

# Congress of the United States

## House of Representatives

Washington, DC 20515

**ZOE LOFGREN**

18TH DISTRICT, CALIFORNIA

August 7, 2024

[HTTPS://LOFGREN.HOUSE.GOV](https://lofgren.house.gov)

[WWW.FACEBOOK.COM/ZOELOFGREN](http://WWW.FACEBOOK.COM/ZOELOFGREN)

Rules and Open Government Committee  
San José City Council  
200 E. Santa Clara St.  
San José, CA 95113

Dear Councilmembers,

I write to express concern about the proposed Resolution regarding federal recognition for the Muwekma Ohlone Tribe.

Since the Resolution mentions me by name, I must provide important context as well express disappointment that I would even be referred to without prior communication, particularly given that a primary stakeholder involved waged a recent disinformation campaign against me. The current Resolution draft notes that I supported the Tribe's application under the Bureau of Indian Affairs' (BIA) administrative process 25 years ago. That is true. Like every other petitioner, the Tribe had the right to a fair and timely decision by BIA. However, based on the facts presented by the Tribe in their petition, BIA determined in 2002 that the Muwekma Ohlone Tribe did not meet three of the seven criteria required for federal recognition.<sup>1</sup> The Tribe sought a reversal of the BIA's determination through the D.C. Circuit Court and, after evaluating the BIA process and the Tribe's evidence, the Court upheld BIA's final decision in 2011.<sup>2</sup> Thereafter, the Tribe filed an appeal and was denied in 2013.<sup>3</sup> While I supported the Tribe's application to BIA more than two decades ago, I also believe it is important to respect fact-based decisions so that all tribes have a fair and equal opportunity to seek recognition. I'm concerned that the reference to me in the Resolution implies I support overturning BIA's decision, which is what the Tribe seeks today.

I encourage the Council to approach the issue with the seriousness and attention it deserves. Unfortunately, the current Resolution draft is, at best, misleading. For example, the current Resolution extensively describes the *process* under which the Tribe submitted a petition to BIA, but fails to note the *conclusion* of that process: That BIA determined that the Tribe did not meet nearly half of the required criteria and that both a federal district court and an appeals court

---

<sup>1</sup> United States Department of the Interior, Office of Federal Acknowledgement, Summary Under the Criteria and Evidence for Final Determination against Federal Acknowledgment of the Muwekma Ohlone Tribe, Petition 111 (September 6, 2002). [https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/111\\_muwekm\\_CA/111\\_fd.pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/111_muwekm_CA/111_fd.pdf)

<sup>2</sup> *Muwekma Ohlone Tribe v. Salazar*, 813 F. Supp. 2d 170 (D.D.C. 2011). <https://casetext.com/case/muwekma-ohlone-tribe-v-salazar>

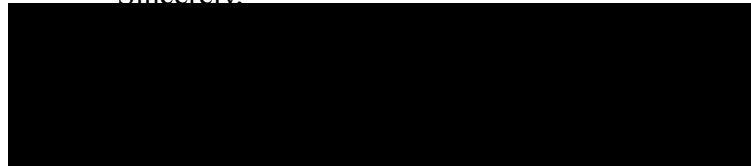
<sup>3</sup> *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209 (D.C. Cir. 2013). <https://casetext.com/case/muwekma-ohlone-tribe-v-salazar-2>

upheld that determination. It would be unprecedented for Congress to overturn a BIA determination in the manner the Tribe seeks: Congress has never granted federal recognition to a tribe that was denied by BIA and exhausted all appeals.<sup>4</sup> Doing so for one tribe would create significant issues of fairness for other tribes who have also received negative determinations under the BIA process. I encourage the Council to more carefully consider this and other complicated issues that would arise from Congress overturning BIA's independent, fact-based determination.

Finally, I would note that federal recognition, which is part of formalizing a government-to-government relationship between the United States and a tribe, is a unique and complex federal process. The Council may wish to consider whether its intervention in this federal matter is appropriate at all.

Thank you for your consideration of my concerns. Should you have any questions, please feel free to reach out to me or to my staff.

Sincerely,



Zoe Lofgren  
Member of Congress

---

<sup>4</sup> BIA Acknowledgement Petitions Denied Through 25 C.F.R Part 83 (34 Petitions, as of March 2024).  
<https://www.bia.gov/as-ia/ofa/petitions-resolved/denied>

## FW: Rep. Eshoo Letter re Muwekma Ohlone Resolution

City Clerk <city.clerk@sanjoseca.gov>

Thu 8/22/2024 10:35 AM

To: Agendadesk <Agendadesk@sanjoseca.gov>

 1 attachments (827 KB)

Rep Eshoo Letter to SJ Council re Muwekma Ohlone Resolution 8.22.24.pdf;

---

**From:** Cohen, Andrew [REDACTED]  
**Sent:** Thursday, August 22, 2024 10:26 AM  
**To:** City Clerk <city.clerk@sanjoseca.gov>  
**Subject:** Rep. Eshoo Letter re Muwekma Ohlone Resolution

[External Email]

You don't often get email from [REDACTED] [Learn why this is important](#)

Good morning,

Congresswoman Anna Eshoo would like to submit the attached letter for the official record of the San Jose City Council's meeting on Tuesday, August 27. The letter relates to the resolution supporting federal recognition for the Muwekma Ohlone Tribe that will be considered at the meeting.

Please let me know if you need any additional information from our office for the letter to be submitted for the record.

Thanks,  
Andrew

Andrew Cohen  
Senior Legislative Assistant | Congresswoman Anna G. Eshoo (CA-16)

[REDACTED] [Website](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



*Congress of the United States  
House of Representatives  
Washington, D. C. 20515*

*Anna G. Eshoo  
Sixteenth District  
California*

August 22, 2024

The Honorable Members of the San José City Council  
c/o Ms. Toni Taber, City Clerk  
City of San José  
200 East Santa Clara Street  
San José, California 95113

Dear Councilmembers,

It has come to my attention that on Tuesday, August 27<sup>th</sup>, the San José City Council will consider a resolution in support of federal recognition for the Muwekma Ohlone Tribe. I write to share my concerns about this resolution which has significant federal implications.

Federal recognition provides Native American tribes with many rights and benefits, including the ability to establish a tribal government, acquire tribal land, and participate in certain health, education, and housing programs. In many cases, federal recognition also authorizes tribes to operate casinos on tribal land that would otherwise be prohibited under state gambling restrictions. The Bureau of Indian Affairs (BIA) is responsible for determining which tribes qualify for recognition under existing federal regulations (25 CFR §83.11). However, in a small number of cases, Congress has passed legislation to recognize tribes outside of the BIA process.

The Muwekma Ohlone Tribe first petitioned the BIA for recognition over three decades ago. After evaluating the Tribe's evidence, the BIA determined in September 2002 that the Tribe only met four of the seven criteria required for recognition. Specifically, the BIA concluded that the Tribe was unable to demonstrate that it (1) comprises a distinct community, (2) has maintained political influence over its members, and (3) has been identified as an American Indian entity on a substantially continuous basis since 1900. Each of these conditions must be met in order to qualify for recognition under existing federal regulations.

The Tribe challenged the BIA's decision in the U.S. District Court for the District of Columbia, and in September 2011, the Court upheld the Bureau's decision in *Muwekma Ohlone Tribe v. Salazar*. A unanimous panel of the U.S. Court of Appeals for the District of Columbia affirmed the District Court's decision in March

2013. Having exhausted both the administrative and judicial paths to recognition, the Tribe is now seeking recognition through an act of Congress.

Federal recognition is a political determination, not an ethnic or racial one. Therefore, the relevant question before Congress is not whether the Muwekma Ohlone Tribe are among the Indigenous people of the Bay Area. I certainly do not dispute this claim and neither does the BIA. Instead, the key question is whether the Tribe constitutes a distinct and long-lasting sovereign nation entitled to a government-to-government relationship with the United States. This is a more complicated question with significant implications for the approximately 400 other non-federally recognized tribes in the U.S., including several in our region.

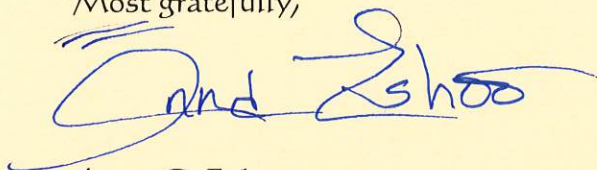
The resolution pending before the City Council fails to grasp the complexity of the issue at hand. It makes no mention of the BIA's administrative decision or the multiple federal court rulings upholding it. These omissions distort the historical record and give the misleading impression that the question before Congress is much simpler than it actually is.

Another highly important consideration for the Council is the issue of gaming. Unless an anti-gaming provision is included, federal recognition legislation passed by Congress would authorize the Muwekma Ohlone Tribe to engage in gaming operations. While I recognize that gaming has provided meaningful economic benefits for some tribes, I have concerns about the potentially harmful impact of gaming on the broader community. The gambling industry often exploits those who suffer from addiction. I have seen firsthand the devastating impact of gambling addiction on members of my own family.

On many prior occasions, Congress has enacted tribal recognition legislation containing gaming prohibitions. In fact, six of the seven tribes recognized by Congress over the past decade have had gaming prohibited. The Muwekma Ohlone Tribe's leadership has, thus far, been unwilling to consider any path forward that does not involve full gaming rights. Because other members of the Bay Area congressional delegation share my concerns about gaming, the Tribe's position has left us at an impasse and prevented us from engaging constructively on the complex underlying question of whether legislative recognition should be pursued at all.

I hope this information will be helpful to the Council as you consider the proposed resolution, and I thank you in advance for your consideration of my concerns.

Most gratefully,



Anna G. Eshoo  
Member of Congress