existed before the SFR Mission, and in modified forms, continued through the SFR Mission period, to the American period, and to the present.<sup>40</sup>

The petitioner’s response does not accept the possibility that the three claimed “lineages” became part of an amalgamated Indian tribe at SFR and expresses doubt that the Indian population at the mission formed a historical Indian tribe. The petitioner’s response states,

Insofar as OFA’s suggested “alternate theory” implies an amalgamation of lineage members into a new, centralized political and social entity, it overstates the influence of the relatively brief mission experience, misinterprets evidence of intermarriage and Christian practice, and conflicts with the near-unanimous view of contemporaneous observers and later scholars that lineages remained the primary sources of political identity within a broader shared social community.<sup>41</sup>

Similarly, the petitioner’s response does not accept the idea that there existed a historical Indian tribe in the mid-19th century on the land grants near SFR Mission. The petitioner states that, in the 1843–1845 period, “[t]here were at least 73 leaders of families and lineages [in the vicinity of the mission], and no recognized centralized authority among the Indians.”<sup>42</sup>

The FTB response also contends that OFA is holding FTB to a higher evidentiary standard than the regulations require. To make its case, the petitioner quotes some of the guidance that OFA provided in the TA Review Letter:

The FTB petitioner should submit evidence other than secondary sources and the SFR baptismal records. Specifically, the petitioner should provide historical documents that demonstrate the existence of the three distinct social and political

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<sup>39</sup> FTB Response to OFA TA Review Letter, 2 and passim.

<sup>40</sup> Ibid, 12.

<sup>41</sup> Ibid, 15.

<sup>42</sup> Ibid.



entities named Suitcabit, Cabuepet, and Tujubit, as they moved through time separately, and also came together as a coalition at various points in time.<sup>43</sup>

The FTB then cites the statement in the TA Review Letter that OFA “could not find other kinds of evidence to support the petitioner’s claim that its ancestors prior to 1900 were members of ‘portable, movable, [and] flexible’ lineages.”<sup>44</sup> The FTB then sums up its protest as follows:

The TA review explains (p. 3) that the Tribe cites to [SFR] baptismal entries for Indians at the Mission regarding the villages of birth to demonstrate that the Tribe historically comprised a network of lineages, but OFA “could not find, other kinds of evidence to support the petitioner’s claim that its ancestors prior to 1900 were members of ‘portable, movable, [and] flexible’ lineages”. . . . The TA review’s finding that more than one form of evidence is needed is contrary to the regulations which permit a petitioner to meet criterion (e) with “one or a combination of” specified categories of evidence, including “Church...enrollment records.” § 83.10(e)(2)(ii). This provision makes clear that the Tribe may demonstrate that its members descend from a historical Indian tribe based on Mission baptismal records only.”<sup>45</sup>

Contrary to the petitioner’s contention that OFA sought evidence beyond that required in the regulations, OFA requested evidence to show that the petitioner’s claimed “lineages” constituted historical Indian tribes or combined to form a single historical Indian tribe for the purpose of calculating descent under criterion 83.11(e), a request in accord with the regulations. If the petitioner demonstrated through evidence that its “lineages” had combined to form a single historical Indian tribe—whether or not any of the “lineages” was a historical Indian tribe—then OFA could determine whether the petitioner satisfies criterion 83.11(e) by calculating descent from that particular historical Indian tribe. The materials that the petitioner submitted—SFR baptismal records, the petitioner’s membership list, the rolls of the Indians of California for claims payments, among others—does not constitute such evidence.

The petitioner further claims that the Department is impermissibly holding FTB to a higher standard under criterion 83.11(e) than it held the Timbisha Shoshone Tribe (TST) when the Department acknowledged TST in 1983.<sup>46</sup> The FTB believes that the TA Review Letter’s “request for a showing that the Suitcabit, Cabuepet and Tujubit ‘moved through time separately, and also came together as a coalition at various points in time’ goes beyond the regulatory requirement of a showing that Petitioner’s members are ‘descendants of a historical Indian tribe (or of historical Indian tribes that combined and functioned as a single autonomous political entity).”<sup>47</sup> The FTB adds that, “[i]n promulgating the 2015 regulations, the Department made

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<sup>43</sup> Ibid, 1.

<sup>44</sup> FTB Response to OFA TA Review Letter, 1–2.

<sup>45</sup> Ibid.

<sup>46</sup> The Timbisha Shoshone Tribe was previously known by two different names, the Death Valley Timbi-sha Shoshone Tribe, and the Death Valley Timbi-Sha Shoshone Band of California (which was the name the tribe used when it petitioned for Federal acknowledgment). See “Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs,” 85 FR 5462, as signed on January 6, 2020, and published on January 30, 2020.

<sup>47</sup> FTB Response to OFA TA Review Letter, 6.

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clear that criterion (e) ‘will continue to be applied consistently with previous decisions,’” and that “[e]vidence and methodology sufficient in positive decisions on criterion (e), such as Tunica-Biloxi Indian Tribe, Poarch Band of Creeks, and Death Valley Timbi-sha Shoshone Tribe, will continue to be sufficient to satisfy criterion (e) under these final regulations.”<sup>48</sup>

Notwithstanding the petitioner’s claim, the evidence upon which the Department relied in reaching positive decisions on criterion (e) in regard to the three aforementioned former petitioners (now Federally acknowledged tribes) is different from FTB’s evidence, limiting the applicability of that precedent. Specifically, in identifying the entity from which to calculate descent in those decisions, the Department examined tribal rolls, a type of documentation listed under provision (e)(1) across all version of the Federal acknowledgment regulations.<sup>49</sup> In the preamble of the 2015 final rule promulgating the most recent version of the regulations, the Department explained the evidentiary value of such rolls, which provide the names or identities of the people who belonged to a tribal entity at the time when the roll was created. The Department stated that:

Many federally recognized tribes rely on tribal Federal rolls as base membership rolls and the Department’s approach here regarding such rolls for this process is consistent with this tribal practice. While no human endeavor is perfect, tribal rolls created by the Department were often prepared in person by a Departmental representative or team to promote accuracy. The final rule clarifies that the roll must have been prepared for a tribe. In contrast, rolls of the Indians of California for claims payments would not satisfy § 83.11(e)(1) because those rolls were not prepared for specific tribes, but rather descendants from an Indian who lived in the State on June 1, 1852. If Departmental tribal censuses or rolls are not available, the Department will then look to other documents, as needed. For example, the rolls of the Indians of California may be provided as evidence to be evaluated under § 83.11(e)(2). This approach codifies past practice. For example, in acknowledging the Death Valley Timbi-Sha Shoshone Band, the Department relied on Departmental rolls and censuses.<sup>50</sup>

For criterion 83.11(e), FTB has not provided any documents—other than, possibly, the membership list that FTB itself created—that were prepared as tribal rolls, and OFA did not locate any such rolls during its evaluation. Because the Department relied upon such rolls to evaluate criterion (e) in its decisions relating to the three aforementioned tribes—but cannot do so here—the petitioner’s argument relating to evidence used in those decisions is misguided. FTB has not submitted any documents that show that its “lineages” existed as a historical Indian tribe or as historical Indian tribes that combined and functioned as a single autonomous political entity.

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<sup>48</sup> Ibid, 6–7. See also “Federal Acknowledgment of American Indian Tribes; Final Rule,” 80 FR 37862, 37866–37867 (2015).

<sup>49</sup> For example, see TST PF 1982, 6–7 (listing such rolls).

<sup>50</sup> 80 FR 37867.

*A Possible Alternative Historical Indian Tribe Claim*

Section 83.12 of the 2015 regulations provides a way by which a petitioner may claim that, at some point in the past, the Federal Government previously acknowledged it as an Indian tribe. The regulations state that OFA will conduct its review for previous Federal acknowledgment during its Phase I TA Review (§ 83.26(a)(1)(ii)) and during its review for its Phase II PF (§ 83.26(b)). As an alternative to the claimed historical Indian tribe discussed above, OFA considered whether the petitioner can claim descent from an entity that allegedly was previously acknowledged as a historical Indian tribe for the purpose of criterion 83.11(e).<sup>51</sup>

The FTB claims that the Federal Government previously acknowledged a “community of San Fernando Indians, headed by Rogerio Rocha” (1824–1904), by establishing a relationship with it as an Indian tribe.<sup>52</sup> The petitioner further states that the Federal Government acted “on behalf of an Indian entity” that was broader than solely Rocha himself and broader than his household.<sup>53</sup> However, the petitioner has not demonstrated that this claimed “Indian entity” was a historical Indian tribe. Furthermore, the petitioner has not documented that its current membership descends from specific Indians who were a part of a historical Indian tribe that demonstrably existed in the 1890s of which Rocha was a captain. Therefore, for the purpose of satisfying criterion 83.11(e), OFA will not evaluate the petitioner’s descent from the “Indian entity” that the petitioner claimed was acknowledged by the Federal Government in the 1890s.

*Summary under Criterion 83.11(e)*

As discussed in the Overview, in evaluating a petitioner under criterion 83.11(e), OFA considers several issues, including whether a petitioner has identified a historical Indian tribe for the purpose of calculating descent under criterion 83.11(e); whether a petitioner has demonstrated that this historical Indian tribe existed at a particular point before 1900; and whether a petitioner has documented that its current members descend from individuals who belonged to that historical Indian tribe.

The most significant problem that OFA found in evaluating the FTB’s petition is that FTB did not identify a historical Indian tribe for the purpose of calculating descent under criterion 83.11(e) and demonstrate that it existed. In summary:

- Although a native village may constitute a historical Indian tribe, the petitioner does not claim a single native village as its historical Indian tribe.
- The petitioner identifies numerous native villages, focusing on four, but the petitioner does not demonstrate that these particular native villages ever combined and functioned as a single autonomous political entity.
- The petitioner claims that it descends from three 19th-century “lineages” that, in the post-mission period, the petitioner calls the “Ortega lineage,” the “Garcia lineage,” and the

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<sup>51</sup> The OFA’s TA Review Letter stated that, on a preliminary basis, the petitioner had “not demonstrated that it had unambiguous previous Federal acknowledgment” at the time of the Phase I TA Review Letter. See OFA TA Review Letter, 5–10.

<sup>52</sup> FTB Response to OFA TA Review Letter, 7.

<sup>53</sup> *Ibid*, 24–28.

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“Ortiz lineage.” The petitioner does not demonstrate that any of these “lineages” is a historical Indian tribe.

- The petitioner does not demonstrate that the aforementioned “lineages” combined and functioned as a single historical Indian tribe.
- In its TA Review Letter, OFA suggested that a historical Indian tribe existed at the San Fernando Mission. However, the petitioner did not accept OFA’s identification of a possible historical Indian tribe at SFR.
- Finally, this PF considered whether the petitioner could claim descent from an “Indian entity” under the captaincy of Rogerio Rocha. However, the petitioner has not demonstrated that this claimed “Indian entity” was a historical Indian tribe. Furthermore, the petitioner has not documented that its current membership descends from specific Indians who were a part of a historical Indian tribe that demonstrably existed in the 1890s of which Rocha was a captain.

### *Conclusion under Criterion 83.11(e)*

Criterion 83.11(e) requires that the petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. With its October 17, 2016, TA Review Letter, OFA notified the petitioner of “deficiencies that would prevent the petitioner from meeting” criterion 83.11(e) as required by § 83.26(a)(1)(i). FTB did not respond with information or clarification sufficient to address the deficiencies relating to criterion 83.11(e) that OFA highlighted in its Phase I TA Review Letter. Additionally, OFA is issuing this negative PF under § 83.33(a) because the petitioner did not meet the regulatory requirements of criterion 83.11(e). The petitioner does not meet criterion 83.11(e).

## Criterion 83.11(f)

**83.11(f) *Unique Membership.* The petitioner’s membership is composed principally of persons who are not members of any federally recognized Indian tribe.**

As described in criterion 83.11(d), FTB’s governing document includes a description of the membership criteria which states that “[t]he citizenship of the Tribe shall consist of the following persons who are not enrolled citizens of any other tribe.” The petitioner also provided membership and relinquishment information for its members including 10 completed relinquishment forms, one for each of 10 former members who had left FTB and enrolled with the Choctaw Nation of Oklahoma.

### *The Department’s Analysis*

Several claimed ancestors of FTB are historically linked to Rancho El Tejon. For this reason, OFA compared FTB’s membership list and the federally recognized Tejon Indian Tribe’s 2015 membership roll. OFA analyzed both rolls and found no dual membership.

OFA also compared FTB’s membership list to the Tule River Indian Tribe’s membership roll. An 1864 letter from the Superintendent of Indian Affairs, Austin Wiley, noted that “all the Indians on the Tejon farm and in the vicinity of Fort Tejon, some two hundred in number, have been removed from there to the Tule River farm.”<sup>54</sup> Because it appears that FTB might have a historical relationship with the Indians who went to Tule River, OFA analyzed both rolls and found no dual membership.

### *Conclusions under Criterion 83.11(f)*

Criterion 83.11(f) requires that the petitioner’s membership is composed principally of persons who are not members of any federally recognized Indian tribe. Based on its review of the evidence, OFA has determined that the petitioner’s membership is composed principally of persons who are not members of federally recognized Indian tribes. Therefore, the petitioner meets the requirements of criterion 83.11(f).

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<sup>54</sup> *Annual Report of the Commissioner of Indian Affairs, 1864* (Washington: Government Printing Office, 1865), 131.

## Criterion 83.11(g)

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

The 2015 acknowledgment regulations require OFA to conduct a review to determine whether a petitioner meets criterion 83.11(g). The petitioner has the option to address criterion 83.11(g), but it is not obligated to do so.

In conducting its review, OFA reviewed termination legislation relating to California Indian tribes. In 1958 and 1964, Congress passed termination legislation relating to California tribes and Rancherias. The 1958 Act (72 Stat. 619) explicitly listed specific Rancherias that could be terminated, while the 1964 Act (78 Stat. 390) provided a general grant of authority to terminate California tribes or Rancherias. The petitioner was not specifically listed in the 1958 Act.<sup>55</sup> Additionally, notices of termination are published by the Bureau of Indian Affairs (BIA) in the *Federal Register*, but a review of the indexes to the *Federal Register* did not find any such notice for the petitioning group.<sup>56</sup>

As part of its 2009 petition materials, the petitioner submitted a certified letter asserting that “the Fernandeño Tataviam Band of Mission Indians nor its members are the subject of congressional legislation that has expressly terminated or forbidden a Federal relationship.”<sup>57</sup> None of the evidence that FTB submitted indicates FTB or its members have been the subject of congressional legislation that has expressly terminated or forbidden a relationship with the Federal Government as Indians or as an Indian tribe.

### *Conclusions under Criterion 83.11(g)*

Criterion 83.11(g) requires that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. Based on its verification research, OFA did not find that the petitioner or its members are the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.11(g).

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<sup>55</sup> Database search, Heinonline.org, 72 Stat. 619 and 78 Stat. 390.

<sup>56</sup> Readers are able to browse issues of the *Federal Register* published between 1936 and the current issue online at the Government Publishing Office website; [www.govinfo.gov/app/collection/FR](http://www.govinfo.gov/app/collection/FR).

<sup>57</sup> FTB 2009 Submission, FTB Doc. 60004.FTO.

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- “San Fernando Mission Villages as Entered in the Baptismal Registers.” OFA Director’s and Historian’s Files.
- “Work Paper for Antonio Maria Ortega.” Genealogist Files.
- “Work Paper for Maria Josefa Leyva.” Genealogist Files.
- “Work Paper for Jose Ortiz.” Genealogist Files.

### ACKNOWLEDGMENT FINDINGS

- Department of the Interior. Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of the Death Valley Timbi-Sha Shoshone Band of Indians of California Pursuant to 25 CFR 54. 1982. OFA Files.
- Department of the Interior. Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of the Poarch Band of Creeks of Alabama Pursuant to 25 CFR 83. 1983. OFA Files.
- Department of the Interior. Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of the Tunica-Biloxi Indian Tribe of Louisiana Pursuant to 25 CFR 54. 1980. OFA Files.

**APPENDIX: Biographical Overviews of the Petitioner’s Three Claimed “Progenitors”**

The three people listed below are the three claimed “progenitors” of the petitioner. Below are brief biographical overviews of the three people based on historical records contemporary to their lifetimes. The OFA provides these overviews to clarify genealogical relationships raised in OFA’s TA Review Letter and to discuss connections to specific genealogical claims in the petitioner’s submissions.

The identities of these three claimed “progenitors” have been verified within the historical records submitted by the petitioner, and in those records discovered in OFA’s research. Records which OFA believed the petitioner did not have were transmitted to the petitioner on November 20, 2018, pursuant to § 83.26(a).

Two of the three “progenitors,” Rita and Leandra, have been documented as descendants of SFR Indians with an ancestral connection to specific native villages. The third, Maria Rosaria, is documented as having been baptized at LPC to parents with connections at SFR. She cannot be linked to a specific historic native village based on the baptismal records of SFR alone. She can, however, be linked to one of SFR post-mission land grant communities through her relationship to her father.

*Rita* (22 May 1830<sup>58</sup>–after 1868<sup>59</sup>)

Rita “de la Mision” was baptized on May 24, 1830, at SFR to parents, Francisco and Paula.<sup>60</sup> The baptismal record does not identify origins for Francisco and Paula; however, other records give additional information. For example, Rita’s father was a co-grantee for the El Encino land grant with two other SFR Indians.<sup>61</sup> The land grant document for “Expediente 458” states that the requestors, “having spent much of our lives in San Fernando in the service of that Establishment” petitioned for land grants at Encino. Francisco’s baptism and marriage were also recorded at SFR, though neither record records his origin other than the Mission itself.<sup>62</sup> His baptism entry on ECPP records his parents as Juan Maria and Francisca Xaviera; but, the database notes that the links to both parents are not directly stated in the record.<sup>63</sup> If these identifications are correct, Juan Maria was from the village of Chaguayabit and Antonia was from the “rancheria de Tochonabit.”<sup>64</sup>

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<sup>58</sup> This date of birth is based on her baptismal entry which gives her age at the time of baptism as 2 days; ECPP, SFR bap. 2742.

<sup>59</sup> This date is from the last confirmed record for Rita, the baptism of son, Juan Tadeo Ortega; Los Angeles County, California, Our Lady Queen of Angels, (Catholic) Church Records, Bautismos 1865–1880, p.179 (stamped), no. 1258 (1868), Juan Tadeo Ortega; citing FHL microfilm no. 2538.

<sup>60</sup> ECPP, SFR bap. 2742.

<sup>61</sup> Tiburcio, Roman, and Francisco were described as “Indians of the Mission of San Fernando.” Translated Expediente no. 458, p. 308, Encino; digital image, *Ancestry* (<http://www.ancestry.com>: December 19, 2018); citing microfilm MF2: 9 (35–39), California State Archives, Sacramento.

<sup>62</sup> ECPP, SFR bap. 1617; FTB 2018 Submission, FTB Doc. 91079.FTO; ECPP, SFR mar. 765.

<sup>63</sup> This indication is made through the use of “X” following the linked register numbers. See the ECPP Guide to Users found at [https://drive.google.com/file/d/1f\\_15Ffnp4Fsubqc-ctaY\\_y6Yvtankme-/view](https://drive.google.com/file/d/1f_15Ffnp4Fsubqc-ctaY_y6Yvtankme-/view); ECPP, SFR bap. 1617.

<sup>64</sup> ECPP, SFR bap. 317; ECPP, SFR bap. 226.

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Rita's mother, Paula, was described in the registers as an Indian of the mission and her father was Encino co-grantee, Tiburcio, whose origin is recorded as Taapu in his 1803 baptism record.<sup>65</sup> Paula's mother, Teresa, was baptized at SFR in 1800 and her entry records her origin as the "rancheria de Cabuepet but no parental data is recorded."<sup>66</sup> The marriage entry for Tiburcio and Teresa shows origins of rancheria de Taapu and rancheria del Encino, respectively, with no parental data recorded.<sup>67</sup> In its 2009 petition materials, the petitioner claims that Teresa was the daughter of a woman named Juana Josefa whose origin was Suitcabit.<sup>68</sup> As with the relationship link between Francisco and Juan Maria discussed above, the connection between Juana Josefa and Teresa is also indirect (see previous footnote).

Rita married, first, another SFR Indian named Benigno, on September 1, 1845,<sup>69</sup> and, second, a Sonoran-born man named Fernando Ortega, on March 19, 1862.<sup>70</sup> There is no evidence that Fernando Ortega was part of an Indian entity at that time. Rita's exact date of death is unknown, but she is last found named in the baptism record of her son, Juan Tadeo Ortega, in Los Angeles on May 28, 1868.<sup>71</sup>

The petitioner has members who claim descent from two sons of Rita and Fernando Ortega: Antonio Maria Ortega and Luis Eduardo Ortega. Luis, a legitimate son, was baptized at the Los Angeles Plaza Church (LPC) on August 31, 1862.<sup>72</sup> No baptismal record for a son of Rita and Fernando named Antonio Maria Ortega has been found, however the petitioner claims that a child baptized under the name Jose Rosario Ortega on May 30, 1858, at San Fernando is the same person as Antonio Maria Ortega.<sup>73</sup> Based on OFA's review, there is evidence establishing a reasonable likelihood for Antonio Maria Ortega being the same person as Jose Rosario Ortega.<sup>74</sup>

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<sup>65</sup> The transcribed margin notes for her baptismal record on ECPP state that Paula was "de la M.n," and her origin was simply "Mision." ECPP, SFR bap. 2071; ECPP, SFR bap. 849.

<sup>66</sup> ECPP, SFR bap. 342.

<sup>67</sup> ECPP, SFR mar. 485.

<sup>68</sup> The citation provided by the petitioner to prove this relationship is for an entry in the ECPP database for SFR baptism no. 475 which is not linked to Teresa's entry. Juana's entry includes a note in the "relative type" box stating that her natural child, or "hija," was named Teresa with the baptism code that matches that of Paula's mother and makes the "X" addition that implies an indirect link rather than a relationship link outright stated in the entry; FTB 2009 Submission, Criterion (b), 4.

<sup>69</sup> FTB 2009 Submission, FTB Doc. 91079.FTO.

<sup>70</sup> FTB 2009 Submission, FTB Doc. 80111.LPC.

<sup>71</sup> ECPP, LA bap. 1258.

<sup>72</sup> FTB 2009 Submission, FTB Doc. 80116.LPC.

<sup>73</sup> A full discussion of the petitioner's claims regarding the question of Antonio Maria Ortega's identity is found in the FTB petitioner's response to TA submitted to OFA dated August 21, 2017; and FTB 2009 Submission, FTB Doc. 80004.LPC; see also OFA, "Work Paper for Antonio Maria Ortega."

<sup>74</sup> OFA, "Work Paper for Antonio Maria Ortega."

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*Leandra* (26 Mar 1840<sup>75</sup>–after 1865<sup>76</sup>)

Leandra was baptized at SFR on March 28, 1840. She was likely the legitimate daughter of SFR *neofitos*,<sup>77</sup> Ramon and Eugenia, both of whom were baptized at SFR.<sup>78</sup> Ramon was baptized in 1808 and his parents were recorded as Cornelio and Antonia.<sup>79</sup> Though Cornelio’s origins are unstated in both his baptism and marriage records, Antonia’s origins are identified as Chaguayabit on her 1802 baptism entry.<sup>80</sup> Eugenia was baptized at SFR in 1817 to recorded parents, Francisco del Espiritu Santo and Teofila.<sup>81</sup> Francisco’s origins were recorded during his 1799 baptism as Tujunga.<sup>82</sup> Teofila, baptized at SFR in 1811, has recorded origins at the “rancheria de Topipabit.”<sup>83</sup>

Leandra likely married widower Jose Cupertino at San Buenaventura Mission (SBV).<sup>84</sup> Cupertino was a son of SFR *neofitos*, Pedro and Euqueria, who lived on the nearby grant lands of El Escorpion.<sup>85</sup> Records for two children of Jose and Leandra have been located in the registers of SBV.<sup>86</sup> Cupertino himself died sometime after 1860, when the Federal census enumerator recorded the couple.<sup>87</sup>

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<sup>75</sup> This date is based on Leandra’s baptism entry which states that she was 2 days old at the time of her baptism; ECPP, SFR bap., 2987.

<sup>76</sup> Date calculated from the last confirmed record for Leandra, her daughter, Maria Josefa, in Los Angeles on April 10, 1865; FTB 2009 submission, FTB Doc. 80291.LPC.

<sup>77</sup> *Neofito* (masculine) and *neofita* (feminine) are Spanish words that refer to a neophyte or Christian Indian living at the missions.

<sup>78</sup> These parental links are also indirect, as indicated by the “X” entries in ECPP (see footnote 68); FTB 2009 Submission, Criterion (e), 9; ECPP, SFR bap. 2987; ECPP, SFR bap. 1712; ECPP, SFR bap. 2298.

<sup>79</sup> ECPP, SFR bap. 1712.

<sup>80</sup> ECPP, SFR bap. 765; ECPP, SFR mar. 177; ECPP, SFR bap. 717.

<sup>81</sup> ECPP, SFR bap. 2298.

<sup>82</sup> ECPP, SFR bap. 171.

<sup>83</sup> ECPP, SFR bap. 1848.

<sup>84</sup> Harrington identifies the wife of José, the oldest son of Pedro and “Elqueria,” as Leandra and further states that she was “a Fernandina;” Harrington, Kitanemuk, reel 100, 19/78, frame 227; and San Buenaventura (Ventura, California), Mission Registers, Marriages 1782–1893, 119[a], entry no. 1231, [undated] Jose y Leandra; FHL microfilm no. 0913170, item 3; and FTB 2015 Submission, FTB Doc. 80799.Johnson.Mission Indians of San Fernando, 278.

<sup>85</sup> ECPP, SFR bap. 2763.

<sup>86</sup> Two sons, José Jesus and José Manuel were found in the registers of SBV with parents named José and Leandra. José Jesus was baptized at SBV in May 1859 but died by October of that year. A baptism record has not been located for José Manuel, but his burial record shows that he was dead a month after his brother; San Buenaventura (Ventura, California), Mission Registers, Baptisms 1809–1873, p. 176[b], entry no. 1756, 7 May 1859, José Jesus; FHL microfilm no. 0913170, item 2; and San Buenaventura (Ventura, California), Mission Registers, Deaths 1824–1912, [unpaginated] entry no. 1157, October 18, 1859, José Jesus; FHL microfilm no. 0913171, item 2; and San Buenaventura (Ventura, California), Mission Registers, Deaths 1824–1912, [unpaginated] entry no. 1161, November 1, 1859, José Manuel; FHL microfilm no. 0913171, item 2.

<sup>87</sup> FTB 2015 Submission, FTB Doc. 80809.USC. Though this document was included in the 2015 supplementary material, the file itself could not be opened. The image can be found here: 1860 U.S. Census, Santa Barbara County, California, San Buenaventura township, population schedule, p. 14 (handwritten), dwelling no. 73, family no. 73, Indians at Saticoy; digital image, *Ancestry* (<http://www.ancestry.com>: accessed 28 October 2018); citing NARA microfilm publication M653, roll 65.

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On April 10, 1865, in Los Angeles, a child was baptized Maria Josefa, a “hija nat,”<sup>88</sup> with Leandra identified as the mother and Juan Leyva, a vaquero from Tejon, as the father.<sup>89</sup> Leandra has not been found after this date in 1865, but the petitioner has members who claim descent from her daughter, Maria Josefa, who appears in later records as Josephine, Josefa, Josefina, and/or Josie.<sup>90</sup> On May, 23, 1882, “Josefina Leiba” and her Mexican-born husband, Ysidoro Garcia, baptized a legitimate daughter named Petra Garcia in Los Angeles.<sup>91</sup> No record of marriage for Maria Josefa (or any variation) and Ysidoro has been found but several descendants of Maria Josefa, including the daughter of Petra, filed claims applications under the 1928 act regarding enrollment of California Indians naming Leandra as their ancestor through her daughter with Juan Leyva.<sup>92</sup> Maria Josefa’s 1952 Ventura County death record adds to the evidentiary weight that she was the daughter of “Llandra.”<sup>93</sup>

*Maria Rosario* (1840<sup>94</sup>–prob. Feb 1911<sup>95</sup>)

Maria del Rosario (aka “Rosaria”) was baptized as a young child at Los Angeles Plaza Church (LPC) on October 4, 1840. Her parents are recorded in this entry as Miguel and Rafaela and both were Indians from San Diego Mission (SD).<sup>96</sup> Rosaria likely married Miguel Ortiz (who is not known to have been an Indian), though no marriage record has been found. She probably died in February of 1911.<sup>97</sup> Some of the petitioner’s members claim descent from Rosaria and Miguel’s son, Jose, or Joseph, who submitted an application under the California Indian claims and named “Rosaria Ariola” as his mother.<sup>98</sup>

Rosaria’s father appears in various records as Miguel, Jose Miguel, and Jose Miguel Triunfo (or Triunfo).<sup>99</sup> There is no confirmed record of baptism or marriage for Jose Miguel Triunfo. In its 2009 petition, the FTB petitioner asserts that Triunfo was baptized at SFR in 1814 as Jose de Todos Santos.<sup>100</sup> However, there is no context on this record that would allow for a reasonably likely identification of this person being the same as Jose Miguel Triunfo. Further, anthropologist John Johnson raises an additional question on this assertion by stating that

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<sup>88</sup> *Hija natural* (feminine) or *hijo natual* (masculine) are Spanish terms that mean a daughter or son, respectively, born outside of formal marriage.

<sup>89</sup> FTB 2015 Submission, FTB Doc. 80799.Johnson.Mission Indians of San Fernando, 278. *Vaquero* is a Spanish word for “cowboy.”

<sup>90</sup> OFA, “Work Paper for Maria Josefa Leyva.” For consistency within this finding, Leandra’s daughter is referred to as Maria Josefa, unless records are quoting her with a different name.

<sup>91</sup> This baptism is entered immediately prior to the baptism of a child of Antonio Maria Ortega and his wife, Ysidora Garcia; FTB 2015 Submission, FTB Doc. 80128.A.LPC.

<sup>92</sup> FTB 2009 Submission, FTB Doc. 108.LN; FTB Doc. 112.LN; FTB Doc. 241.BL; FTB Doc. 114.LN.

<sup>93</sup> FTB 2016 Submission, FTB Doc. 91059.FTO.DEATH.

<sup>94</sup> Maria’s age is not given on her baptismal entry, but she is noted as being a “parvula” (female infant) at the time of her baptism on October 4, 1840; ECPP, LA bap. 1022.

<sup>95</sup> This date appears on the California claims application index card for her son, Jose Ortiz; FTB 2009 Submission, FTB Doc. 00243.A.BL.

<sup>96</sup> ECPP, LA bap. 1022.

<sup>97</sup> FTB 2009 Submission, FTB Doc. 00243.A.BL.

<sup>98</sup> FTB 2009 Submission, FTB Doc. 00113.LN; FTB Doc. 00113.LN.PDF.

<sup>99</sup> ECPP, SFR bap. 2887; ECPP, SFR bap. 2960; FTB 2009 Submission, 8; ECPP, LA bap. 1022; ECPP, SFR bap. 3031; ECPP, SFR bap. 2062a; ECPP, SFR bap. 3092; ECPP, SG bap. 8972.

<sup>100</sup> FTB 2009 Submission, Criterion (e), 8.

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Triumfo's origins are unclear in that "there is no 'José Miguel,' or 'Miguel,' baptized at either Mission San Fernando or San Buenaventura that may be matched with him."<sup>101</sup> There is also the conflicting information regarding his origins from the sacramental register entries for his children, which does not resolve the question of his origin.

The OFA attempted to resolve the issue of Triumfo's origins by looking at additional information found in the SFR sacramental registers. The first child baptized at SFR with a father of that name was a daughter named Maria del Refugio in 1846.<sup>102</sup> Jose Miguel Triumfo was identified on that record as "Yndio" with no baptism number or origin recorded. His wife, Rafaela Cañedo, was identified with a baptismal number from SD. Maria was also recorded as a mestiza.<sup>103</sup> Since her father was an Indian, this would imply that her mother was a non-Indian, or possibly not a full Indian. Several other confirmed and possible children were identified for this couple but none were born before secularization. The baptism records for two likely children – Maria del Rosario and Jose Ramon – include a place of origin for Triumfo, but the information conflicts (his wife is consistently recorded as being from SD). Maria del Rosario's record states that he was from SD and the record for Jose Ramon states that he was from SFR.<sup>104</sup>

Prior to the birth of Maria del Refugio, Triumfo petitioned for land at San Fernando and nearby Cahuenga between 1844 and 1845.<sup>105</sup> In all three grant records, Triumfo was described as an Indian or a *neofito*, and in two of them, he was described as "of the Mission of San Fernando."

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<sup>101</sup> FTB 2015 Submission, FTB Doc. 80799.Johnson.Mission Indians of San Fernando, 274.

<sup>102</sup> ECPP, SFR bap. 3092.

<sup>103</sup> *Mestiza* is a Spanish word that means a female of mixed European and Indian ancestry.

<sup>104</sup> Seven children may have been the children of Triumfo with Rafaela. Triumfo's full name only appears as father on two baptism records – that of Maria del Refugio in 1846 and a son, Francisco Xavier in 1848. Two early baptisms appear to name his wife, Rafaela, as mother but neither record names Jose Miguel Triumfo as father. More evidence would be necessary to confirm whether these are children of Triumfo. The remaining three baptism records record the father's name as Miguel or Jose Miguel; ECPP, SFR bap. 2887; ECPP, SFR bap. 2960; FTB 2009 Submission, Criterion (e), 8; ECPP, LA bap. 1022; ECPP, SFR bap. 3031; ECPP, SFR bap. 2062a; ECPP, SFR bap. 3092; ECPP, SG bap. 8972.

<sup>105</sup> Unclassified Expediente no. 203, translated v. 8, 13–14; file no. 101, translated v. 6, 551–52; Unclassified Exp. No. 266, translated v. 8, 127–33; Unclassified Exp. No. 191, translated v. 7, 623–24; digital image, *Ancestry* (<http://www.ancestry.com> : December 19, 2018); citing microfilm MF2: 9 (35–39), California State Archives, Sacramento.