Salt River
**PIMA-MARICOPA INDIAN COMMUNITY**
10,005 EAST OSBORN ROAD/SCOTTSDALE, ARIZONA 85256/ PHONE (480) 850-8000

July 7, 2003

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California, 94105

Dear Mr. Nastri:

Enclosed please find the official and formal recommendation for the 8-hour ozone NAAQS designation for the Salt River Pima-Maricopa Indian Community. This Federally recognized Tribal Community is located in the urban metropolitan region of Maricopa County, Arizona. As a tribal community located in a major metropolitan area, the impacts of ozone are of significant concern to the Salt River Indian Community, primarily because of the Community's location relative to the City of Phoenix and other regional municipalities, and the prevailing conveyance of ozone onto the Tribal Community.

As a tribal sovereign, the Community appreciates the opportunity to submit this recommendation and looks forward to working constructively with EPA to resolve the mitigating issues concerning this designation process. In the interim, should you or your staff have any questions or concerns with this recommendation, please do not hesitate to contact me at your convenience at 480/850-7262.

Sincerely,

B. Bobby Ramirez, Manager
Cultural & Environmental Services

cc: Douglas McDaniel
Hans Klose, Director Community Development Dept.
File

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**PIMA-MARICOPA INDIAN COMMUNITY**
10,005 EAST OSBORN ROAD/SCOTTSDALE, ARIZONA 85256/ PHONE (480) 850-8000

July 3, 2003

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Dear Mr. Nastri:

In accordance with the U.S. Environmental Protection Agency (EPA) memoranda titled "Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts" dated November 14, 2002, and "Extension for States and Tribes to Submit Air Quality Designation recommendations for the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS)" dated February 27, 2003, the Salt River Pima - Maricopa County Indian Community (the "Community") is submitting this updated recommendation for its 8-hour ozone NAAQS designation. Based on the criteria provided in the EPA memoranda titled "Guidance on 8-Hour Ozone Designations for Indian Tribes" dated July 18, 2000, the Community reaffirms its earlier recommendation that the land within the exterior boundaries of the Community be designated as "unclassifiable."

An unclassifiable designation is consistent with Clean Air Act (CAA) § 107(d)(1) because no reasonable basis exists to conclude that the area within the exterior boundaries of the Community is meeting or not meeting the 8-hour ozone standard. On one hand, the State of Arizona's 2000 to 2002 ozone monitoring data suggests that the land within the exterior boundaries of the Community may be attaining the 8-hour ozone standard, as surrounding monitoring sites had no fourth highest three-year average value greater than 0.085 ppb. On the other hand, while the Community is currently developing a monitoring network as part of its efforts to assume regulatory responsibility over the Community's air resources, it does not have three year's worth of actual monitoring data within its exterior boundaries to demonstrate attainment under EPA rules. Accordingly, until such time as the Community's monitoring network indicates that the 8-hour ozone standard is or is not being met, the Community should be designated as unclassifiable.

It is the Community's understanding, however, that EPA presumes that all areas located within a Metropolitan Statistical Area (MSA) or Consolidated Metropolitan Statistical Area (C/MSA) should be similarly designated. (*See* EPA Memorandum, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards," dated March 28, 2000). While it remains unclear what the State will ultimately recommend as the designation for the areas that surround the Community, the Community nonetheless disagrees with the presumption as applied to Tribal lands. Because the Community is a federally recognized Indian tribe, EPA's federal trust responsibility requires that it work directly with the Community on a government-to-government basis, rather than as a subdivision of other governments. This trust responsibility is separate and apart from the requirements of the Clean Air Act (CAA) § 107(d) designation process and has been consistently reaffirmed by the courts, executive orders and agency policy statements. As such, the Community believes that a State area designation has no effect on the Community.

Although EPA's memorandum titled "Guidance on 8-Hour Ozone Designations for Indian Tribes" dated July 18, 2000 expressly recognizes that a State's request for a designation of an area that surrounds Tribal lands does not dictate the designation for Tribal lands, EPA nonetheless has placed the burden on Tribes to justify that a different designation is warranted using 11 mitigating factors. Placing such a burden on Tribes is inconsistent with EPA's federal trust responsibility, the purpose and intent of the tribal authority rule (TAR), and defies tribal sovereignty. This burden is especially problematic for Tribes that may not have the resources to conduct the technical analysis necessary to rebut the presumption. Just as EPA may not directly impose a state designation on Community land, EPA may not, by its presumption, indirectly force a state air quality designation on the Community. Instead, the Community must be evaluated on its own merits.

Notwithstanding the Community's objection to the C/MSA presumption approach, the following discussion of the 11 mitigating factors is provided in support of an unclassifiable designation.

1. ***Emissions and air quality in adjacent areas (including adjacent C/MSAs)***

The principal industrial sources of emissions located within the exterior boundaries of the Community include the Salt River Sand & Rock mining operations, several asphalt and concrete batch plants, and the Salt River Landfill. A landfill gas collection system and gas to energy plant is located at the closed Tri-Cities Landfill. Automobiles, however, are likely to be the primary source of ozone precursor emissions, with Loop 101 (Pima Highway) running north and south nine miles along the Community's western boundary adjacent to Scottsdale and Arizona 87 (Beeline Highway) running diagonally through the Community from McDowell Road to Shea Boulevard. These highways are nevertheless largely out of the Community's control and the Community's 7,000 residents contribute only a relatively small portion of the vehicle miles traveled.

As for air quality in adjacent areas, monitoring data indicates that the Phoenix metropolitan area effectively achieved compliance with the 1-hour ozone standard in 1999.

Furthermore, as indicated above, the State's 2000 to 2002 ozone monitoring data suggests that the air quality in areas surrounding the Community is meeting the 8-hour ozone standard. However, because some monitoring sites within the Phoenix-Mesa MSA have recorded values greater than 0.085ppb, it remains unclear how the area adjacent to the Community, but within the MSA, will be designated. In any event, while air quality in adjacent areas should be a consideration in the designation decision, jurisdictional boundaries, tribal sovereignty, and trust responsibilities dictate that an adjacent area's designation has no conclusive effect on the Community.

2. ***Population density and degree of urbanization including commercial development in Indian country (e.g., shows a significant difference from surrounding areas)***

With the Community having approximately 84.35 square miles and 7,000 members, the population density is about 83 people per square mile. In contrast, Maricopa County has approximately 9,222 square miles and a population of 3,072,149 (U.S. Bureau of the Census, 2000), resulting in a population density of over 333 people per square mile. While the Community has made remarkable progress in creating an infrastructure to attract and service business growth opportunities, it remains predominantly a rural area with 19,000 acres of preserve. The Community currently has several enterprise operations, which help fund necessary services (e.g., Casino Arizona, Salt River Sand & Rock), and plans to pursue similar opportunities for economic development. Nevertheless, substantial or accelerated growth is not expected.

As these numbers indicate, the surrounding area stands in stark contrast to the Community. According to the Census Bureau, Phoenix became the nation's seventh most populous city in 1998 and had the fastest rate of increase of cities with populations of 1 million or more during the 1990s. Adjacent suburban areas likewise experienced rapid growth with Maricopa County's population increasing in the past two years by nearly 8,000 a month. The Community's predominantly rural area shows a significant difference from the residential and commercial development in the rapidly growing surrounding area.

3. ***Monitoring data representing ozone concentrations in local areas and larger areas (i.e., urban or regional scale)***

As stated above, the Community is currently in the process of developing a monitoring network, but does not have three continuous years of ambient monitoring data representing 1-hour or 8-hour ozone concentrations within its exterior boundaries. State monitors surrounding the Community recorded no fourth highest three-year average value greater than 0.085 ppb during the 2000 - 2002 period for the 8-hour standard. These monitors include, Apache Junction (0.080 ppb), Blue Point Bridge (0.084 ppb), Falcon Field (0.084 ppb), Fountain Hills (0.080 ppb), and South Scottsdale (0.078 ppb). These monitors therefore suggest, attainment, albeit marginally, of the 8-hour ozone standard in the areas immediately surrounding the Community.

4. ***Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area)***

As part of its efforts to develop a comprehensive air quality regulatory program, the Community conducted a comprehensive emission inventory of sources located within the exterior boundaries of the reservation. The inventory was conducted for year 1999 and some of the source emissions data was updated for year 2000. Based on the inventory data and information generated, the predominant criteria pollutant of concern within the exterior boundaries of the Community was and remains Particulate Matter at 10 microns ($PM_{10}$). Aggregate mining operations, concrete batch plants and agricultural operations generated the primary source of this pollutant.

With respect to precursor pollutants for ozone, the inventory identified mobile sources as the primary source of these emissions. However, as stated earlier, the vast majority of vehicle miles traveled are from the highway infrastructure that transverses through the Community, which is largely beyond the Community's control. There are no significant sources of VOCs or NOx emissions within the Community other than the Salt River and Tri-Cities Landfills. The Tri-Cities Landfill has implemented gas controls as part of its landfill gas to energy project and the Salt River Landfill also has a gas collection system in place to reduce landfill emissions. Emissions from these facilities are not significant enough to substantially contribute to air degradation within the Community or the greater East Valley area. The majority of the emissions inventory data and information for the Community is currently available on the EPA's National Emissions Inventory (NEI) database.

5. ***Traffic and commuting patterns***

Traffic commuting patterns by Community members are judged insignificant. There are currently about 7,000 residents, with minimal migration on or near Community lands. The Community will continue to coordinate traffic on the major roads bordering or passing through the Community with the Maricopa Association of Governments (MAG).

6. ***Expected growth (including extent, pattern and rate of growth)***

Although the Community will continue to seek out new growth opportunities, most resources remain devoted to establishing a necessary infrastructure and meeting basic needs. As a result, substantial or accelerated growth is not anticipated.

7. ***Meteorology (weather/transport patterns)***

During the summer, winds typically blow across the Phoenix valley from the west toward the east and northeast. Ozone essentially migrates in a regular pattern across the Phoenix valley, with ozone precursors generated in the center of the greater Phoenix area and moving to the east and northeast as these precursors react in sunlight. As a result, the Community is essentially a victim of ozone transport from the greater Phoenix airshed. Accordingly, an unclassifiable designation would help obviate the need for the Community to consider seeking other remedies for the transport of pollution into the Community, such as possibly filing a petition pursuant to CAA § 126. It is bad enough that the Community and its members are the unwilling recipients of

inadequately controlled development in other areas of the Phoenix valley. EPA should not compound this circumstance by burdening the Community with an inappropriate nonattainment designation.

8. ***Geography/topography (e.g., mountain ranges or other air basin boundaries)***

There are no geographic or topographic boundaries that prevent ozone precursor emissions from the greater Phoenix area from entering the Community's airshed.

9. ***Jurisdictional boundaries (e.g., counties, air districts, existing 1-hour nonattainment areas, reservations, etc.)***

Jurisdictional boundaries appear to weigh heavily against EPA's presumption that all areas located within a C/MSA should be similarly designated. For example, Maricopa County and Pinal County are both included in the Phoenix - Mesa MSA. However, these counties have separate and distinct designations, which can only be justified on the basis of their respective jurisdictional boundaries. Unlike the counties, which are mere political subdivisions, the Community is an independent sovereign and its boundaries should be entitled to heightened recognition in support of an unclassifiable designation independent of other areas within the Phoenix - Mesa MSA. Indeed, EPA recognized this distinction in the recent Federal Implementation Plan (FIP) for the Phoenix nonattainment area for particulate matter. EPA specifically excluded the Community from the FIP's requirements.

Although the Community was previously included in the Maricopa Association of Governments (MAG) Urban Planning Area nonattainment area, it is the Community's long-standing position that it was arbitrarily and erroneously included in this area due to EPA's failure to adequately consult with the Community during the CAA § 107(d) designation process in accordance with the Agency's federal trust responsibility. Despite the questionable validity of the 1-hour ozone standard nonattainment designation, there has not been a violation of the 1-hour standard in the last three years. *See* 65 Fed. Reg 31,859 (May 19, 2000). Thus, any previous nonattainment designation for the 1-hour ozone standard should bear no relationship to the current designation for the 8-hour ozone standard.

10. ***Level of control of emission sources***

As previously indicated, the primary source of ozone precursor emissions within the Community's exterior boundaries is automobile emissions along the Pima and Beeline Highways, which are largely out of the Community's control. Even if significant ozone emission sources did exist, the Community, unlike the greater Phoenix area does not contribute to ozone problems in surrounding communities due to existing transport patterns. As EPA is aware, the Community is currently in the process of developing a comprehensive air quality control program. The Community is confident that as the program is implemented, the regulatory program will control all emission sources located within its exterior boundaries so as not to contribute to air pollution problems in surrounding communities. The Community

therefore believes that an unclassifiable designation is appropriate because no significant sources within the Community contribute to the ozone problems in the greater Phoenix area.

11. ***Regional emission reduction impacts (e.g., NOx SIP call or other enforceable regional strategies)***

The Community has been actively involved in several national and regional emission reduction and planning efforts, including the Western Regional Air Partnership (WRAP); the Arizona $PM_{2.5}$ Monitoring Working-Group; the Maricopa Association of Governments Air Quality Technical Advisory Committee; the Tribal Air Monitoring Support Center Steering Committee; the National Monitoring Strategy Committee; and the Maricopa County Air Toxics Initiative. Indeed, the Manager of Cultural and Environmental Services served as co-chair of the WRAP Tribal Data Development Working-Group and the Technical Oversight Committee in support of the implementation of the Regional Haze Rule. These efforts demonstrate the Community's continuing commitment to regional emission reduction strategies.

The Community believes that working with neighboring governments in the development and implementation of regional emission reduction strategies is the appropriate way to address emissions transport from inadequately controlled development in other areas of the Phoenix valley.

An inappropriate ozone nonattainment designation for the Community would provide no additional incentive for neighboring governments to take action because the Community is an independent sovereign and not part of the State Implementation Plan. Accordingly, EPA should not impede these regional planning efforts by unjustly burdening the Community with an unwarranted nonattainment designation.

The Salt River Pima-Maricopa Indian Community appreciates the opportunity to submit this designation recommendation for the new 8-hour ozone standard and looks forward to working with Region IX during the designation process. Questions and concerns may be directed to B. Bobby Ramirez at (480) 850-8045.

Sincerely,

Joni M. Ramos, President
Salt River Pima - Maricopa Indian Community