

APPENDIX C-1

GILA RIVER INDIAN COMMUNITY COORDINATION

Appendix C-1, *Gila River Indian Community Coordination*, contains correspondence from the Arizona Department of Transportation to the Gila River Indian Community regarding whether the Gila River Indian Community would like to hold a forum to give its members the opportunity to provide oral testimony on the Final Environmental Impact Statement.



Intermodal Transportation

Janice K. Brewer, Governor
John S. Hallikowski, Director
Jennifer Toth, State Engineer
Robert Samour, Senior Deputy State Engineer, Operations
Dallas Hammit, Senior Deputy State Engineer, Development

August 29, 2014

Governor Gregory Mendoza
Gila River Indian Community
525 West Gu u Ki
Sacaton, AZ 85147

Subject: Proposed South Mountain Freeway Public Involvement

Dear Governor Mendoza:

The Arizona Department of Transportation (ADOT), in partnership with the U.S. Federal Highway Administration, is working to complete the Final Environmental Impact Statement (FEIS) for the proposed South Mountain Freeway (Loop 202), which is part of the Maricopa Association of Government's Regional Transportation Plan. As part of the Draft Environmental Impact Statement process ADOT received comments regarding oral tradition of the Gila River Indian Community. In recognition of the Community's traditions and in agreement with our previous government to government communication protocol, ADOT seeks guidance on how to best accommodate the comments received in this final stage of public involvement for the FEIS.

If there is interest from the Gila River Indian Community leadership, ADOT proposes that the two entities, in partnership, conduct a forum for Community members during the 60-day review timeframe for the FEIS. This forum, if desired, would allow members of the Community to provide oral testimony on the FEIS at a time, place and in a manner that is mutually agreeable.

We respectfully request a response to this inquiry by September 19, 2014 to allow for the appropriate arrangements to be made, should a forum be desired during the 60-day review period, which is scheduled to begin in late September.

Sincerely,

Robert Samour, PE
Senior Deputy State Engineer

Cc: Lt. Governor Stephan Roe Lewis
Manuel Johnson



Janice K. Brewer, Governor
John S. Halikowski, Director
Jennifer Toth, State Engineer
Robert Samour, Senior Deputy State Engineer, Operations
Dallas Hammit, Senior Deputy State Engineer, Development

September 25, 2014

Governor Gregory Mendoza
Gila River Indian Community
525 West Gu u Ki
Sacaton, AZ 85147

Subject: Proposed South Mountain Freeway Public Involvement / Oral Tradition

Dear Governor Mendoza:

Enclosed are comments received by the South Mountain Freeway Transportation Corridor Study Team from Gila River Community members regarding the oral tradition. These comments were collected as part of the public input period for the Draft Environmental Impact Statement and were retrieved from the more than 8,000 submitted comments from interested parties across Arizona.

On Friday, September 26, 2014, the Arizona Department of Transportation and the U.S. Federal Highway Administration will release the Final Environmental Impact Statement for the proposed South Mountain Freeway. On that day, the 60-day public review period will begin, providing the public with an opportunity to review the preferred action. Comments received during the 60-day Final Environmental Impact Statement review period will be considered in the Record of Decision, the final decision-making document prepared by the Federal Highway Administration. The Record of Decision is expected to be finalized in late 2014 and available for public review in early 2015. The 60-day public review window is twice the amount of time required under federal law. Public comments must be submitted by November 25, 2014.

ADOT seeks guidance on how to best accommodate the oral tradition of the people of the Gila River Indian Community in this stage of public involvement for the Environmental Impact Statement. If there is interest from Gila River Indian Community leadership, ADOT proposes that the two entities, in partnership, conduct a forum for Community members during the 60-day review timeframe. This forum, if desired, would allow Community members an opportunity to provide oral testimony on the Final Environmental Impact Statement at a time, place and in a manner that is mutually agreeable.

We respectfully request a response to this inquiry by October 27, 2014 to allow for the appropriate arrangements to be made, should a forum be desired during the 60-day review period.

Sincerely,

Robert Samour

Robert Samour, PE
Senior Deputy State Engineer

RECEIVED
JUL 30 2013

BY: *RB*

Gila River Alliance for a Clean Environment; COMPLAINT UNDER TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

Complainant,

v.

Arizona Department of Transportation,

Respondent.

I. INTRODUCTION

This is a civil rights complaint by the Gila River Alliance for a Clean Environment (hereinafter "GRACE,"), comprised of Akimel O'odham, (River People) and Maricopa (Pee Posh) indigenous peoples of the Gila River Indian Community (hereinafter "GRIC,") under Title VI of the United States Civil Rights Act¹ against the Arizona Department of Transportation (hereinafter "ADOT") for its discrimination in the form of unequal treatment and unequal impact against GRIC members based on race. As indigenous people of the American Indian race, Complainants are people protected by Title VI.

As a recipient of Federal highway funding, ADOT is subject to Title VI of the United States Civil Rights Act.

Complainant alleges that ADOT violated Title VI of the United States Civil Rights Act by the following actions:

A. On April 26, 2013 ADOT released a Draft Environmental Impact Study (DEIS) identifying its proposal and preferred alternative for building a major highway –the South Mountain Loop 202- that would go through and desecrate a mountain held sacred by tribal members including members of GRACE, and is taking further action to complete the proposal and approve the project, despite being fully aware of and acknowledging the sacredness and spiritual and cultural significance of the mountain, that if implemented would have a profound negative impact on the cultural and spiritual well-being of the tribal members/indigenous peoples who are members of GRACE and would cause major cumulative health effects from toxic and criteria pollutants emitted by cars and trucks;

B. discriminated in its public participation process toward tribal members including members of GRACE by providing less public participation opportunities to tribal members than non-tribal members, despite the fact that the proposed highway project would disproportionately impact tribal members.

¹ "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C § 2000d.

II. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

To succeed in this Civil Rights complaint, the complainant does not have to show that there was a deliberate, intentional discrimination by ADOT, but rather, that there is a discriminatory effect / disparate impact that gives rise to a section 601 Title VI of the Civil Rights Act of 1964 violation. Section 601 of Title VI of the Civil Rights Act of 1964 states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."² Section 602 of Title VI states: "Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity³...is authorized and directed to effectuate the provisions of section 601"⁴

Section 602 prohibits recipients of federal funds to engage in any activities that result in discriminatory effect or disparate impact against individuals, groups of people, or whole communities of a certain race, color, or national origin.⁵ The discriminatory effect / disparate impact can occur when a seemingly neutral decision or action results in an unjustifiable adverse effect. Or in other words, an inaction or action by a recipient of federal funds that may appear neutral on its face and is not accompanied with any intent to discriminate, but nevertheless negatively affects an individual, groups of people, or a whole community of a certain race, color, or national origin, without any substantial legitimate justification, violates Title VI.

The actions of ADOT were clearly not neutral and were made with total awareness and acknowledgement that the proposed freeway route through the sacred mountain would have serious negative cultural, spiritual and health impacts on a protected class of people.

III. THE COMPLAINANTS

Complainant GRACE is a grassroots organization of the Akimel O'odham, (River People) and Maricopa (Pee Posh) indigenous peoples of the GRIC. The GRIC's reservation abuts the proposed project site, the GRIC and its people including the complainant have strong cultural and spiritual ties to South Mountain and they use the project site for cultural and spiritual purposes. Under Title VI, Native Americans are a protected class and historically have been discriminated against by the US government

GRACE advocates for the protection of the environment and the sacred and cultural sites of the Gila River Indian Community and its people.⁶ Its mission is "to inform Indigenous peoples on environmental issues affecting their communities."⁷ GRACE was formed in the early

² 42 U.S.C § 2000d.

³ Arizona's transportation system is partly funded by grants from the Federal Highway Administration through the Federal Aid Highway Program.

⁴ Transcript of Civil Rights Act (1964) <http://www.ourdocuments.gov/doc.php?flash=true&doc=97&page=transcript> (last visited July 23, 2013).

⁵ U.S. Commission on Civil Rights, Title VI and Environmental Justice <http://www.usccr.gov/pubs/envjust/ch3.htm> (last visited July 6, 2013).

⁶ Gila River originates in southwestern New Mexico and stretches about 600 miles across Arizona. (The Gila River Featured as Arizona's River of the Month Aug. 29, 2012 <http://www.cdf.org/news/gila-river-featured-arizonas-river-month> (last visited July 6, 2013)).

⁷ Gila River Alliance for a Clean Environment - Support and Network, *Take action for Indigenous rights and sacred land on Indigenous Peoples Day*, <http://www.geocities.ws/contaminatedinaz/announce.html> (last visited July 6, 2013).

2000s when action was needed to stop Stericycle, a medical waste incineration facility, located on the GRIC reservation from continuing to illegally burn medical and non-medical waste imported onto the reservation and emit Hazardous Air Emissions (HAPs).⁸ GRACE also led the successful campaign to prevent Romco, another private hazardous waste facility operating on the GRIC reservation without the required federal permits, from continuing to violate hazardous waste laws and pollute the area and residents.⁹

GRIC tribal members and the tribe hold the South Mountain sacred and see it as central to its creation story.¹⁰ GRACE opposes the proposed South Mountain Loop 202 because the project would desecrate the South Mountain by going through it, resulting in a disparate impact – culturally and spiritually on the GRIC¹¹ – and in disparate cumulative health effects¹² on the GRIC tribal members.

Complainant GRACE brings this Civil Rights Complaint on behalf of its GRIC tribal members who have been discriminated against by ADOT's inadequate consultation and unequal public participation process and who would be disparately affected by the implementation of the South Mountain Loop due to devastating cultural, spiritual, health and environmental impacts.

The GRIC includes the tribes of the Akimel O'odham, (River People), and the Maricopa (Pee Posh).¹³ The Akimel O'odham, who have inhabited the Sonoran Desert long before Europeans settled the Americas, are native to central and southern Arizona and are descendants of the Hohokam, whose artifacts have been dated as far back as 10,000 years ago.¹⁴ Known as the "desert farmers" by some, the Akimel O'odham were sophisticated engineers and farmers, successfully growing a variety of crops in the Sonoran desert landscape.¹⁵ The Maricopa are a Yuman tribal people.¹⁶ As early as the mid-1700s, the Maricopa arrived from their lower Colorado River area homes.¹⁷

⁸ Greenaction for Health & Environmental Justice, *Gila River Alliance for a Clean Environment* Nov. 26, 2002 <http://greenaction.cclearn.org/ies/pr112602.shtml> (last visited July 6, 2013).

⁹ Greenaction for Health and Environmental Justice, *Gila River Indian Community Tribal Members & Environmental Justice Supporters to Hold Rally to Demand Closure of Romco Toxic Waste Plant* <http://greenaction.cclearn.org/indigenuslands/gilariver/documents/PressAdvisoryGilaRiverIndianCommunityToxicWasteProtest032407.pdf> (last visited July 6, 2013); Censored News, Bradley Angel, *Gila River: Victory to shut down hazardous waste facility* June 20, 2007 <http://bsnorrell.blogspot.com/2007/06/gila-river-victory-to-shut-down.html> (last visited July 6, 2013).

¹⁰ Gila River Indian Community Resolution NO. GR-41-07, A Resolution Designating the South Mountain Range (Muhadag, Avikwaxos) as a Sacred Place and Traditional Cultural Property of the Gila River Indian Community.

¹¹ Indian Country Media Network, *Video: Footage From Sacred Sites Rally in Arizona* April 2, 2013 <http://indiancountrytodaymedianetwork.com/2013/04/02/video-footage-sacred-sites-rally-arizona-148501> <http://indiancountrytodaymedianetwork.com/2013/04/02/video-footage-sacred-sites-rally-arizona-148501> (last visited July 6, 2013).

¹² Gila River Indian Community, Roberto A. Jackson *2012 Referendum Kicks Off in Sacaton* <http://www.gilariver.org/index.php/january-2012-grin/2519-loop-202-forum> (last visited July 6, 2013).

¹³ The Maricopa live in district 7 of the GRIC. The Gila River Indian Community, *History: the Gila River*, <http://www.gilariver.org/index.php/about-tribe/profile/history> (last visited July 6, 2013).

¹⁴ The Gila River Indian Community, *History: the Gila River*, <http://www.gilariver.org/index.php/about-tribe/profile/history> (last visited July 6, 2013); This is the current age and most likely will change as archeologists continue to find older and older artifacts.

¹⁵ The Gila River Indian Community, *History: the Gila River*, <http://www.gilariver.org/index.php/about-tribe/profile/history> (last visited July 6, 2013).

¹⁶ *Id.*

¹⁷ *Id.*

in 1859, GRIC was established as the first reservation in part of what later became Arizona in 1912.¹⁸ In 1862, when water flowed freely, GRIC was growing more than one million pounds of wheat a year; however, between the 1870s and 1880s, water supplies drastically diminished due to upstream diversions by non-Native farmers. These diversions rendered farming almost nonexistent.¹⁹ Between approximately 1880 and 1920, GRIC faced mass famine and starvation.²⁰ Due to the need for outside assistance, diet and way of life completely changed.²¹ Alcoholism became a major problem and the GRIC “experienced the loss of certain cultural and artistic traditions and rituals.”²² “This time became one of...the darkest moment(s) in ...their... long history.”²³ In the 1930s, circumstances began to improve when the U.S. government completed Coolidge Dam on the upper Gila River, which created the San Carlos Reservoir: this restored some farming practices.²⁴ Eventually, small businesses, schools, health centers, and new housing began to appear on the reservation.²⁵ However, GRIC faces one of the highest levels of diabetes in the United States, thought to be directly a result of the disappearance of the traditional lifestyle and diet.²⁶

The GRIC history also includes forced boarding school for children, which not only was psychologically and physically oppressive but was culturally and socially oppressive, as it was instituted to acculturate Native American children into non-native American Indian speaking and practicing children.

Today, encompassing 372,000 acres along the Gila River, GRIC is the seventh largest federally recognized reservation in Arizona.²⁷ It is in both Pinal and Maricopa counties and is 17 miles south of downtown Phoenix.²⁸ Approximately 14,000 of the 21,000 enrolled GRIC members live on the reservation.²⁹ 4,274 or 36% of GRIC tribal members on the reservation are under 18 and 7,438 or 64% are over 18; 675 or 6% of GRIC tribal members are 65 and older.³⁰ The Akimel O’odham (River People) comprise 90% of the GRIC reservation and the Pee Posh (Maricopa), who live at the west end of the South Mountain, comprise about 10% of the GRIC

¹⁸ In 1846, the territory now known as southern Arizona, came under the control of the US, and in 1854, the entire present day Arizona territory was officially made part of the United States territory. Arizona became a US state in 1912. *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Jovana J. Brown, *When Our Water Returns: Gila River Indian Community and Diabetes* (<http://www.evergreen.edu/tribal/docs/WhenOurWaterReturns%2009-25-09.pdf>) (last visited July 6, 2013).

²⁷ ADOT, South Mountain Study Team, *Chapter 2 Gila River Indian Community Coordination* (<http://www.azdot.gov/south-mountain-loop-202-docs/eis/chapter2/chapter2.pdf>) (last visited July 6, 2013).

²⁸ Gila River, Tourist Attractions, <http://www.gilariver.org/index.php/about-tribe/profile/tourism/18-tourist-attractions/159-tourist-attractions> (last visited July 6, 2013).

²⁹ ADOT, South Mountain Study Team, *Chapter 2 Gila River Indian Community Coordination* (<http://www.azdot.gov/south-mountain-loop-202-docs/eis/chapter2/chapter2.pdf>) (last visited July 6, 2013).

³⁰ United States Census Bureau, *2010 Demographic Profile* (<http://www.census.gov/popfinder/>) (last visited June 17, 2013).

reservation. GRIC is organized into seven territorial districts.³¹ GRIC has an executive branch, comprised of a governor and lieutenant governor; a legislative, made up of a Community Council³² consisting of members from the seven territorial districts of the reservation; and a judicial branch, with a Community Court of seven judges that provides services to approximately 20,000 members of GRIC.³³

GRIC’s economy has been growing via agricultural, gaming, and the development of industrial parks.³⁴ GRIC is currently one of the largest agricultural producers in the state of Arizona, farming cotton, wheat, millet, alfalfa, barley, melons, pistachios, olives, citrus, and vegetables.³⁵ Now that it has finally settled an ongoing water dispute and will be receiving enough water to sustain itself, it plans to put in approximately 140,000 more acres of agriculture in the next 20 years.³⁶ GRIC has three casinos, Wild Horse Pass, Lone Butte, and Vee Quiva.³⁷ GRIC operates three industrial parks.³⁸ Like the US states, GRIC has its own transportation and environmental departments.

As a Native Nation, the federal government has a direct trust relationship with the GRIC and its people. The basis for this special legal relationship is found directly in the Constitution and memorialized in treaties.³⁹ This trust relationship applies to all Federal agencies and to Federal action outside Indian reservations.⁴⁰ Due to this trust relationship, the government has a special legal responsibility to review this complaint according to the unique requirements owed to the GRIC by the government.

Because of the 1992 National Historic Preservation Act (NHPA) Amendments, the GRIC has a Tribal Historic Preservation Officer (THPO) to assist in identifying and nominating historic properties / historic resources on their tribal lands⁴¹ for the National Park Service (NPS) to place

³¹ The districts are: Blackwater, Hashen, Kehk, Sacaton, Santan, Casa Blanca, Komatke, Maricopa Colony (The Gila River Indian Community, Government, <http://www.gilariver.org/index.php/about-tribe/districts> (last visited June 9, 2013)).

³² According to Article III Sect. 6 of the Gila River Indian Community Constitution, “the Council shall have the power to enact ordinances, subject to review of the Secretary of the Interior.” <http://thorpe.ou.edu/IRA/gilacons.html> (last visited July 8, 2013).

³³ The Gila River Indian Community, Government, <http://www.gilariver.org/> (last visited July 8, 2013).

³⁴ Inter Tribal Council of Arizona, Inc., Gila River Indian Community http://itcaonline.com/?page_id=1158 (last visited July 8, 2013).

³⁵ *Id.*

³⁶ GRIC Response to EPA, Gila River Indian Community Response to EPA’s Nine Factors Requirement for Designation of PM-2.5 Under the National Ambient Air Quality Standards, p. 2 Jan. 4, 2011, <http://www.regulations.gov#!documentDetail;D=EPA-HQ-OAR-2010-0163-0016> (last visited July 6, 2013); Arizona Department of Water Resources, Gila River Indian Community Water Rights Settlement – 2006, http://www.azwater.gov/AzDWR/SurfaceWater/Adjudications/New_Gila_River_Indian_Community_Settlement.htm (last visited July 11, 2013).

³⁷ Gila River Gaming Enterprises, <http://www.wingilariver.com/> (last visited July 22, 2013).

³⁸ Inter Tribal Council of Arizona, Inc., Gila River Indian Community http://itcaonline.com/?page_id=1158 (last visited July 8, 2013).

³⁹ See Art. I, § 8, par. 3 of the U.S. Constitution.

⁴⁰ See, e.g., *Nance v. Environmental Protection Agency*, 645 F.2d 701, 711 (9th Cir. 1981), cert. den. 454 U.S. 1081 (1981); *Pyramid Lake Paiute Tribe v. U.S. Dept. of Navy*, 898 F.2d 1410, 1420 (9th Cir. 1990). See, e.g., internal guidance documents issued by the Department of the Interior in its Departmental Manual (DM), at 303 DM chapter 2, 512 DM chapter 2 (acknowledging that all bureaus and offices within DOI are subject to the federal trust responsibility when their actions affect “tribal trust resources, trust assets, or tribal health and safety.” 512 DM §2.2. The DOI Departmental Manual is available in the Electronic Library of Interior Policies at: clips.doi.gov.

⁴¹ Tribal lands means “all lands within the exterior boundaries of any Indian reservation; and ...all dependent Indian communities” (16 U.S.C. § 470w(14)).

on the National Register of Historic Places (NRHP) of 1966. The purpose of the NHPA is to “preserve the historical and cultural foundations of the Nation as living parts of community life.”⁴² The NHPA “established the National Register of Historic Places and the requirements under Section 106 of that Act that require federal agencies to take into account the effects of their actions on historic properties listed on or eligible for inclusion on the National Register.”⁴³ The South Mountain has been approved as a traditional cultural property “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.”⁴⁴

IV. THE ARIZONA DEPARTMENT OF TRANSPORTATION

ADOT, a state government agency created in 1974, is the sponsor of the proposed construction and operation of the South Mountain Loop 202.⁴⁵ It is “responsible for collecting transportation revenues and for planning, constructing and maintaining Arizona’s highway infrastructure,”⁴⁶ as well as, the state’s public transportation and municipal airports.⁴⁷ Its mission is “to provide a safe, efficient, cost-effective transportation system.”⁴⁸ On April 26, 2013, ADOT released a DEIS for the Loop 202 South Mountain Freeway Study.⁴⁹

ADOT is a recipient of federal highway funds and is thus subject to and required to comply with the non-discriminatory requirements of Title VI of the U.S. Civil Rights Act.

V. RIPENESS

This complaint is timely filed because it is in response to the improper and discriminatory action taken by ADOT’s April 26, 2013 sponsorship and release of the DEIS for the Loop 202 South Mountain Freeway Study that was prepared by the Federal Highway Administration (FHWA), the federal lead agency for the proposed action, in cooperation with the U.S. Army Corps of Engineers (USACE), the U.S. Bureau of Indian Affairs (BIA), and the Western Area

⁴² Patricia Parker, *Traditional Cultural Properties: What You Do and How We Think*, Volume 16 CRM 1993 <http://www8.nau.edu/hcpo-p/Parker.pdf>.

⁴³ *Id.*

⁴⁴ National Park Service, National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties 1990, available at www.cr.nps.gov/nr/publications/bulletins/nrb38.htm; Criteria for eligibility for being on the National Register are: “associated with events that have made a significant contribution to the broad patterns of our history; are associated with the lives of persons significant in our past; embody the distinctiveness of a type, period, or method of construction, or...represent the work of a master, or...possess high artistic values, or...represent a significant and distinguishable entity whose components may lack individual distinction, or have yielded, or may be likely to yield, information important in prehistory or history.” 36 C.F.R. § 60.4.

⁴⁵ ADOT, South Mountain Study Team, *South Mountain Freeway Draft EIS Summary*, 1 available at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/FHWA-AZ-EIS/00-SMDEIS-Summary-Chapter.pdf

⁴⁶ ADOT, *Strategic Plan fiscal years 2013-2017*, 2011 available at http://www.azdot.gov/Inside_azdot/PDF/StrategicPlan.pdf.

⁴⁷ About ADOT, http://www.azdot.gov/Index_docs/About_ADOT.asp (last visited July 8, 2013).

⁴⁸ *Id.*

⁴⁹ Loop 202 (South Mountain Freeway), http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/index.asp (last visited July 8, 2013).

Power Administration.⁵⁰ The release of the DEIS began a 90-day public review and comment period that will conclude on July 24, 2013.⁵¹

This complaint is also timely filed because ADOT conducted a public participation process to receive public input on the proposed project, but conducted it in a way that provided GRIC tribal members, including members of GRACE, less of an opportunity to meaningfully participate in the process than non-Native people.

VI. STATEMENT OF FACTS

A. SOUTH MOUNTAIN (Muhadag, Avikwaxos)

The South Mountain, known in the Pima language as the Muhadag and in the Maricopa language, Avikwaxos,⁵² consists of the Ma Ha Tauk, Gila, and Guadalupe Mountain Ranges.⁵³ It abuts the northern territory of the GRIC and consequently, is the immediate landscape of the northern boundary of the GRIC reservation. A portion of Main Ridge North and Main Ridge South of the South Mountain is on the GRIC, and serve as the “Community’s main, direct physical link to the South Mountains”.⁵⁴ The South Mountain “figures prominently in oral traditions of both the Akimel O’Odham (River People) and the Pee Posh (Maricopa).”⁵⁵ The Akimel O’odham believe that South Mountain is where their creator immersed.

On January 6, 1982, the Gila River Indian Community Tribal Council adopted an ordinance declaring “as a matter of Community policy and legislative determination, that the public interests of the Pima-Maricopa people and the interests of all other persons living within the jurisdiction of the Gila River Indian Community require that the Community adopt a means whereby all sites, location, structures, and objects of sacred, historical or scientific interest or nature will be protected from desecration, destruction, theft, or other interference.”⁵⁶

Then in 1989, the Gila River Indian Community Tribal Council adopted a resolution to preserve the lands of their Hohokam ancestors, by approving the “Policy Statement of the Four Southern Tribes (Salt River Pima-Maricopa Indian Community, Ak Chin Indian Community, Tohono O’odham Nation, and the Gila River Indian Community) which outlines the Four Tribes intent to protect, promote, and preserve cultural affinity to the HuHuKam.”⁵⁷

On April 4, 2007, the Gila River Indian Community Tribal Council adopted a tribal resolution affirming that the South Mountain is “a sacred place / traditional cultural property ...that...must be kept inviolate”⁵⁸ thereby recording the sacredness and significance of South

⁵⁰ ADOT, South Mountain Study Team, *South Mountain Freeway Draft EIS Summary*, at 1.

⁵¹ ADOT, Loop 202 (South Mountain Freeway), http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/index.asp (last visited July 8, 2013).

⁵² Gila River Indian Community Resolution NO. GR-41-07, A Resolution Designating the South Mountain Range (Muhadag, Avikwaxos) as a Sacred Place and Traditional Cultural Property of the Gila River Indian Community.

⁵³ City of Phoenix, South Mountain Park Preserve Map, available at http://phoenix.gov/webcms/groups/internet/@inter/@rec/@parks/@parks/@nrl/documents/web_content/062880.pdf.

⁵⁴ ADOT, South Mountain Study Team, chapter 5 Section 4(f) *Evaluation p. 26* available at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/south-mountain-loop-202-docs/EIS/chapter5/chapter5.pdf.

⁵⁵ Gila River Indian Community Resolution NO. GR-41-07, A Resolution Designating the South Mountain Range (Muhadag, Avikwaxos) as a Sacred Place and Traditional Cultural Property of the Gila River Indian Community.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Mountain to the people of the GRIC and its tribal government. This important tribal resolution is attached as Exhibit A and incorporated into this complaint. The resolution states the GRIC Community Council “strongly opposes any alteration of the South Mountain Range for any purpose”...and any alteration...“would be a violation of the cultural and religious beliefs of the Gila River Indian Community and would have a negative cumulative effect on the continuing lifeways of the people of the Gila River Indian Community.”⁵⁹

Not only is South Mountain itself sacred, but there are also numerous sites with highly significant meaning and purpose to GRIC.⁶⁰ There are many ancestral burial and archeological sites, and ancient shrines.⁶¹ Further, the Colorado River Indian Tribes⁶², Salt River Pima-Maricopa Indian Community⁶³, the Ak-Chin Indian Community⁶⁴, the Tohono O’odham Nation⁶⁵, and the Pascua Yaqui Tribe⁶⁶ also hold the South Mountain sacred.⁶⁷

Much of the South Mountain is within the South Mountain Park Preserve (SMPP),⁶⁸ which is a 16,600 mile park preserve in the Sonoran desert⁶⁹ in Phoenix, Arizona. First created in 1924 during the New Deal era, 13,000 acres of the land were bought from the federal government by the city of Phoenix for a “scenic/pleasure park.”⁷⁰ Then, in 1927, the Bureau of Land Management (“BLM”) conveyed 9,200 acres of land to the City of Phoenix where some of that land was converted into the SMPP.⁷¹ Then, in April 2009, 247 acres of State Trust Land, were purchased from the Arizona Land Department.⁷² SMPP is a historic property and is eligible

⁵⁹ *Id.*

⁶⁰ For example, Red Mountain, South Back Mountain, and Sandi Muck Mountain.

⁶¹ YouTube, *South Mountain Freeway Protest*, <https://www.youtube.com/watch?v=1Mws03pJ0iE> (last visited July 8, 2013).

⁶² Colorado River Indian Tribes, <http://www.crit-nsn.gov/> (last visited July 8, 2013).

⁶³ The Salt River Pima-Maricopa Indian Community, <http://www.srpmic-nsn.gov/> (last visited July 8, 2013).

⁶⁴ Ak-Chin Indian Community, <http://www.ak-chin.nsn.us/> (last visited July 8, 2013).

⁶⁵ Tohono O’odham Nation, <http://www.tonation-nsn.gov/default.aspx> (last visited July 8, 2013).

⁶⁶ Pascua Yaqui Tribe, <http://www.pascuayaqui-nsn.gov/> (last visited July 8, 2013).

⁶⁷ The DEIS states “archaeological sites and places considered culturally important by Native American groups would be affected by any of the build alternatives. The Gila River Indian Community (GRIC) and the Salt River Pima-Maricopa Indian Community have both passed Tribal Resolutions designating the South Mountains as a TCP and the Colorado River Indian tribes have said that they also consider the South Mountains a TCP.” (South Mountain Transportation Corridor August 28, 2008 Draft Technical Report Summary Cultural Resources p. 4 available at

http://www.azdot.gov/southmountainfreeway/PDF/082808_SMCAT_CulturalResources_Summary_Final.pdf).

⁶⁸ The Trust for Public Land: Conserving Land for People, *The 150 Largest City Parks* available at

<http://cloud.tpl.org/pubs/ccpe-largest-oldest-most-visited-parks-4-2011-update.pdf>.

⁶⁹ This desert is approximately 100,000 square miles spanning from New Mexico, California, and into Southern Arizona. The Sonoran desert is one of the most diverse deserts in the world.

Further, the Sonoran desert is providing extensive ecosystem services to humans, some already identified, like climate regulation. <http://www.sonorandesert.org/> (last visited July 8, 2013).

⁷⁰ AZR, *City Commission Approves Plan For Municipal Park In Salt River Mountains*, April 6, 1924, South Mountain History, found at <http://southmountainhistory.blogspot.com/2009/05/city-commission-approves-plan-for.html>.

⁷¹ ADOT, South Mountain Study Team, chapter 5 *Section 4(f) Evaluation* at 25.

⁷² “In 1988, the planning of what became known as South Mountain 620 began. Through years of negotiating with the City of Phoenix, and after many unsuccessful auctions, the 247 acre parcel north of Chandler Boulevard was auctioned successfully on April 2, 2009 for \$18 million. The Development Agreement for the parcel provides for a preserve, fire station and park, and also paves the way for sale and development of approximately 350 acres south of Chandler Boulevard when the market recovers.” This sale was under the name of Arizona Open Space Sales. (Arizona State Agency Publications, Arizona State Land Department Annual Report 2008-2009 p. 11 available at

for listing in the National Register of Historic Places.⁷³ As stated previously, some of the South Mountain is within the GRIC’s northern territorial edge, giving the GRIC a corridor to get to other areas of the South Mountain from the reservation. As the DEIS states, the portions of the South Mountain on Community land are at the western end: the Main Ridge North and Main Ridge South. These ridges “serve as the Community’s main, direct physical link to the mountains.”⁷⁴ The SMPP, which includes the South Mountain, one of their TCPs, preserves cultural, historical, geological, and ecological resources relevant to the GILA tribal members.⁷⁵

For the GRIC, the concept of creation is not something in the past but is an ongoing process, one that they are intrinsically a part of and are obligated to participate in. The GRIC fulfill this duty through ceremonies and rituals designed to preserve and stabilize the earth. Failure to fulfill those obligations is thought to result in great harm to the earth and the people who depend on it. Ceremonies are efforts undertaken for specific purposes in accordance with instructions handed down from generation to generation. Rituals are performed in prescribed locations that are unique and specific sites possess different spiritual properties and significance.

Some traditionalists and Elders of the GRIC use portions of the South Mountain for periodic ceremonies and rituals. These are special people who are keepers of the tribal peoples’ heritage and culture who possess an essential role believed to sustain the tribal people as a whole. These ceremonies and rituals have been passed on through the ages and have been performed for ages.

Traditionalists also are people who follow the natural Native American way of living from the earth: picking and harvesting traditional cultural foods like the fruit of the saguaro⁷⁶ and medicines, and teaching and guiding the young in the cultural and spiritual ways.

B. SOUTH MOUNTAIN LOOP 202 PROPOSAL

The South Mountain Loop 202 is a proposed eight-lane, 22-mile long highway in southwestern Maricopa County, Arizona.⁷⁷ If constructed, it would be the last section of the proposed master plan Regional Freeway and Highway System first proposed in 1985 by

<http://azmemory.azlibrary.gov/cdm/compoundobject/collection/statepubs/id/2318/show/8057/rcc/15>).

⁷³ ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* p. 130 available at

http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/FHWA-AZ-EIS/04-SMDEIS-Chapter-4-Affected-Environment,-Environmental-Consequences,-Mitigation.pdf.

⁷⁴ ADOT, South Mountain Study Team chapter 5 *Section 4(f) Evaluation* at 26.

⁷⁵ City of Phoenix, South Mountain <http://phoenix.gov/parks/trails/locations/south/> (last visited July 8, 2013);

YouTube Fat Man’s Pass <http://www.youtube.com/watch?v=EhhS86uAaAc&feature=youtu.be> (last visited July 8, 2013).

⁷⁶ The saguaro is a large, tree-sized cactus species which can grow to be over 70 ft. tall. It is native to the Sonoran Desert in Arizona. The saguaro blossom is the State Wildflower of Arizona. Harming a saguaro in any manner is illegal by state law in Arizona, and when houses or highways are built, special permits must be obtained to move or destroy any saguaro affected.

⁷⁷ ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 4-9; Maricopa County has 3 interstates, 1 US route, 3 loops, and 7 state routes. (Lands of Arizona, <http://www.landssofarizona.com/County-Data-For-Maricopa-County-Arizona> (last visited July 8, 2013); Its public transportation includes a 57-mile transit system in Phoenix, Tempe, Mesa, Glendale and Chandler, which includes Local, LINK, Express and RAPID commuter bus service; Light rail; neighborhood circulators; rural route; dial-a-Ride; Vanpool service; and an online carpool and vanpool matching system. (Providing Public Transportation Alternatives for the Greater Phoenix Metro Area, <http://www.valleymetro.org/overview> (last visited June 16, 2013))

Maricopa Association of Governments (“MAG”),⁷⁵ that when connected to a surface transportation system would allegedly: “reduce increasing congestion on the Interstate Highway System in the urban core; facilitate and more effectively distribute the regional movement of goods and delivery of services; more evenly distribute traffic on the major arterial street grid and reduce regional traffic using the grid; better serve already-occurring regional traffic; provide an alternate route for pass-through traffic; provide an integrated intermodal network of freeways strategically located to accommodate local and regional land use planning; enhance local mobility by removing regional traffic from the local road network; create infrastructure to support the regional bus transit system component of the intermodal Long Range Transportation Plan (LRTP) (MAG 2001a); encourage and direct planned growth.”⁷⁹

Although the master plan Regional Freeway and Highway System has done without this last section, the DEIS asserts that this section is necessary. The DEIS sites that “over the past 40 years, Phoenix-area population, housing, and employment experienced some of the fastest growth in the nation...and from the early 1950s to the mid-1990s, population in the MAG region grew by over 500 percent.”⁸⁰ The DEIS assumes that population growth will continue at the same rate as it did between the 1950s to mid-1990s and that Maricopa County’s population will add an average of 1 million a decade from 2005-2035.⁸¹ The DEIS states that “almost 50 percent of projected increases in population, housing, and employment from 2005 to 2035 for the entire MAG region are expected to occur in the southwestern and southeastern portions of the Phoenix metropolitan area” and would benefit from the highway to get back and forth to central Phoenix.⁸² The DEIS cites public support of the South Mountain Loop by “Voter approval of the one-half cent sales tax in 1985 (Proposition 300) and its continued endorsement in 2004 (Proposition 400) for continued public support for investment in regional transportation projects; results from the Maricopa County Official Canvas (Maricopa County 2004a) that show voters in 90 percent of the county’s 1,058 voting precincts voted in favor of Proposition 400 and the

⁷⁵ ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 4; Update Regional Transportation Plan p. 71 http://www.azmag.gov/Documents/RTP_2010-Annual-Report_Final_v17.pdf; The Maricopa Association of Governments (MAG) is the metropolitan planning organization (MPO) for transportation planning in the Maricopa County region; the principal planning agency for the region in air quality and water quality; and the designated agency for developing population estimates and projections for the region. (Maricopa Association of Governments, <http://www.azmag.gov/>). The DEIS relies on MAG’s planning from 1985 and its population projections for the proposed South Mountain highway. (Arizona Department of Transportation, Strategic Plan fiscal years 2013-2017 http://www.azdot.gov/Inside_azdot/PDF/StrategicPlan.pdf)

⁷⁹ ADOT, South Mountain Study Team, chapter 1 *Purpose and Need* p. 4 available at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/FHWA-AZ-EIS/01-SMDEIS-Chapter-1-Purpose-and-Need.pdf; ADOT’s Long Range Transportation Plan: 2010-2035 includes a list of roadway projects ordered in importance, with the South Mountain Loop taking third place. The first two are for the Hassayampa Freeway, which is part of the CANAMEX Trade Corridor, route going through Arizona, Nevada, Utah, Idaho, and Montana, and linking to the Canadian province of Alberta and the Mexican states of Sonora, Sinaloa, Nayarit, and Jalisco. It is argued by PARC, and others, that if South Mountain is created, it will be used by truck drivers looking for a bypass to more easily get through the Maricopa area; something ADOT asserts is not the purpose of the loop. Even if it is not the purpose of the loop, it would be a result of the South Mountain Loop: Since the CANAMEX route has not been put in and there is a route put in that is better than the existing roadways, truckers will use it.

⁸⁰ ADOT, South Mountain Study Team, *Summary* at 5; Maricopa County is the most populated county in Arizona and it is also one of the largest counties in the United States, and Phoenix, the state’s capital, is its largest city. (Maricopa’s population was 3,817,117 in 2010. (United States Census Bureau, 2010 Demographic Profile <http://www.census.gov/popfinder/> (last visited June 17, 2013)).

⁸¹ ADOT, South Mountain Study Team, *Summary* at 5.

⁸² *Id.* at 5-6.

projects it would fund; and voters in 81 percent of the 31 voting precincts in the Study Area favored Proposition 400 and the projects it would fund.”⁸³

The DEIS also asserts that pollution will actually be reduced, ultimately improving air quality with the South Mountain Loop 202. The stated reason for this viewpoint is that the problem with the existing roadways is traffic and congestion. With the South Mountain Loop 202, some cars would have an alternative route for driving back and forth to downtown Phoenix.

The DEIS lays out several options, called “action alternatives” to choose from for implementing the proposal.⁸⁴ One action alternative is a no-build.⁸⁵ The DEIS evaluation concluded that the No-Build Alternative would not satisfy the projects purpose and need: the purpose and need are based on socioeconomic factors (population, housing, and employment projections); regional transportation demand (traffic and congestion); and existing and projected transportation system capacity deficiencies (present and future transportation system management, transportation demand management, transit, street network expansion, land use, and a combination of the transportation systems).⁸⁶ The DEIS states that with population growth, and its resulting increase in traffic and congestion, and even future alternative freeway modes that have been planned and would likely be funded, like for example, increasing bus routes, could not solve the purpose and need that the South Mountain Loop would fulfill. Chapter 3 states that “These alternatives alone would have limited effectiveness in reducing overall traffic congestion in the Study Area and, therefore, would not meet the purpose and need criteria; specifically, they would not adequately address projected capacity and mobility needs of the MAG region...Based on projected regional travel demand and the extent of mobility needs of the MAG region and in the Study Area, arterial street network improvements alone would not meet the needs of the MAG region; and The Land Use Alternative is not a viable alternative because no plans exist to alter planned land uses in the region.”⁸⁷

The build options consist of choosing one western alternative -W59, W71, and W101- and the one available eastern action alternative - E1.⁸⁸ All western alternatives begin at I-10 (Papago Freeway) and proceed east to a common point to all on an alignment parallel and adjacent to the GRIC boundary. All alternatives would cross Union Pacific RR, Salt River, Roosevelt Canal, Laveen Area Conveyance Channel, and all require I-10 improvement.⁸⁹

There is only one eastern alternative because the only other alternative that ADOT had considered was a route on GRIC land, which the GRIC rejected. DEIS states “the E1 Alternative is the only action alternative developed for the Eastern Section. Despite efforts by ADOT and FHWA to seek permission to study an alternative in detail on Community land, permission has not been granted. Therefore, ADOT, with concurrence from FHWA, identified the E1 Alternative as its Preferred Alternative in the Eastern Section.”⁹⁰

⁸³ ADOT, South Mountain Study Team, Chapter 1 *Purpose and Need* at 9.

⁸⁴ ADOT, South Mountain Study Team, *Summary* at 4.

⁸⁵ *Id.* at 8.

⁸⁶ ADOT, South Mountain Study Team, chapter 1 *Purpose and Need* at 11-13.

⁸⁷ ADOT, South Mountain Study Team, Chapter 3 *Alternatives* p. 3 available at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/south-mountain-loop-202-docs/EIS/chapter3/chapter3.pdf.

⁸⁸ ADOT, South Mountain Study Team, *Summary* at 8; 38; Maricopa County is the most populated county in Arizona and it is also one of the largest counties in the United States.

⁸⁹ ADOT, South Mountain Study Team, Chapter 3 *Alternatives* at 48.

⁹⁰ ADOT, South Mountain Study Team, *Summary* at 38.

The DEIS states: “based on the alternatives screening process, environmental impacts assessment, and stakeholder input, ADOT, with the concurrence from FHWA⁹¹, identified the W59 Alternative as its Preferred Alternative in the Western Section and the E1 Alternative the Eastern Section.⁹¹ This “preferred” route would be down Pecos Road in the Ahwatukee Foothills, through the western portion of the South Mountain Preserve, including through the South Mountain itself, and up 59th Avenue through Laveen.⁹² The DEIS approximates that 31.3 of the 16,600 acres of the SMPP would be taken for the proposed highway and 0.9 mile of Loop 202 would pass through the southwestern edge of South Mountain.⁹³ Cuts to South Mountain would be a 220-foot cut through one ridge, a 190-foot cut to another, and a 70-foot cut to a third for an estimated cost of \$30 million.⁹⁴

C. ADOT AND THE DEIS ACKNOWLEDGE SACRED AND CULTURAL SIGNIFICANCE OF SOUTH MOUNTAIN

The DEIS acknowledges that the South Mountain is sacred to the GRIC, is a TCP⁹⁵, and further, is National Register of Historic Places (“NRHP”)–eligible. The DEIS indicates that ten locations have been identified by GRIC as places of cultural importance: the South Mountains, two prehistoric village sites, an active shrine site, two prehistoric petroglyph sites, and four prehistoric trail sites, which qualify as NRHP-eligible TCPs.⁹⁶ The NRHP eligibility of two of the properties was confirmed by FHWA through consultation with the GRIC.⁹⁷ Five TCPs have been identified within the project area of “potential effects”. The DEIS specifically states that the South Mountains were determined eligible for NRHP listing as a TCP under Criteria A and B.⁹⁸

The DEIS states: “the Community has expressed to ADOT and FHWA its concerns about an alignment through the South Mountains and the irreversible impacts on the South Mountains from the proposed action. To the Community, the South Mountains are part of a continuum of life and not an individual entity that can be isolated and analyzed.”⁹⁹

The DEIS further acknowledges that the GRIC is opposed to any destruction of the South Mountain. It states “the mountains are considered sacred—playing a role in tribal cultures, identities, histories, and oral traditions—and appear in many creation stories. Many traditional

⁹¹ ADOT, South Mountain Study Team, Chapter 3 *Alternatives* at 65, 69.

⁹² ADOT, South Mountain Study Team, *Summary* at 35.

⁹³ *Id.* at 13.

⁹⁴ Allison Hurtado, Ahwatukee Foothills News, *Environmental impact: Groups have big concerns about South Mountain Freeway* July 3, 2013 http://www.ahwatukee.com/news/article_115f9b36-e3a0-11e2-8a62-0019bb2963f4.html (last visited 7/3/13).

⁹⁵ ADOT, South Mountain Study Team, *Summary* at 39.

⁹⁶ ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 140.

⁹⁷ *Id.*

⁹⁸ *Id.* Under Criteria A, properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of American history and under Criteria B, properties may be eligible for the National Register if they are associated with the lives of persons significant in American past.

(National Register Bulletin, How to Apply the National Register Criteria for Evaluation 1997

<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf> (last visited June 23, 2013).

⁹⁹ ADOT, South Mountain Study Team, Chapter 5 *Section 4(f) Evaluation* at 5-26.

religious and ceremonial activities continue on the mountains.”¹⁰⁰ Further, ADOT is aware that GRIC prefers the no-build alternative.¹⁰¹

The DEIS states that their preferred-action alternative would cut through the South Mountains resulting in removing two archaeological sites identified as contributing components of the South Mountains TCP, (considered NRHP-eligible under Criteria A and D); modif(ing) the spiritual landscape of Native peoples; altering access by Native American groups to culturally important places; interfering with ceremonial practices and religious activities of some Native American groups.¹⁰²

The DEIS also states: “two contributing components to the TCP are located within the Study Area, one of which is considered NRHP-eligible under Criterion A. The first site is...unique and possibly associated with traditional religious and ceremonial activities associated with the South Mountains. The second site is situated within the South Mountains TCP. These sites continue to function in the living Akimel O’odham and Pee Posh communities and often serve as spiritual places (Tribal Historic Preservation Officer [THPO] response [not concurrence] regarding NRHP-eligibility of the South Mountains as a TCP and its contributing components was received on August 17, 2011; consultation is ongoing).”¹⁰³

Further, the DEIS acknowledges that the portions of the South Mountains on GRIC located on the western end serve as the “Community’s main, direct physical link to the mountains.”¹⁰⁴ Further, it states, “the E1 Alternative would result in direct use of the TCP. Approximately 3 miles of freeway alignment would pass through the mountains and would affect the southern and southwestern portions of the TCP.”¹⁰⁵

Further, the DEIS states “While the conversion and permanent loss of part of the mountains to a transportation use by the proposed action is a concern, related Community-expressed concerns focus on impacts on history, culture, traditions, and the ability to maintain and continue the cultural identity of the communities...Within the context of the TCP, the proposed action would be a physical barrier on the landscape, altering traditional access to sacred sites, disrupting traditional cultural practices, and degrading the overall integrity of the cultural tradition and identity. Even with mitigation, implementation of the proposed action would alter the direct physical connection Community members have between their homeland and the South Mountains and would restrict the ability to visit or use these locations in a traditional cultural manner.”¹⁰⁶

After stating all of the above, the DEIS states that “the E1 Alternative was designed in such a way as to avoid a site that is a contributing element to the South Mountains TCP, resulting in no direct use of this TCP element. A R/W fence would limit access to the site by freeway

¹⁰⁰ ADOT, South Mountain Study Team, *Summary* at 39.

¹⁰¹ In a letter to ADOT’s Director John Halikowski in 2010, GRIC stated “despite our desire for a no-build option...the Community is willing to assist ADOT in studying potential On-Reservation alignments” in an effort to “mitigate cultural impacts to Muadag (South Mountain).” (GRIC Executive Office of the Governor & Lieutenant Governor, January 27, 2010 letter to ADOT, John Halikowski).

¹⁰² ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 129-132.

¹⁰³ ADOT, South Mountain Study Team, Chapter 5 *Section 4(f) Evaluation* at 26.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 27.

users, but Community members would continue to gain access to the site as they currently do.¹⁰⁷

Nevertheless, the DEIS then states, “even with mitigation, implementation of the proposed action would alter the direct physical connection Community members have between their homeland and the South Mountains and would restrict the ability to visit or use these locations in a traditional cultural manner.”¹⁰⁸

The DEIS later states, “alternatives to avoid use of the South Mountains TCP were evaluated and determined to be not prudent and feasible.”¹⁰⁹

The DEIS states that besides the South Mountain itself, another TCP would be affected. Although not physically damaged by the construction of the South Mountain Loop, this TCP would be affected by highway related consequences, i.e. noise. The DEIS states: “AZ T:12:112 (ASM) is used by contemporary Community members actively exercising their traditional religious and ceremonial practices and beliefs. The site and its use are part of a broad pattern of traditional religious and ceremonial practices and beliefs that defined the cultural identity, continuity, and traditions of the Akimel O’odham. Therefore, the site is eligible for listing in the NRHP under Criterion A as a TCP.” However, it states, this “resource does not have noise-sensitive activities or viewshed characteristics that contribute to its importance as a Section 4(f) resource. Therefore, according to 23 C.F.R. § 774.15, no further analysis of these proximity impacts to determine whether they would substantially impair the resource is necessary.”¹¹⁰

The DEIS concludes, “in summary, the intrusion of the proposed freeway into the South Mountains, including especially the cuts into three ridgelines, would likely be perceived as severe by many members of the Community. The above measures have been and/or would be undertaken to avoid, reduce, or otherwise mitigate impacts on the South Mountains TCP and on AZ T:12:112 (ASM). The proposed freeway would be located in an area used frequently by members of the Community, one that provides direct access to the South Mountains. Thus, the proposed action would adversely affect physical access to the TCP and adversely affect another TCP within the South Mountains TCP. Perhaps more important to members of the Community, the proposed action might be perceived as severing the Community’s spiritual connection to the mountain.”¹¹¹

VII. ARGUMENT

Discrimination against people on the basis of color, race, or national origin is prohibited under Title VI. Title VI provides that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹¹² One form of discrimination prohibited is action that causes a disparate impact on a protected class of people. For the DEIS to move forward, it cannot violate Title VI.¹¹³ However, if the South Mountain Loop 202 is constructed, the distribution of negative impacts

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 28.

¹¹¹ *Id.*

¹¹² 42 U.S.C. § 2000d.

¹¹³ ADOT, South Mountain Study Team, *Summary* at 12.

and burdens¹¹⁴ would be highly unequal to the GRIC and for the foregoing reasons, Title VI was violated by ADOT because:

- the proposed route through South Mountain would knowingly, improperly, and illegally desecrate a site with profound sacred and spiritual significance resulting in an unjustifiable disparate impact on the GRIC;
- construction and the effects of vehicle and truck traffic on the proposed South Mountain Loop 202 would result in pollution causing disproportionate cumulative health effects causing a disparate impact on the GRIC and its tribal members, including members of GRACE, and;
- inadequate consultation and inadequate process was given to the GRIC.

A. SOUTH MOUNTAIN LOOP 202 DISPARATE CUMULATIVE SPIRITUAL AND CULTURAL EFFECTS ON THE GRIC, INCLUDING GRACE COMPLAINANTS

GRIC grievances about the proposed South Mountain Loop 202 have common themes. Like the following, they identify the great cultural and spiritual meaning the South Mountain signifies to the GRIC: “our people feel that the mountain is a sacred place and we should respect it.”¹¹⁵ “we need to protect it because that mountain is sacred to our people,”¹¹⁶ you don’t know what it means to us having the mountain there, it won’t be the same if it should be gone,”¹¹⁷ and “when I was younger I recall being taught about our people’s heritage...I remember being taught by my elders that we come from South Mountain.”¹¹⁸ See attachments. Another GRIC tribal member stated “as we were growing up we were taught that our land was sacred and that we need to protect it at all cost. South Mountain...is one of our sacred mountains.”¹¹⁹ See attachment. Plainly put, construction of the South Mountain Loop 202 would desecrate a natural landscape with profound sacred and spiritual significance to the GRIC. One GRIC tribal member wrote that “my connection to South Mountain is that it is a very sacred place to me and my people.”¹²⁰ See attachment. Another said “it is a sacred mountain to our people...and...it was most sacred to our ancestors...there are stories about that mountain I was told by my elders, and there are plants that grow on this mountain that we use today for healing, eating, and blessings.”¹²¹ See attachment.

Cutting and blasting the South Mountain to place a highway through it would result in a major disparate impact on the GRIC. One tribal member stated “the mountain is central to the

¹¹⁴ This is not the first time that the GRIC would have to carry the burden of a transportation project. Arizona “renewed on promises to build interchanges and frontage roads on Interstate 10, which ADOT had offered in return for allowing an interstate to bisect the reservation.” (Sean Holstege, *The Republic, 1998 plan for South Mountain Freeway passed*, March 25, 2013 <http://www.azcentral.com/community/ahwatukee/articles/20130308south-mountain-freeway-plan-ignored.html> (last visited July 11, 2013)). Further, the GRIC just recently got reimbursed by ADOT for allowing I-10 on the reservation.

¹¹⁵ Beonka Thomas, GRIC tribal member, Aff. July 3, 2013.

¹¹⁶ Laverne Thomas, GRIC tribal member, Aff. July 8, 2013.

¹¹⁷ Stephanie Thomas, GRIC tribal member, Aff. July 8, 2013.

¹¹⁸ Laura Thomas, GRIC tribal member/GRACE member, Aff. ¶ 2.

¹¹⁹ Daniel Hernandez, GRIC tribal member Aff. ¶ 1.

¹²⁰ Nicole Johns, GRIC tribal member Aff. ¶ 1 June 29, 2013.

¹²¹ Winnona Catha, GRIC tribal member Aff. ¶ ¶ 1-2 July 2, 2013.

O'odham creation story and continues to be a place to hold ceremonies by and for the O'odham people. The mountain is also sacred to us because of the plant life we use for medicinal and ceremonial purposes and also because of the wildlife we hunt to sustain ourselves. The construction of this freeway would greatly harm the wellbeing of the mountain and therefore will bring harm to the O'odham."¹²² See attachment.

South Mountain is a very major and significant part of the GRIC spiritual and cultural life. It is a place of importance with esteemed meaning: it is associated with integrity, strength, patience and offers innumerable cultural and spiritual benefits to the GRIC. It has been there on the landscape and has withstood time and the elements in good and bad times with generations of GRIC ancestors. Becoming a major historical and spiritual theme in the GRIC's lives, stories, teachings, rituals, ceremonies, and medicines are derived from South Mountain. One tribal member stated "South Mountain is important to me because it's part of our heritage. There are many teachings that go with that mountain. Stories and songs that our generations to carry on."¹²³ See attachment. Another stated "according to our oral history South Mountain is a sacred mountain to our people. Akimel O'odham legends and stories talk about South Mountain being the home of the deity for our tribe. There are also stories about artifacts and petroglyphs from our ancestors the Hohokam located on South Mountain."¹²⁴ See attachment. Another GRIC tribal member stated "Oral history and legends state that South Mountain is the home of "Elder Brother" (I'ittoi) deity of the Akimil O'odham Tribe (Gila River Indian Community Tribe). South Mountain was also once inhabited by our ancestors the Hohokam. The Hohokam has been acknowledged by archeologist, anthropologist and historians to be one of the first settlers of this region. South Mountain is also a place of worship, sacred ceremonies are performed, prayer and blessings are given and shrines are built to honor I'ittoi and our ancestors."¹²⁵ See attachment.

Disturbing South Mountain would be desecrating it and desecrating it would be harming the GRIC itself—"to take the South Mountain away is a great impact to the Gila River Indian Community. It would be losing a part of us even more."¹²⁶ See attachment. "To hear of this mountain being destroyed has put a great hurt in my spiritual life...The mountain has given me much in my life. It has kept me strong, sane, peaceful, and healthy."¹²⁷ See attachment. Much harm would occur because this significant historical and cultural site that has been handed down through the generations is rich with the past: its heritage reaches into the present and connects with the GRIC living today. One tribal member stated "I have a very strong connection to South Mountain. In my late teens I left my hometown of Ajo, Arizona to attend Arizona State University. As a young woman far from home it was a difficult adjustment to live in the city, but going to South Mountain helped with this transition...as a young mother raising a child in the late sixties/early seventies, I often went to south Mountain to meditate when times became tough or if I was unable to return to Gila River for family emergencies. South Mountain has always made me feel closer to home and closer to my O'odham Himdag."¹²⁸ See attachment.

¹²² Renee Jackson, GRIC tribal member Aff. ¶ 2.

¹²³ Fairietta Morago, GRIC tribal member Aff. ¶ 1.

¹²⁴ Peggy Mae Morago, GRIC tribal member Aff. ¶ 2 July 6, 2013.

¹²⁵ Joseph Morago, GRIC tribal member/GRACE member, Aff. ¶ 2 July 22, 2013.

¹²⁶ Fairietta Morago, GRIC tribal member Aff. ¶ 1.

¹²⁷ Bernadette Stevens, GRIC tribal member Aff. ¶¶ 4-5 July 2, 2013.

¹²⁸ Peggy Mae Morago, GRIC tribal member Aff. ¶ 2 July 6, 2013.

GRIC and GRIC tribal members in GRACE¹²⁹ have repeatedly and publicly communicated the sacred significance of South Mountain, while at the same time, opposing ADOT's actions and the South Mountain Loop 202 project. However, ADOT has consistently ignored these communications and continued its efforts to plan the South Mountain Loop 202 through the South Mountain. One tribal member lamented "you may see the Mountain as an obstacle! But we see it as a refuge for our animals, a place where we can take our children and teach them our culture. It may not seem like a lot but the Mountain means so much to our community."¹³⁰ See attachment.

In April 29, 2008, the Arizona Republic published an article entitled, *Gila resolution calls freeway path 'sacred land'*.¹³¹ The article reads: "The (GRIC) council in April 2007 designated the South Mountain Range as "a sacred place/traditional cultural property" that must not be violated. The council said any alteration of the range "for any purpose would be a violation of the cultural and religious beliefs of the Gila River Indian Community."¹³²

Nevertheless, ADOT's August 2008 Draft Technical Report Summary states "direct impacts on cultural resources from construction could result in their partial or total loss."¹³³ It goes on to state "archaeological sites and places considered culturally important by Native American groups would be affected by any of the build alternatives. The Gila River Indian Community (GRIC) and the Salt River Pima-Maricopa Indian Community have both passed Tribal Resolutions designating the South Mountains as a TCP and the Colorado River Indian tribes have said that they also consider the South Mountains a TCP. The Federal Highway Administration (FHWA) and the Arizona Department of Transportation (ADOT) recognize the South Mountains as a TCP."¹³⁴

During a MAG public comment meeting on the South Mountain Loop 202 on December 21, 2009, GRIC tribal members and supporters pled with the government association to stop their plans to go through the South Mountain and "respect the heritage of their peoples."¹³⁵ With a banner outside stating "standing against those who ruin the land" tribal members expressed their "deep and abiding love" for South Mountain and their "responsibility to protect" it for their ancestors and future generations.¹³⁶ One youth stated: "this pressure has to stop...we had a river taken away...our lands have been reduced enough...our ancestors should not have had to go through what they did for a highway to go basically past their cemetery."¹³⁷ A speaker from Protecting Arizona's Resources and Children ("PARC") pointed out that GRIC at that time was

¹²⁹ GRACE has spent extensive time and resources during the planning and preparing of the DEIS by attending the various South Mountain Freeway meetings, speaking out to the media communicating the sacredness of the South Mountain, and urging the government to choose an alternative transportation mode that would not desecrate the GRIC's cultural heritage.

¹³⁰ Daniel Hernandez, GRIC tribal member Aff. ¶ 1.

¹³¹ Colleen Sparks, The Arizona Republic, *Gila resolution calls freeway path 'sacred land'* Apr. 29, 2008 found at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/articles/PDF/042908AZREP.pdf.

¹³² *Id.*

¹³³ ADOT, South Mountain Transportation Corridor Study Citizens Advisory Team Draft Technical Report Summary Cultural Resources August 28, 2008 p. 2 available at http://www.azdot.gov/southmountainfreeway/PDF/082808_SMCAT_CulturalResources_Summary_Final.pdf.

¹³⁴ *Id.* at 4.

¹³⁵ YouTube, South Mountain Freeway Proposal - Public Comments pt 1, Dec. 21, 2009

<https://www.youtube.com/watch?v=1Mws03pJ0iE> (last visited June 17, 2013).

¹³⁶ *Id.*

¹³⁷ *Id.*

being pressured to permit a highway either through their limited reservation or through sacred ancestral land abutting their reservation –both of which have sacred and traditional values.¹³⁸

Also in that meeting, GRIC tribal members shared how their ancestors are a part of the “sacred territory” of South Mountain and how the tribal members of GRIC continue to be defined by it.¹³⁹ One tribal member expressed his concern that this desecration was “just another attempt to take more land” from indigenous people, whose historical legacy was one of losing more and more of their land by non-indigenous people.¹⁴⁰ He further shared with the audience how South Mountain is where their “creator started” and reiterated that it is a “sacred area that cannot be touched.”¹⁴¹ Another speaker stated his elders taught him that South Mountain “can’t be disturbed and if disturbed, would cause problems” to the world.¹⁴² Another stated that “this (cultural land of his ancestors) is what binds us together”; and another stated that “desecration of the South Mountain would break and kill them.”¹⁴³ Another pointed out to the audience the compromises the tribal members have already had to make like having to tolerate sacred places in the SMPP being desecrated with graffiti and trash.¹⁴⁴ She said it was unfair and wrong that now they are expected to permit their sacred South Mountain to be bulldozed for a highway.

GRACE co-founder, Lori Riddle, also spoke to the audience during the 2009 MAG public comment meeting. She stated that GRACE was opposed to the project because the proposal “imped(s) on fundamental ‘cultural sensitivities’ of indigenous peoples of the GRIC.”¹⁴⁵ Further she said, the GRIC “honor the land...honor the mountains.”¹⁴⁶ This is where they “pray...fast...prepare...gather...strength.”¹⁴⁷ This is “a heritage that goes back hundreds and thousands of years.”¹⁴⁸ Frustrated with ADOT’s failure to respect tribal concerns about the proposed desecration of the sacred mountain, Riddle had to say once again “the community has already chose(n) not to have a highway.”¹⁴⁹

The November, 11, 2009, Ahwatukee Foothills News article, *Questions remain on blasting into South Mountain*, questioned the soundness of “blasting through...major ridges of South Mountain in the park, which the Gila River Indian Community (GRIC) considers sacred.” It went on to quote Shannon Rivers, a member of GRIC, who said that the South Mountain “has burial sites, archeological sites and shrines.” The article also quoted Lori Riddle’s concerns with cutting into the ridges of the sacred South Mountain. Riddle stated, “when they talk about

¹³⁸ *Id.* In 2009, a route through the reservation was being pressured on the GRIC.

¹³⁹ YouTube, South Mountain Freeway Protest, <https://www.youtube.com/watch?v=1Mws03pJ0iE> (last visited June 17, 2013).

¹⁴⁰ YouTube, South Mountain Freeway Proposal - Public Comments /Part 1 found at <http://www.youtube.com/watch?v=tZ8MWtOX8eQ>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*; Only certain tribal members are allowed even in the sacred places and only certain tribal members knowledgeable and skilled do ceremonies in the sacred places.

¹⁴⁵ YouTube, South Mountain Freeway Proposal - Public Comments /Part 2 Dec. 21, 2009, <https://www.youtube.com/watch?v=zGW3Lwba15Y> (last visited June 17, 2013).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

blasting the mountain, it hurts... It’s totally going to change the area and people don’t realize that.”¹⁵⁰

In a 2010 Environmental Assessment for a tower site on South Mountain, the Arizona Department of Game and Fish reported the sacredness of the South Mountain. It stated “the Gila River Indian Community and Salt River Pima-Maricopa Indian Community have passed resolutions declaring the South Mountains to be a sacred place/traditional cultural property because of the prominent role the mountains have in oral traditions and songs of the Akimel O’odham (Pima) and Pcc Posh (Maricopa) tribes.”¹⁵¹

On January 21, 2011, the Ahwatukee Foothills News published, *Gila River Tribe: Sacred Sites On South Mountain Top Issue In 202 Debate*, which stated “foremost on the mind of Gila River Indian Community members are the sacred sites and shrines on South Mountain that would be destroyed if plans to blast a freeway through the mountain proceed...The No. 1 concern by far is the desecration of that mountain...there are a number of areas of cultural significance that would be compromised. There are a number of cultural sites throughout the entire mountain.”¹⁵²

Further, in a 2012 press release, Lori Riddle of GRACE stated: “This project would harm the physical and spiritual integrity of Muhadag Do’ag (South Mountain) and traditional cultural properties associated with the mountain.”¹⁵³ “Many of the affected mountains in the South Mountain Range are sacred homelands of the O’odham people.”¹⁵⁴ “That is why the people in the Gila River Indian Community voted against having it on our lands and why we oppose the alignment that would cut through the mountain.”¹⁵⁵

In 2013, in an interview on 91.5 KJZZ, Riddle spoke again stating: “I know people try to diminish that (sacredness of the mountain to the GRIC tribal members), but it’s a freedom of religion that we have all rights to, and we feel like they are taking that freedom away from us.”¹⁵⁶

¹⁵⁰ Doug Murphy Ahwatukee Foothills News, *Questions remain on blasting into South Mountain*, Nov. 11, 2009 found at

http://www.azdot.gov/southmountainfreeway/PDF/20091111_questionsremaininblastingintosouthmountain.pdf.

¹⁵¹ EA, Finding of No Significant Impact for South Mountain Tower, found at

http://www.ntia.doc.gov/legacy/psid/AZ_1.02f_South%20Mtn_EA%20and%20FONSI%20package_signed.pdf.

¹⁵² Ari Cohn, Ahwatukee Foothills News, *Gila River Tribe: Sacred Sites on South Mountain Top Issue In 202 Debate*, January 21, 2011 found at <http://www.azdot.gov/southmountainfreeway/PDF/012111AFN.pdf>.

¹⁵³ Sierra Club, *New Sierra Club Report Identifies How the Nation’s Best and Worst Transportation Projects Will Move the US Beyond Oil, or Keep Us Shackled to the Pump. South Mountain Freeway Makes the List of Worst Projects*, December 11, 2012 found at

http://www.arizona.sierraclub.org/pr_and_alerts/pr_and_alerts_2012/alert_12-11-12.asp (last visited July 10, 2013).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Steve Shadley, *South Mountain Freeway proposal gets mixed reviews at a public hearing*

May 21, 2013 <http://www.kjzz.org/content/1305/south-mountain-freeway-proposal-gets-mixed-reviews-public-hearing> (last visited July 1, 2013); The Free Exercise Clause of the First Amendment states that Congress shall not pass laws prohibiting the free exercise of religion; GRACE also argues that ADOT’s action to desecrate South Mountain is a violation of the United States trust responsibility with the Native Americans based on the fact that no analysis of ADOT’s action is made in light of the American Indian Religious Freedom Act (“AIRFA”). The AIRFA of 1978 declares that it is the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. (Pub. L. No. 95-341 (codified in part at 42 U.S.C. § 1996)). AIRFA provides land managers with the authority to take action to protect sacred lands. (Dean Suagee and Jack Trope, *Native Sacred Places Protection Legal workshop*, revised 2/11/2008 P. 13). AIRFA requires policies of all governmental agencies to eliminate interference with the free exercise of Native religion, based on the First Amendment, and to accommodate access to and use of religious sites to the extent that the use is practicable and is

B. SOUTH MOUNTAIN LOOP 202 DISPARATE CUMULATIVE HEALTH AND ENVIRONMENTAL EFFECTS ON THE GRIC, INCLUDING GRACE COMPLAINANTS

With approximately 67,000 cars travelling daily between Phoenix and Tucson on Interstate 10 (one of the three interstate highways that serves as the through-routes for nearly all truck traffic) only a small fraction of those cars are driven by tribal members.¹⁵⁷ However, because approximately 25 miles of Interstate 10, two lanes in each direction, is running through the GRIC, pollution is being created and emitted onto the GRIC.¹⁵⁸ The GRIC assert that this is its single biggest source of air pollution in the community.¹⁵⁹ There are also several million cars owned by people who live, work, and commute within the greater Phoenix area, causing pollution, while car ownership in GRIC is low because GRIC members work and live in the same districts.¹⁶⁰ The GRIC even goes as far to encourage customers to use buses from the near-by urban areas on a regular basis to reduce single occupancy car traffic to its Casinos.¹⁶¹ However, even with this proactive approach to the environment, the 2005 Joint Air Toxics Assessment Program (JATAP) report shows that GRIC has high Particulate Matter (“PM”) and Volatile organic compounds (VOC) in its air.¹⁶² The South Mountain Loop 202 would be yet another source of pollution not created by the GRIC but affecting the GRIC.

Maricopa County has struggled to meet the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM).¹⁶³ The American Lung Association’s State of the Air 2013, gave Maricopa County a grade of F for the period between 2009-2011 in High Particle Pollution 24-hr days.¹⁶⁴ It also ranked Phoenix-Mesa-Glendale, AZ 18th in Most Polluted by Year-Round Particle Pollution (Annual PM 2.5) and 21st in Most Polluted by Short Term Particle

not inconsistent with an agency’s essential functions. (Canby, John C. Jr., *American Indian Law in a Nutshell*, pg. 339, 340 1988 West Publishing Company). The Merriam Webster dictionary defines practicable as “capable of being put into practice or of being done or accomplished: feasible.” (Merriam-Webster, <http://www.merriam-webster.com/dictionary/practicable>. (last visited June 13, 2013)) Here FDOT and ADOT’s essential functions are not compromised by not going through South Mountain. Further, there are practicable and feasible alternatives to going through South Mountain like expanding existing highways and developing the public transit systems.

¹⁵⁷ GRIC Response to EPA, *Gila River Indian Community Response to EPA’s Nine Factors Requirement for Designation of PM-2.5 Under the National Ambient Air Quality Standards*, p. 4 Jan. 4, 2011, found at <http://www.regulations.gov/#!documentDetail,D=EPA-HQ-OAR-2010-0163-0016>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Hilary R. Hafner Analysis of Air Toxics Collected As Part of The Joint Air Toxics Assessment Project Dec. 2006 found at <http://www.epa.gov/ttnamti1/files/20032004csatam/FinalreportJATAP2005.pdf>.

¹⁶³ Paul Atkinson, *2011 record year for Maricopa County air pollution* 91.5 KJZZ, Feb. 24, 2012 <http://www.kjzz.org/content/1202/2011-record-year-maricopa-county-air-pollution> (last visited July 11, 2013); Phoenix has one of the worst air pollution problems in the nation. Mother Nature Network, *7 U.S. cities with the worst air pollution*, <http://www.mnn.com/health/healthy-spaces/photos/7-us-cities-with-the-worst-air-pollution/phoenix> (last visited July 11, 2013).

¹⁶⁴ American Lung Association, *State of the Air 2013*, found at <http://www.lung.org/associations/states/california/assets/pdfs/sota-2013/sota-2013-full-report.pdf>.

Pollution (24-hour PM 2.5).¹⁶⁵ According to the EPA Green Book, Maricopa County has been in nonattainment in Particulate Matter (PM)-10 since 1992.¹⁶⁶

PM-10 is a “complex mixture of extremely small particles and liquid droplets...made up of a number of components, including acids..., organic chemicals, metals, and soil or dust particles.”¹⁶⁷ PM-10 are “inhalable coarse particles,” that can be found near roadways and dusty industries.¹⁶⁸ They can affect the heart and lungs and cause serious health effects.¹⁶⁹ Those most at risk to PM-10 are people with heart or lung disease¹⁷⁰, older adults, children, and physically active people.¹⁷¹ People with diabetes may also be at risk.¹⁷² Further, new studies suggest that exposure to high particle levels may also be associated with low birth weight in infants, pre-term deliveries, and possibly fetal and infant deaths.¹⁷³ Long-term exposures have been associated with problems such as reduced lung function and the development of chronic bronchitis and even premature death.¹⁷⁴ Short-term exposures to particles can aggravate lung disease, causing asthma attacks and acute bronchitis, and may also increase susceptibility to respiratory infections.¹⁷⁵

Almost every one of the PM-10 exceedances has been detected at the air quality monitor at 43rd Avenue and Broadway Road. Because the air is already heavily polluted, the placement of a freeway about a mile and a half upwind from this monitor will have a disparate impact on the health and welfare of the GRIC, who are situated next to the proposed site. The GRIC has the highest level of diabetes in the nation; those with diabetes are more susceptible to irritation from PM-10 and more susceptible to other medical conditions.

Additionally, during the construction phase, thousands of tons of dirt would be moved around upwind of the 43rd Avenue and Broadway Road monitor causing increased levels of PM. The proposed path of the South Mountain Loop 202 would cause PM over the Salt River bed, where extensive earthmoving will be necessary for the construction of the bridges. Blasting South Mountain would also release enormous amounts of PM, and the natural wind currents and prevailing wind patterns would push this PM toward the air monitor at 43rd Avenue.

Because people are contracting Valley Fever (Coccidioidomycosis) in Southern Arizona (especially in the Phoenix and Tucson areas),¹⁷⁶ Valley Fever is a threat. The two species of coccidioides fungi that cause Valley Fever are commonly found in the soil of specific areas, one of which is Arizona’s Sonoran desert, and are stirred into the air by anything that disrupts the soil like construction.¹⁷⁷ Moreover, Native Americans are more susceptible to developing serious

¹⁶⁵ *Id.* at 13-15.

¹⁶⁶ Nonattainment Status for Each County by Year for Arizona As of December 14, 2012 http://www.epa.gov/oaqps001/greenbk/anay_az.html (last visited June 24, 2013).

¹⁶⁷ EPA, Particulate Matter (PM) <http://www.epa.gov/airquality/particulatepollution/> (last visited 6/24/13).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ In people with heart disease, short-term exposures have been linked to heart attacks and arrhythmias.

¹⁷¹ Air Now, Particle Pollution and Your Health http://airnow.gov/index.cfm?action=particle_health.page1#2 (last visited June 24, 2013).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ The University of Arizona, Valley Fever Center for Excellence, <https://www.vfce.arizona.edu/ValleyFeverInPeople/WhoGetsIt.aspx> (last visited June 24, 2013).

¹⁷⁷ Mayo Clinic, Definition: Valley Fever, <http://www.mayoclinic.com/health/valley-fever/DS00695> (last visited July 1, 2013).

infection from it than are whites.¹⁷⁸ If the South Mountain Loop 202 is constructed there would be a real risk to the members of the GRIC.

The GRIC would also be disparately affected by negative environmental consequences to its agriculture sector. Agriculture plays an important role for the GRIC and is a major sector in GRIC's economic development plan. "15,000 acres of Community farms on the GRIC support a variety of crops such as cotton, wheat, millet, alfalfa, barley, melons, pistachios, olives, citrus, and vegetables. And independent farming operations cultivate an additional 22,000 acres of similar crops, bringing the total agricultural product value to an excess of \$25 million."¹⁷⁹ Now with its newly restored water rights, the GRIC is planning on developing a much larger agricultural industry. However, PM decreases crop production, and because of this, not only will the health of the crops be compromised but the profit from the GRIC's agriculture will be compromised by the air pollution from the South Mountain Loop 202.

Maricopa County has also been in nonattainment in 8-Hr ozone 1997 since 2004 and in 8-Hr ozone 2008 since 2012.¹⁸⁰ The American Lung Association's State of the Air 2013, gave Maricopa County a grade of F for the period between 2009-2011 in High Ozone days¹⁸¹ and 23rd in Most Ozone-Polluted Cities.¹⁸² Ozone is formed when pollutants emitted by cars, power plants, industrial boilers, refineries, chemical plants, and other sources react chemically in the presence of sunlight.¹⁸³ Those most at risk are children, adults who are active outdoors, adults - including older adults - with respiratory diseases, such as asthma, and people with unusual susceptibility to ozone.¹⁸⁴ Ozone can aggravate asthma and inflame and damage the lining of the lungs that can in turn cause long-term health effects and a lower quality of life.¹⁸⁵

Higher ozone levels would have a disparate effect on the people of the GRIC. First, many GRIC members have asthma and other respiratory problems. Ozone increases will exacerbate existing problems. Second, because the Hassayampa Freeway CANAMEX route is not first being built, the South Mountain Loop would be used as a bypass for truck drivers traveling from Canada to Mexico. This would also have a major disproportionate effect on the GRIC. With Interstate 10 already running through the GRIC, more diesel trucks near the GRIC would only increase pollution, some of which are cancer-causing.¹⁸⁶ Diesel from trucks can create the same amount of air pollution as 150 passenger cars¹⁸⁷ and diesel exhaust has been

¹⁷⁸ Mayo Clinic, Risk Factors: Valley Fever, <http://www.mayoclinic.com/health/valley-fever/DS00695/DSECTION=risk-factors> (last visited July 1, 2013).

¹⁷⁹ Inter Tribal Council of Arizona, Inc., Gila River Indian Community http://itcaonline.com/?page_id=1158 (last visited 7/8/13).

¹⁸⁰ EPA, Nonattainment Status for Each County by Year for Arizona As of December 14, 2012 http://www.epa.gov/oaqps001/greenbk/anay_az.html (last visited July 13, 2013); 91.5 KJZZ, Paul Atkinson, *2011 record year for Maricopa County air pollution*, Feb. 24, 2012 <http://www.kjzz.org/content/12022011-record-year-maricopa-county-air-pollution> (last visited July 13, 2013); Phoenix has one of the worst air pollution problems in the nation. Mother Nature Network, *7 U.S. cities with the worst air pollution*, <http://www.mnn.com/health/healthy-spaces/photos/7-us-cities-with-the-worst-air-pollution/phoenix> (last visited July 13, 2013).

¹⁸¹ American Lung Association, State of the Air 2013 found at <http://www.lung.org/associations/states/california/assets/pdfs/sota-2013/sota-2013-full-report.pdf>.

¹⁸² *Id.* at 13-15.

¹⁸³ AirNow, Smog - Who does it hurt? <http://airnow.gov/index.cfm?action=smog.page1> (last visited 6/27/13).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Cancer-causing pollutants from trucks are diesel particulate matter and Volatile Organic Compounds (VOCs) such as benzene, formaldehyde, and polycyclic aromatic hydrocarbons (PAHs). (Sierra Club, Highway Health Hazards, http://www.sierraclub.org/sprawl/report04_highwayhealth/report.pdf (last visited 6/29/13)).

¹⁸⁷ MECA, *Clean Air Facts Emission Controls for Diesel Engines* <http://www.meca.org/> (last visited 7/2/13).

linked to lung cancer and the development of asthma.¹⁸⁸ Moreover, although the United States has implemented national heavy-duty diesel emissions standards and Ultra-low-sulfur diesel ("ULSD") fuel requirements, Mexico has not made significant progress in implementing its heavy-duty diesel emissions standards nor has it transitioned to ULSD.¹⁸⁹ And, although the Arizona Department of Air Quality monitors 1967 through 2008 diesel powered vehicles in the metro Phoenix (Area A) and Tucson (Area B), commercial vehicles that are licensed in multiple states are not.¹⁹⁰ Further, some trucks using the South Mountain Loop 202 will be carrying hazardous material causing major risks to the GRIC. Although the DEIS admits that the South Mountain Loop 202 will be used to transport hazardous waste, it does not include an emergency plan for the different communities that could be affected by accidents by transporters of hazardous waste.

There is also a risk of a pollution hot spot developing in the GRIC because of the leveling of mountain ridges and the placement of a highway with speeding cars and trucks on the flattened area abutting the GRIC. The GRIC reservation is situated between the Sierra Estrella to the west running north and south along the entire distance of the GRIC on the western edge, the South Mountain to its north separating the GRIC from Phoenix and Tempe, and the Santan Mountains on the northeast side, separating the GRIC from Gilbert and Apache Junction.¹⁹¹ "These natural barriers are large enough and have sufficient altitude to prevent pollution from transporting onto GRIC even during periods of inversions and stagnant air."¹⁹² The South Mountain Loop will eliminate the natural barrier of the South Mountain separating the GRIC from the heavily polluting cities of Phoenix and Tempe. Further, the new car and truck emissions will be emitted near the GRIC. Under certain wind and weather patterns, these emissions will be captured and contained within the remaining ranges on the GRIC causing a hotspot. Like past off-reservation polluting activities, the GRIC will have to bear the consequences of pollution not created by them but migrating to its lands.

The GRIC also would be disproportionality affected by other public health concerns, concerns of which were not mentioned in the DEIS. The GRIC struggle with substance abuse, such as alcoholism and methamphetamine addiction, and have been struggling with a high suicide rate.¹⁹³ American Indian and Alaska Native (AI/AN) people are significantly more likely to report past-year alcohol and substance use disorders than any other race.¹⁹⁴ And suicide rates for AI/AN people are 1.7 times higher than the U.S. all-races rate.¹⁹⁵ Further, several sources

¹⁸⁸ EPA, *Health Assessment Document for Diesel Engine Exhaust* (Final 2002) found at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=29060#Download>.

¹⁸⁹ EPA, Thirteenth Report of the Good Neighbor Environmental Board to the President and Congress of the United States, p. 15 found at <http://www.epa.gov/ofacmo/gneb/gneb13threport/English-GNEB-13th-Report.pdf>.

¹⁹⁰ Arizona Department of Air Quality, Air Quality Division: Vehicle Emissions: Diesel Vehicles, <http://www.azdeq.gov/air/ve/diesel.html> (last visited 7/2/13).

¹⁹¹ GRIC Response to EPA, Gila River Indian Community Response to EPA's Nine Factors Requirement for Designation of PM-2.5 Under the National Ambient Air Quality Standards, p. 5 Jan. 4, 2011, found at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2010-0163-0016>.

¹⁹² *Id.*

¹⁹³ National Indian Health Board, *The Gila River Indian Community's Equine Programs*, http://www.nihb.org/behavioral_health/mspi_program_gila_river.php (last visited July 1, 2013).

¹⁹⁴ Substance Abuse and Mental Health Services Administration Office of Applied Studies, *The NSDUH Report (2007)* found at <http://www.oas.samhsa.gov/2k7/AmIndians/AmIndians.htm>.

¹⁹⁵ Indian Health Service Office of Public Health Support, *Trends in Indian Health, 2002-2003; Historical trauma is linked to increased suicide risk not only through depression, despair, and helplessness felt because of cultural oppression, but also because anger, aggression, and violence felt in response to experiences of victimization can be*

indicate that AI/ANs are at higher risk for certain mental health disorders than other racial/ethnic groups.¹⁹⁶ The Office of Minority Health reports that AI/ANs experience higher rates than all races in the following areas: serious psychological distress; feelings of sadness, hopelessness, and worthlessness; feelings of nervousness or restlessness; and suicide.¹⁹⁷

The Indian Health Service, the Federal Health Program for American Indians and Alaska Natives, recognizes that one major reason for these higher national rates of substance abuse and psychological problems is historical trauma.¹⁹⁸ Historical trauma describes the cumulative effects of the massive group trauma experienced by AI/AN peoples and nations since the arrival of European settlers on the American continent.¹⁹⁹ This trauma has taken various forms, from outright violence of wars and forced relocation to damaging prohibitions on Native languages and cultural and religious practices. Historical trauma has many dimensions, but one important aspect is that, as with any trauma situation, parents and caregivers who have been traumatized often pass on trauma response patterns to their children.²⁰⁰ This means that the effects of historical trauma in AI/AN communities include not just past or present acts of oppression and racism that AI/AN people have been victimized by, but also the ways that trauma response behaviors are internalized, repeated, and passed on within AI/AN families and communities.²⁰¹

The people of the GRIC, like many other Native Americans in the US, have continued to socially and psychologically struggle to heal from losing traditional ways of life, homeland, language, traditions, etc. due to intrusions on their culture. Because cultural identity and psychological health are related, healing is thwarted by continued marginalization of their culture and worldview. ADOT, deliberately destroying more culture unnecessarily is discriminatory and irresponsible. It is discriminatory because the act destroys an integral part of the GRIC's identity while history shows that Native Americans and the people of the GRIC have lost an incredible amount of their culture already. The GRIC in particular have been embattled in a water right dispute for decades. The loss of water has changed its way of life in very significant ways like food production, diet, independence, etc. And only just recently are the GRIC's water rights being restored after having had to struggle for almost a century with severely reduced water flows. Moreover, ADOT's action is discriminatory because modern psychology shows that cultural identity and environment play a major role in human health, especially for Native Americans who have a unique relationship with their culture and the natural environment.

Not only will a sacred mountain be desecrated but access to historical, ancestral land will be more limited, less accessible, and will be disturbed by noise, cars, and pollution. The landscape will be more fragmented and urbanized, qualities not compatible with sacredness. Modern psychology is not the only messenger to ADOT: the GRIC's 2007 Community Council resolution stated that they "strongly oppose(d) any alteration of the South Mountain Range for

turned against oneself. (Subia BigFoot, D., *History of Victimization in Native Communities*, found at <http://ictc.org/History%20of%20Victimization%20Issues-%20Final.pdf>).

¹⁹⁶ Olson, L. & Wahab, S., *American Indians and Suicide: A Neglected Area of Research. Trauma, Violence, and Abuse*, 2006 7(1), 19-33.

¹⁹⁷ US Department of Health and Human Services Office of Minority Health, *Mental Health and American Indians and Alaska Natives*, found at <http://minorityhealth.hhs.gov/templates/content.aspx?ID=6475>.

¹⁹⁸ U.S. Department of Health and Human Services, *American Indian/Alaska Native Behavioral Health Briefing Book*, August 2011, found at <http://www.ihs.gov/behavioral/documents/AIANBHBriefingBook.pdf>.

¹⁹⁹ Brave Heart, M. Y. H. and DeBruyn, L. M., *The American Indian Holocaust: Healing Historical Unresolved Grief*, *American Indian and Alaska Native Mental Health Research*, 1998 8(2), 61.

²⁰⁰ U.S. Department of Health and Human Services, *American Indian/Alaska Native Behavioral Health Briefing Book*, August 2011, found at <http://www.ihs.gov/behavioral/documents/AIANBHBriefingBook.pdf>.

²⁰¹ *Id.*

any purpose"...and any alteration..."would be a violation of the cultural and religious beliefs of the Gila River Indian Community and would have a negative cumulative effect on the continuing lifeways of the people of the Gila River Indian Community."²⁰² ADOT's decision is irresponsible because the government is sponsoring a program that significantly reduces Native American culture and identity while at the same time knowing the integral relationship the GRIC has with the South Mountain and possessing all the tools to recognize that Title VI of the Civil Rights Act is being violated.

C. ADOT DISCRIMINATED BY NOT CONDUCTING ADEQUATE CONSULTATION TO PREVENT A DISPARATE IMPACT AND BY PROVIDING INADEQUATE NOTICE, ACCESS, AND PUBLIC PARTICIPATION OPPORTUNITIES FOR GRIC AND GRACE TRIBAL MEMBERS

GRIC tribal members are speaking out strongly because GRIC feel that they have not been properly included, consulted, and heard. In analyzing ADOT's procedure and process before and after the release of the DEIS, it is apparent that ADOT did not comply with Title VI's requirement that no person may be excluded from participation in, denied the benefit of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin.²⁰³ It is also apparent that ADOT did not comply with NEPA's provision to provide for "all Americans safe, healthful, productive, and esthetically pleasing surroundings", or to take a "systematic, interdisciplinary approach" to aid in considering environmental and community factors in decision making.²⁰⁴

Ignoring the fact that GRIC, as a Native American peoples with community centered values and a strong sense of responsibility to protect the integrity of the past, present, and future generations, ADOT has embraced MAG's interpretation that the South Mountain Loop 202 is an absolute necessary component of the MAG master-plan. MAG's subcommittee, the Transportation Policy Council (TPC), which plans for and sets aside money for transportation projects in the Maricopa County region and provides the overall plan for all modes of transportation in Maricopa County, is heavily filled with business leaders and corporate executives, who have a bias toward seeing the South Mountain constructed. The GRIC however must make decisions that protect their culturally rich ancestral lands and the health and welfare of present and future generations of GRIC.²⁰⁵ The TCP includes executives from trucking companies (Swift, Knight), shopping mall owners and operators (Macerich), several realty companies, casino architects (The Killian Companies), and a construction firm that builds freeways (FNF Construction).²⁰⁶ ADOT, who is captive to MAG's belief that the project is necessary, has designed the DEIS so as to create the impression that the South Mountain Loop 202 must be built and no other alternatives are prudent or feasible, downplaying and ignoring the disparate impacts that would result if the South Mountain Loop 202 were constructed.

²⁰² Gila River Indian Community Resolution NO. GR-41-07, A Resolution Designating the South Mountain Range (Muhadag, Avikwaxos) as a Sacred Place and Traditional Cultural Property of the Gila River Indian Community.

²⁰³ 42 U.S.C. § 2000d.

²⁰⁴ Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982.

²⁰⁵ MAG, TCP <http://www.azmag.gov/Committees/Committee.asp?CMSID=1041> (last visited July 15, 2013).

²⁰⁶ *Id.*

ADOT has minimally consulted with the GRIC in the scoping and preparing of the DEIS both officially and unofficially. While ADOT indicates that it has conducted 178 meetings with GRIC on its South Mountain Loop 202 proposal between 2001 to 2012, only three, all in 2011, were identified as cultural resource consultation meetings and none were attended by the BIA.²⁰⁷ Further, these cultural resource consultation meetings were designated as "Meetings Focused on the Proposed On-Community Alignment, 2010-2012" biasing any efforts to satisfy the goals of a cultural resource consultation meeting. The National Park Services' guidance for federal historic preservation programs states: "consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply providing information."²⁰⁸ Further, consultation should start early for a proposed project, not 9 years after conducting meetings. And those best equipped to communicate the tribes' sensitivities to cultural places should be consulted with and not just met with so as to satisfy what it believes is its Title VI and EJ requirements.²⁰⁹

ADOT spent the first 9 years just informing GRIC representatives what its plan were and trying to "coordinate" its agenda -not consulting: ADOT worked mainly with the Natural Resources Standing Committee (NRSC) and the Transportation Technical Team (TTT). The NRSC is a special committee reporting to the Community Council that reviews all land use actions under its jurisdiction, acts as a key decision-making agent in actions pertaining to land use effects on Community land, and issues right-of-entry permits for non-Community members wishing to conduct a survey or other data collection tasks on Community land." And the TTT is a special committee established by the Community Council...to facilitate informed decisions on transportation requests.²¹⁰ These two committees do not participate in consultation, which is something very different from making land use decisions, issuing right-of-entry permits for non-Community members, and facilitating informed decisions on transportation requests.

Moreover, ADOT didn't conduct the informational scoping meetings itself. The DEIS states that in August 2010 while ADOT believed it still could secure an on-reservation alignment, it presented an environmental and engineering overview outlining the freeway and its

²⁰⁷ None of these meetings was the one that the Four Southern Tribes of Arizona attended. (ADOT, South Mountain Study Team, Chapter 2 *Gila River Indian Community Coordination* at 4-7); The federal government is obligated by its "trust responsibility" to represent the best interests of tribes and their members. This specific responsibility is delegated to the U.S. Bureau of Indian Affairs (BIA)." (*Id.* at 2); Under Executive Order 13,175, each federal agency must establish a process for consultation with tribal officials in the development and implementation of "policies that have tribal implications" based upon the "unique legal relationship" between the United States and "Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions." (65 FED. REG. 67249 (Nov. 6, 2000) <https://www.federalregister.gov/articles/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal> (last visited July 15, 2013)). With the BIA as one of ADOT's partners, any ADOT action with the South Mountain Freeway is dependent on it complying with Executive Order 13,175.

²⁰⁸ National Park Service, The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs pursuant to the National Historic Preservation Act, 63 FED. REG. 20496, 20504 (Apr. 24, 1998).

²⁰⁹ While the Elderly Concerns Group was met with twice, in 2001 and in then in 2002 by ADOT, nothing came of it. Because their concerns did not influence the DEIS, the Group on June 12, 2013 had to make a formal motion that the Elderly Concerns Group was opposed to the South Mountain Freeway and the destruction of the South Mountain. See attachment.

²¹⁰ ADOT, South Mountain Study Team, Chapter 2 *Gila River Indian Community Coordination* p. 3 found at http://www.azdot.gov/Highways/Valley_Freeways/Loop_202/South_Mountain/PDF/FHWA-AZ-EIS/02-SMDEIS-Chapter-2-Gila-River-Indian-Community-Coordination.pdf.

impacts on GRIC land to the TTT, who with the help of the Public Information office solicited recommendations and comments from GRIC tribal members on an off-reservation and an on-reservation alignment.²¹¹ The DEIS states that meetings were held from December 2010 through March 2011 in each of the seven districts, with some districts having multiple meetings.²¹² The DEIS states that meetings were also held with special interest groups and a total of 15 meetings occurred.²¹³ GRACE states that these meetings were heard about only if one participated in certain closed meetings and only certain people were invited to those closed meetings. Further, many in attendance questioned why ADOT was not conducting these meetings but rather GRIC representatives. It appears that ADOT inappropriately gave its duty for scoping and community outreach to tribal representatives, and failed to make sufficient and direct efforts to engage GRIC tribal members between December 2010 and March 2011.

The only information publicized in the GRIN that the general GRIC community had before they voted in February 2012 to voice their opinion about the South Mountain was a paid ad by Pangea in the December 2011 and January 2012 GRIN telling tribal members that an on-reservation build would save South Mountain and an off-reservation build would desecrate South Mountain and an article by GRACE in the January 2012 GRIN expressing that a no build was an option, which meant that neither the reservation would be built on nor would South Mountain be desecrated. Still, uninterested in knowing how an off and an on-reservation build would impact the GRIC negatively,²¹⁴ without conducting consultation and arguably never communicating with the general GRIC community themselves, ADOT moved forward with designing only one eastern alternative through the South Mountain. Needless to say, many GRIC tribal members felt they had not been consulted. One GRIC tribal member stated: "A.D.O.T. did not ask in proper manners what we as a community would like done or not done with our sacred place of gathering."²¹⁵ See attachment.

As a sovereign nation with historical, cultural, and spiritual connections with lands no longer fully assessable but which they have rights to, adequate consultation is necessary. Not only does the NHPA require consultation with the GRIC because the South Mountain is a TCP with religious and cultural significance²¹⁶ but Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations also calls for consultation. Executive Order 12898 states "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations"²¹⁷ Nonetheless, after listing ADOT's meetings with the GRIC, Chapter 2's *Gila River Indian Community Coordination* ends with, "in

²¹¹ *Id.* at 8.

²¹² *Id.* at 8.

²¹³ *Id.* at 8.

²¹⁴ GRACE's article in the January 2012 GRIN states "Both proposed freeway alignments destroy the mountain. The on reservation alignment will force the loss of more than 600 acres of GRIC lands at the base of South Mountain (source: Kimberly Dutcher, GRIC Law Office). These sites are full of cultural significance, and The Arizona Department of Transportation (ADOT) knows this. By destroying the foothills of Muhadag Do'ag, we destroy the entire mountain, as well as Muhadag Do'ag's connection to the Estrellas. And what about the Pee Posh and O'odham families that would fall victim to the on-reservation alignment, and lose their homes to the freeway?" GRIN, Jan. 2012 15, NO.01 p. 4 found at www.gilalriver.org/news

²¹⁵ Nicole Johns, GRIC tribal member, Aff. ¶ 5 June 29, 2013.

²¹⁶ 16 U.S.C. § 470a(d)(6)(B); 36 C.F.R. §§ 800.3(d) and (f)(2) and 36 C.F.R. § 800.2(c)(2)(ii).

²¹⁷ Exec. Order No. 12898, 59 Fed. Reg. (Feb. 11, 1994) found at <http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>.

accordance with Executive Order 12898, on environmental justice, and with Title VI of the Civil Rights Act of 1964 (Title VI), the coordination efforts outlined in this chapter establish that reasonable efforts have been made to engage and provide the Community's population access to the EIS process for the proposed action."²¹⁸

ADOT's weak coordination efforts and flimsy access to the EIS process however are not enough: Title VI fundamentally requires consultation where exchange of ideas happens to prevent disparate impacts that Title VI prohibits. One-sided informational meetings, which most of the various GRIC meetings were between 2001 and 2012 do not give a community the potential to affect the opinions of the decision makers. The meetings to discuss the South Mountain Loop 202 were only for technical, information gathering, and for ADOT to present its intent and not for consultation. For example, while the DEIS acknowledges that the Community Council is "the primary decision-making and legislative body for the Community....consist(ing) of 17 members elected by residents of the Community's seven districts"²¹⁹, ADOT only coordinated two meetings with them, one in 2003 that only included community council representatives from districts 4, 6, and 7 and another in 2005. It is apparent ADOT was only meeting to satisfy what it allegedly believed its requirements were under Executive Order 12898 and Title VI to "coordinate" and "engage"²²⁰ the GRIC, and moreover, to "ensure full and fair participation"²²¹ –again, not to truly consult or to consider anything but an on-reservation or a South Mountain Preserve alignment.

Additionally, ADOT's meetings between 2001 and 2012 with the GRIC were not even full and fair. As a potential especially affected group, full and fair mean equal opportunity to participate and communicate ones position. For example, between 2010 through 2012, none of the 76 meetings focused on the proposed on-reservation alignment were conducted in districts three or five because as chapter 2 *GRIC Coordination* states, they would have been "less affected" by an on reservation alignment. This is not true because overall, the reservation is community land and any change of use will affect all tribal members. Further, a no-build is an equally legitimate option that NEPA requires analyzed. However, the meetings between 2001 and 2009 were conducted under the assumption that an alternative on the reservation was obtainable, while the meetings between 2010 and 2012 were conducted under the assumption an on-reservation alignment could be ultimately negotiated: none of the meetings therefore consulted and considered alternatives focusing on the effects and impacts on the GRIC for using GRIC land or the effects and impacts on the GRIC for desecrating sacred land. For example, chapter 2 goes on and says "informational meetings have been conducted with District 1 and 2 representatives regarding project status and identification of their concerns regarding the proposed action. These meetings occurred in 2002; both Districts 1 and 2 are outside of the Study Area. Although presentations to Districts 1 and 2 have not been made since 2002, articles regarding the project have appeared in the Gila River Indian News."²²² One GRIC tribal member stated "I wasn't notified about the meetings that they had about this freeway being built. I believe that they should of set out flyers to notify people not just only landowners but members of our community that should also be included to this matter that is coming in affect to our

²¹⁸ ADOT, South Mountain Study Team, Chapter 2 *Gila River Indian Community Coordination* at 11.

²¹⁹ ADOT, South Mountain Study Team, Chapter 2 *Gila River Indian Community Coordination* at 3.

²²⁰ *Id.* at 1, 4.

²²¹ ADOT, South Mountain Study Team, chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 29.

²²² ADOT, South Mountain Study Team, Chapter 2 *Gila River Indian Community Coordination* at 8.

reservation."²²³ See attachment. Another tribal member stated "I don't know why they can't hold a meeting in each District to see what the people think. Even though it is for landowners. But I think it is going to affect the whole reservation."²²⁴

GRIC's issues and concerns of the environmental, health, and cultural cumulative impacts on them and the misuse of transportation dollars for unnecessary highway expansion in the name of parochial economic development could not be considered in the decision making process because they were ignored by ADOT's tunnel vision agenda of obtaining an on-reservation alignment so that they could spare the South Mountain and the Ahwatukee Foothills.²²⁵ No evidence suggests that the GRIC's concerns were appropriately considered: why else after the GRIC voted for a no-build²²⁶ did ADOT end up with only one eastern alternative that goes through the GRIC's sacred mountain.

The community forum meetings during the 90 day comment period also were not full and fair.²²⁷ As a nation with an oral tradition centered around community involvement and community transmission, (which is very different from a written tradition that is individualistic and easily transferable by non-community engagement), the one ADOT meeting on the reservation did not allow for formal "public testimony". Rather, the meeting only allowed participants to report to a court reporter who recorded GRIC members' comments individually. This was unfair as the May 21st downtown Phoenix public hearing allowed people to speak with a court reporter, complete a comment form, or give a formal 3-minute comment (public testimony).²²⁸ By the time GRIC's community forum meeting came around June 22, 2013, the three options offered at the downtown Phoenix public hearing narrowed into only speaking with a court reporter or completing a comment form. Attendees at the GRIC community forum meeting were also forbidden to bring signs and banners to communicate and voice their opinions. These restrictions were a great insult to tribal members, especially since they felt excluded from the DEIS scoping and preparation of the DEIS. Also, the same video that was played at the beginning of the release of the DEIS and that can be found on the website was played over and over at this meeting instead of providing tribal members the opportunity to address everyone at the meeting.

²²³ Winona Catha, GRIC tribal member, Aff. ¶ 3 July 2, 2013.

²²⁴ Bernadette Stevens, GRIC tribal member, Aff. ¶ 5 July 2, 2013.

²²⁵ For example, after many failed attempts, Ahwatukee Foothills representative DiCiccio was hired by ADOT in 2006 as a consultant to negotiate with the GRIC to reconsider allowing the freeway on its land. (Scan Holstege, *The Republic, 1998 plan for South Mountain Freeway passed*, March 25, 2013 <http://www.azcentral.com/community/ahwatukee/articles/20130308south-mountain-freeway-plan-ignored.html> (last visited July 11, 2013)).

²²⁶ In late 2011, the GRIC Community Council passed a resolution to hold a Community-wide referendum on the freeway. The referendum asked members whether they supported an on-reservation alignment, an off-reservation alignment, or a "no-build" option. On February 7, 2012, most GRIC voters voted for the "no-build" option.

²²⁷ Meetings were held in: Ahwatukee Foothills Village; Avondale; Chandler; Estrella Village; Gila River Indian Community; and Laveen Village. Public testimony was formally prohibited at all meetings. (ADOT, Public participant Guide for the Loop 202 South Mountain Freeway Study Draft Environmental Impact Statement, found at http://www.smfonlinehearing.com/files/2313/6881/9504/SMTN_Meeting_Guide.pdf; However, public testimony was allowed at the May 21st Phoenix Public Hearing.

²²⁸ ADOT, You're invited! Loop 202 South Mountain Freeway Study Draft Environmental Impact Statement Available for Public Review and Comment, found at http://www.azdot.gov/Highways/EPG/EPG_Common/PDF/Public_Notices/Loop202-South-Mountain-Freeway-project.pdf.

“Many Community members voiced disappointment in the format of the forum, which they said was completely from ADOT’s perspective...and...one-sided”.²²⁹ One GRIC tribal member stated “I was unable to attend the ONE and only meeting that I would have been allowed to speak at publicly. As stated before I don’t travel to the Phoenix metro-area due to the distance, pollution and the heat. I am an elder that is in a wheelchair, which needs assistance to get around. Attending this meeting was impractical for me and the ONE meeting held in the Gila River Indian Community was held over fifty miles from my home. I feel that A.D.O.T. violated my civil right by not allowing anyone to speak at the meeting held in the Gila River Indian Community, as well as other meetings held in other communities. I was raised by oral traditions, I was taught to speak out, and I have a right to be heard in a public forum.”²³⁰ See attachment. Another GRIC tribal member said “I feel ADOT discriminated against us all at the last public forum held in Komatke, AZ. Gila River Indian Community members were not able to voice their public comments. No matter where the meetings are held. All parties whether you are against or for the freeway should be able to speak. No meeting should be one sided for any reason what so ever. That is very unfair. Again this is a fast fix to eliminate process that everyone should abide by.”²³¹ See attachment.

Notice was also inadequate. The June 22 meeting was not publicized on GRIN until an ADOT advertisement appeared on GRIN the day before the actual event.²³² This did not give tribal members enough notice to plan and prepare to attend the meeting, especially because many GRIC members lack transportation. To make matters worse, transportation was not provided to the GRIC as promised for the downtown Phoenix public hearing. Because of this, minimal GRIC participation at the Phoenix meeting was possible. In attempting to obtain community transportation for the Phoenix event, GRACE representative, Lori Riddle, called to speak with ADOT on numerous occasions to ask about transportation assistance. However, no one ever picked up. She had to leave messages and left several until ADOT’s answering machine became too full to allow her to leave any more messages. Then, when she then turned to MAG’s Senior Engineer Bob Hazlett for assistance in resolving this issue, he only shrugged his shoulders at her and said that it was just discovered that the ADOT message machine was designed to take up to 12 or so messages at a time. He said nothing else and did nothing to help. Not until the Phoenix meeting, did ADOT then hand out instructions about transportation assistance. And, then when GRACE tried to secure transportation for GRIC tribal members for the on-reservation public forum meeting on June 22, 2013, ADOT failed to provide vans to pick up tribal members that many of the GRIC needed to attend the meeting. At the last moment, ADOT put the responsibility on the GRIC requesting that GRACE representative, Lori Riddle, provide ADOT with a list of those who needed transportation with their contact information and addresses: because of the time constraints, this was not possible to provide.

One GRIC tribal member summed up ADOT’s performance with the GRIC: “the manner in which ADOT has pursued the Gila River community member’s voice and cooperation regarding the Draft Environmental Impact Study and the planning process has been poor to say

²²⁹ Joshua Jovanelly, GRIC Website, ADOT outreach on proposed 202 ext. held in Komatke <http://www.gilalriver.org/index.php/news/3829-adot-outreach-on-proposed-202-ext-held-in-komatke> (last visited July 15, 2013).
²³⁰ Peggy Mae Morago, GRIC tribal member, Aff. ¶ 4 July 6, 2013.
²³¹ Fairietta Morago, GRIC tribal member, Aff. ¶ 6.
²³² GRIN, *Learn More about the DEIS*, June 21, 2013 found at http://www.gilalriver.org/GRIN/JUNE_21_GRIN_Final.pdf.

the least. There was very little communication between the GRIC and MAG and ADOT. When community members were made aware of public hearings and meetings, it was short notice and not sympathetic to our community members lack of transportation. Furthermore, when ADOT did hold a “Public Forum” in GRIC, members were not to voice their statements verbally as others were able to do at the Phoenix hearing.”²³³ See attachment.

ADOT also circulated and gave out inaccurate information about the GRIC, creating the false impression that the GRIC did not have as much to lose in the South Mountain Loop 202.²³⁴ While participating in this ADOT community forum meeting on the GRIC, GRIC attendees recognized that while in the DEIS there are two TCPs²³⁵ discussed, both of which would be completely destroyed if the proposed freeway extension was built, the ADOT posters at the meeting did not show this.²³⁶ When the attendees asked the ADOT representatives why this was so, different representatives replied in various ways: one said that the posters were outdated, another said there were no inaccuracies, and another stated that the discrepancies were up for interpretation.²³⁷ The posters also did not list other O’odham cultural resources such as petroglyph sites and prehistoric trails rich in artifact remains.²³⁸ It can only be guessed at how much damage the inadequate and incompetent presentation of the GRIC’s many cultural and sacred areas and artifacts have done in regards to the dialogue and understanding of this project. It also shows what is produced by inadequate consultation, full and fair participation, and actual coordination.

D. NO SUBSTANTIAL LEGITIMATE JUSTIFICATION FOR SOUTH MOUNTAIN LOOP 202 AND FEASIBLE, REASONABLE AND NON-DISCRIMINATORY ALTERNATIVES EXIST FOR ADOT

As enumerated in the facts of the DEIS, ADOT is well aware of the sacredness of the South Mountain and the role that the mountain plays in the GRIC tribal members’ culture and heritage. Title VI requires that recipients of federal funding such as ADOT must not take actions that have a disproportionate effect /disparate impact on peoples of a specific color, race, or national origin such as the people of the GRIC who are Native Americans.

With sacred places that must be undisturbed and where rituals and ceremonies may not even be conducted without the right environment, the South Mountain Loop would disparately impact GRIC tribal members. Here, there is an Indigenous Peoples, whose culture is embedded with its relationship with the South Mountain environment –known as a sacred territory-- from which they get physical, mental, and spiritual life. The desecration of South Mountain by construction and operation of a highway loop would result in a monumental disparate impact and a prohibited discriminatory effect. Further, the health and environmental impacts would also be disproportionately burdensome on the GRIC. Native Americans are supposed to be afforded civil rights protections from the majority: this is why GRACE requests ADOT to protect and to not

²³³ Rence Jackson, GRIC tribal member, Aff. ¶ 3.
²³⁴ Akimel o’odham youth collective’s Blog, *O’odham Zombies March Against the 202*, June 24, 2013 <http://aoycblog.wordpress.com/> (last visited July 18, 2013).
²³⁵ The prehistoric Huhukam villages and the Pueblo del Alamo and Villa Buena.
²³⁶ Akimel o’odham youth collective’s Blog, *O’odham Zombies March Against the 202*, June 24, 2013 <http://aoycblog.wordpress.com/> (last visited July 18, 2013).
²³⁷ *Id.*
²³⁸ *Id.*

purposely create a disparate impact on a protected class of people that would have a monumental and disastrous effect on the welfare and quality of life of the GRIC.

For all of the effort that was put into spelling out environmental justice requirements, Title VI itself was not defined, nor was it evaluated effectively in the DEIS. ADOT's August 2008 South Mountain Transportation Corridor Study Citizens Advisory Team Draft Technical Report Summary/Cultural Resources states that "by law, adverse impacts on cultural resources determined eligible for listing in the NRHP must be mitigated. The degree of mitigation required is directly related to the historic designation as described by Section 106. Direct impacts from construction on cultural resources determined to be of religious or traditional cultural importance by Native American groups or others could result in desecration of a sacred place. A potential indirect impact might be a community's loss of access to a culturally important place as a result of construction restrictions."²³⁹

ADOT's August 2008 South Mountain Transportation Corridor Study Citizens Advisory Team Draft Technical Report Summary/Environmental Justice²⁴⁰ acknowledged that GRIC was a protected peoples²⁴¹ under Title VI; however, it made no mention that evaluating sacred places through the lens of Section 106 of the NHPA that requires "agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment,"²⁴² does not eliminate the necessity of evaluating the disparate impact of losing sacred places, culture, heritage, etc. based on Title VI.²⁴³ In this document, Title VI was not analyzed.

In chapter 4 of ADOT's DEIS, Title VI is only mentioned as a subset of Environmental Justice and the 1994 Executive Order 12898 on environmental justice; moreover, it is not defined. Title VI is not a policy or an executive order, but is the law and must be complied with as the rule of the law. Only in a short sidebar, does chapter 4 say, "in addressing environmental justice, it is important to understand whether the proposed action would have disproportionately high and adverse impacts on the protected population"²⁴⁴ but it doesn't say this in regards to Title VI or spell out its criteria. Rather, it directs the reader to go on to Land Use, Social Conditions, Displacements and Relocations, Economic Impacts, Air Quality, Noise, Cultural Resources, Visual Resources, Prime and Unique Farmlands, and Temporary Construction Impacts, which essentially are various sections of the DEIS that are over hundreds of pages long.

²³⁹ ADOT, South Mountain Transportation Corridor Study Citizens Advisory Team Draft Technical Report Summary/Cultural Resources August 28, 2008 p. 2 found at http://www.azdot.gov/southmountainfreeway/PDF/082808_SMCAT_CulturalResources_Summary_Final.pdf.

²⁴⁰ ADOT, South Mountain Transportation Corridor Study Citizens Advisory Team Draft Technical Report Summary/Environmental Justice, found at http://www.azdot.gov/southmountainfreeway/PDF/062608_SMF_CAT_EJ_Summary_Final.pdf.

²⁴¹ It appears that in this report, ADOT is not identifying GRIC accurately as a protected class. It is protected because of race not by color. The US Census currently identifies the following races: white, black or African American, American Indian and Alaska Native, Asian, Native Hawaiian and other Pacific Islander. Race, Definition (last visited 6/23/2013) http://quickfacts.census.gov/qfd/meta/long_RH1525211.htm). Further, the protection is because of a history of discrimination; therefore, the disparate impact must be evaluated through the lens of the class of people experiencing political, social, economic, cultural discrimination historically.

²⁴² Section 106 Regulations Summary <http://www.achp.gov/106summary.html> (last visited 6/23/2013).

²⁴³ This section on Title VI errs in defining what it is by not defining it but rather, conflating it into a subsection of environmental justice. Title VI does have a place in environmental justice, but Title VI is much more than environmental justice.

²⁴⁴ ADOT, South Mountain Study Team, Chapter 4 *Affected Environment, Environmental Consequences, and Mitigation* at 38.

ADOT is responsible for ensuring its actions and non-actions do not violate Title VI. Building a freeway through and desecrating South Mountain disproportionately affects a protected class and may only be done if there is a substantial legitimate justification. Connecting Ahwatukee Foothills to Laveen so that businesses like malls and movie theaters can come in is not a substantial legitimate justification.²⁴⁵ Nor is alleviating traffic a substantial legitimate justification without first addressing the alleged problem of congestion²⁴⁶ and pollution when there are more prudent and feasible alternatives²⁴⁷, as well as, comparably effective alternatives with less of a disparate impact to choose from.

A substantial legitimate justification for creating a disparate impact is just not found in the DEIS. To prove a "substantial legitimate justification," the recipient of federal funds must show that the challenged action or non-action was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."²⁴⁸ The justification must bear a "manifest demonstrable relationship" to the challenged policy.²⁴⁹ And there must not be an alternative that is comparably effective with less of a disparate impact.²⁵⁰

ADOT purposely crafted its purpose and need to strategically make a no-build alternative appear non-debatable. The DEIS gives reasons for why it appears the proposal is favored and what the projects alleged purposes and needs are. The DEIS states that population growth, housing demand, economic growth, and the deficiencies in alternative modes of transportation

²⁴⁵ In a Loop 202 Meeting in Laveen on May 21, 2013, Phoenix City Councilman Michael Nowakowski stated that Laveen has "plans for a hospital, a mall, restaurants and shops, but ... all the plans are dependent on the South Mountain Freeway being built...shops and businesses won't come unless there's a possibility that residents from other parts of the Valley could be attracted to the area." (Allison Hurtado, Ahwatukee Foothills News, *Laveen residents gather to organize support for South Mountain Freeway*, http://www.ahwatukee.com/news/article_20023ca0-clab-11e2-befb-001a4bcf887a.html (last visited July 14, 2013).

²⁴⁶ Texas A&M's 50th Urban Mobility Report ranks the Phoenix-Mesa metropolitan area 40th among U.S. cities for the average amount of time motorists spend in traffic jams. 39 other areas rank higher for congestion than Phoenix-Mesa.

²⁴⁷ "Section 4(f) refers to the original section within the U.S. Department of Transportation Act of 1966 which established the requirement for consideration of park and recreational lands...and historic sites in transportation projects. The law, now codified in 49 U.S.C. §303 and 23 U.S.C. §138, is implemented by the Federal Highway Administration (FHWA) through the regulation 23 CFR 774. Before approving a project that uses Section 4(f) property (e.g. a public park like SMPP), FHWA must either (1) determine that the impacts are de minimis, or (2) undertake a Section 4(f) Evaluation. If the Section 4(f) Evaluation identifies a feasible and prudent alternative that completely avoids Section 4(f) properties, it must be selected. If there is no feasible and prudent alternative that avoids all Section 4(f) properties, FHWA has some discretion in selecting the alternative that causes the least overall harm (see discussion below). FHWA must also find that all possible planning to minimize harm to the Section 4(f) property has occurred." (FHWA, *Section 4(f) at a Glance*, <http://environment.fhwa.dot.gov/4f/4fAtGlance.asp> (last visited July 15, 2013). SCOTUS has provided parameters to guide interpretation of the statute in *Overton Park v. Volpe*. (401 U.S. 402 (1971)). The Court defined "feasible" as an alternative grounded in "sound engineering." The Court interpreted a "prudent" alternative as one that would not present "unique" or "truly unusual" problems, or "costs or community disruption of extraordinary magnitude." (Id. at 413). The Overton Park decision stressed that protection of 4(f) lands was of "paramount importance" under the statute. (Id. at 412-413). Here, there is a 4(f) land of paramount importance, a federally funded transportation project, impacts that are not de minimis, and prudent and feasible alternatives.

²⁴⁸ *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), aff'd, 197 F.3d 484 (11th Cir. 1999), cert. granted sub. nom. *Alexander v. Sandoval*, ___ U.S. ___, 121 S.Ct. 28, 68 U.S.L.W. 3749 (U.S. Sept. 26, 2000) (No. 99-1908) (quoting *Elston*, 997 F.2d at 1413).

²⁴⁹ *Georgia State Conference*, 775 F.2d. at 1418. See, e.g., *Elston*, 997 F. 2d at 1413.

²⁵⁰ See *Elston*, 997 F.2d at 1407.

make the South Mountain Loop absolutely necessary. Further, it argues a no-build solution is not a feasible alternative. The DEIS states that the proposed project's purpose and need is to get people off the southern part of Phoenix out of the existing roads onto another route; it goes on to assert that this cannot be satisfied without creating this specific Loop. The DEIS asserts that moreover, this proposal has been supported since 1985 and would complete the last part of the master plan.²⁵¹ Therefore, it is claimed that a no-build could not fulfill this purpose and need. However, if the essential purpose and need is to reduce congestion, a no-build alternative using various transportation modalities, including rail serving the southwest and southeast suburbs of Phoenix, and that included changes in zoning, used the Census Bureau's more realistic medium population prediction rather than the high prediction projection, acknowledged that the 2006 economic downturn has changed the future demographics of the area, and took a hard look on who actually would be using the South Mountain Loop 202, the purpose and need would still be fulfilled.²⁵² One no-build alternative PARC has suggested is light rail along Pecos Road that would go through a small portion of the GRIC (with permission) rather than cutting through South Mountain.

²⁵¹ The DEIS states that because voters voted for a one-half cent sales tax for transportation funding in 1985, then extended the life of that tax via proposition 400, and then canvassing results by MAG showed that over a majority of voters supported proposition 400, there is overall public support for the South Mountain Loop. However, both proposition 300 and 400 are general propositions for regional transportation projects and not for the South Mountain Loop specifically. Further, the South Mountain Loop proposal has always been extremely controversial and is opposed by many. Many find the South Mountain Loop outdated, bad for communities and too expensive. (Road Rage "Jana's View" Phoenix Magazine Feb. <http://www.janabommersbach.com/phx-mag-feb07.php> (last visited June 26, 2013)). For example, many people of the Ahwatukee Foothills are opposed to the project. The loop would demolish recently built homes in this planned community in the foothills of South Mountain: some ask if it was that important, why it wasn't already built and why the state let this development get so large. Protecting Arizona's Resources and Children (PARC) also believes the project is unnecessary, financially irresponsible, and contrary to the public interest. (Allison Hurtado, Ahwatukee Foothills News, PARC to host public meeting about Loop 202, May 8, 2013 (last updated May 16, 2013) http://www.ahwatukee.com/community_focus/article_d7b6f25e-b748-11e2-a138-0019bb2963f4.html). South Mountain Park Board of Trustees is also against the project because the SMPP is a park preserve, land designated as conservation land: they say that this land is critical habitat and further fragmentation of natural desert will only expedite loss of species. It further degrades the essence of what a preserve is and moreover destroys highly culturally significant sites that are held sacred to many Native American Indians. The Sierra Club also opposes the South Mountain Loop for a variety of reasons, one of which is the argument that the South Mountain Loop will not reduce pollution in the long run: smart growth must be adopted and reliance of highway systems will not solve traffic or pollution problems. Don't Waste Arizona also opposes the South Mountain Freeway arguing that NEPA was violated in multiple ways: no recent scoping was done; projections of growth are outdated, most current scientific data is not used; there is no purpose or need; major emergency planning issues were not even mentioned; and a huge superfund will need to be cleaned up. (Don't Waste Arizona and PARC, Steve Brittle, <http://player.vimeo.com/video/70051539> (last visited July 12, 2013)); and the Akimel O'odham Youth Collective has been very active and vocal about the cultural and health effects that the South Mountain highway would cause. (<http://aoychlog.wordpress.com/>).

²⁵² The US census gives low, medium, and high population projections. The DEIS used the high estimates. Further, the DEIS ignores that after 1990, population growth stopped speeding at the level the DEIS predicts for 2020 and 2035; Tom R. Rex, *New Population Projections For The United States, Arizona And Arizona Counties A Report from the Office of the University, Economist*, Jan. 2013 found at <http://wpcarc.y.asu.edu/seid/ccpr/upload/Projections.pdf>.

The DEIS analysis of the no-build asserts that more pollution would result with nothing built and that the U.S. Environmental Protection Agency's air quality standards could be met if the project went through. However, building more highway miles will only increase more driving and more pollution. And it would only motivate more urban sprawl that supports further development into the Sonoran desert of cultural significance. Moreover, the Sonoran desert is being reduced at record speed causing the loss of major ecosystem services.²⁵³ For example, the Sonoran desert regulates temperature. "As the Phoenix metropolitan area continues to sprawl, (replacing Sonoran desert with more development) the urban heat island will expand from the urban core further into suburban regions."²⁵⁴ What Arizona's unchecked urban sprawl is creating is unsustainability²⁵⁵ because for one, it is not controlling it with sustainable transportation.²⁵⁶ The urban heat island actually affects people of lower socioeconomic status elderly, and minorities, like Native Americans.²⁵⁷

Moreover, because of their inaccurate assumptions and relative insignificance, the build verses no-build differences in percentage of trips in the study area, travel time to downtown, and differences in miles of 1-10 with 3+ hours of congestion do not identify a substantial legitimate justification for the financial cost, pollution consequences, and disparate impact to GRIC, as well as the additional consequence of added congestion on existing roadways for example, to bypass the additional 10 miles the loop would put on the Ahwatukee Foothills residents on their way to downtown Phoenix.²⁵⁸ According to the DEIS, the percent change in traffic on arterial streets would be 9% and the percent change in traffic on freeways would be 8%.²⁵⁹ Further, the DEIS estimates 10 saved minutes for travel time from Laveen to downtown and 6 saved minutes for Ahwatukee to downtown if the South Mountain Loop was constructed.²⁶⁰ And, the DEIS estimates that with the South Mountain Loop, there would be 7 less miles of 1-10 with 3+ hours of congestion in the morning and 12 less hours of congestion in the evening.²⁶¹

The substantial legitimate justification argument fails by the fact that E-I as the preferred alternative for the east side had no other alternatives from which to compare or choose because, as the DEIS states, GRIC forbid ADOT from using GRIC reservation land for the South

²⁵³ Ecosystem services are services from natural systems like deserts that assist humans either directly or indirectly. (de Groot, R.S., M.A. Wilson, and R. M.J. Boumans. 2002. A typology for the classification, description and valuation of ecosystem functions, goods, and services. *Ecological Economics* 41:393-408.)

²⁵⁴ Sally Wittlinger, Decades, Arizona State University, *Sustainability: The Urban Heat Island* <http://arizonaindicator.org/sites/default/files/content/publications/Decades-vol1-issue-10.pdf>.

²⁵⁵ The Brundtland Commission defined sustainability as a system that meets the needs of the present without compromising the needs of future generations. (United Nations Economic Commissions for Europe. Sustainable development - concept and action. http://www.unece.org/ocs/nutshell/2004-2005/focus_sustainable_development.html (last visited July 11, 2013)).

²⁵⁶ Paul Mees, *Transport for Suburbia: Beyond the Automobile Age Earthscan* 2010.

²⁵⁷ Rachel Morello-Frosch, *The Climate Gap: Inequalities in How Climate Change Hurts Americans & How to Close the Gap*, found at http://domsife.usc.edu/pere/documents/The_Climate_Gap_Full_Report_FINAL.pdf.

²⁵⁸ "If you are going to use the new Loop 202 to go to Downtown Phoenix, good luck as you just added another 10 miles to your route. The loop from I-10 (San Tan/Pecos) to 59th Avenue is 22 miles, and then add another 5 miles to back-track to Central and you have a total of 27 miles. The current distance from the same starting point is 17 miles." (Jim Jochim, Ahwatukee Foothills News, *Proposed South Mountain Freeway will do permanent harm to our environment*, http://www.ahwatukee.com/tukee_talk/article_bc0a8868-d4c1-11e2-bbc4-0019bb2963f4.html (last visited July 14, 2013)).

²⁵⁹ ADOT, South Mountain Study Team, Chapter 1: *Purpose and Need Banner* at <http://www.smfonlinehearing.com/materials/chapter1/>

²⁶⁰ *Id.*

²⁶¹ *Id.*

Mountain Loop. The DEIS does not make it clear why there were no other alternatives. Putting in the failed attempt with GRIC indicates there was a real assumption by ADOT that GRIC should have permitted the highway through its territory.²⁶² And because GRIC rejected the request, only one other option was available, and one that would also disparately impact the GRIC.²⁶³ By late 1998, ADOT had spent \$24 million on Pecos Road right of way. And now, ADOT says it owns about 85 percent of the land it needs along Pecos Road.²⁶⁴ From the facts, having a disparate effect on the GRIC, either by putting the South Mountain in the GRIC's reservation or through its sacred mountain has never been a deterrent in ADOT's plans.

Regulations implementing NEPA explain that an EIS "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives."²⁶⁵ And the Ninth Circuit has determined that agencies should be afforded considerable discretion in defining the purpose and need of a project.²⁶⁶ However, this discretion is not without limitations.²⁶⁷ For example, "an agency cannot define its objectives in unreasonably narrow terms."²⁶⁸ And "[a]n agency will not be permitted to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be considered."²⁶⁹ Because there is no other alternative, the purpose and need for the proposed project is unreasonable.

ADOT's Long Range Transportation Plan: 2010-2035, enumerates several goals and objectives for building transportation systems. They are: improve mobility and accessibility; preserve and maintain the system; support economic growth; link transportation and land use; consider natural, cultural, and environmental resources; enhance safety and security; strengthen partnerships; and promote fiscal stewardship. ADOT's Long Range Transportation Plan is seriously flawed by giving natural, cultural, and environmental resources only consideration; as

²⁶² After Governor Rhodes of the GRIC wrote a letter dated January 27, 2010 to ADOT's Director John Halikowski volunteering to allow a study of the effects of an On-Reservation Loop 202 alignment in order "to mitigate any negative impacts to our culture and land" because "despite our desire for a no-build option, we recognize that there is a high likelihood that the Loop 202 Mountain will be built", Governor Brewer of Arizona responded in a February 1, 2010 letter stating "I am hopeful for the opportunities that may exist to consider the economic development potential of this much-needed transportation corridor" and "I am pleased to know that your team is part of the conversation and that there is a path forward for ongoing talks about the conditions of the Community's cooperation." What is found in Governor Brewer's response is that Arizona is not interested in GRIC's values and needs but is only requesting that the GRIC "cooperate". (GRIC Executive Office of the Governor & Lieutenant Governor, January 27, 2010 letter to ADOT, John Halikowski; ADOT Governor, Feb. 1, 2010 letter to Governor William R. Rhodes, GRIC).

²⁶³ ADOT spokesperson Tim Tait stated during the ADOT outreach in Komatke on June 22, 2013 that "A possible Gila River route will remain off the table unless the Community changes its stance either through a re-vote or Community Council action. If such a reversal occurs any time before the final record of decision on the freeway is reached in 2014, then an alternative Gila River alignment would be studied...As of now, there's no indication that that's changing, so the project team is moving ahead with the E1 alternative...That's the only thing that's on the table." (Joshua Jovanelly, GRIC Website, *ADOT outreach on proposed 202 ext. held in Komatke* <http://www.gilariver.org/index.php/news/3829-ador-outreach-on-proposed-202-ext-held-in-komatke> (last visited July 15, 2013).

²⁶⁴ Sean Holstege, *The Republic*, 1998 plan for South Mountain Freeway passed, March 25, 2013 <http://www.azcentral.com/community/ahwaukucce/articles/20130308south-mountain-freeway-plan-ignored.html> (last visited July 11, 2013).

²⁶⁵ 40 C.F.R. § 1502.13.

²⁶⁶ *Morrison*, 153 F.3d at 1066.

²⁶⁷ *Id.*

²⁶⁸ *City of Carmel-By-The-Sea v. United States Dep't. of Transp.*, 123 F.3d 1142, 1155 (9th Cir.1997).

²⁶⁹ See also *City of New York v. United States Dep't of Transp.*, 715 F.2d 732, 743 (2d Cir.1983).

explained before, just considering significant cultural resources will limit federal funding. Further, in light of the goals and objectives, the South Mountain Loop 202 actually weakens partnerships, as the GRIC is a partner in transportation projects: marginalizing partners weakens, not strengthens partnerships. The South Mountain Loop 202 is also contrary to the promotion of fiscal stewardship. The South Mountain Highway will cost twice as much as any other highway that ADOT has built in the past: the 101 and the 202 loops cost about 40 to 46 million per mile. South Mountain would cost about 80 million per mile.²⁷⁰ The DEIS also fails to even include and therefore estimate the cost of the highly contaminated areas in the path of the proposed South Mountain Loop 202 that would have to be cleaned up for the highway to be put in.²⁷¹

The South Mountain Loop 202 is neither legitimate and integral to ADOT's mission nor is it necessary. The South Mountain Loop 202 would not be efficient or cost-effective. It would be more efficient to design a transportation mode that will strategically complement the realistic population projections, socioeconomic needs and current transportation modes to reign in urban sprawl and promote smart growth. It is not cost effective because it is going to be twice as much as other highway projects, 30 million of which would just be used to cover going through South Mountain. Having the highway through the ridges will require lots of maintenance, which will require ongoing costs.²⁷² Population growth, socioeconomic development and limits to current transportation modes do not bear a manifest demonstrable relationship to going through South Mountain. There are numerous ways to accommodate population growth, create smart growth and invest and improve in present transportation modes and public transportation without going through South Mountain. As PARC and others suggest, there are alternatives that are comparably effective with less of a disparate impact. Therefore, there is no substantial legitimate justification for the disparate impact on the GRIC.

If ADOT wants to fulfill the purpose and need of reducing congestion and traffic and at the same time, follow the Arizona Transportation Plan, several alternatives offered by PARC are feasible: (1) Light rail along Pecos Road but going through a small portion of the GRIC (with permission) rather than cutting through South Mountain; (2) 8-10 lane Loop 202 following Baseline Road from 51st Ave to I-10; (3) 8-10 lane Loop 202 from I-10 near Avondale going along the west side of the Estrella Mountains and then cutting between the Estrella and Maricopa Mountains, following the southern boundary of the GRIC to the I-10 north of Casa Grande; (4) 8-10 lane freeway along State Route 85 from I-10 at Buckeye to I-8 at Gila Bend as a "real" truck by-pass; (5) 8-10 lane freeway along State Route 85 from I-10 at Buckeye, cutting between the Estrella and Maricopa Mountains and across to I-10 north of Casa Grande as a "real" truck

²⁷⁰ Jana Bommersbach, *Road Rage "Jana's View"* Phoenix Magazine February 2007 quoting Eric Anderson of MAG <http://www.janabommersbach.com/phx-mag-feb07.php> (last visited July 1, 2013).

²⁷¹ The proposed path of the freeway crosses contaminated property near Interstate 10 near 55th Avenue. Also, groundwater is contaminated with tetrachloroethene (PCE), trichloroethene (TCE), 1,1-dichloroethane (1,1-DCA), cis-1,2-dichloroethene (cis-1,2-DCE), 1,1-dichloroethene(1,1-DCE) and chromium in the area around 51st avenue and Van Buren to 59th Avenue and Van Buren: the area is on the list of the state of Arizona's Water Quality Assurance Revolving Fund (WQARF), which is the state's equivalent of a Superfund Site. (AZDEQ, *West Van Buren Water Quality Assurance Revolving Fund (WQARF) Site*, found at <http://www.azdeq.gov/environ/waste/sps/download/phoenix/wvb.pdf>) By purchasing this contaminated land for the freeway, the state of Arizona would have to assume the liability for the clean-up of these contaminants, along with the liability for adverse health impacts suffered by workers in the area. This would be an enormous economic impact.

²⁷² FHWA does not provide funding for continued maintenance of hillside erosion after construction. ADOT does not provide its maintenance highway workers funding to mitigate sediment discharges from hillside rills and failed sediment control features of the original construction best management practices.

by-pass; (6) 8-10 lane freeway along one of the routes described in 2, 3, or 4, and renumber it as the I-10 so all "through" traffic would take this route as a default; (7) Renumber the I-10 through Phoenix as I-810 or the like, making it obvious that it is for Phoenix traffic only.²⁷³ Additional alternatives are improve the Broadway Curve by applying good engineering directly to the interchanges in that area; build a road to help Laveen traffic reach I-10 West, much as Pecos Road helps Ahwatukee reach I-10 East; and improve SR 85 to a freeway and renumber the truck bypass 1-10 to better facilitate and encourage all pass-through traffic to travel around the valley instead of through it.

Further, just by applying smart technology on existing highway, infrastructure projects would look entirely different. For example, traffic planners know solutions to ameliorate congestion that could be applied to the Phoenix-metropolitan area.²⁷⁴ For example, simple partial solution is a toll-free 511 traffic telephone system.²⁷⁵ Another technology is based on a network of freeway cameras and sensors that would measure and monitor the amount of traffic and predict how long a journey will take; information then could be fed to mobile devices and the electronic message signs on freeways that tell motorists how long it will take to reach certain intersections.²⁷⁶ Highway signs could also give alerts of traffic jams miles in advance and advise people to take detours.²⁷⁷ The signs could also signal lane closures miles before cars approach a bottleneck.²⁷⁸ Also, some carpool lanes might be better off converted back into regular lanes.²⁷⁹ And, more signs urging slow traffic to stay to the right could also relieve congestion.²⁸⁰

VIII. REMEDIES

For all the reasons above, ADOT violated Title VI of the Civil Rights Act by engaging in discrimination based on race, ethnic identification, and nationality.

In order to provide effective remedies for the discrimination set forth in this Complaint, ADOT must:

- (1) exclude any route for the proposed freeway that would go near or through the South Mountain or GRIC or other sites considered sacred or culturally significant to indigenous people;
- (2) adopt an environmental justice policy that will ensure compliance with Title VI for all current and future projects;
- (3) and prohibit future federal funding to ADOT if the South Mountain Loop 202 is built.

Submitted by: Lori Riddle

on behalf of the Gila River Alliance for a Clean Environment

²⁷³ PARC, Possible Alternatives to SMF, http://74.53.100.109/~protecto/?page_id=31 (last visited June 29, 2013).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Sean Holstege, The Republic, *New report details Phoenix-area's traffic congestion* Feb 4, 2013 <http://www.azcentral.com/news/articles/20130131phoenix-area-new-report-details-traffic-congestion.html> (last visited July, 9 2013).

P.O. Box 11217
Bapchule Az 85121
529-610-3405
contaminatedinaz@yahoo.com

Please send all communications via mail or email.

RECEIVED
JUL 30 2013
BY: BJR

Gila River Alliance for a Clean Environment (GRACE)

EMBARGO UNTIL 7 AM TUESDAY JULY 30, 2013 Contact: Lori Riddle 520-610-3405; Joseph Morago 520-610-8027

GILA RIVER INDIAN COMMUNITY TRIBAL MEMBERS TO SERVE ARIZONA DEPARTMENT OF TRANSPORTATION WITH FEDERAL TITLE VI CIVIL RIGHTS COMPLAINT FOR ADOT'S PROPOSED BLASTING OF SACRED SOUTH MOUNTAIN AND DESECRATION OF SACRED SITES IF SOUTH MOUNTAIN LOOP 202 FREEWAY IS BUILT

PRESS CONFERENCE AND SERVING ADOT WITH CIVIL RIGHTS COMPLAINT:
TUESDAY, JULY 30, 2013 9 AM

IN FRONT OF ARIZONA DEPARTMENT OF TRANSPORTATION 206 S. 17th AVE., PHOENIX, ARIZONA

Phoenix, AZ. – Gila River Indian Community tribal members and their community group the Gila River Alliance for a Clean Environment will have a press conference on Tuesday, July 30, 2013 at 9 am to announce that they have filed a federal civil rights complaint under Title VI of the United States Civil Rights Act against the Arizona Department of Transportation. The press conference will take place in front of ADOT, 206 S. 17th AVE., Phoenix, Arizona.

Following the press conference, tribal members with the Gila River Alliance for a Clean Environment will serve ADOT with a copy of the civil rights complaint.

The civil rights complaint alleges that ADOT violated the civil rights of Native peoples of the Gila River Indian Community by proposing and promoting the South Mountain Loop 202 Freeway that would negatively and disparately impact Gila River Indian Community tribal members by desecrating their sacred South Mountain and causing disparate health impacts. The complaint is being filed with the United States Department of Transportation, as ADOT is a recipient of funds from the US DOT/Federal Highway Administration and is subject to the non-discrimination provisions of Title VI.

Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Tribal members, a protected class of people, were discriminated against because:

- ADOT knowingly and purposely designed the South Mountain Loop 202 through the GRIC's sacred South Mountain, despite recognizing and acknowledging that the South Mountain Loop 202 would have a serious and major disparate impact on tribal members culturally, spiritually, and religiously;
- ADOT purposely designed a narrow purpose and need for the DEIS based on inaccurate and false estimates of population projections and users of the South Mountain Loop 202 Freeway, narrow assumptions of potential alternative transportation modalities, and ignored the environmental and sociological consequences of creating more freeway rather than moving toward smart growth, eliminating any alternative that would not have a disparate and a negative cumulative effect on the Gila River Indian Community and its people;
- ADOT failed to analyze the South Mountain Loop 202's disparate health, environmental, and economic impacts on the tribe and tribal members who already experience higher rates of diabetes and asthma that would be exacerbated if the South Mountain Loop 202 were constructed;
- ADOT provided inadequate consultation and informed consent, access, notice, and meaningful participation in the Draft Environmental Impact Statement scoping and planning to the Gila River Indian Community tribal members.

The civil rights complaint requests that the federal government cease all further funding to ADOT if the South Mountain Loop 202 project is built due to the devastating cultural, spiritual and health impacts on tribal members that would unacceptably and illegally violate civil rights of tribal members.

In addition, the Gila River Alliance for a Clean Environment will be filing international complaints with UN Special Rapporteurs on human rights and fundamental freedoms of indigenous people, cultural rights, and freedom of religion.



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

CULTURAL RESOURCE MANAGEMENT PROGRAM
CULTURAL RESOURCE SPECIALIST OFFICE

POST OFFICE BOX 2140
(520) 562-3570
(520) 562-3571
FAX: (520) 562-3576

MEMORANDUM

TO: Jennifer Giff, GRIC General Counsel

FROM: Barnaby V. Lewis, CRMP Cultural Resource Specialist *[Signature]*

DATE: March 26, 2007

SUBJECT: RESOLUTION DESIGNATING THE SOUTH MOUNTAIN RANGE (Muhadag, Avikwaxois) AS A SACRED PLACE AND TRADITIONAL CULTURAL PROPERTY OF THE GILA RIVER INDIAN COMMUNITY.

Attached is a draft resolution designating the South Mountain Range as a sacred place and traditional cultural property for your review. We wish to proceed in presenting this resolution before GRIC Cultural Resource Standing Committee at the next regular meeting on Tuesday, March 27, 2007. Thank you for your attention in this review. Please call me at 562-6713 or Assistant Cultural Resource Specialist, Angela D. Garcia-Lewis at 562-6743 if you have any questions.



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION NO. GR-41-07

A RESOLUTION DESIGNATING THE SOUTH MOUNTAIN RANGE (*Muhadag*, *Avikwaxós*) AS A SACRED PLACE AND TRADITIONAL CULTURAL PROPERTY OF THE GILA RIVER INDIAN COMMUNITY.

WHEREAS, the Gila River Indian Community Council ("the Community Council") is the governing body of the Gila River Indian Community ("the Community"); and

WHEREAS, the Community Council on January 6, 1982, did adopt Ordinance No. GR-01-82 under Title XV of the Gila River Indian Community Law and Order Code in which "[i]t is...declared as a matter of Community policy and legislative determination, that the public interests of the Pima-Maricopa people and the interests of all other persons living within the jurisdiction of the Gila River Indian Community require that the Community adopt a means whereby all sites, location, structures, and objects of sacred, historical or scientific interest or nature will be protected from desecration, destruction, theft, or other interference."; and

WHEREAS, the Community Council through Resolution GR-15-89 did approve the Policy Statement of the Four Southern Tribes (Salt River Pima-Maricopa Indian Community, Ak Chin Indian Community, Tohono O'odham Nation, and the Gila River Indian Community) which outlines the Four Tribes intent to protect, promote, and preserve cultural affinity to the HuHuKam; and

WHEREAS, the Community Council has always held the preservation of historical, archaeological, cultural, religious sites as a high priority and recognizes the need to protect the cultural heritages of the Akimel O'odham (Pima) and the Pee Posh (Maricopa); and

WHEREAS, the identification and authentication of sacred places / traditional cultural properties is the sole responsibility of the federally recognized tribe according to its unique culture; and

WHEREAS, the Community does recognize certain locations to be sacred places / traditional cultural properties based on the unique cultural and spiritual beliefs of the Akimel O'odham (Pima) and the Pee Posh (Maricopa); and

GILA RIVER INDIAN COMMUNITY
RESOLUTION GR-41-07
PAGE 2 OF 2

WHEREAS, all, but not limited to, of the places referenced in the oral traditions of the Akimel O'odham (Pima) and the Pee Posh (Maricopa) are culturally and spiritually significant to the continuing life ways of the Akimel O'odham (Pima) and the Pee Posh (Maricopa); and

WHEREAS, the *Muhadag* (Pima language) also known as (a.k.a.) *Avikwaxós* (Maricopa language), a.k.a. Greasy Mountain (English language), and geographically known as the South Mountain, South Mountain Range, or Salt River Mountains (Range) figures prominently in oral traditions of both the Akimel O'odham (Pima) and the Pee Posh (Maricopa)

NOW THEREFORE BE IT RESOLVED, that the Community Council hereby does acknowledge and recognize that the South Mountain Range in its entirety is a sacred place / traditional cultural property and must be kept inviolate.

BE IT FURTHER RESOLVED, that the Community Council hereby strongly opposes any alteration of the South Mountain Range for any purpose would be a violation of the cultural and religious beliefs of the Gila River Indian Community and would have a negative cumulative affect on the continuing lifeways of the people of the Gila River Indian Community.

BE IT FINALLY RESOLVED, that the Governor, or in his absence, the Lieutenant Governor, is hereby authorized to sign and execute such documents as are necessary to effectuate this resolution.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted on the 4th of April, 2007, at a Regular Community Council Meeting held in District 3, Sacaton, Arizona at which a quorum of 10 Members were present by a vote of: 9 FOR; 0 OPPOSE; 1 ABSTAIN; 5 ABSENT; 2 VACANCIES.

GILA RIVER INDIAN COMMUNITY

LFR Pll 4-10-07
GOVERNOR

ATTEST:

Ann J. Stewart
COMMUNITY COUNCIL SECRETARY



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

RESOLUTION GR-126-00

RESOLUTION OPPOSING THE USE OF 51ST AVENUE FOR THE PROPOSED TRUCK BYPASS ROUTE AND ANY FUTURE BYPASS PLANS FOR THE PROPOSED SOUTH MOUNTAIN PARKWAY THROUGH THE DISTRICT SIX COMMUNITY OF THE GILA RIVER INDIAN COMMUNITY

WHEREAS, the Maricopa County Department of Transportation (the "MCDOT") completed a 51st Avenue Corridor Truck Route Analysis Study that projected traffic volumes of 7,000 vehicles per day on 51st Avenue in 1997 with volumes projected to increase to 23,000 vehicles per day by the year 2020;

WHEREAS, MCDOT has proposed a truck bypass route that would redirect traffic and reduce current and future congestion on 51st Avenue in Laveen;

WHEREAS, the City of Phoenix completed a South Mountain Parkway Specific Plan in 1999 to address the limited access to the west valley from Interstate 10 east;

WHEREAS, the Maricopa Association of Governments (the "MAG") has formed a South Mountain Agency Stakeholders group for the purpose of developing a recommendation for the alignment for the proposed South Mountain Parkway;

WHEREAS, the Arizona Department of Transportation (the "ADOT"), MCDOT, City of Phoenix, and MAG plan on extending Pecos Road west around the South Mountain with an option of crossing across lands of the Gila River Indian Community (the "Community");

WHEREAS, the District Six community has experienced the negative impact of increasing traffic through the residential areas along 51st Avenue south of the Community's boundary;

WHEREAS, 51st Avenue is essential to the Community because it serves as the principal arterial from Riggs Road-Beltline road and is a significant east/west travel route to the western portion of the Community;

WHEREAS, the District Six Community is concerned with the safety and welfare of its members, as well as other members of the Community who utilize this roadway, due to excessively speeding vehicles on 51st Avenue, which has residential areas, churches, a health clinic, a school, a Boys and Girls club, and a convenience store within its area;

GILA RIVER INDIAN COMMUNITY
RESOLUTION GR-126-00
PAGE 2

WHEREAS, the District Six Community has concerns of increasing traffic, excess speeding vehicles, the safety and welfare of its members, the area's significant cultural and religious importance to the entire Community, the deterioration of the pristine natural environment, and the increase negative noise and visual impacts;

WHEREAS, because of its concerns, the District Six Community strongly opposes the proposed parkway, truck bypass route, or any future bypass plans through portions of the South Mountain and across Community land;

WHEREAS, on June 12, 2000, the District Six Community voted to strongly oppose future transportation of hazardous waste and materials through its community; and

WHEREAS, the District Six Community strongly requests that the Community Council oppose any future development of roadways from ADOT and MCDOT through the District Six Community.

NOW THEREFORE BE IT RESOLVED, that the Community Council strongly opposes the development plans by ADOT, MCDOT, and MAG for a truck bypass route or any future bypass plans for the proposed South Mountain Parkway across Community lands.

BE IT FINALLY RESOLVED, that the Governor, or in the Governor's absence the Lieutenant Governor, is hereby authorized to take necessary action to effectuate the intent of this Resolution.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1. (a), (1), (7), (9) and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted by this 2nd day of August, 2000 at a Regular Community Council Meeting held in District 3, Sacaton, AZ at which a quorum of 13 Members were present by a vote of 15 FOR; 0 OPPOSE; 0 ABSTAIN; 2 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY
[Signature]
GOVERNOR

ATTEST
[Signature]
COMMUNITY COUNCIL SECRETARY

**Elderly Concerns Group
Motion Sheet**

Date: June 12, 2013

Ms. Sharon Gonzales, District Seven Elder, made a motion that we as elders oppose

The Free way project and to keep them from destroying South Mountain.

The motion was seconded by: Mr. Fred Reams, District Three Elder.

Motion approved on this 12th day of June 2013 by a majority show

Of hands from the group.

Sandra Jackson
Secretary's Signature

6/27/13
Date

Mary V. Thomas
Chairperson's Signature

6-27-13
Date

July 2, 2013

I, Winnona Catha am a community member of the Gila River Indian Reservation. My connection to the South Mountain is that it is a sacred mountain to our people. Also, it was most sacred to our ancestors.

There are many things that the mountain was used for such as ceremonies, there are stories about that mountain I was told by my elders, and there are plants that grow on this mountain that we use today for healing, eating, and blessings.

I wasn't notifying about the meetings that they had about this freeway being built. I believe that they should of set out flyers to notify people not just only landowners but members of our community that should also be included to this matter that is coming in affect to our reservation. Also, they should of provided transportation for the districts or have meetings at each of the service centers. Some of the community members don't have transportation to be these meeting were located at.

Our land and mountain is important to me then this freeway. As I look towards the District 6 area I can see a slightly cloud of pollution. If we have this freeway there will be a huge cloud of pollution that will cover our land. It will affect our peoples health like; asthma, lung diseases, infants may be born with birth defects, and heart diseases. I am concerned about our future generations' health and what they would have to live if this freeway is built. We got to look forward and think of their future before considering anything, because I remember when I was younger my grandmother would always say "This is your land and never let a white person take it from you." Well she said it to me in Pima; I understood what she was saying after she explained to me.

Thank You,



Winnona Catha

P.O. Box 1021

Sacaton, AZ 85147

(520) 562-1530

mv.2.butterflies.0913@gmail.com

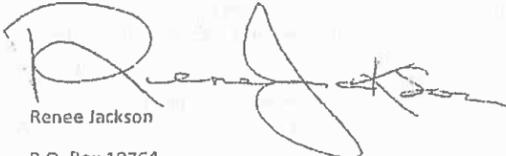
My name is Renee Jackson and I am a member of the Akimel O'odham tribe also known as the Gila River Indian Community. I am writing this statement for two reasons, 1) to give a supportive statement regarding the cultural significance of Muhadag (South Mountain) and 2) to state my concerns regarding the Arizona Department of Transportation's lack of cooperation and planning with the people of GRIC.

As an Akimel O'odham woman, I regard Muhadag (South Mountain) as a place of spiritual significance to the O'odham tribes. The mountain is central to the O'odham creation story and continues to be a place to hold ceremonies by and for the O'odham people. The mountain is also sacred to us because of the plant life we use for medicinal and ceremonial purposes and also because of the wildlife we hunt to sustain ourselves. The construction of this freeway would greatly harm the wellbeing of the mountain and therefore will bring harm to the O'odham.

The manner in which ADOT has pursued the Gila River community member's voice and cooperation regarding the Draft Environmental Impact Study and the planning process has been poor to say the least. There was very little communication between the GRIC and MAG and ADOT. When community members were then made aware of public hearings and meetings, it was short notice and not sympathetic to our community members lack of

transportation. Furthermore, when ADOT did hold a "Public Forum" in GRIC, members were not to voice their statements verbally as others were able to do at the Phoenix hearing.

Most importantly, I feel that the possible construction of this freeway through our sacred Muhadag is a direct violation to my civil and religious rights as an Indigenous person. Also, as an advocate for my children, I wish to state my opposition to the Loop 202 expansion, aka, the South Mountain Freeway as I see it as a threat to their religious freedoms being that Muhadag is considered our most valued place of worship and must be protected for our future generations.



Renee Jackson

P.O. Box 10764

Bapchule, Az 85121

rjackson81@gmail.com

(520)233-1634

My name is Peggy Mae Morago I am 66 yrs. old retired elementary school teacher an elder from the Gila River Indian Community. I am writing this statement to express my opposition and concerns about A.D.O.T.s proposed South Mountain Loop 202 Freeway.

I have a very strong connection to South Mountain. In my late teens I left my hometown of Ajo, Arizona to attend Arizona State University. As a young woman far from home it was a difficult adjustment to live in the city, but going to South Mountain help with this transition. According to our oral history South Mountain is a sacred mountain to our people. Akimel O'odham legends and stories talk about South Mountain being the home of the deity for our tribe. There are also stories about artifacts and petroglyphs from our ancestors the Hohokam located on South Mountain. As a young mother raising a child in the late sixties/early seventies, I often went to South Mountain to meditate when times became tough or if I was unable to return to Gila River for family emergencies. South Mountain has always made me feel closer to home and closer to my O'odham Himdag.

One of my major concerns about the proposed South Mountain Loop 202 freeway is the health effects on my community. As a retired school teacher I am well aware of the rise in respiratory illness in children within all communities. This proposed freeway will increase the occurrence of asthma, bronchitis, and many other respiratory ailments due to particulate matter and pollutions from this project. The elderly, newborns and young children will be hit the hardest from this freeway. I am an elder with Valley Fever; this freeway will defiantly affect my health. This is the major reason why I don't travel to the Phoenix metro area. It is difficult for me to breath from all to pollution in the air, and I don't want this pollution in my community.

Another issue I wish to address is the way A.D.O.T. conducted the meetings for the public. I was unable to attend the ONE and only meeting that I would have been allowed to speak at publicly. As stated before I don't travel to the Phoenix metro-area due to the distance, pollution and the heat. I am an elder that is in a wheelchair, which needs assistance to get around. Attending this meeting was impractical for me and the ONE meeting held in the Gila River Indian Community was held over fifty miles from my home. I feel that A.D.O.T. violated my civil right by not allowing anyone to speak at the meeting held in the Gila River Indian Community, as well as other meetings held in other communities. I was raised by oral traditions, I was taught to speak out, and I have a right to be heard in a public form.

Inclosing I want to state for the record that the proposed Loop 202 South Mountain Freeway is wrong. The destruction of our Sacred Mountain is not only a violation of our traditions and heritage, but detrimental to our O'odham Himdag. Enough has been taken away from us already, why must we sacrifice more.

Peggy Mae Morago 7-6-2013

Peggy Mae Morago 7/6/2013

G.R.I.D. # 6675

P.O. Box 1289

Sacaton, Arizona 85147

My name is Joseph C. Morago I am a member the Gila River Indian Community. I am writing this statement to address my opposition of the South Mountain Loop 202 Freeway. As a charter member of G.R.A.C.E. (Gila River Alliance for a Clean Environment) I have followed this issue for many years. During this time I have notice the condescending attitude and lack of respect that A.D.O.T. (Arizona Department of Transportation) has shown to the people of the Gila River Indian Community. For well over two decades our community has repeatedly reject the idea of a freeway passing thought our community, because of cultural, religious, environmental and the current and potential health affects to our community. In spite of our concerns and objections A.D.O.T., M.A.G. (Maricopa Association of Governments), Maricopa County, and the Maricopa Regional Transportation Team still insist on building the South Mountain Loop 202 Freeway by blasting away a piece of our sacred mountain.

South Mountain is a sacred place of cultural significant to the people of Gila River. Oral history and legends state that South Mountain is the home of "Elder Brother" (I'toi) deity of the Akimel O'odham Tribe (Gila River Indian Community Tribe). South Mountain was also once inhabited by our ancestors the Hohokam. The Hohokam has been acknowledged by archeologist, anthropologist and historians to be one of the first settlers of this region. South Mountain is also a place of worship, sacred ceremonies are preformed, prayer and blessings are giving and shrines are built to honor I'toi and our ancestors. Other activities such as the harvesting of the saguaro cactus fruit and gathering of medicinal plants occur at different times of the year. Because of the sacredness of South Mountain, any destruction would be detrimental to the spiritual wellbeing of the people of the Gila River Indian Community.

Another major concern about this proposed freeway project is the health effects on the people of the Gila River Indian Community due to air quality. According to the 2005 Joint Air Toxics Assessment Program (JATAP) Gila River has a high level of Particulate Matter (PM) and Volatile Organic Compounds (VOC) in the air above the community. If the proposed South Mountain Loop 202 Freeway is completed the air quality over the Gila River Indian Community would drastically change for the worse. The U.S.E.P.A. (United States Environmental Protection Agency) "Green Book" states that Maricopa County has been nonattainment in Particulate Matter (PM)-10 since 1992. PM-10 is inhalable coarse particulates that consist of a complex mixture of extremely small particle and liquid droplets made up several components like acids, organic chemicals, metals, and soil or dust particles, which can cause an increase of Heart and Lung disease.

Short term exposure to PM-10 can increase susceptibility to respiratory infections, aggravated lung disease, acute bronchitis and an increase of asthma attacks. Long term exposure to PM-10 have been associated with reduced lung function, chronic bronchitis, premature death, low birth weights in infants, premature delivery, and possible fetal and infant death. Infants are not the only ones at risk to these types of ailments. Older adults, the elderly, children, active adults, and people with lung and heart disease, resent studies have shown that people with diabetes are also at risk when exposed to Particulate Matter (PM)-10.

The Gila River Indian Community is not the only community to raise concerns over this proposed freeway project. The residents of Ahwatukee Foothills have raised some of the same concerns about the South Mountain Loop 202 Freeway. As stated before I am a member of G.R.A.C.E. and I am also a member of P.A.R.C. (Protect Arizona's Resources & Children) to protect South Mountain. One of P.A.R.C.'s major concerns is the potential for a hazardous material incident if an accident is to occur on this proposed freeway project. According to the maps in the D.E.I.S. and A.D.O.T.'s video presentation, the South Mountain Loop 202 Freeway would be within a mile of several schools, homes, and businesses that would have to be evacuated of such an incident were to occur. With too few exits and an ineffective emergency management plan the possibility for serious injury, long term illness or loss of life is extremely high.

The next issue I wish to address is the manner in which A.D.O.T. has disseminated information concerning the South Mountain Loop 202 Freeway to the people of the Gila River Indian Community. The D.E.I.S. states that A.D.O.T. attended 178 meetings with the Gila River Indian Community. If this is true why did A.D.O.T. only attend a couple meetings with tribal council in over a decade? Who did A.D.O.T. meet with from the Gila River Indian Community? Why did A.D.O.T. fail to properly notify community members of public meeting, and why does A.D.O.T. acknowledge the cultural and religious significant of South Mountain to the Akimil O'odham people but dismiss these facts by insisting on moving forward with the construction of the South Mountain Loop 202 Freeway.

An addition to the previous mentioned issues I would like to address A.D.O.T.'s handling of the of the ninety day public comment period concerning the D.E.I.S. I feel that A.D.O.T. mishandled and misinformed the people of the Gila River Indian Community. The D.E.I.S. was released on April 25, 2013. On April 30, 2013 A.D.O.T., M.A.G., the TTT (Transportation Technical Team), Gila River Indian Community Executive Office, G.R.I.C. Law Office, G.R.A.C.E., G.R.E.Y. (Gila River Environmental Youth) with five other grassroots and private corporation organizers met to discuss how community members would be able to comment on the D.E.I.S. Among the issues discussed was transportation to the public comment meeting in Downtown Phoenix, confirmation of a meeting(s) in Gila River, issues with submitting comments online, and notification to community member about important meetings, dates and other relevant information concerning the D.E.I.S. comment period.

At this meeting A.D.O.T. agreed to hold one or more public meeting(s) in Gila River to accept comments on the D.E.I.S. A.D.O.T. stated at this meeting that they would also provide free bus passes to the Downtown Phoenix public comment hearing. What A.D.O.T. failed to do was provide proper and concise information. A.D.O.T. never told community member that they would not be able to speak at the meeting in Gila River. A.D.O.T. also failed to provide adequate notice of this meeting. Although a notice was posted in the Gila River Indian Newspaper, this notice appeared in the paper only once on the days prior to the meeting scheduled in Gila River.

Inclosing I would like to state for the record that A.D.O.T. has not acted in good faith concerning the South Mountain Loop 202 Freeway project as it pertains to the people of the Gila River Indian Community. In fact A.D.O.T. has violated the Civil Rights of the Gila River Indian Community by acknowledging the significant and sacredness of South Mountain, but dismissing these facts with plans to blast through portions of South Mountain. In effect A.D.O.T. has discriminated against the Gila River Indian Community by preventing tribal members from participating in the comment process. The failure of notification of meetings held within the Gila River Indian Community, not allowing tribal members to make verbal public comments at the only public form held within the Gila River Indian Community, and failure to provide the bus passes promised to the Gila River Tribal Leadership for community members to attend the only meeting that public verbal comments were accepted. A.D.O.T. has violated the Civil Rights of the residents of the Gila River Indian Community and should not be able to receive federal funding for the South Mountain Loop 202 Freeway project.

Joseph C. Morago 7/22/2013
Joseph C. Morago 7/22/2013

G.R.I.D. # 12192

P.O. Box 1289

Sacaton, Arizona 85147

(520) 562-3886

Rezrocker67@yahoo.com

My name is Laura M. Thomas. I am an enrolled member of The Gila River Indian Community. I am also a member of G.R.A.C.E. - Gila River Alliance for a Clean Environment. I am the founder G.R.E.Y. - Gila River Environmental Youth. I am also a member of P.A.R.C. - Protecting Arizona's Resources and Children.

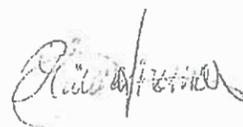
When I was younger I recall being taught about our people's heritage. Hearing the stories and being told about things that occurred many years ago in our culture. I remember being taught by my elders that we come from South Mountain. Battles were fought, families settled, it was always considered to be home to our people.

In regards to this issue, I had been under the impression that the people of Gila River Indian Community had passed a vote for no build on the loop 202. This issue continues to be pushed upon our community after it has been said by the people we do not want this. The efforts put forth by A.D.O.T. (Arizona Department of Transportation) in the case of the freeway are a burden upon the people of the community. Each meeting they hold to try and convince community members to be in favor of the freeway is reaching a level of harassment. People have to take time out of their day in order to be able to attend meetings after it has been clearly said "we as a people do not want it".

My people have been affected by chemical exposure. There are also many questions about health concerns that may arise because of the projected freeway. Air pollution, destruction of our sacred mountain, negative effects on the environment and the discrimination against our religious and cultural beliefs is why I'm against the proposed South Mountain Loop 202 Freeway.

Laura Thomas

P.O. Box #11217
Bapchule, Az. 85121
(480)532-5331
l.thomas1985@yahoo.com



Fairietta Morago

Gila River Indian Community

South Mountain is important to me because it's part of our heritage. There are many teachings that go with that mountain. Stories and songs that our future generations to carry on. To take the South Mountain away is a great impact to the Gila River Indian Community. It would be losing a part of us even more.

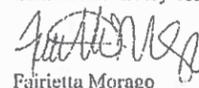
I am the 3rd generation from the boarding school era. Because of that era that happened to our grandparents. Some of the stories and songs will be lost forever. Our communities as O'odham people here on Gila River Indian Community need to salvage what is left of our lands. Not ruin it by putting a freeway through it. Learn to honor and take care of our lands.

Be making change this drastic is beyond the environmental issues, and the budget/cost it will take to put this freeway there.

It's spiritually connection to all walks of life. A way to stay in balance for society to be whole as best as it can be. Nobody takes time to listen and learn to why certain places should be left untouched. Now days the common human being lives too fast paced. Just think of the present time. A long time ago we knew how to think of the long term impact of ways of life.

Life there is no fast fix. This freeway to travel as stated at previous meetings. A 20-minute interval to get to point A to point B does not eliminate anything. A fast fix to life creates more problems you end up with a bigger mess than what you started with. I am against putting in a freeway through or by South Mountain. It's a disruption to nature's way of life.

I feel ADOT discriminated against us all at the last public forum held in Komatke, Az. Gila River Indian Community members were not able to voice their public comments. No matter where the meetings are held. All parties whether you are against or for the freeway should be able to speak. No meeting should be one sided for any reason what so ever. That is very unfair. Again this is a fast fix to eliminate process that everyone should abide by. Good, bad, and indifferent. Every comment counts. No one comment should be left unheard or unsaid.



Fairietta Morago

P.O. Box 893

Sacaton, AZ 85147

(520) 562-0269

July 24, 2013

Hello, my name is Lori Riddle. I am a daughter of the HoHoKam nation and a daughter of Antonio Azul, the last chief of my people. I am an enrolled member of the Gila River Indian Community. I was born here; I was raised here, lived here most of my life and will probably die here. In my lifetime, I've lived here in my territorial land and my confined reservation land, both in traditional manner and with modern conveniences. I was taught as a young girl how to gather, harvest and acquire foods and medicine for personal use. However I'm not a medicine person, a traditionalist or anything like that, I'm just a modern day O'odham woman who lives in 2 worlds and can balance both worlds. I pass this knowledge to my future generations. I am the co-founder, director and a member of GRACE (Gila River Alliance for a Clean Environment) a grassroots organization that has been, for more than a decade operating to protect my community from hazards of all types around the community. In addition, GRACE has been educating the community about subject matter surrounding those issues. I also sponsor a youth group GREY (Gila River Environmental Youth), who also does the same thing GRACE does but geared toward youth in the community. I'm also a member of various other groups and organizations, not to mention have had or currently hold seats on various committees, boards and commissions throughout the community. Finally, I am also a member of PARC (Protecting Arizona's Resources and Children).

Sometime after the turn of the century events happened that set in motion my part of the equation. While being raised on the reservation I found myself living on a toxic superfund site. This began my environmental experience. I became knowledgeable of toxic substances, bio-accumulation, persistent organic pollutants, half-life and many other terms that kids such as myself shouldn't have to learn. As I translated information to my grandparents I began to find myself unknowingly being educated in the procedures used for assessment and abatement processes. I was present for the original remediation of my family's land and then again 20 years later when a bio-remediation was needed.

With this knowledge and background I found locally, multiple issues in my community, one of them was the proposed South Mountain Loop 202. Taking a closer look I began to see the deficiencies in this project and notice that there was virtually no public participation. Consultation seemed minimal at best, if any? I began to look at the data for the substance releases and persistence of those substances. Ultimately, as any other project I looked at how these substances would impact Health and Human life. As a family who's been through the fire once, we've become quite aware of symptoms as a result of toxic exposure. In the documents submitted there is evidence and reference to some of the knowledge related to exposures. Back in the day of our exposure there wasn't enough information available.

My concern about the Dioxin furans, the Particulate matter both 2.5 and 10 microns, Carbon monoxide and the multitude of other substances that would continually be present in our community is enormous. There is more concern because of the terrain and the natural makeup of our community. The heaviest impacted areas would be the populated villages located directly

July 24, 2013

between two natural barriers, the South Mountain and the Estrella Mountain ranges. These barriers would most definitely keep those toxic substances in my community.

Currently, we have an amazing preserve that is full of the natural beauty that most Americans and people from all around the world picture when thinking of the well-known Sonoran desert. As a privileged individual, I've lived at the western tip of the South Mountain and seen many beautiful sunrises and given many blessings to the day and the people based on those gorgeous sunrises. In addition, while working for my community I have gained knowledge of aquifers, water sheds and washes that would be directly impacted.

My people would be cut off from interactions with the mountain, as a third party recipient of this information I had heard that the engineers and designers have mentioned animal crossings that would be put in place but no mention of human crossings that would be needed to go pray and have ceremonies and such. Not to mention the distraction of noise from the vehicles. During prayer, it's important to be in a peaceful quiet area. I tasked my daughter to complete research; she found that it takes multiple generations for animals to learn their "new" crossings. During that learning time we lose numerous animals because of destruction of current natural known crossings. I have to mention about the cacti in the area, on the reservation the cacti grow more abundantly around and on mountain areas, not so much in the flat lands anymore. So naturally as we have our ceremonial harvesting activities, there is a greater need to gather the fruit in mountain areas. Lastly, we Akimel O'odham as many other peoples acknowledge the spiritual properties associated with mountains. It is in my O'odham sister's memory as with many of my O'odham sisters that I recall her making jellies and other delicious dishes for both personal and financial sustainability, yet another reason to have direct accessibility to the mountains.

There is an enormous concern about Hazardous Material coming through our community. If this were to become "the" truck route, it most surely will be the hazardous material route. Since I sit on the CTERC (Chemical Tribal Emergency Response Commission), I have not seen hazard mitigation for this freeway. I also have not seen proposed policy to address what will happen in case a hazardous incident were to occur on this proposed freeway. Currently, we as a community do see our share of hazardous incidents/spills on the reservation by way of the I-10 (Interstate 10) freeway. Even though, when we look at potential incidents on either freeway, it will be apples and oranges as we have differences in the already established freeway (I-10) and the proposed freeway (L202).

There were very few meetings, very little public participation. The very first invite extended was days after the DEIS was released which was April 25th, 2013. The meeting invite was on April 30th, 2013 at 3pm in GRIC at the Governance Center.

Present were the TTT, Governor and Lt Governor (who is Chair of the TTT), various tribal departments, a rep from ADOT (who I can't recall), a rep from MAG, Senior Engineer Bob Hazlett as well as a few of the grassroots organizers. Represented were at least organizers from

July 24, 2013

5 groups. During this meeting we were given 3 copies of the DEIS to divide among our groups. A few days prior, a community member attempted to call to find out how to obtain a copy of the DEIS, she was told in order to get a hard copy she would have to pay 50.00 dollars. During the April 30th meeting they also advised us about the 50.00 dollar charge for hard copies. At this meeting they also told us that free bus service would be provided to the May 21st DEIS public comment hearing in Phoenix at the Phoenix Convention Center. Details about how the free bus rides to the hearing saying community members could catch the bus in two locations and even take the light rail, but no other details regarding the bus service were given. They also went through the scenario of what to expect at the hearing, how it would be set up, etc. At the beginning of the meeting the ground rules set as relayed by TTT's David White and Stephen Lewis both individuals head of the TTT. We were not allowed to speak about anything else but what the process was going to be, at this point there wasn't any mention that the Phoenix hearing would have some differences than the community forums. It was at this meeting where GRIC Lt Gov. had to officially request that a meeting (or two) be held in GRIC for community members that couldn't make the public hearing. At this meeting the handouts "Fact sheet" and "How to participate" were distributed. That's all I can recall.

A few times I attempted to call the number provided on the handouts, which also had a recording saying they couldn't receive any more messages, the box was full, or something to that effect. I had also heard similar accounts from other people who were attempting to call the number. On the Thursday before the hearing I started to get worried because there was no further mention of free transportation besides what was relayed to us during the April 30th meeting. I called the number provided and was able to have an opportunity to leave a voice message in which I said something to the effect of: Hello my name is Lori Riddle from the Gila River Indian Community and I'm trying to get some further information on bus service, passes or vouchers for my community members. How will this work? Would someone give me a call on my cell #520-610-3405, thank you?

No Response!!!!

So on the day of the Phoenix hearing May 21st, 2013 I lingered several hours. I only recognized Mr. Bob Hazlett from MAG, I approached Mr. Hazlett and asked him, "So who's in charge here?" He chuckled but didn't answer, I told him, "I ask because I have some concerns". I told him there's a problem with the number that it is always full and can't take anymore new messages, his response, "Yes, we just found out today that it only holds so many messages (I think the number he gave me was 13)". So I told him maybe they need to empty that a few times a day? The other thing I mentioned was that I had left a message on the number and relayed the message I had left the week prior. After that I said, "So how was this supposed to work? Because we could have gotten more tribal members present". He shrugged his shoulders and said, "Well it's too late now". Also on the day of the Phoenix hearing the participants received the small booklet "SMTN Meeting Guide". This was the first time we as community members

July 24, 2013

had seen this. The guide did say the community forums were going to be utilizing a different format. It also listed only 1 GRIC forum and listed it as tentative.

The meeting in GRIC was short notice fliers went out to the community literally days before the event. Before this event at least three weeks prior one community organizer emailed a request urging GRIC to provide transport to community members to the meeting. There is a lack of community members without vehicles. No response. Lastly a few days before organizers and community voiced their concerns over the inability to voice, in open forum, their concerns at this meeting it was this time we saw the GRIC forum flyers for the first time. We additionally asked again if transport would be provided, they finally said yes, but we organizers had to provide a list of community members who needed transport. This was not expected, it was too short of notice to gather all that information. The day of the GRIC forum were community members dissatisfied the lack of inability to openly voice their concerns. The video was looped, as posted on ADOT's website, throughout the day.

Previously, While the TTT was going through the community with their presentation about the proposed loop 202 that I specifically TTT's David White in two district meetings that I had attended one in district six and the other in district four. There were concerns about ADOT not coming to present the information themselves. The one elder in district six asked who they were working for? He (the elder) stated that he felt like the TTT should not have been presenting the information but ADOT should have been the ones bringing this information to the community. That same consensus was expressed at the district four meeting it was raised by an elder woman (although not as confrontational as the one in district six).

In closing, I'm tired of fighting this monster of a freeway being pushed on to our community. I'm tired of reading blogs, comments to news articles and discussion forums of people with a "Bullying" attitude, telling my people what "You (Indians) need to do". Even a newspaper editorial of a popular news outlet, stated how, "the GRIC should this and should that"! It sickens me that this freeway has successfully brought out the racial wars effect. It's literally created debates, arguments and full blown fights! This needs to stop and other we need to work on discussions of cleaner transportation, safer technologies for a better cleaner, greener future for all our children.



Lori Ann Riddle, GRACE
GRID #11,180
P.O. Box 11217
Bapchule, Arizona 85121
Cell #520-610-3405
E-mail: contaminatedinaz@yahoo.com

7-8-13

Hi my name is Stephanie J. Thomas and I'm a Gila River member, I reside in District 5 Casa Blanca and I lived here all my life and I've been hearing a lot about what was going on with the South Mountain, if I had the transportation I be there at all meetings, and I've been pray, keeping everyone in prayer. But most of all as I hear what's going on I don't like them trying to destroy the South Mountain, because it's been there for years, and I really don't think they need to tear that down, because it's been our favorite and as I can recall I've been up there with my family just to see the whole view of Phoenix and the Gila River and it's a Good View, that I know most of the people who loved being up there and having picnics, and other things riding their horses. So I pray that this Mountain will stay, Cause if we can live in this world they why??? Can't the Mountain stay. And as I use to live in Dist 6 we use to live right across from the Mountain on 51st Boundary line and as I use to wake every morning going to school I would see the sun rising from there, and I know a lot of people who lived

around there know what I'm talking about and so many things you don't know what it means to us having the Mountain there, and it won't be the same if it should to be gone. We don't need this freeway there it's just gonna call a lot of accidents there or other things I can't say. So Once Again Please don't take our South Mountain away, because it is sacred to us,

Thank You
Gila River Pima Stephanie Thomas
Tribal # PO Box 10952
13762 Capchule Arizona
85112-1

(520) 610-6247

I am Daniel Orion Hernandez I'm a member to the Gila River Indian Community. our people have lived in the valley for centuries. we are descendants of the Hu Hu Tam people. we have farmed this land for thousands of years. ~~our people~~ ~~children~~ as we were growing up we were taught that our land was sacred and that we need to protect it at all cost. South Mountain park is one of our sacred mountains. at one time it had belonged to our community. I can sit here and talk about everything that I had learned growing up and sit in rd. I know that what we believe as ~~Indian~~ Indian people aint the same as what you believe. you may see the mountain as a obstacle! but we see it as a refuge for our animals, a place where we can take our children and teach them our culture, ~~it may not seem like~~ a lot but the mountain means so much to our community.

There are so many reasons that we dont want the 202 thru the mountain! Having 4.5 ~~more~~ highway go thru means more pollution for our community. ~~It is not~~ I am worried that my children will never

see Blue Skys, they will grow up with health problems. from all the ~~smog~~ smog. there will be more accidents, more spills, and more problems for our community to worry about. we really dont need to put another problem for our children to worry about.

Adot needs to know we dont want this freeway to go thru ~~our~~ South Mountain or thru our community. we dont need to destroy the mountain, schools, homes and communities! the people have spoken No Loop 202!

Daniel Hernandez
#14479.

P.O. Box 832

Sacaton Az 85147

DanielOrionHernandez@gmail.com



7-8-13

My Name is Laverne Thomas. I am an enrolled member of the GIC. I wanted to tell someone of how little information has been given to us people here we need to protect the South Mountain because that mountain is sacred to our people. We still gather needed items even now. I guess that all I can say for now.

Laverne Thomas 6394
 P.O. Box 11421
 Bapchule, AZ 85121
 (520) 315-2275

Hello,

6-29-13

My name is Nicole Johns and I am a Gila River Indian Community member. I am stating that my connection to South Mountain is that it is a very ~~sacred~~ sacred place to me and my people.

I would also like to say that A.D.O.T. did not properly notify every one in our community about the meetings they have had about South Mountain.

I myself have not heard anything about these meetings ~~until they~~ ^{until they} have already passed. They don't make it easy for me to get to these meetings that they have. I don't have transportation to go in to the city or to the far west end of our reservation. I would like to add that it would be more convenient if they would have went to each district and asked each of us how we felt about this.

The health concerns I have about this project are that the exhaust would kill plant life that has been there for hundreds of years and can & will be a health hazard for the people that live near

and around the Freeway.
May I add that A.D.O.T. did not
ask in proper manners what we as
a community would like done or not done
with our sacred place of gathering.

Thank You.
Nicole Johns
Gila River Indian
Community Member
#17102.
⁽⁶⁰²⁾390-1908 or ⁽³²⁰⁾418-1469
nicolejohns41@yahoo.com
Nicole Johns

7-3-13

HELLO MY NAME IS BEONKA THOMAS AND
I AM FROM THE GILA RIVER COMMUNITY
I AM WRITING THIS LETTER BECAUSE I FEEL
LIKE I DID NOT GET ~~PROPER~~ NOTIFICATION
ABOUT MEETINGS. I FEEL THESE ARE IMPORTANT
MEETINGS. TO BE PART OF ARE PEOPLE FEEL
THAT THE MOUNTAIN IS A SACRED PLACE
AND WE SHOULD RESPECT IT I HAVE A SMALL
CHILD AND I DONT WANT HIM TO SICK
FROM THE POLLUTION. I FEEL THAT THE
FREEWAY WOULD BE TAKEN SOMETHING
AWAY FROM OUR PEOPLE AND ANCESTORS.

BEONKA THOMAS
4667 N. (Mesa)
20587#
(520) 610-6247

PO BOX 10952
BARCELONNE ARIZONA
85121

5

7-2-13

~~Frances~~ Frances Stevens, I am 13 years old,
I am a Gila River Indian Community member
and a member of G.R.E.Y. (Gila River
Environmental Youth)

I'm against the freeway to be built,
because ~~the~~ the pollution will make us
sick also destroy our plant lifes, In the
future even make our animals die or
get sick.

~~First~~ First of all, I really ~~don't~~ don't like
the idea of this freeway/loop 202.
because it can ruin our lifes in the
future, make us very sick. what I'm
saying is that we have enough of
pollution on the reservations, we don't
need more pollution to ruin our future
families.

~~Second~~ Second of all, the pollution will
destroy our plants/crops that
we make a living on, also our
trees! we need our trees.

~~The~~ The last thing I would like
to talk about is why weren't there
~~the~~ transportation given to the community.

For the ~~of~~ meetings, ~~you~~
you should know that some of the
community members would like to ~~attend~~
attend the meetings but have no ride to attend.
So please listen to us and hear what we
have to say. ~~Frances~~

Frances
Stevens

0/12/13

To whom it may concern,

My name is Verdadele Stegans. I am an enrolled member of the Gila River Reservation. I am a Pima/Apache residing in District 3.

All and most of my life I have lived on the reservation. I originally grew up in District 3. I left the reservation a few years to another reservation out of state. As I returned back to the reservation I finished grade school and went to boarding school. By that time I learned my parents and family had moved to the West end of the reservation. There I had lived to grow into my adult hood.

So today as I hear about this project being built. It saddens me to know that they are so persistent to build this Freeway. I guess because that's all that Kanga is there for. All of this saddens me to hear all the stuff that everyone is going through. As for myself, I care much for my people. And with this project in fact, I know there will be alot of health issues. As I lived on the West End. I use to do alot of running along the gas line. I also use to climb the mountain.

Almost everyday, I would sit on the top and pray. It gave me a good feeling within myself each day I did this. I would also see how close the noise had started to come out. This was only the beginning. Now today I see how much of the city has come. Then it makes me realize how many of these white people that are making their noise come out our way, could and are prejudice of Indians. To hear of this mountain being destroyed has put a great hurt in my spiritual life. Because God has made this creation and people are wanting to mess it up for something that is not really necessary. The Freeway today has been serving a good enough purpose. Also if this Freeway being built it would take away my grandchildren right to have a home out there, as well as my daughter.

She has a part in this section about the Freeway being built. Through all this she has not been notified of every mtg that was held. She only heard it from her aunts after the meeting had taken place. I for her to help. She needs to be notified of all mtgs. I don't know who these people who are even wanting

to build this Freeway. I don't know why they can't hold a meeting in each District to see ~~what~~ the people think. Even though it is for land owners. But I think it is going to affect the whole reservation. Especially with the living conditions. For the ones who are in ~~their~~ homes. Will they continue to stay or will they have to move. I know in life that change is good. But in this matter I don't think so. I know of some elders who still go to get the medicine ~~and~~ cactus food and soap for their health and spiritual needs. As we grow older. How can our tradition stay alive if we don't stand up for our community. I can see that there are more homes being built out there today. And if these people have to move then why are we wasting money when it could start going to a medical or other emergency need. Because by this Freeway being built. We are all going to need a lot of medical needs. Especially of the speed limit and if the car goes over the railing. Has anyone thought of all the accidents and mishaps there could be. I don't know how many people climb that mountain. But you need to climb it and take a good look

at the pollution. Believe me it is not a very good feeling. To see all of the grey. Gee! we don't even want to stand in a dust storm. That even carries all kinds of chemicals as well. I thought it was just dirt. Until my daughter caught the Valley Fever. And asked around. Then I realized that we all have it. Because we live in the Desert. Its just how are bodies work and our immune system. So to wonder of the pollution that will come along with the Freeway. ~~and~~ To say to someone that I helped put my family in danger. Is kinda foolish. Because I might as well have killed them myself. I wish there is another way to build a road not a Freeway. Because there is always another solution. Because in life we have a wrong and a right. So please take into consideration of everyone involved from infants to adults. As well as all the health reasons of the people here of today. The mountain does have a reason for it being where it is at today. So to bother it would bring more than we all discussed for. Because it is the work of our hand. And it brings survival. I also wonder if they build this Freeway. Are

my people who live out there going to have to start paying for their water from the city. I know there are several water wells out there. But will they have to be covered because of this Freeway. The water out in that area is not so well. But in order to have better water. The wells would have to be dug deeper. To take things away or destroy is not a good way of life. The mountain has given me much in my life. It has kept me strong, sane, peaceful, and healthy. As well as other purposes. To see it being destroyed is sad. Because I'm sure if we want our kids to stay active and exercise. We need to all need to take a stand. So one needs to be really honest about all aspects of this Freeway. Especially to the community of the reservation

Wendee Stearns
520-562-1530

4365

1 for the future in 10, 15, 20 years for the people that
 2 live out there? Thank you.
 3 THE FACILITATOR: Thank you very much.
 4 Andrew Pedro.
 5 MR. PEDRO: Hello, I'm from the Gila River
 6 Indian Community and I'm one of our community managers,
 7 our community manager, David White for Gila River, he
 8 stated that transportation officials were to be taking
 9 cultural awareness training, and has that ever happened
 10 for people part of the 202? Anyone? And if it were, who
 11 would be taking those cultural awareness training
 12 classes; would it be construction? Would it be ADOT
 13 officials themselves? And in the DEIS it does say that
 14 if any uncovered cultural items, that construction would
 15 stop immediately. How are they supposed to know if
 16 training never happened?
 17 And like Danelle said, it is a sacred place to
 18 us and we have been here thousands of years, you people
 19 have been here 200 years. And that thing in the EIS,
 20 except for saying that it could cause loss of cultural
 21 property and that is like -- that's a violation of our
 22 religious rights, that is a sacred place. How is ADOT
 23 able to go through there with being that it's a public
 24 park and it's a public preserve, so it's owned by the
 25 public; how are you supposed to get those right-of-ways

1 in a public park?

2 So yeah, we are against this freeway and there
3 is nothing in the EIS that says that they stopped working
4 with the community to look into the effects of the
5 community when it's right on our border. And obviously,
6 it's going to affect us. And yeah, like people in
7 Laveen, they're on the other side of the mountain,
8 they're not going to feel it as much as we do.

9 And especially to our culture, how we live.
10 We're almost gone, most of our community lives in poverty
11 and most of the people there can't even speak our native
12 language. And it's not our fault, it's colonization's
13 fault for pushing us out of our own land. And right
14 here, right where you stand and where you're sitting is
15 traditional Akimel O'odham territory, and I hope that you
16 realize that and wonder about how it really affects us
17 and not just the financials of it, how it affects us
18 internally and spiritually. If we were to build through
19 one of your churches, I'm sure you would be standing here
20 where I am telling you that this is a bad idea, because
21 it affects your religious rights. Well, this affects our
22 religious rights.

23 If there's one corridor that separates us from
24 the mountain itself, that's a violation of our religious
25 rights and that -- yeah, there's supposed to be one

Page 19

1 tunnel going under the freeway, that's unsafe and it
2 would affect our medicinal plants that we use culturally
3 that are going extinct and cultural animals that we use
4 in our culture: The owl, tortoise, Sonoran Desert
5 tortoise, Mexican spotted owl, those are all endangered
6 species that you're willing to sacrifice other species
7 just for progress.

8 Is that really how you want your kids to view
9 the world; do you want your kids growing up in pollution,
10 growing up with cancer, asthma, bronchitis, birth
11 defects? We don't want that for our community. Look how
12 bad it is already. We don't want none of that, so I just
13 hope that you look back into that.

14 And with the shuttles, I mean, nobody actually
15 got the shuttles, there wasn't that much effort put into
16 it from ADOT themselves, the community had to invite ADOT
17 to come to the community to give out information. They
18 weren't giving out any information before until the
19 community told them to. That itself is just disgusting,
20 how she said before, and how disgusting it is to see
21 people pushing this freeway, which they don't acknowledge
22 us as a people, being that we've been here before anybody
23 has been here and our ancestors go back. And what if
24 there was other people who came into this? This doesn't
25 affect just the Gila River Indian tribe, this affects all

Page 20

1 tribes in Southern Arizona, being Tohono O'odham, Ak
 2 Chin, Salt River Indian Community, culturally it affects
 3 them and is disgusting to see how this is still being
 4 pushed forward.

5 THE FACILITATOR: Thank you.

6 If anybody else who has not registered would
 7 like to speak at the hearing, please make sure that you
 8 register at the registration desk and then come before
 9 us.

10 If you need additional time, please, if you
 11 would like to make additional comments, please give your
 12 comments to the court reporter. Thank you.

13 Harlan Barehand.

14 MR. BAREHAND: Good morning, sirs. Thank you
 15 for the opportunity to come and speak with you this
 16 morning. I am Harlan Barehand, I'm registered with the
 17 Gila River Indian Community. Thank you very much for not
 18 putting it on our reservation, we appreciate that very
 19 much. I hope that it will stay off our borders and into
 20 the Ahwatukee and the Laveen area. And I think that we
 21 can benefit financially through them, but our reservation
 22 as it is is very small and we cannot afford to lose any
 23 more land as it is. And history tells us that the
 24 original Gila River boundaries is Van Buren on this side,
 25 so you're asking for Gila River land, but that's history.

Page 21

1 MS. CHASE: I'll start out by saying I'm angry. I
 2 am angry because I came here to have something to say about
 3 this, to the State of Arizona and to the people. And now I
 4 find out, when I get here, I can't say anything.

5 Well, I'm just now pointing out that all I can talk
 6 to is a court reporter. I can't even talk -- And that's not
 7 what the paper said. The paper said that -- The paper said
 8 there was going to be another meeting here, for public -- for
 9 public opinion. Well, that's what I'm here for.

10 I'm not here to talk to a court reporter. I'm not
 11 here to talk to the State of Arizona. I'm here to talk about
 12 this issue to the people that are involved: community members;
 13 Pangaea, who wants to do this thing. What for? And to the
 14 State of Arizona.

15 The Government gave us this land, this reservation,
 16 for our benefit, for our use. The State of Arizona aren't
 17 Indians. Go on the other side of the boundary. Put your
 18 freeway on the other side of the boundary.

19 Yeah, well, you can just listen to what I've got to
 20 say here, being I can't talk to anybody.

21 That's wrong, doing it, because that's tyranny,
 22 that you're going to tell us what you're going to do but you
 23 don't want -- you don't want us to tell you what we think about
 24 it except to a court reporter?

25 I want to talk to the people. I want to be able to

Page 3

1 get my ideas and what I think about this thing to the people.
2 That's the whole purpose of the meeting, as to whether they're
3 going to build the freeway or not. How are you going to build
4 the freeway when you don't know what we think about it, except
5 on paper?

6 I'm not here to talk to you.

7 And that's wrong. That's not Indian way. That's
8 another thing that I'm talking about, wanting to talk about, is
9 Indian way. We have our way, our traditions, our culture. And
10 you people, you Americans, we call you Americans. You
11 Americans, you don't know Indian way.

12 Well, I'm here to tell you what Indian way is. And
13 Indian way is still here on the reservation. It's alive and
14 kicking.

15 And Pangaea wants to build this freeway on there,
16 and they're not even -- I called and found out, they don't even
17 have any exit. What is it? 22 miles, that freeway is going to
18 run? There aren't even any exits on the reservation.

19 And Pangaea wants to bring industry and business?
20 How are they going to bring industry and business to the
21 freeway when there's no exits?

22 The exit is going to be at 59th Avenue,
23 off-reservation. All the State wants to do is put a road in
24 here, for your convenience.

25 And the paper said that this is not going to be

1 harmful to the City of Phoenix. Do I care about the City of
2 Phoenix? No.

3 I live here on the reservation. I am concerned
4 about the impact of this freeway, that's going to have on our
5 environment. We've got South Mountain here. We've got
6 Estrellas over here on the other side. Where is that smog
7 going to go? Right here on the reservation.

8 And Phoenix, the State of Arizona, wants that smog
9 here on the reservation, not in Phoenix.

10 From the very beginning, when Columbus came here
11 and discovered -- to the Bahamas and to the United States of
12 America, what it is now, they've been trying to destroy the
13 Indian population, the Natives. They set out to kill us.

14 Germany, Hitler, they had their concentration camps
15 where they annihilated the Jewish population. The United
16 States is no different. The only thing is they don't call them
17 concentration camps. They call them reservations.

18 They put us on reservations for why? To kill us
19 off. But I've got news for you: We're still here. We're
20 survivors.

21 They took -- The Government took our land, in
22 Docket 228. And the attorney told me, we got 25 cents an acre
23 for that land. That was \$6 million to be split with Salt
24 River, Ak-Chin, and Gila River. That's three -- \$6 million.
25 That came to 25 cents an acre. That's what we got for it.

1 And the Government argued: Because it was
2 undeveloped land.

3 What do they mean, undeveloped land? The Pimas
4 built canals all over this place. It was not undeveloped land.
5 We had an irrigation system here that's doing well today.
6 Those same irrigation canals that the Pimas built are being
7 used right now. It was not undeveloped land.

8 We didn't have 20-foot -- or 20-story skyscrapers.
9 But I'll tell you what: We still had a skyscraper. We had a
10 four-story building near Coolidge, the Casa Grande ruins today.
11 Four stories high, a massive building. There aren't even
12 four-story buildings in Casa Grande, in Florence, or Coolidge
13 today.

14 And they have the nerve to tell -- call us
15 uncivilized? Heathens? They don't know Indian history. They
16 don't know Indians like we know Indians.

17 I'm an Indian. I'm a Pima Indian. I was raised by
18 Pimas. My first language was Pima. I was born on the
19 reservation. I know what our history is.

20 I know what it is today: We're in a transition.
21 And I don't like that transition.

22 This guy -- I wasn't going to say this, but I will
23 now. This guy, what's his name? Joseph Perez. Pangaea. I
24 said -- I was talking to some young people at the computer lab,
25 some time ago, and I says, "Who is this guy, anyway?"

Page 6

1 And one of the young men there laughed, and he
2 said, "I went to school with -- with Joey. He used to say,
3 'I'm not an Indian. I'm a Mexican.'"
4 And now, all of a sudden, it behooves him to become
5 an Indian because he wants to make money? So now he's saying,
6 "Oh, I'm a tribal member. My family this, and my family that."
7 What kind -- What kind of stuff is this? I mean,
8 that's not Pima way. He wasn't raised as a Pima. He doesn't
9 even speak Pima.

10 And that's what I'm saying, is now, what we've got,
11 we're in a transition, where that we have people like me, who
12 know Indian life, who know Indian tradition and Indian way.
13 And we have the new generation, who don't even speak Pima and
14 didn't even want to be associated as being an Indian. He's a
15 Mexican.

16 Well, I'm glad to be a Pima because I know my
17 heritage. I know my ancestors. I know their way of life. I
18 know how they lived and what they did.

19 And I have something against those contractors that
20 were at that last meeting, saying that they wanted -- that this
21 meant 30,000 jobs for them and they wanted -- they wanted that
22 freeway in there. Well, I'm sick and tired of them.

23 I've got news for them: I'm sick and tired of
24 rescuing the American public, people, because we did that when
25 the settlers came through. They had Indian scouts, Pima

Page 7

1 scouts, that went out in the desert and picked up the settlers
2 because they were dying from lack of water, dehydration. And
3 they rescued them, fed them, gave them water, took care of
4 their animals.

5 And now these contractors are coming to the Pimas
6 and saying, "Oh, help us. We want 30,000 jobs."

7 I've got news for them: They're barking up the
8 wrong tree. Let them go to their Government.

9 It was the United States Government that was
10 overseeing all this housing thing that went corrupt and
11 bankrupt and put us into recession, put this country into
12 recession. Hold those people responsible. Make them provide
13 jobs for them. Don't come to the Pimas and ask the Pimas to
14 provide jobs for them. We already did that. And I don't want
15 to do it now.

16 Now all we've got is 373,000 acres. This land is
17 for our children. It's for us to live on. The Government gave
18 us this land for our use, for our benefit.

19 And those contractors and the State of Arizona,
20 they're not Pimas. They're not Indians. Go on the other side
21 of the freeway -- or the boundary. Go on the other side of the
22 boundary and build your freeway over there.

23 They gave us 25 cents an acre for this land.
24 Don't -- You don't need any more. We're not giving you another
25 square inch. You go on the other side of the boundary and

1 build your freeways.
2 These freeways are like snakes: a freeway here, a
3 freeway there, a freeway here. Freeways all over the place.

4 We don't want any freeways on our reservation.
5 Where is all that pollution going to go? Right here on the
6 reservation.

7 Does Phoenix care? Does the State of Arizona care?
8 Does Governor What's-Her-Name care? No.

9 We're survivors. And I'm here to tell you guys:
10 Take your freeway and go on the other side of the boundary.

11 You've got Baseline over there. Put your freeway
12 over there. And then don't put any exits on it for 22 miles,
13 and see what those people, those business people, have to say
14 about that.

15 A freeway with no exits? And these Pangaea people
16 think they're going to get rich because they're going to put in
17 a freeway with no exits and they're going to put businesses up
18 alongside the freeway? That's disaster. That's failure
19 because people off-reservation aren't going to come to the
20 reservation, to their businesses, to do business, when they can
21 go two blocks down there from their house and go to Bashas', go
22 to Walmart, and Target, and all of those other places. They're
23 not going to come to here.

24 Business is: Location, location, location.

25 Where is your location?

1 And they want to put business out in the middle of
2 the desert, by a freeway with no exits? How smart are these
3 people at Pangaea? Who are they, anyway? We don't even know
4 anything about Pangaea. Who is this Joey Perez? Has he done
5 land development? How successful has -- What's his history?
6 Where is his money coming from? Who is financing this Pangaea
7 outfit?

8 They're paying -- They're paying people \$50 a
9 signature to sign those petitions. And where else is that
10 done? Do off-reservation people get \$50 when they sign a
11 petition? They're doing it here.

12 And who is paying them that \$50? Where is it
13 coming from?

14 Joey Perez is just a front. I understand, his wife
15 is a partner in this, too. He's just a front.

16 But who is behind it? Where is the money coming
17 from? Who are the -- Where is the money?

18 And even those people aren't too smart if they want
19 to put businesses out in the middle of the freeway with no
20 traffic.

21 We're 22 percent unemployed here. And they expect
22 us to go and buy from them? We're poor. We're
23 poverty-stricken. And that's why those landowners want that
24 freeway to go in there. They think it's going to be money for
25 them. But it isn't.

Page 10

1 They're promised \$2,000, that they're going to get
2 \$2,000. But those landowners don't stop to think that that
3 land is fractionated land. What -- how that turn -- How that
4 came about is that, when the Allotment Act was passed in
5 18-something -- '87, I think it was. When they passed that
6 first Allotment Act, every Indian in the Gila River got ten
7 acres. My grandfather got ten acres. His children got ten
8 acres.

9 Then, when he died, then his children got a
10 fraction of his allotment. And then his grandchildren -- who
11 I'm a grandchild -- now I have interest in that land. So
12 that's what this land is. That ten acres is fractionated.

13 When it's leased out, all the people, the allottees
14 that have interest in that land, just get a fraction of the
15 \$2,000. But these people think they're going to get \$2,000?
16 Huh-uh. They're only going to get a portion of that \$2,000,
17 depending on how many people are in that land.

18 All of the landowners are -- They're not landowners
19 because they don't own the land. They just have interest in
20 the land. All of those people are going to get a portion of
21 that \$2,000.

22 So what are they going to end up with? We have
23 hundreds of people that have interest in these fractions, one
24 piece of fractionated land, so that some of them only get
25 pennies when that land is leased out. So how far is \$2,000

Page 11

1 going to go?
2 And this is why I'm here to tell the people, to
3 bring out these things, so that they won't be taken in. They
4 don't -- They don't think about this. All they see -- All they
5 hear is: We're going to get \$2,000.
6 And where is \$2,000 going to go, anyway?
7 One lady told me she went to a meeting. They told
8 her she was going to get \$2,000. She said, "What am I going to
9 do with \$2,000? I can't fix my car, pay my electric bill.
10 What am I going -- What good is \$2,000 going to do me?"
11 She said, "I left. I wasn't interested."
12 She was a smart one. She had it figured out. But,
13 unfortunately, there are people that don't figure it out. They
14 don't think.
15 And that's what I'm here for, is to try to tell
16 them: Look, this is what's happening. This is what's
17 involved. These are -- These are all the things that are
18 involved in this freeway thing.
19 (Ms. Chase speaks a brief phrase in Pima) Don't
20 like it. Don't accept it.
21 And -- and Joey Perez, and he wants to -- He wants
22 to have another election on this? We already said, "No." The
23 people already had an election.
24 And here, here, I found this thing here. I didn't
25 get a copy of that. But read that.

1 See, that's a -- This is a picture of the
2 reservation. There's Chandler and all these other places
3 around it. And this is what it says here. It says -- I have
4 to get my glasses.
5 This says: Shouldn't community members be able to
6 decide what is -- what is appropriate for the community?
7 We already did. We already decided. No, we don't
8 want the freeway.
9 But, you see, there's a -- There's a Indian way and
10 an American way. We're in conflict. And Americans don't
11 understand Indian way. Indian way, the people have already
12 said what they -- what they wanted. Indian way, it shouldn't
13 even come up again. It's been decided.
14 So how -- And I was talking to a friend about this.
15 And I said, "Well, you know, this isn't like a court hearing
16 and one side loses and they ask for an appeal. We had an
17 election, not -- not a court hearing. This shouldn't be an
18 appeal."
19 And she said, "Well, if I think of it, I think that
20 there was a Martin Luther King election, and I think they --
21 the voters went to the polls three times before they made
22 Martin Luther King a holiday."
23 I thought -- I said, "Oh, yeah, I didn't know that.
24 I forgot about that."
25 So that's a difference, right there, between Indian

1 way and the American way. American way, you can keep
 2 petitioning and petitioning and petitioning and petitioning.
 3 It's like a crying baby. The baby cries and cries and cries
 4 until momma comes and gives it some milk and shuts it up.
 5 So then -- And that's what -- That's what Pangaea
 6 is doing: Crying and crying and crying, petition after
 7 petition, to get their way because legally they can do it.
 8 But Indian way, Indian way, you can't, because we
 9 already decided. We already told you: No, we don't want it.
 10 Go away. Leave us alone.
 11 That's Indian way.
 12 And I said -- And that's the conflict that we're
 13 in. We're in one -- we're in one -- We're in one life and in
 14 another life. We're Indian way, living Indians -- living
 15 Indian way, and trying to be living American way. They're in
 16 conflict.
 17 And we're getting this new generation of people who
 18 don't know Indian way. And Perez doesn't even want to admit
 19 he's an Indian, saying, "I'm a Mexican."
 20 So what have we got here?
 21 And I'm just here to say, to the people, that we
 22 need to -- we need to -- If we're Indians and this land is our
 23 land, we need to preserve it for our children. We need to be
 24 careful about the environment. We have the Sierra Club now and
 25 all kinds of other clubs that are concerned with the

Page 14

1 environment.
 2 I've got news for them: We had Sierra Club long
 3 before they ever came along, because Indians didn't kill just
 4 to kill. It wasn't a sport.
 5 The Indians up north, they hunted buffalo. And
 6 they used every bit of that buffalo for their -- for their
 7 livelihood or whatever. They used the -- They used the hides
 8 for tents, for clothing, for food. They used the whole
 9 buffalo. They didn't go out there and just destroy it.
 10 They did the same thing with other life. Deer,
 11 they didn't go out there and kill Bambi's mother and kill
 12 Bambi, too. They were concerned with wildlife.
 13 They called the earth "Mother Earth," because
 14 Indian way, Indian language, is expressive and they saw that
 15 the earth provided grain, berries, rabbits, buffalo, deer, for
 16 their food and for whatever they needed. The earth did that.
 17 So that's why they called it "Mother Earth."
 18 And they lived in harmony with their environment.
 19 When those settlers came west and they saw the
 20 buffalo and the beavers, all they saw were hides and money.
 21 And that's the difference between the Europeans and the
 22 Indians.
 23 Our lives are different. We think different.
 24 We're Indians. And -- and we live, many of us, just like our
 25 ancestor did. And we've lost so much of -- of our way of life

Page 15

1 now.

2 My grandfather, when I was a little girl, our
3 little dog, Tuffy -- I still remember his name. It was a
4 little -- kind of, a little white dog with fluffy fur. That
5 little dog was running in circles, yipping and yapping, and
6 just wild. And we all stood there watching him, my brothers
7 and sisters and I.

8 And my grandfather was close by, and he saw that
9 little dog. He calmly walked over to the house and got a
10 pitchfork standing up against the building. He took that
11 pitchfork and he killed that little dog.

12 And I thought: Why are you doing this? Why are
13 you killing our dog?

14 And it wasn't until I went to high school and had a
15 science class and heard about rabies, then I knew why my
16 grandfather killed that dog.

17 And that was the way the whole Indians were.
18 They -- He didn't bat an eyelash. He saw the danger, and he
19 moved. He didn't wait an hour, 15 minutes, or the next day.
20 He took that pitchfork and he killed that little dog for the
21 safety of us children.

22 And that's part of what I know Indian way is like.
23 And that's why that I'm here, to say that there's still some of
24 us that are traditional. There's still some of us that know
25 Indian way.

1 And I won't bat an eyelash to say, "Take your
2 freeway and put it on the other side of the boundary."
3 That's what it's all about. Our Indian way is
4 different. And -- and we're in conflict. And our children are
5 not learning Indian way.

6 But there's some of us here that still -- we're
7 still traditional. We still know our ways.

8 And I'll tell you another story about my
9 grandfather. My father was in the United States Army. And he
10 came home. He was in Hawaii, and he came home. And I guess my
11 grandfather got his check and cashed it. And my dad found out
12 about it. I was a little girl. I was standing right there,
13 listening to all of this.

14 And my dad said to my grandfather, (Ms. Chase
15 speaks a brief phrase in Pima), "I'm going to put you in jail."
16 And my grandfather looked at him and said,
17 (Ms. Chase speaks a brief phrase in Pima), "Go ahead and do
18 it."

19 But he said, "These children" -- he said all of
20 this in Pima -- "these children are your children. It's your
21 responsibility to take care of these children. But you haven't
22 been doing it. I've been doing it. I've been taking care of
23 your children. And, yes, I took that check and I cashed it,
24 for your children, to buy them food, to buy them clothes, to
25 buy them what they need. I did it. Go ahead. Put me in

1 jail."

2 My dad, because he was an Indian, raised Indian
3 way, put his head down, turned around, and walked away.

4 Yeah, American way, my grandfather could have gone
5 to prison for forgery. But Indian way, he won. And my dad
6 walked away and didn't do that.

7 So that's the way Indian way is. That's what I
8 know about Indian way. It's different from the American way.
9 And that's what I'm here, to remind these people that want to
10 do this: No, don't do it. Do like my grandfather did. He
11 killed that little dog for the safety of his children. Think
12 about your children. Don't give away this land because what
13 are your children going to have? Nothing.

14 I have -- I have interest in my grandfather's land
15 now because he didn't give it away. He was poor. He didn't
16 have money. They were poverty-stricken. But he didn't sell
17 his land because in those days, those old people said, "Don't
18 sell your land. If you do, you're going to be walking down the
19 road with a bag of clothes. You're going to have nowhere to
20 live. You're going to have nothing. You save this land."

21 That's what we were told. That's how we were
22 raised. But some of our people don't know this.

23 This Joey Perez, he's not Indian way. All he's --
24 He's American way: Greed. Give me that money. Give me that
25 money. That's the way -- That's the way it is.

Page 18

1 And I'm here to say, I don't want the freeway on --
2 on Indian land. I like our buzzards. I like our jackrabbits.

3 An elderly man at an elderly-concerns meeting said,
4 "I saw -- I saw two eagles up there on South Mountain. What's
5 going to happen to them once that freeway goes in?"

6 Because Indians live with their environment. They
7 care about the roadrunners, the quail. They learn from it.

8 I used to go to the old-time Farmers Association
9 meetings and hear the stories that they told. And the stories
10 were about the animals, and they lived with the animals. They
11 didn't -- They only took what they needed. They didn't just
12 kill them. They didn't destroy them.

13 That's why I'm saying that they were here long
14 before Sierra Club came along, and all of these other wildlife
15 programs and projects.

16 We lived that life, and I don't want to see it
17 destroyed. I want to save it for -- for our people and for our
18 children.

19 And, as it is, we have all kinds of pollution now.
20 We get asthma. My little great-grandson has asthma. I get
21 asthma because of our environment and the -- and the pollution
22 of the -- of the air.

23 But people don't think of that.

24 We're dying from diabetes. 80 percent of our
25 population on Gila River have diabetes. In 1909 they only had

Page 19

1 one case of diabetes. Today, 80 percent of our population has
2 diabetes.

3 Diabetes causes strokes, heart attacks, kidney
4 failures, all kinds of failures in the bodies. Our legs are
5 amputated. Our arms are amputated. And then we die.

6 And now they say that Alzheimer's is connected with
7 diabetes.

8 So we're dying. We're becoming an extinct nation.
9 And that's bad enough, that we -- Now they want to put a
10 freeway through here and further pollute our air? No.

11 The people need -- Our people need to think about
12 all these things and to think of what they're doing and not
13 just be trying to grab that money because where is that money
14 going to go, anyway? It's not going to go anywhere. You're
15 not going to take it with you.

16 And you're just depriving -- These people are just
17 depriving their children of land, of a place to live. So
18 that -- that -- those are -- That was what I wanted to try to
19 bring out, and these points to bring out to the people. And --
20 and to try, both sides.

21 And those -- Those contractors need to be ashamed
22 of themselves because all they want is 30,000 jobs. They don't
23 care about the people here.

24 And when those jobs and that freeway is completed
25 and those 30,000 people are out of jobs, what are they going to

1 do next?

2 It's just a temporary -- a temporary cure for their
3 insatiable desire for TVs and, you know, those phones, all
4 kinds of phones, and all kinds of computers and all kinds of
5 stuff like that. It's never going to end, their desire for
6 them, because that's the way that these Europeans are. They
7 did it in Europe, fought over land over in Europe. From bible
8 days, they fought over land.

9 But the Natives here in this country, we're
10 different. We don't -- We didn't fight over land. We had our
11 areas where we lived, but we didn't fight over land because
12 they believed that land was to live on. It wasn't meant for
13 personal ownership.

14 And this is one of the differences between the
15 Indians and the Europeans. They want their name on a tract of
16 land. And, when the West started being settled, the Government
17 gave -- I didn't write that down, the statistics on that -- but
18 gave a lot of land in the West, reserved for the Indians.

19 Then they passed -- I believe it was the Dawes Act.
20 They passed that Act. And what that Act did was they took the
21 land that they reserved for the Indians and sold it to the
22 settlers for 50 cents an acre.

23 And so this Government has been -- they've -- Their
24 intention, from the very beginning, was to kill all of the
25 Natives off, get their land and their buffalo and everything

1 else they could get. And that's been -- That's been the
2 intent, all this time.

3 And they're -- And they're still doing it. They
4 already got all our reservation land. I mean, not our
5 reservation land but the -- what do you call it, the -- the
6 Native lands where the Natives lived. They already took that.
7 That's where we got the 25 cents an acre. They already got it.
8 But they're not satisfied with that.

9 Now they're coming on the reservation and wanting
10 our reservation land.

11 I fought more developers coming -- wanting to come
12 on our reservation and take our land, because they've developed
13 all of Chandler. They're up to our border now. Now our
14 reservation land is looking pretty good to them because
15 contractors, their mindset is: If they see a piece of land
16 that doesn't have asphalt on it, they're going to put asphalt
17 on it. They're going to put buildings on it. That's the
18 nature of the beast.

19 But that's not our way. We like our jackrabbits.
20 I live on a tribal home-site lot that's about an acre big. I
21 have rabbits. I have cardinals, doves, quail, all kinds of
22 birds, and owls that come to -- come to my lot because I
23 provide water for them. And birds love water; I've found that
24 out.

25 And they come to -- Even dogs, stray dogs, come to

Page 22

1 my house looking for water. And -- and I have trees. And they
2 want the safety of my -- of my lot.

3 And I just found out we even have rattlesnakes. We
4 had found a little tiny rattlesnake on the porch. So even
5 rattlesnakes are coming to my house.

6 But -- but Indian way, these are all -- This is
7 part of my heritage, to live in conformity with nature. They
8 didn't -- They didn't kill animals just to kill them.

9 We had a -- We had a Gila monster one time by our
10 house, and my dad took that Gila monster and took it out in the
11 desert. He didn't kill it. And so but that's an example of --
12 of how Indian -- Indian way is, how Indian people thought and
13 how they lived.

14 And it's so sad for me to see that we're losing it.
15 For what? For money? For the greed of money?

16 And in the old days people didn't have money. They
17 didn't care about money. They put holes in nickels and made
18 necklaces out of them or put them on their shirts. You know,
19 that's what money meant to them. It was just a decoration.

20 And they were happy. I remember, as a little girl,
21 that we would go to Sacaton. And the church would take their
22 tamales and sell tamales. And they had -- They had baseball
23 teams playing against each other. They had rodeo. And people
24 were happy. People laughed and visited, and they were happy.

25 But it wasn't money that made them happy. It

Page 23

1 was -- It was being social, getting together, relatives. We're
2 all related. And it was people getting together. And they
3 laughed and had fun.

4 I remember, as a little girl, that the girls used
5 to hold hands, and they would walk around the rodeo arena in
6 one direction. And the boys would walk around the arena in the
7 opposite direction. And then, when they'd come together,
8 they'd all giggle and laugh. The girls would giggle and laugh.
9 And -- and you used to be able to -- Girls would hold hands,
10 and nobody thought of them as being homosexuals. Now you don't
11 dare walk down the street holding a girl's hand.

12 But so those are the -- Those are the differences.

13 And being 75 years old, I've lived in that
14 generation. I know what it's like to be a Pima, what it's like
15 to be an Indian, and what it's like to live in the -- in the
16 Indian society, where that -- where that families, they live
17 together and work together and help each other. If somebody
18 needed a house, they all got together and built a house for
19 them. Somebody needed their grain to be -- to be harvested;
20 they all came and harvested the grain. They -- They lived
21 together. That's the way Indian life was.

22 Today, it's different because Americans don't live
23 like that. They put their grandparents in the nursing home
24 somewhere so they won't be bothered by them. Now we're doing
25 that.

Page 24

1 So we're changing, and I don't think it's for the
2 good.

3 And all we've got -- If all we've got now is -- is
4 to fight for this freeway not to go through here, then we've
5 got to do.

6 And I'll just say, to that Pangaea, Joey Perez, and
7 all those people that are -- that are trying to put this
8 freeway in, that there's still some of us here, some of us
9 traditionals, that we're still here. And we're still Indians.
10 We're still Pimas.

11 And -- and those people that were at that Phoenix
12 meeting, they're a block that were opposed to the 202 Freeway.
13 They're a block. And, if Joey Perez and his cohorts want to
14 put that freeway in, they're going to have to go through that
15 block.

16 And we're still Pimas, like the old Pimas. We're a
17 formidable bunch. And you better look out because we're not --
18 we don't want it.

19 And -- and, as they said in the Marine Corps -- My
20 husband was in the Marine Corps. And there was a saying. It
21 goes: You feel froggy? Jump.

22 Joey Perez feels froggy? Jump.

23 So that -- Yeah, he's going to have to reckon with
24 some of us traditionals.

25 And that's all I've got to say.

Page 25

1 Pangaea got another petition. And so they brought
2 it to the Council. And the enrollment or the secretary's
3 office, they looked at these signatures, and they weren't
4 right. And so I guess some of them were forged. They didn't
5 really say.

6 But so they had a -- So the Council had a meeting
7 on that. And Myron Scherers (phonetic) made a motion to clean
8 up the petition, go through all the signatures and make sure
9 they were all valid signatures. And the Council passed that
10 motion.

11 But Annette Stewart, a councilwoman from
12 District 5, didn't vote for it. And she gave her reason why.
13 She said: They should just redo the whole petition, not just
14 clean it up.

15 And -- and I'm in agreement with her on that, on
16 account of the petition is one document. It isn't just this
17 page and that page and all of the pages put together. It's all
18 of the pages put together making one document. And, if any
19 part of that document is fraudulent, then the whole document is
20 fraudulent.

21 They need to retake that petition and redo it.

22 And I'll go one step further, to say that the
23 people that carried those petitions and got those fraudulent
24 signatures shouldn't be allowed to carry another petition. And
25 in my anger I'll even say that those people should be excluded

Page 26

1 from the reservation. We have people that are excluded. What
2 that means is that, when people are so bad, they're -- they're
3 run off the reservation.

4 And that's what they should do to these people
5 because they're confidence people. And I don't know if they're
6 men or woman or who. But they take -- They get the confidence
7 of the people.

8 These people that signed the petition are believing
9 that everything is upright; everything is honest. And it
10 isn't. And so they signed the petition, believing that
11 everything is right when it isn't. And these people getting
12 the petitions, signatures, they're -- They're confidence
13 people.

14 And that -- What can be worse than to betray Indian
15 way again is to betray people that have trusted you to do
16 what's right. There's just no -- There's just no excuse for
17 it.

18 There isn't even -- We don't even have a law, I
19 think, about that because it's not our way. We don't have
20 people that -- confidence men that come in here and gain the
21 confidence of the people for their benefit and then turn around
22 and stab them in the back. That's not Pima way. So we don't
23 even have any laws that would cover that.

24 The only thing we have is exclusion. If -- if a
25 family or a person is so bad, then exclude them from the

Page 27

5048

1 reservation. Throw them off.

2 So and I think -- I would have a tendency to
3 believe that, if we were living back in the seventeen, eighteen
4 hundreds, they would do exactly that. I think that, if they
5 found somebody that was so bad, and so immoral, so corrupt, I
6 think they'd -- they'd tell them, "Leave the reservation. Get
7 out of here."

8 I think that's what they -- that that would be the
9 remedy that they would have for that. So I would -- being --
10 Being somebody from the old ways, that's -- that would be my
11 opinion on that.

12 But, at least, what they should do is not allow
13 these people who carry these petitions and got fraudulent
14 signatures to go do it again. You -- When somebody robs your
15 house, you don't open the door and say, "Come on in, do it
16 again. You didn't -- You forgot my refrigerator."

17 So but okay. I guess that will be all.

18
19
20
21
22
23
24
25

Linda Allen

Document Created: 7/20/2013 12:55:15 AM by Web Comment Form

Arizona Department of Transportation officials who are part of 202 planning were to have taken cultural awareness trainings put on by the Gila River Indian Community, as stated by Community Manager David White. When were those trainings conducted, what GRIC department conducted them, and what were the policy shifts, if any, that resulted from the cultural awareness trainings? What scoping comments from these trainings went into the DEIS?

Was the Section 106 process for South Mountain ever begun between the Tribal Historic Preservation Office and the Arizona Department of Transportation? If no, when can GRIC expect that process to start, in order to comply with the Religious Freedom and Restoration Act, as well as the National Historic Preservation Act? What outreach and scoping has ADOT done to the sister tribes of O'odham who also hold the South Mountain range as sacred, namely the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, and the Tohono O'odham Nation? What outreach and scoping has ADOT done to the other tribes who have cultural affiliation to South Mountain, such as the Colorado River Indian Tribes and the Hopi Nation?

If the freeway were to be built, what type of assurances are there that air quality assessments for Gila River and Maricopa County will be kept separate? Gila River has been awarded a Clean Air Excellence award by the Environmental Protection Agency, and our community does not want any of our air quality measurements to fall under the Phoenix region, which has had sanctions from the EPA for withdrawing their clean air programs.

On January 19, 2011, the Environmental Protection Agency Regional Administrator signed the Gila River Indian Community's (GRIC) Tribal Implementation Program (TIP) into effect. The effect of this action was to make the TIP federally enforceable. The TIP regulates air quality within the boundaries of Gila River, and its purpose is to enforce air quality standards within the GRIC boundaries. The TIP contains ordinances that require GRICDEQ staff, tribal attorneys, and if needed, the GRIC tribal police, to assume civil and criminal enforcement actions against persons who violate clean air standards outlined in the TIP. If the E1 alignment is built, and air quality monitors in Gila River exceed PM10 and ozone standards, what will be the procedure for Gila River to prosecute federal agencies or persons whose actions violate clean air standards within the TIP?

On January 25, 2011 the State of Arizona withdrew plans for a State Implementation Plan (SIP) to meet particulate matter-10 standards in the Maricopa County PM-10 nonattainment area, thus failing to comply with provisions of the Clean Air Act. By withdrawing the SIP, the State of Arizona triggered a January 31, 2011 decision by the Environmental Protection Agency to begin a sanctions clock on Maricopa County, because the county's air quality plan does not adequately protect human health. What air quality permits will the Arizona Department of Transportation have to secure in order to begin construction on the E1 alignment in Maricopa County, especially in light of being under the sanctions clock by the

EPA?

Because of South Mountain's religious and cultural significance to the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Colorado River Indian Tribes, building the E1 alignment will have an adverse impact on the exercise of Native American religious beliefs. If MAG, ADOT, and the State of Arizona continue with plans to build the proposed E1 alignment, these agencies and the state will be violating parts of the Religious Freedom and Restoration Act (RFRA), specifically as defined in 42 U.S.C. Amendment 2000cc-5. The proposed E1 alignment would introduce visual, atmospheric, and audible elements that would diminish South Mountain's cultural and religious significance. Many O'odham feel that South Mountain is in eminent danger from construction plans that will impact their sacred site for all time. There has been a lack of good faith consultation with O'odham traditional religious leaders, and almost a complete lack of diligence in the Section 106 process with GRIC. When will ADOT begin to consult closely with O'odham religious leaders, and to also inform them that the proposed 202 extension is also part of the Maricopa Association of Governments' plan to build the Sun Corridor between Phoenix and Tucson?

What type of government-to-government talks will ADOT disclose that they have done with Gila River tribal leadership to uphold the United Nations Declaration of the Rights of Indigenous People (UNDRIP), namely Article 7 of Convention No. 169 which states that Indigenous and tribal peoples have the right to "decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development."? Maricopa County is within the territorial boundaries of the U.S. and is subject to the laws, both international and domestic of the United States of America, and since the U.S. is a supporter of the UNDRIP, Maricopa County officials also are obligated to the UNDRIP's articles and recommendations. Finally they U.S. Ratified the ILO Convention 169 (which is legally binding) and signed onto the ILO, which means they are legally obligated to its principles and conventions.

The cornerstone of Convention No. 169, on which all its provisions are based, is consultation and participation of Indigenous and tribal peoples. The Convention requires that Indigenous and tribal peoples are consulted on issues that affect them. It requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. This means not just the Gila River Indian Community, but also Salt River Pima-Maricopa Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, Colorado River Indian Tribes and Hopi Nation, which are all tribes that have cultural affiliations to South Mountain. To ensure that the rights of these Indigenous and tribal peoples are protected and taken into account when any measures are being undertaken that are likely to have an impact on these peoples, scoping must be done by ADOT in those communities.

The proposed freeway is meant to be an I-10 commercial truck bypass to decrease traffic congestion on I-10 in Maricopa County. In the DEIS, the impacts of air pollution do not include vehicle emissions from commercial trucks originating from Mexico, which are fueled with diesel that does not meet the environmental standards adopted by Arizona. The air pollution models in the DEIS need to study the number of Mexican commercial trucks with destinations that pass through metro Phoenix, or whose destinations are in this geographic region. Those tons of air pollution need to be identified (what type of particulate matter it would be and the associated health impacts), quantified, and factored in to the analysis of air quality.

If living near a major highway adversely affects air quality, does it shorten the human lifespan, and if so, how much shorter is the human lifespan? ADOT or HDR has a legal and civil responsibility to bring in outside research and air toxicology experts to explain how poor air quality affects the body, as well as pregnancy outcomes and fertility rates. The 2005 JATAP study must be included in the FEIS, as well.

Aerial photography must be added to the DEIS to show how many homes in Gila River would be destroyed by the path of the proposed project, as well as the acreage of Indigenous TCPs that would be destroyed.

South Mountain is a sacred area not just to the Gila River Indian Community, but to the Ak-Chin Indian Community, Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation, the Hopi, and to the Colorado River Indian Tribes. What type of scoping, community outreach, and hearings did ADOT perform in those communities?

What consultants from those communities were brought in to stress the protection of traditional cultural properties?

What types of protections are in place for NRHP-eligible resources in the South Mountain Park Preserves (SMPP)? Under Criterion A (association with an important event) and Criterion B (association with an important person) of Section 106 of the NRHP, the entire 16,600 acres of the SMPP is NRHP-eligible as a traditional cultural property. This means the No Build alternative is the only action ADOT can take to protect the South Mountains.

The DEIS describes a fence to be built around an O'odham cultural resource, as a mitigation measure. Culture cannot be fenced, and the freeway's direct and indirect impacts to this site must be brought back to the Gila River Indian Community, Ak-Chin Indian Community, Salt River Pima-Maricopa Indian Community, Tohono O'odham Nation, Hopi tribe, and the Colorado River Indian Tribes (CRIT) before this resource is further impaired. Article 8 of the 2007 United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) prohibits the "forced assimilation or destruction of Indigenous culture." Further analysis of direct and indirect impacts to Site AZ T:12:112 is a basic human and civil right for the affected tribal stakeholders.

If the E1 alignment were built, there are eight O'odham TCPs that would be indirectly affected, including petroglyphs, artifact scatter, and prehistoric trails. The E1 alignment completely destroys another TCP element, as it is in the path of the proposed freeway. The City of Phoenix is currently undertaking an NRHP-eligibility determination study of the archaeological sites within SMPP. Civil rights and human rights within the UNDRIP mandate that an evaluation of the traditional cultural properties be performed with direct consultation of traditional O'odham leaders BEFORE any route of the proposed project can be selected. Article 7 of the UNDRIP states that Indigenous and tribal peoples have the right to "decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development".

The City of Phoenix, under the provisions of the Phoenix Mountain Preserve Act, is not able to sell South Mountain Park Preserves land to ADOT. ADOT would have to condemn 31.3 acres of SMPP land before it could be used for the proposed freeway extension. Under the 1964 Civil Rights Act, Native Americans are a protected class, and intrusions on Native American religious practices are illegal. How does ADOT plan to condemn 31 acres of an O'odham cultural resource without consulting with traditional leaders of O'odham tribes, as well as Hopi and CRIT? Article 25, Section 3 of the UNDRIP says that "states shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous peoples concerned."

No action can be taken on the proposed freeway extension until the Tribal Historic Preservation Office responds to an August 17, 2011 document regarding NRHP eligibility of the South Mountains. Request that ADOT withdraw consideration of the South Mountain extension of the Loop 202 Freeway until all tribal stakeholders are directly consulted by the Tribal Historic Preservation Office about NRHP eligibility.

Because of the egregious lack of information in the DEIS, a revised DEIS must first be written by ADOT/HDR Engineering that adequately informs the public so that members of the public can make an informed decision about the proposed project.

5060

1 THE REPORTER: Please state your name.

2 MS. JACKSON: My name is Renee Jackson, and

3 I'm a member of the Akimel O'odham tribe in Central
4 and Southern Arizona. I reside in the Va ki Village,
5 District 5. And there are several reasons why I
6 oppose the freeway. In addition to cultural
7 preservation and land preservation, there are several
8 discrepancies in the DEIS that I became aware of.

9 One of the most concerning omissions is
10 the lack of information about the trucks coming in
11 from Mexico. I understand that Mexican regulations
12 are different from those of the U.S., and those have
13 not really been talked about in the EIS. And I think
14 it's a huge, huge error to leave that information
15 out. I know that another reason -- I know that the
16 DEIS, or at least concerning the air pollution only
17 extends to about one-fourth of a mile from the
18 freeway itself. But as we all know, pollution does
19 not sit, especially air pollution, does not sit and
20 stay in this corridor of one-fourth mile from the
21 freeway.

22 And there is a huge concern about the
23 village of Komatke, located in the west side of Gila
24 River. There is almost a bowl that is created. The
25

1 valley between South Mountain, Moadahk, and -- South
 2 Mountain, Moadahk, to the Komadk, which is also known
 3 as the Estrella Mountain range, creates a bowl effect
 4 and all that pollution sits between -- in that
 5 valley.

6 Now, there's -- Komatke is one of the
 7 biggest villages that we have here in the Gila River.
 8 There's many children, schools, churches, Boys &
 9 Girls Center, and many, many residential homes. Now,
 10 there are already health concerns in our community,
 11 and the added pollution that this freeway would
 12 create is just adding to that problem. And I
 13 understand the argument that it's because the
 14 metropolis of Phoenix is growing, that we need to
 15 have this infrastructure in place now. I believe
 16 that money and effort could be put into the public
 17 transportation systems, extended light rail, light
 18 pass, et cetera.

19 What a lot of people fail to understand is
 20 we live in a desert. We have limited resources, and
 21 we have to think smarter about how we build. Another
 22 freeway is not going to alleviate the air pollution,
 23 as they state, it's merely going to -- it's merely
 24 going to move that pollution to our community.

25 The other concern is that the lack of

Page 27

1 information and the lack of participation that ADOT
 2 and MAG have given to the Gila River Indian
 3 Community, outside of this public forum. There has
 4 been little participation in getting information to
 5 the people of the community. I believe that everyone
 6 in the community has not had enough information about
 7 this freeway, and the fact that that lack of
 8 participation from the State to our community and the
 9 fact that this time to comment is very short is going
 10 to give it a skewed interpretation of how Gila
 11 River feels.

12 There was not -- there's not enough
 13 outreach to the community. There's not enough
 14 availability for the community to give their concerns
 15 other than these forums. I believe that this forum
 16 itself, today, is another way to silence the people
 17 of Gila River. There should have been greater
 18 emphasis of having community members be able to speak
 19 about how they feel about the freeway. Not just
 20 about the environmental, the health hazards, but more
 21 about culture and the significance of the mountains
 22 to us.

23 The Gila River Indian Community passed a
 24 resolution in 2007 declaring that Moadahk, the South
 25 Mountain, is cultural property of our tribe. We find

Page 28

1 that mountain sacred and it is equivalent to a church
2 to us. Any disturbance to our church is still a
3 disturbance, whether as much as ADOT wants to believe
4 that they are trying not to displace wildlife or cut
5 into the mountain more than they have to, it is still
6 a disturbance to the mountain, and to our spiritual
7 well-being as O'odham people.

8 I believe that -- I know that this
9 freeway system is important not only to ADOT and the
10 people of Phoenix, but it is barely -- it is merely
11 just another project for them in their transportation
12 system. Whereas this, protecting the mountain, is
13 vital to our well-being as O'odham people. There are
14 various stories that come with the mountain that
15 we've been taught, and that we are relearning. And,
16 in fact, this fight for this mountain has reignited
17 that passion for protecting that mountain, but also
18 for sharing those stories as well.

19 There are many plants and animals that we
20 as O'odham people still hold sacred to -- that live
21 there in that mountain range. There are medicinal
22 plants that are available, there's "shegoi," there's
23 also other foods that we eat from the cactus, the
24 "hashem," these -- these plants are already being
25 affected by the pollution that's on the mountain

Page 29

1 today. It's hard to find anyplace to find a clean
2 area to harvest these medicines that have not been
3 tainted with chemicals or air pollution. We have to
4 preserve those plants, not just as O'odham people,
5 but as people all of us collectively who live in
6 these deserts, these plants and animals are vital to
7 us.

8 Anybody who has a concern about
9 conservation of nature should know that this freeway
10 system, this mere project to the outside community is
11 going to be devastating for us all. This is not just
12 an O'odham thing. This is an everybody thing. We're
13 going to -- we're going to feel the effects of this
14 freeway system in our health and in our own
15 well-being.

16 This desert cannot support this many
17 people, and I know as we try and try and support and
18 accommodate for everybody, this society is eventually
19 going to collapse. It has been seen before,
20 historically, and it is going to happen again. This
21 place does not have the resources to house this many
22 people. Our aquifers, our groundwater is being
23 depleted. Our plants are being polluted. Our sacred
24 mountains are now being destroyed.

25 That's what I have to say.

Page 30

1 THE REPORTER: Thank you so much.
 2 (Proceedings concluded at 12:00 p.m.)
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

5114

From: [Projects](#)
 To: [ADOT](#)
 Subject: FW: Loop 202 South Mountain Freeway Study
 Date: Monday, July 15, 2013 2:03:42 PM
 Attachments: [Image001.png](#)

Thank you,
Matthew Eberhart
 Community Relations Officer
 1655 W Jackson St. MD 126F
 Phoenix, AZ 85007
 602-712-2060
azdot.gov


From: Jeanne Hart [mailto:mondayitisnomore@cox.net]
 Sent: Monday, July 15, 2013 2:02 PM
 To: Projects
 Subject: Loop 202 South Mountain Freeway Study

LOOP 202 SOUTH MOUNTAIN FREEWAY STUDY

Reasons for a "**NO BUILD OPTION**" of the Loop 202 South Mountain Freeway are as follows:

- The highway will become the CANAMEX Highway from Mexico to Canada which will allow the transport of hazmat materials through our community. Chemicals such as sulfuric acid, gasoline, and especially chlorine gas would be disastrous. Evacuation would be extremely difficult and would have a health and death impact. In order to mitigate this catastrophe shelters would have to be built in the community. An accident on the highway is all that is needed for the release of these toxic chemicals. Let alone that the tax payers would be responsible for the cleanup.
- The highway is all about moving trucks through the valley from Mexico. They use high sulfur diesel fuel which is not allowed to be sold in this country.
- The highway will create dangerous air pollution due to transportation exhaust which is known to cause cancer. The Ahwatukee Foothills is at present one of the least polluted communities in the valley.
- ADOT spent \$43,000,000 buying property along only one route (59th Ave.) since 1988, and not any other route. This shows bias toward their opinion of the proposed route. The study and legal process should have been concluded before the purchase of property. They violated this legal obligation.
- Use of 2005 data in the study is not valid any longer. They did not use the most current, updated and scientific data that is required by law. What about

- omission of fact.
- "Due Process" was not afforded to the community by way of asking questions and getting answers. The technical substantiated information of the Environmental Impact Study was not provided at the libraries as promised.
 - Property devaluation is expected to be about 30%. This is an upscale community and the devaluation in property would significantly affect the state real estate revenues. The character of the neighborhood would change.
 - It would disrupt schools, churches, personal property and the lifestyle of the Foothills residents. Some schools and churches that the community attend are now in jeopardy of being destroyed. The children who attend the remaining schools, churches and the YMCA would suffer an environmental impact because of the close proximity to the highway.
 - The constant noise of the traffic would go against the reason citizens purchased property in the Foothills in the first place.
 - Crime is a real concern for those living here in this peaceful, quiet community and the appeal would be destroyed. More police presence would be required putting a burden on the state

Jeanne Hart

Confidentiality and Nondisclosure Notice: This email transmission and any attachments are intended for use by the person(s)/entity(ies) named above and may contain confidential/privileged information. Any unauthorized use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by email, and delete or destroy all copies plus attachments.

This page intentionally left blank