JAMUL INDIAN VILLAGE
KUMEYAAY NATION

September 10, 2003

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Tribal Administrator

Re: 8-Hour Ozone Designation under the National Ambient Air Quality Standards (NAAQS)

Gentlemen:

Background

On August 2, 2000, the then Acting Director, Air Division, U.S. E.P.A., Region IX, addressed a letter to "Tribal Leader." That letter invited participation from Indian tribes in the process of designating areas as non-attainment under the new 8-hour ozone National Ambient Air Quality Standards (NAAQS). Attached to that letter were two (2) documents entitled "Guidance on 8-hour Ozone Designations for Indian Tribes" (referenced herein as "Guidance for Indian Tribes") and "Boundary Guidance on Air Quality Designations for the 8-hour Ozone NAAQS" (referenced herein as "Boundary Guidance").

The August 2, 2000 letter informed some tribes that a preliminary review of air monitoring data indicated that they may be located within a "Metropolitan Statistical Area" (MSA) where a violation of the 8-hour ozone NAAQS has been measured. As a consequence, the tribal land as well as the surrounding area, may be designated non-attainment. The U.S. E.P.A. invited the tribes to consult with the E.P.A. in the designation process prior to the E.P.A. making a final designation. As the chairman of the Jamul Indian Village, I would like to accept the E.P.A.'s offer to consult with us on the 8-hour ozone designation.

While we look forward to discussions with the E.P.A. regarding the 8-hour ozone designation process, we are concerned that including our tribal land in the San Diego County MSA could potentially implicate activities on our lands. Because any such potentiality would affect our domestic sovereignty, we feel it is important that we meet with you and participate in the designation

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The Jamul Indian Village

The Jamul Indian Village is a small enclave of approximately six acres, located approximately 20 miles east/southeast of the City of San Diego. The tribe is made up of 56 members. Our lands are used for residential purposes and thus there is no manufacturing or industrial enterprises taking place.

The Village is surrounded by some two million residents in the County of San Diego and more than one million residents just across the border in the City of Tijuana. The tribe's social and business activities are insignificant in context of those in the surrounding communities.

The Process

Our understanding of the 8-hour ozone NAAQS designation process is that the E.P.A. is required to use MSAs or Consolidated MSAs (CMSAs). The MSA unit is used as a presumptive way to develop the social and economic integration of such areas and to encourage coordinated efforts for ozone statistical and regulatory programs. The "Boundary Guidance" encourages states and tribes to base ozone attainment and non-attainment on these MSAs or CMSAs. Because we feel that our tribe is neither socially nor economically integrated into the surrounding MSA, we disagree with the inclusion of our village within the boundaries for the 8-hour ozone non-attainment designation for San Diego County.

The E.P.A. has suggested that tribes in non-attainment MSAs demonstrate or justify why the designation should not apply to them. The law provides eleven mitigating factors that, when achieved, permit an attainment or unclassified designation. However, placing these burdens of mitigation and persuasion on the tribe fails to recognize our separateness and improperly classifies our tribe air quality by the presumption of social and economic integration within the MSA.

The Jamul Indian Village members have historically been accustomed to clean, high quality air. We appreciate that activities of surrounding local governments and enterprises affected by airshed characteristics have led to 8-hour ozone non-attainment. Furthermore, we share the E.P.A's concern for the health and well-being of its citizenry within the San Diego MSA. However, we disagree that the Jamul Indian Village should be included within the non-attainment designation for this MSA.

Such an approach fails to respect the real world conditions and the government-to-government relationship that exist between our sovereign nation and the government of the United States of America. Such an approach would harm the trust relationship and obligations that otherwise exist between the United States government and our tribe.

Lack of Data

It should also be noted that at the present time, the village does not have the requisite three years of air quality monitoring data to justify any designation other than attainment/unclassifiable. Thus, we request that the E.P.A. designate the Jamul Indian Village as attainment/unclassifiable. Once appropriate data is developed, this issue can be revisited by the tribe and the E.P.A.

Should the E.P.A decide not to agree with the Jamul Indian Village position regarding the attainment/unclassifiable designation, we reserve the right (without waiving any other rights) to address and submit to the E.P.A. the eleven mitigating factors regarding why the Jamul Indian Village should be so designated.

Our Request

We request that appropriate representatives of the E.P.A.'s Air Division meet and confer with the Jamul Indian Village representatives. At the present time, the village does not have an air quality program. However, through the E.P.A.'s consultation, planning, training, and funding (by a General Assistance Program (GAP) grant), we desire to establish an air program.

We look forward to the E.P.A.'s consultation with us on the 8-hour ozone designation issues. We encourage detailed discussions that address short and long term planning, and the need for future resources and funding to establish our own air quality program. We also invite the E.P.A. to consult with us on other environmental programs and requirements.

Thank you for your attention to this letter and our request. We are excited about the opportunity to work with you to protect the quality of the air, the health, and the well-being of members of our tribe, our neighbors and the visitors to our lands and to the surrounding communities.

Sincerely,

Lee Acebedo
Chairman, Jamul Indian Village

/mkk
cc: Jack Broadbent, Air Division Director
Gary Lance, California Tribal Air Programs
Mr. Roy Ford
Clancy Tenley, Indian Programs Office Manager