

Decision Notice and Finding Of No Significant Impact

Tonto Apache Land Exchange

USDA Forest Service, Southwestern Region
Coconino, Prescott, Sitgreaves, Prescott and Tonto National Forests
Coconino, Gila, Navajo and Yavapai Counties, Arizona

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Introduction

This Decision Notice documents my decision to select Alternative B, the Proposed Exchange, as described in the March 2006 Environmental Assessment (EA) for Proposed Tonto Apache Land Exchange. This decision will approve conveyance of approximately 273 acres of federal National Forest System land described as the Payson parcel to the Tonto Apache Tribe for approximately 405 acres of non-federal land described as the Truswell, Munoz, Peat Bog, and Tin Hat parcels. The Payson parcel (Gila County) is located within the Payson Ranger District of the Tonto National Forest. The non-federal Peat Bog and Tin Hat parcels (Gila County) are located within the Payson and Tonto Basin Ranger Districts, respectively, on the Tonto National Forest. The Truswell parcel (Yavapai County) includes acreage within both the Verde Ranger District of the Prescott National Forest and the Red Rock Ranger District of the Coconino National Forest. The Munoz parcel (Navajo County) is within the Lakeside Ranger District of the Sitgreaves National Forest. Legal descriptions for these parcels are attached at the end of this document.

This exchange will be completed under authority of and in accordance with the General Exchange Act of March 20, 1922, as amended; the Federal Land Policy and Management Act of October 21, 1976; and the Federal Land Exchange Facilitation Act of August 20, 1988. It is in accordance with current Forest Service regulations at 36 CFR 254 and policies and contributed to achieving Tonto, Coconino, Prescott, and Sitgreaves National Forests' Land Management Plan direction. The scope of my decision is limited to the actions described in the EA and this Decision Memo/Finding of No Significant Impact (DN/FONSI). This decision is site specific. The environmental analysis documented in the EA is available for public review in the offices of the Payson District Ranger (Payson, AZ), the Tonto Forest Supervisor (Phoenix, AZ), and the Southwestern Regional Forester (Albuquerque, NM).

Appraisals for the federal and non-federal lands were approved for agency use on September 6, 2005, with an effective value of June 1, 2005. Initially, the appraisal reports were deemed usable for the intended purpose until December 1, 2005. On November 10, 2005, the Tonto National Forest requested the Senior Review Appraiser reexamine the market to see if the values in the approved Forest Service appraisal were still representative of the market. The reports were reviewed based on current market data and found usable for the intended purpose until June 1, 2006. Execution of a formal Exchange Agreement will commit both the United States and the Tonto Apache Tribe to accept as final the agency-approved appraisal values for the subject lands. The federal land has an approved value of \$5,075,000 and the non-federal land has an approved value of \$5,425,000. At closing, the United States will pay the Tonto Apache \$350,000 cash payment to equalize values.

Purpose and Need for Project

The Forest Service plans to consolidate land ownership by conveying a parcel within the Town of Payson to the Tonto Apache Tribe, to acquire privately-held parcels within national forests in the State of Arizona, and to meet the expansion needs of the Tonto Apache community.

Consistent with the Tonto National Forest Land and Resource Management Plan (1985) and the Plans of other involved National Forests, the objectives of this project are to:

1. Acquire riparian habitat for national forest protection and management.
2. Acquire a portion of one of only two known peat bogs in the State of Arizona.
3. Exchange 273 acres of Tonto National Forest lands within the Town of Payson to the Tonto Apache Tribe.
4. Reduce administrative burden by simplifying land ownership patterns.

Decision and Proposed Action

It is my decision to approve the land exchange, as proposed.

The 273-acre federal parcel that will be conveyed into private ownership is within the corporate boundaries of the Town of Payson on the Payson Ranger District of the Tonto National Forest. It is

adjacent to both the existing Tonto Apache Reservation and to private single-family residential development. State Route 87 cuts north to south through the western portion of the parcel and is authorized under a Federal Department of Transportation Easement to the Arizona Department of Transportation. The easement will be protected as an outstanding right in the parcel conveyance.

The government will acquire four parcels on four national forests in Arizona:

- Truswell parcel (160 record acres/177.76 surveyed acres; T. 13 N., R. 5 E., section 17 & 20) – straddles the Verde River 3.5 miles south of the Town of Camp Verde and is within the Verde Ranger District, Prescott National Forest and the Red Rock Ranger District, Coconino National Forest. The property includes chaparral and scattered juniper on mountain slopes, open fields, shrubs and trees and some large cottonwoods on river terrace, and dense riparian vegetation on riverwash areas.
- Munoz parcel (98.98 record/surveyed acres; T. 11 N., R. 20 E., section 29 & 32) – is located one mile northeast of Pinedale, Arizona on the Lakeside Ranger District, Sitgreaves National Forest. This topography is relatively flat pastureland with one hill in the northeast corner and a stock pond.
- Peat Bog parcel (15.73 record/surveyed acres; T. 11 N., R. 11 ½ E., section 19, 20, 29, 30) – is a small piece of a larger inholding bounded on the east and west by National Forest System lands within the Payson Ranger District of the Tonto National Forest and on the north by privately owned land. The 15 acre parcel features a portion of a peat bog. The remainder of the bog is on the private parcel held by a third party and is not available for exchange or purchase.
- Tin Hat parcel (130.59 record acres/130.27 surveyed acres; T. 5 N., R. 12 E., section 34) – is five miles north of Roosevelt, Arizona, within two miles of Roosevelt Lake. It is located within the Tonto Basin Ranger District, Tonto National Forest and includes bottomland of Salome Creek. Two inclusions, a portion of the bottomland and a cemetery plot will remain in third party private hands.

The government will revoke special use permits to APS, Qwest and NPG Cable for a jointly used utility corridor. One or more easements for this corridor will be granted upon closing to protect special use permit holder uses.

Decision Rationale – Public Interest Determination

This decision best meets the purpose and need for the project, responds to public issues, and minimizes overall disturbance to federal resources. Forest Service specialists reviewed and analyzed public comments that were used to formulate and strengthen the environmental analysis. These have been thoroughly analyzed and discussed in the EA. All comments and resulting analysis are contained in the project record.

Considering all alternatives, including those that were considered but eliminated from detailed study, a range of reasonable alternatives was considered. I have also reviewed the alternatives considered in detail and find that they were responsive to key issues and the purpose and need for the analysis.

My reasons for proceeding with this action and selecting action Alternative B are as follows:

1. In accordance with 36 CFR 254.3(b), I have determined that this exchange will serve the public interest.
 - This exchange will achieve better management of federal land through consolidation of national forest ownership (EA: 59-60). Consolidation will result in reduction of approximately 2.65 miles of shared property boundary between National Forest System and privately-held lands; elimination of two complete inholdings and reduction in size of two.
 - The exchange will meet the needs of local residents and their economies by providing an expansion opportunity for the Tonto Apache Tribe (EA: 3, 51-52).
 - The exchange will meet the needs of national, state, and local residents by securing important riverine and riparian resources (EA: 14-15), acquiring elk winter habitat (EA: 15), and protecting a portion of a peat bog (EA: 15).
 - The resource values and the public objectives served by the non-federal lands or interests to be acquired exceed the resource values and public objectives served by the federal land to be conveyed.
 - The intended residential use of the conveyed federal land will not substantially conflict with established management objectives on adjacent federal lands, including Indian Trust lands.
2. This exchange will place private land adjacent to the Verde River into public ownership, thereby protecting 0.6 miles (EA: 35) of existing and potential riparian corridor from future development and long-term water quality. The federal parcel and all of the non-federal parcels contain floodplains. The non-federal lands will be consolidated with the adjoining National Forest System lands contributing to a contiguous land base where consistent management objectives are applied. Protection of these areas will occur under Forest Service jurisdiction and management.
 - a. Floodplains: Executive Order 11988, which was signed on May 24, 1977, was promulgated to avoid adverse impacts associated with the disposal, occupancy and modification of floodplains. Floodplains are defined by this order as:

“...lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any one year.”

There are 0.66 miles of floodplain on the federal parcel (Forest Service hydrologist report, September 30, 2005). This includes the headwaters of and a tributary to Gibson Creek. These are ephemeral drainages that only flow in response to precipitation. They contain no significant riparian vegetation and minimal floodplain values. Once the lands are passed out of federal ownership, they are subject to floodplain restrictions of the County Flood Control District Ordinance. The National Flood Insurance Program (42 U.S.C. 4001-4128) provides the umbrella document for states' floodplain control programs. In Arizona, A.R.S. § 48-3601 through § 48-3627 provides directions to counties and local governments. Counties must have floodplain regulations in effect in order to qualify for the National Flood Insurance Program. In Gila County, floodplain regulations are found in the *Gila County Floodplain Management Ordinance*, approved June 24, 2003.

The Forest Service hydrology report (September 30, 2005) indicates that the non-federal land contains 1.6 miles of floodplain. The exchange will result in a net federal gain of 0.94 miles of floodplain. The floodplain value on the non-federal parcels are considered significant. The Forest Service will be receiving lands with higher floodplain resource values than it is yielding. A NOTICE to be contained in the Exchange Agreement and reflected in the patent will mitigate potential impacts to floodplain on the federal property. A copy of that NOTICE is attached hereto and made a part hereof. Disturbance on the floodplain will not change as a result of this exchange; therefore, the exchange will have no effect on the floodplain and does not constitute a significant effect.

- b. Wetlands: Executive Order 11990, signed on May 24, 1977, was promulgated to avoid adverse impacts associated with the destruction or modification of wetlands. This exchange will result in a net gain of 14.0 acres of wetland. The federal parcel contains no wetlands. Wetlands were identified on the Peat Bog non-federal parcel. The bog extends onto adjacent private land. On the parcel, the bog supports approximately 14 acres of wetland vegetation species such as sedges and rushes. This is one of only two peat bogs known in Arizona. Green Valley Creek flows through the bog for approximately 0.23 miles and is perennial within the parcel.
- c. Municipal Watersheds: This decision will not affect a municipal watershed.

The exchange will result in a net gain of 0.94 miles of floodplain and 14.0 acres of wetland. This exchange is favorable to the United States and meets the goals of Executive Order 11988 (Wetlands) and Executive Order 11990 (Floodplains) (EA: 34-37).

3. No surface water is available on the federal parcel. The Tribe has entered into a Water Service Agreement with the Town of Payson making water supplies from Payson available for the Tribe's anticipated residential and commercial growth both on the existing reservation and on the federal parcel (EA: 37-41). The agreement, signed in 2005, is to remain in effect for five years and will automatically renew for one year intervals thereafter unless either party provides six-month written notice to the other stating intent not to renew. In addition, the agreement commits the Tribe to:
 - Implement water conservation measures comparable to the Town's regulations on both the Reservation and the Payson federal parcel;
 - Cooperate with the Town in efforts to identify and procure additional and new water supplies;
 - Not utilize new wells that negatively impact existing Town wells.

Tribal demands planned for in the Water Service Agreement (2005) could increase use of water in Payson from 1,615 acre-feet of water (in 2004) to approximately 1,653 acre-feet per year. This 38 acre-feet per year increase would result in a two per cent increase in water withdrawn from the Payson aquifer. The Town of Payson estimates safe-yield to be approximately 1,826 acre-feet per year. The potential increase in use of 38 acre-feet per year would not surpass safe-yield of the aquifer. There will be no negative effect on water availability in the Payson vicinity.

4. There will be no negative effect or loss of viability across the Forest for any endangered, threatened, or sensitive species or their habitat with the implementation of this project (EA: 41-47). In the Biological Assessment and Evaluation dated September 12, 2000 (D. Pollack) and Supplement I dated August 26, 2005 (E. Klein), Forest Service wildlife biologists determined that this exchange will have no effect on the bald eagle, Colorado Pikeminnow, the Razorback sucker, and the chiricahua leopard frog or its habitat. It will also have no effect on the Mexican spotted owl and the southwestern willow flycatcher or their proposed or designated critical habitats. This project will comply with the Endangered Species Act of 1973.
5. Executive Order 13186, signed on January 10, 2001, emphasizes conservation of migratory birds. The Migratory Bird Analysis (E.H. Duke Klein, August 26, 2005) finds that the changes caused by this project will be undetectable at the forest or regional scale for the Gray Flycatcher, Pinyon Jay, Gray Vireo, Black-throated Gray Warbler and the Juniper Titmouse. The exchange is not expected to cause a trend in any of the migratory species analyzed toward federal listing as Threatened or Endangered (EA: 42).
6. Management Indicator Species Analysis (E.H. Duke Klein, August 26, 2005) shows loss of pinyon-juniper woodland habitat type. However, the loss is so minute (less than one hundredth of one percent) that it will not alter forestwide habitat or population trends (EA: 42).
7. The non-federal Truswell parcel along the Verde River is within designated critical habitat for the Mexican spotted owl and the southwestern willow flycatcher. It contains occupied chiricahua leopard frog habitat and has been proposed as critical habitat for the species (BA&E Supplement No. 1, August 26, 2005).
8. There are both positive and negative effects on landowners adjacent to the properties involved and to the general public. However, the negative effects, as described in the EA and within this decision, appear to be minimal and limited in scope (EA: 31, 50-62).

Homeowners north of the federal Payson parcel expressed concern about soil erosion affecting their properties. The majority of the parcel drains toward the south. Development of the Payson parcel would not affect drainage towards adjacent homes to the north (EA: 31). Regardless of type and location of development on the parcel, any development would require compliance with the Clean Water Act and any construction that would disturb more than one acre would require a storm water discharge permit from the Environmental Protection Agency. Operators of construction sites would be required to develop and implement storm water pollution prevention plans to control discharge of pollutants. These proactive steps would be in effect if the land is owned in fee and subject to Town of Payson ordinances or is placed in Trust status and subject only to federal statutes and regulations.

Concerns were expressed that conveyance of the federal parcel to the Tonto Apache Tribe would negatively affect adjacent private land values and local traffic. Past federal conveyances in the vicinity have shown just the opposite with regard to land values (EA: 57-58). The Tribe intends to construct 22 homes on the federal parcel. This is low density development for the area and should not adversely affect adjacent land values (EA: 58). With regard to traffic concerns, the

Tribe plans to gate the access to Phoenix Street and expects to only use that ingress/egress in emergencies (EA: 58). Access to the federal parcel would be through extension of existing reservation road systems.

Payson sales tax revenues are not expected to change as a result of this land exchange (EA: 50-51). Non-Indian commercial activity on Tribal lands has no tax advantage over business activity within the Town of Payson. In addition, there is little highway frontage property in the federal parcel available for development, commercial or otherwise.

Gila County receipts would be minimally affected by this exchange. The federal parcel currently does not generate property taxes for Gila County. Payments to States for Gila County for federal property within the county increased each year since enactment of the *Secure Rural Schools and Community Self-Determination Act* in 2000. Increases have ranged from \$2,900 to \$8,600 between 2002 and 2006. These increases are tied to the Consumer Price Index, not to federal acreage or land values (EA: 56). In 2000 Gila County collected \$1,247.96 in property taxes on the Peat Bog parcel and \$4,089.84 for the Tin Hat Ranch parcel. Each of these receipts are less than 0.01 per cent of the \$38,544,915.00 in (EA: 56) property tax revenue. Gila County has both lost and gained taxable acreage in past land exchanges, however, overall land values (and consequent taxes) have increased due to development on conveyed federal parcels.

9. The exchange would result in an overall increase of 32.53 acres, more or less, of public ownership. Gila County would see an increase of 126.45 acres of private ownership (they would have a decrease of 146.32 acres if the Tribe is successful in transferring the federal parcel into Trust); Navajo County, a decrease of 98.98 acres; and Yavapai County, a decrease of 160.00 acres.

National Forest administration will be simplified and enhanced through acquisition of the non-federal land and the resulting consolidation of landownership. Completion of this exchange will result in a reduction of 2.65 miles of private/National Forest property boundary.

10. The EA shows that National Forest management will not be adversely affected by this exchange. It further shows that there will be no significant adverse impacts on the quality of the human environment and the exchange is in the public interest.

The non-federal lands will be consolidated with the adjoining National Forest System land and managed in accordance with prescriptions for surrounding NFS lands in applicable Forest Plans (EA: 58-59; 36 CFR 254.3(f)).

The intended use of the conveyed federal land will not conflict with established management objectives on adjacent federal land nor current development on adjacent private and Reservation land. The Tribe and the Town of Payson have signed a Water Use Agreement that outlines the Tribe's plans for 22 homes to accommodate projected needs for the next five years (EA: 37-38, 61). This density of homes per acre (1:12.4) is substantially less than housing density on adjacent private acreage (1:0.4 to 1:0.2) (EA: 58). In addition, by providing an opportunity for additional housing for the current Tribal population (125 people), the conveyance will reduce existing household size from 4.17 per home to 2.59 per home. This will bring the Tribal

household size into closer alignment with the local non-tribal community (2.3 people per home) (EA: 51-52).

Local county and town zoning, ordinances, and agreements will regulate the amount and type of future development on the property. If the Tribe's trust application is successful, then federal laws and regulations will regulate development and protect resources in a similar fashion (EA: 31, 35, 37-41).

11. Public access to the federal land conveyed into private ownership would be restricted. Access from the federal land north into adjacent private residential areas via Phoenix Road would be closed except in emergencies (EA: 58). All existing easements on non-federal parcels will be acknowledged and protected in the warranty deeds.
12. The resource values and public objectives served by the non-federal land to be acquired exceed the resource values and the public objectives served by the federal land to be conveyed. Consolidation of lands will allow application of consistent management objectives to the contiguous arrangement of federal and non-federal lands. Greater protection of valuable natural resources is possible under the jurisdiction and management of the Forest Service through contiguous arrangement of federal and non-federal parcels (EA, 14-16).
13. The exchange meets the equal value requirements of 36 CFR 254.3(c). The non-federal and federal lands in the exchange have been appraised. The Agency-approved appraisals indicate the value of the federal land is less than that of the non-federal land. The federal land has an approved value of \$ 5,075,000 and the non-federal land has an approved value of \$ 5,425,000. A cash equalization payment of \$ 350,000 will be made to the non-federal party, as provided in 36 CFR 254.12.
14. Other than transfer of title, landownership, and management of the lands identified, revocations of special-use permits and issuance of the easement identified previously in this document, this action will not authorize any site-specific management activities by either party. Any site-specific management activities or actions on the acquired non-federal or remaining NFS land would require environmental analysis by the appropriate national forests. Lands conveyed out of federal ownership become subject to all laws, regulations and zoning authorities of state and local governing bodies. Lands entering Trust are subject to federal laws and regulations. Various federal and State of Arizona agencies as well as Gila, Navajo, and Yavapai County agencies will be the regulatory authorities for all land use activities which may occur on the contiguous block of private land or other private land within the analysis area. The laws, ordinances, and zoning authorities of the United States, the State of Arizona, and Gila, Navajo and Yavapai Counties will adequately protect the resources and will not result in a significant effect on the character of the area, soil, water or air quality, visual quality, wildlife, or other natural resources (EA: 26-50, 52-54, 61).

Alternatives Considered

Four alternatives were considered (EA: 19):

- Alternative A – No Action: where no land exchange would occur;
- Alternative B – The Proposed Exchange (selected) where federal and non-federal parcels would be exchanged, as proposed; withdrawals and special use permits would be revoked;
- Alternative C – Adjust Acreage where federal and non-federal parcels would be exchanged, but the federal parcel would be reduced on the east side by 10-acre increments to achieve balance of value according to a final approved appraisal; withdrawals and special use permits would be revoked;
- Alternative D – Eliminate 20+ Acres West of the Beeline Highway where federal and non-federal parcels would be exchanged, but the westernmost portion of the federal land would be deleted in response to local concerns about sales tax and unfair business competition; withdrawals and special use permits would be revoked;

A comparison of the alternatives may be found in the EA on pages 20-25. Detailed analyses of effects may be found in Chapter 3, pages 26-62.

Alternatives Considered But Not Carried Forward for Further Analysis

The exchange process, itself, limits the range of alternatives. A balanced exchange package is arrived at by a series of proposals and counter-proposals until both parties accept a mix of parcels. Since 1995, a number of National Forest officials and Tribal representatives have been involved in extensive informal discussions concerning various modifications to the landownership pattern in the analysis area. Original parcel configurations did not conform to standards in adopted national forest land and resource management plans and questions arose about some of the easements and other encumbrances on some of the parcels. A revised proposal was submitted to the Forest Service in 1999. The exchange proposal analyzed in the EA reflects parcels mutually agreed upon by the Tonto Apache Tribe and the Forest Service.

- **Move federal parcel to the south.** This alternative was eliminated from detailed study because the remnant landownership pattern would increase landownership complexity and would not, therefore, be consistent with the Purpose and Need to increase resource management efficiency.
- **Place buffer between existing subdivisions and federal parcel.** This alternative was eliminated because it would be contrary to one of the objectives of the exchange: boundary complexity reduction. The parcel would be difficult to manage and its value and return to the public would be reduced. Also, such a buffer would be an unreasonable restriction on the use of 90 acres or more of land and is not consistent with existing buffers within adjacent subdivisions. These have 20-foot back yards and five-foot sideyard setbacks.
- **Compensate adjacent landowners for lost property values.** This alternative was eliminated because there is no legal basis for compensation.

- **Delay exchange until area water issues resolved.** This alternative was not advanced for further study because the water issues have been address to a sufficient degree and to delay the exchange does not meet the purpose and need for the project.
- **Acquire non-federal lands by other means.** Purchasing non-federal parcels via funding through a Land and Water Conservation Fund Act allocation was dropped from further consideration because the parcels were purchased by the Tonto Apache Tribe to form an assembled land exchange with the express purpose of trading for the property adjacent to its Reservation. They are unwilling to sell the parcels because they would not be able to acquire the federal parcel.
- **Place development restrictions on deed for federal land.** Based on input for this proposal and others, I have also considered an additional alternative that was not evaluated in the EA: deed restrictions on part of, or on the entire parcel, as appropriate.

Deed restrictions are to be imposed in rare occasions when necessary to protect critical federal interests following consummation of an exchange (36 CFR 254.3(h)) - - Reservations or restrictions in the public interest).

“In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.”

Neither scoping nor evaluation of the federal land by specialists identified any critical resources or National Forest System lands in need of protection through deed restrictions (EA, pp. 18-14). In addition, the use of deed restrictions is not consistent with the Forest Service goal of improving the effectiveness and efficiency of its management - - FSM 5430. The Forest has identified this property for disposal because it lies within the Town of Payson’s corporate boundaries (Tonto National Forest Land and Resource Management Plan, 1985: 14). Administration of deed restrictions can be extremely complicated, time consuming and expensive, resulting in a potential decrease in management efficiency, instead of the intended increases. Therefore, this alternative was not studied in detail.

Public Involvement and Issues Raised

- A. The public was notified of the proposed exchange by legal Land Exchange Notice that appeared once a week for four consecutive weeks in local newspapers in affected counties.
 - *Payson Roundup* (Gila County) – March 27, April 3, 10, and 17, 2001
 - *Daily Courier* (Yavapai County) – March 28, April 4, 11, and 18, 2001
 - *White Mountain Independent* (Navajo County) – March 30, April 6, 13, and 20, 2001
- B. As required by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, since this case involves federal land in excess of \$500,000 value, the House and Senate

Appropriations Committees were notified of the publication of the Land Exchange Notice and given 30 days within which to review the case. The 30-day review period ended May 18, 2006, without comment; therefore, case processing may proceed.

- C. On July 7, 2000, the Yavapai County, Navajo County, and Gila County Boards of Supervisors, State agencies and the Arizona Congressional delegation were notified of this exchange. No objections were received.
- D. A scoping meeting was held on March 21, 2000, with representatives of the Tonto Apache Tribal Council, Tonto National Forest, Town of Payson and the environmental contractor, SEC, Inc. in attendance.
- E. A letter was mailed on April 5, 2000, to potentially interested or affected groups, including individuals, local, state and federal agencies and special interest groups and nine tribes. Information included a project description, maps and a request for comments. A public meeting was held on April 18, 2000. The *Payson Roundup* published articles about the proposed exchange on April 14 and 28, 2000. The Forest Service received 89 comments from this initial scoping effort. Responses were considered in defining the issues and developing alternatives for the project proposal (EA: 11-13, 17-25).
- F. The EA was initially made available for 30-day review with a legal advertisement in the *East Valley Tribune* on January 11, 2002. A letter (1/10/2002) announcing the availability of the EA for review was sent to 180 on our mailing list, including all those who had commented previously, government agencies, organizations and tribes. On January 15, 2002, the *Payson Roundup* ran an article, "Information available on Tribe land exchange." Nineteen responses were received plus one petition signed by 69 people.
- G. Final approved values for the federal and non-federal parcels became available on September 6, 2005. Due to the lag time between the public review of the EA and the acquisition of the appraisal and changes in Forest Service NEPA appeals regulations, the Forest Service took another look at the EA and decided that it should go out for 30-day public comment again, this time under the new appeals regulations. The Forest Service published a legal notice in the *Arizona Republic* announcing that the EA was available for review on October 5, 2005. The letter to the mailing list was sent out on October 19, 2005. Ten comments were received. However, due to the delay in sending the letters and the concern that some respondents had not been given adequate time to formulate their responses, the Forest Service decided to start the comment period once again with another *Arizona Republic* legal publication on November 15, 2005 and a letter sent out on the same day. The ten previous respondents were either called or emailed to let them know about the new comment period. Fifteen comments were received.
- H. All comments were considered in the environmental analysis and were used to develop and refine the issues and alternatives. In an effort to respond to the comments, changes were made in the EA after the November-December, 2005, 30-day comment period.

Issues

Issues identified through both public meetings and reviews were (EA: 11-12):

1. Concern over soil erosion onto adjacent private lands due to development on federal parcel (EA: 31)
2. Availability of water to support planned increase in residential and possible commercial development (EA: 37-41)
3. Potential loss of wildlife habitat due to development and use of currently undeveloped private and federal lands (EA: 41-46)
4. Reduction in air quality due to construction and increased traffic on federal parcel (EA: 47-48)
5. Loss of potential sales tax revenues to the Town of Payson if the federal property is exchanged and the land is placed in Trust status rather than private ownership (EA: 50-51)
6. If land exchange does not occur and additional land for Tribal housing is not provided, quality of life on the Reservation will suffer (EA: 51-52)
7. Visual character of the Payson parcel may be reduced if the land is traded to the Tribe for development (EA: 52-53)
8. Loss of potential Gila County tax base (EA: 54-57)
9. Concern with which government entity would have law enforcement jurisdiction on State Route 87 should the Tribe obtain Trust status for the conveyed federal parcel (EA: 57)
10. Concern that the value of private property adjacent to the federal parcel may be reduced if the federal land is transferred into Tribal ownership due to development and increased traffic through adjacent neighborhoods. (EA: 57-58)
11. Concern about livestock:
 - On federal land wandering onto adjacent private land (EA: 58-59)
 - Grazing on acquired non-federal parcels. Forest Service should protect resource values that made non-federal parcels attractive by emphasizing managing for those values and excluding grazing (EA: 58-59)

Finding of No Significant Impact

The proposed action is consistent with and meets the Standards and Guidelines of the Apache-Sitgreaves, Coconino, Prescott and Tonto National Forests Land and Resource Management Plans, as amended, because the project is feasible and reasonable, meets the Plans' overall direction of protecting the environment while producing goods and services, and uses landownership adjustment as a tool for accomplishing resource management objectives.

Context and Intensity

National Forest administration will be simplified and enhanced through acquisition of the offered private land and the resulting overall consolidation of landownership through this exchange (EA: 59-60).

The physical and biological effects are insignificant and are limited to the project area and the immediately surrounding areas (EA: 41-47).

I have determined that this project is not a major federal action significantly affecting the quality of the human environment. Therefore an environmental impact statement is not needed.

The following areas were considered in evaluating intensity of project impacts:

- a) **Beneficial and adverse environmental impacts.** The EA shows that National Forest management will not be adversely affected by this transaction. It further shows that there will be no significant adverse or beneficial impacts on the quality of the human environment. The physical and biological effects are limited to the exchange areas or the immediate vicinity. The transaction is in the public interest. This land exchange meets the guidelines of the Apache-Sitgreaves, Coconino, Prescott, and Tonto National Forest Land and Resource Management Plans. Upon conveyance of the non-federal land to the United States, the newly acquired lands will be managed together with the surrounding National Forest System lands in accordance with the standards and guidelines in the appropriate Forest Plans. Greater protection of valuable natural resources is possible under the jurisdiction and management of the Forest Service through contiguous arrangement of federal and non-federal parcels. The federal land on the Payson Ranger District conveyed into private ownership will be deleted from the management area in which it is located.
- b) **Public health and safety.** Public health and safety are minimally affected by the proposed action. The effects on water quantity and quality will be negligible (EA: 34-41). Lands conveyed out of federal ownership become subject to the laws, regulations and zoning authorities of state and local governing bodies (36 CFR 254.3). Even if after the conveyance the Tribe's application to enter the property into Trust is approved, future development will still need to comply with the Clean Water Act and other EPA regulations (EA: 31).

The Tribe plans to gate the access to Phoenix Road and use the access only in emergencies (EA: 58). This will ensure that traffic safety in neighborhoods adjacent to the federal parcel is not compromised due to project implementation.

- c) **Unique characteristics of the geographic area.** The federal land is not unique within its geographic setting, in terms of physical and biological characteristics, and is similar to many other areas of national forest and private land in the area (EA: 6, 13-14, 26-27, 31, 34, 41-42, 61).

The federal land does not contain any prime farmland, forestland, or rangeland (EA: 13-14, 58-59).

Acquisition of the four non-federal parcels and conveyance of the federal parcel will result in a net gain of 0.94 miles of floodplain for the United States. Fifteen acres of riparian habitat will be acquired with the Truswell parcel. The Peat Bog parcel that will be acquired contains 14 acres of wetland. No federal wetlands will be conveyed. The riparian and wetland areas may be afforded greater protection under government management.

- d) **Degree to which the effects on quality of human environment are likely to be highly controversial.** There are no known scientific controversies over the effects of this

project on the human environment. The exchange will not significantly affect the quality of the human environment. Of the fifteen comments received on the EA (see “Public Involvement and Issues Raised,” section G), five were in favor of the proposed exchange. The comments in the other ten communications dealt with items listed above under “Issues.” These issues have been analyzed and disclosed in the EA (Chapter 3, 26-62).

- e) **Degree to which the effects are highly uncertain or involve unique or unknown risks.** There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks. Effects of this action will be similar to the effects of past similar actions. The Southwestern Region of the Forest Service has implemented numerous land exchanges over many years. The effects of land exchanges are well understood (EA: 20-62).
- f) **Degree to which this action will establish a precedent for future actions with significant effects.** This project does not set a precedent for other projects that may be implemented to meet the goals and objectives of the Forest Land and Resource Management Plan. Other than transfer of title, land ownership, and management of the identified lands, this action will not authorize any site-specific management activities by either party. Each land exchange or other action must be evaluated on its own merits. Any future actions will be evaluated through the National Environmental Policy Act process, if applicable, and will stand on their own regarding environmental effects and project feasibility.
- g) **Relationship to other actions with cumulatively significant impacts.** Cumulative effects were considered as part of the analysis. There are no known significant cumulative effects from individual or connected actions (EA: 30, 34, 37, 40-41, 47, 50, 51, 52, 54, 56, 57, 58, 59, 60, 61).
- h) **Degree to which the action may affect archaeological/cultural/heritage resources, listed on, or eligible for, the National Register of Historic Places, Native American or Cultural Sites and/or Traditional Cultural Properties.** A heritage resource survey was completed for the Payson federal parcel in 2000 in compliance with the *National Historic Preservation Act*, section 106. The survey identified nine prehistoric and historic sites. Based on this survey, two of the sites were determined not eligible for the *National Register of Historic Places*. Subsequent archaeological investigations of the remaining sites determined that two additional sites were also not eligible for the Register.

The effect on heritage properties in a land exchange is that conveyance out of federal ownership removes eligible properties from federal protection. This, in turn places the properties at risk of loss or damage through development and vandalism in situations where the federal laws and regulations do not apply. The effects of the land conveyance were mitigated through data recovery (testing and excavation) and treatment. In 2005 a Memorandum of Agreement was signed by the Forest Service and the Arizona State Historic Preservation Officer (SHPO) for developing the data recovery and treatment plan. SHPO concurrence was contingent on the Tribe providing protection for immovable petroglyph boulders. The Tribe confirmed their commitment to protect the petroglyphs in a letter to the Forest Supervisor on September 20, 2005. With this commitment, the Section 106 process has been completed.

Nine Tribes were consulted on this land exchange proposal. Letters were sent to:

- Ft. McDowell Yavapai Nation
- Yavapai-Prescott Tribe
- Yavapai-Apache Tribe
- Tonto Apache Tribe
- San Carlos Apache Tribe
- White Mountain Apache Tribe
- Salt River Pima-Maricopa Indian Community
- The Hopi Tribe
- Pueblo of Zuni

The Hopi Tribe expressed concern with the disposition of the petroglyph sites. Agreement was reached, as discussed above, with Tonto Apache Tribe commitment to protect the petroglyph boulders (EA: 60-61).

- i) **Degree to which the action may affect threatened, endangered, or sensitive species or their habitat.** Proposed or currently listed Endangered, Threatened or sensitive species and their habitats will not be affected by implementation of this land exchange. A determination of no effect was made in the Biological Assessment and Evaluation (September 12, 2000) and in Supplement No. 1 (August 26, 2005) for this project. (EA: 42).
- j) **Whether the action violates federal, state, or local laws or requirements imposed for the protection of the environment.** This action does not threaten a violation of federal, state or local law or requirements imposed for protection of the environment. State, county and town governments were made aware of the proposed land exchange. The action will authorize transfer of title, landownership, and management of the lands identified. The action will not authorize any site-specific activities by either party.

Lands conveyed out of federal ownership become subject to all laws, regulations and zoning authorities of state and local governing bodies. Various federal, State of Arizona agencies, as well as the Gila County and the Town of Payson will be the regulatory authorities for all land use activities that may occur on the land conveyed into private ownership. The Tribe applied to the Bureau of Indian Affairs (BIA) to consider transferring the federal parcel, upon conveyance, into Trust (EA: 1). The BIA will conduct an analysis of the Trust application in compliance with the National Environmental Policy Act. If the Tribe's application is approved, the property will be subject to federal laws and regulations (EA: 31, 50-51).

Findings Required by Other Laws and Regulations

- Conveyance of the National Forest System land into private ownership does not conflict with the requirements of Sec. 402(g) of **Federal Land Policy and Management Act**. The Payson Allotment will be reduced by approximately 258 acres. A portion of this pasture has not been grazed in about 20 years and there will be no change in permitted numbers. The American Gulch Allotment will be reduced by about 15 acres. This area, too, has not been grazed in several years and there will be no reduction in permitted numbers as a result of this land exchange.

- Resources eligible for the *National Register of Historic Places* were located within on the federal land. These were treated in conformance with the **National Historic Preservation Act** and **Executive Order 11593**. The State Historic Preservation Officer has concurred with mitigation measures (EA: 60-61).

The Tonto National Forest consulted with nine interested tribes to identify and evaluate traditional cultural properties and to develop appropriate measures to protect heritage resources. This exchange meets the requirements of the **Native American Graves Protection and Repatriation Act** and the **American Indian Religious Freedom Act**.

- This exchange does not conflict with **Executive Order 11988** regarding floodplain management and **Executive Order 11990** regarding wetlands management (EA: 34-37). The positive acquisition of floodplain lands and wetland acres into federal ownership supports the objectives of the Executive Orders.
- The exchange complies with the **Endangered Species Act** of 1973, as amended. A Biological Assessment and Evaluation (September 12, 2000) showed that no proposed or currently listed Endangered, Threatened or sensitive species or their habitats will be affected. In order to be assured that the assessment of effects was up to date, a supplement to the BA&E was completed on August 26, 2005. This supplement determined that implementation of this exchange would still have no effect (EA: 42).
- Analysis included potential impact on Management Indicator Species for the federal parcel (August 26, 2005; EA: 43). The analysis showed loss of pinyon-juniper woodland habitat type. However, the loss is so minute (less than one hundredth of one percent) that it will not alter forest wildlife habitat or population trends. Therefore the exchange will be in compliance with the **National Forest Management Act**.
- A Migratory Bird Analysis was completed in accordance with **Executive Order 13186**. The analysis indicated minute negative change (undetectable at the forest or regional scale) for several species. Implementation of the exchange is not expected to cause a trend in any of the analyzed migratory bird species toward federal listing as Threatened or Endangered.
- No caves are known to exist on the federal land (EA: 61). Therefore, this exchange does not conflict with the intent of the **Federal Cave Resources Protection Act** of November 18, 1988.
- This exchange does not conflict with **Executive Order 12898** regarding Environmental Justice in Minority Populations and Low Income Populations. The no concerns related to Environmental Justice have been identified (EA: 62)
- The non-federal and federal lands in the exchange have been appraised. The appraisals indicate the value of the federal land is \$ 5,075,000 and the non-federal lands are \$ 5,425,000. A payment of cash by the United States to the Tonto Apache Tribe in the amount of \$ 350,000 will

equalize values as required by Sec. 206(b) of the **Federal Land Policy and Management Act** and the **Federal Land Exchange Facilitation Act**.

- The Bureau of Land Management concurred with the Mineral Report on November 9, 2000. The federal land and all the non-federal land, with the exception of the Muniz parcel, have no know value for oil and gas, sodium, potassium, coal or any other leasable minerals. The Munoz parcel has a moderate potential for presence or occurrence of oil and gas, and coal. All parcels have low potential for both locatable and salable minerals.
- The federal and non-federal lands have been examined for evidence of hazardous materials in accordance with the **Comprehensive Environmental Response, Compensation and Liability Act** of 1980 (CERCLA) (42 U.S.C. 9601), as amended (EA: 61). Transaction Screening forms for all parcels were completed by qualified investigators. No evidence was found to indicate that any hazardous material was stored for one year or more or disposed of or released on the properties.

Project Implementation

This project will not be implemented sooner than five business days following the close of the appeal filing period established in the notice of decision in the Arizona Republic, the newspaper of record. If an appeal is filed, implementation will not begin sooner than 15 business days following the date of the last appeal disposition.

Appeal Rights

This Decision is subject to administrative review (appeal) pursuant to **both** 36 CFR Parts 215 and 251. Appellants must submit appeals under only one authority.

Individuals or organizations who provided comment or otherwise expressed interest in the proposed action by the close of the 30-day comment period (December 15, 2005) specified in 36 CFR 215.6 may appeal this Decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

Those who hold written authorizations to occupy and use National Forest System lands pursuant to 36 CFR 251 may appeal this decision with a written Notice of Appeal meeting the requirements at 36 CFR 251.90.

Appeals must be postmarked or received within 45 days after the date of notice of this decision. However, when the 45-day filing period would end on a Saturday or Sunday or federal holiday, the filing time is extended to the end of the next federal working day. The written Notice of Appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with:

Regular Mail address is:

Appeal Deciding Officer
USDA, Forest Service
1400 Independence Ave, SW
Mail STOP 1104
Washington, DC. 20250-1104

The Federal Express and hand-delivery address is:

USDA, Forest Service
Ecosystem Management Coordination (EMC)
ATTN: Appeals
Yates 3CEN,
201 14th Street
Washington, DC 20024; Telephone: 202-205-0895. Fax number is: 202-205-1012.

The business hours for those submitting hand-delivered appeals are: 7:00 a.m. to 5:00 p.m. EST (EDT), Monday through Friday, excluding holidays. An electronic appeal must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf) and Word (.doc) to:

appeals-chief@fs.fed.us

In cases where no identifiable name is attached to an electronic message, a verification of identity will be required. A scanned signature is one way to provide verification.

Appeals, including attachments, must be filed within 45 days from the publication date of the notice in the *Arizona Republic*, the newspaper of record. The publication date of said newspaper of record is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by another source.

Contact

For further information concerning this Decision or the Forest Service appeal processes, contact Emily Garber, Tonto National Forest, 2324 E. McDowell Rd., Phoenix, AZ 85006, (602) 225-5269; or John Bruin, Landownership Adjustment Group Leader, Lands and Minerals, Southwestern Region, 333 Broadway, SE, Albuquerque, NM 87102, (505) 842-3274.

/s/ H. Wayne Thornton

H. WAYNE THORNTON
Director, Lands and Minerals
Southwestern Region
USDA Forest Service

May 19, 2006

Date

Attachments:

Legal descriptions
Floodplain Notice

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status (Not all prohibited bases apply to all programs.). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

LEGAL DESCRIPTIONS

Non-Federal Land

COCONINO AND PRESCOTT NATIONAL FORESTS ("TRUSWELL" PARCEL)

Beaver Creek and Verde Ranger Districts

GILA AND SALT RIVER MERIDIAN, Yavapai County, Arizona

T. 13 N., R. 5 E.

sec. 17--S1/2SE1/4;

sec. 20--N1/2NE1/4.

Containing 160.00 record (177.76 surveyed) acres, more or less.

SITGREAVES NATIONAL FOREST ("MUNOZ" PARCEL)

Lakeside Ranger District

GILA AND SALT RIVER MERIDIAN, Navajo County, Arizona

T. 11 N., R. 20 E.

secs. 29 and 32--That parcel of land located within the SE1/4 sec. 29 and the NE1/4 sec. 32, more particularly described as follows: BEGINNING at the southeast corner of said sec. 29; thence S. 89°17'00" W. on the South line of said sec. 29, a distance of 1350.51 feet; thence S. 01°14'32" E., a distance of 387.22 feet to a point on the northerly right-of-way of State Highway No. 260, said point also being a point on a curve, concave to the northeast, having a central angle of 18°24'22" and a radius of 7539.44 feet; thence northwesterly on said curve, a distance of 2422.02 feet; thence N. 49°02'22" W. continuing on said highway right-of-way, a distance of 303.92 feet; thence N. 00°44'12" W., a distance of 210.73 feet; thence N. 89°17'48" E., a distance of 905.05 feet; thence N. 01°00'03" W., a distance of 63.00 feet, to a point in the existing centerline of the Pinedale-Taylor Road; thence N. 89°24'00" E. on said centerline, a distance of 2685.48 feet, to a point on the East section line of sec. 29; thence S. 01°28'45" E., on said section line, a distance of 1377.97 feet to THE POINT OF BEGINNING.

Containing 98.98 record/surveyed acres, more or less.

TONTO NATIONAL FOREST ("PEAT BOG" PARCEL)

Payson Ranger District

GILA AND SALT RIVER MERIDIAN, Gila County, Arizona

T. 11 N., R. 11 1/2 E. (unsurveyed)

secs. 19, 20, 29 & 30 (protracted)--A portion of HES 424, depicted on that certain

"Record of Survey Of A Portion Of HES 424..., March 1995, Blair C. Meggitt, R.L.S. 18436"; and more particularly described as follows:

COMMENCING at Corner No. 2 of HES 424; thence West (Record bearing and Basis of Bearing) a distance of 1974.23 feet to Corner No. 3 of said HES 424, being THE TRUE POINT OF BEGINNING; thence S. 44°58'58" W., a distance of 1593.14 feet to Corner No. 4 of said HES 424; thence N. 04°33'09" W., on the line between Corners No. 4 and No. 5 of HES 424, a distance of 1130.42 feet to a point which bears S. 04°33'09" E., a distance of 1324.98 feet from said Corner No. 5; thence East, along the Westerly prolongation of Corners No. 2 and No. 3 of HES 424, a distance of 1215.90 feet to Corner No. 3, THE TRUE POINT OF BEGINNING.

Containing 15.73 record/surveyed acres, more or less.

TONTO NATIONAL FOREST ("TIN HAT RANCH" PARCEL)

Tonto Basin Ranger District

GILA AND SALT RIVER MERIDIAN, Gila County, Arizona
T. 5 N., R. 12 E. (unsurveyed)

sec. 34 (protracted)--A portion of HES 247, depicted as PARCEL C on that certain "Record of Survey Of A Portion Of HES 247... January 1997, Blair C. Meggitt, R.L.S. 18436", recorded February 4, 1997, as Map #1327, Fee 701450, official records of Gila County, Arizona, and having a boundary more particularly described as follows:

BEGINNING at the Standard southeast section corner of sec. 34, T. 5 N., R. 12 E., said corner also being Corner No. 1 of said HES 247; thence N. 89°48'00" W., along the South line of sec. 34, a distance of 1313.19 feet to Corner No. 2 of HES 247; thence N. 00°49'05" E., 1302.35 feet to Corner No. 3; thence S. 89°56'05" W., 662.80 feet to Corner No. 4; thence N. 00°13'15" E., 654.65 feet to Corner No. 5; thence N. 89°20'18" W., 657.15 feet to Corner No. 6; thence N. 00°37'42" E., 1978.05 feet to Corner No. 7; thence S. 89°47'40" E., 1962.66 feet to Corner No. 8; thence S. 00°21'33" W., 1973.86 feet to Corner No. 9; thence S. 89°59'37" E., 659.50 feet to Corner No. 10; thence S. 00°34'09" W., 1964.73 feet to the USGLO scribed stone Witness Corner to Corner No. 1 of HES 247; thence continuing S. 00°34'09" W., 0.66 feet to THE POINT OF BEGINNING;

LESS AND EXCEPTING THEREFROM those portions of said HES 247, also shown on said Record of Survey Map #1327 and more particularly described as follows:

PARCEL A:

COMMENCING for a tie at the USGLO scribed stone marking Corner No. 9 of HES 247 described in Parcel C above; thence S. 67°46'49" W.,

446.86 feet to THE TRUE POINT OF BEGINNING; thence S. 71°24'31" W., 600.00 feet; thence N. 09° 22'59" W., 542.00 feet; thence N. 27°53'42" W., 1490.80 feet; thence N. 71°24'31" E., 600.00 feet; thence S. 27°53'42" E., 1490.80 feet; thence S. 09°22'59" E., 542.00 feet to THE TRUE POINT OF BEGINNING; and

PARCEL B (Bacon Family Cemetery):

COMMENCING at said Corner No. 9 of HES 247; thence N. 00°21'33" E., on the line between Corners No. 9 and No. 8 of H.E.S. 247, a distance of 915.65 feet; thence N. 89°38'27" W., 92.81 feet to THE TRUE POINT OF BEGINNING; thence S. 00°21'33" W., 168.58 feet; thence N. 89°38'27" W., 129.20 feet; thence N. 00°21'33" E., 168.58 feet; thence S. 89°38'27" E., 129.20 feet to THE TRUE POINT OF BEGINNING; (0.50 acres, more or less)

Containing, after recognizing the exceptions, 130.59 record (130.27 surveyed) acres, more or less.

Non-federal land:

ALTOGETHER containing 405.30 record (422.74 surveyed) acres, more or less.

	Record Acres	Surveyed Acres
Yavapai County	160.00	177.76
Navajo County	98.98	98.98
Gila County	146.32	146.00

Federal Land

TONTO NATIONAL FOREST

Payson Ranger District

GILA AND SALT RIVER MERIDIAN, Gila County, Arizona

T. 10 N., R. 10 E.

sec. 9--Lots 4 and 6, SE1/4SE1/4SW1/4;

sec. 10--SW1/4; W1/2SE1/4.

Containing 272.77 record (273.97 calculated) acres, more or less.

**Notice
Tonto Apache Land Exchange**

FLOODPLAINS

The information contained in this notice is provided pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

There is approximately 0.66 miles of **federal land** within the 100-year floodplain. Once the lands are conveyed out of federal ownership, they are subject to floodplain restrictions of the Gila County Floodplain Management Ordinance (Document 2003-010889, Gila County Records). The National Flood Insurance Program (42 USC 4001-4128) provides the umbrella document for the states' floodplain control programs. Counties must have floodplain regulations in effect in order to qualify for the National Flood Insurance Program. The State of Arizona has required that local governmental units adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry (A.R.S. § 48-3601 through § 48-3627). The Flood Control District of Gila County is charged with regulating the use of land in accordance with these regulations and those specified in the Gila County Floodplain Management Ordinance approved June 24, 2003. These regulations strictly control development in "Base Flood" areas, which are the same as our "100-Year Floodplains."

A floodplain Notice (all that is detailed above) will be also entered into the Exchange Agreement and in Patent conveying the federal parcels to the non-federal party.

The Forest Service considers County restrictions to be what Clarence W. Brizee, OGC Assistant General Counsel for the Natural Resource Division, references in his October 8, 1980 letter when he talks about: When property in floodplain is proposed for . . . disposal to non-federal public or private parties, the federal Agency shall (1) reference in the conveyance those uses that are restricted under identified federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law. . . .

The non-federal party is willing to have a reference in their conveyance document that cites the local floodplain regulations (1). The Forest and the Regional Hydrologist concur that these are restrictive enough so there is no necessity to cite other restrictions (2). Therefore, we have met the requirements of both 3(d) (1) and (2).

Further, it is direction that:

"In general, deed restriction controlling future use and development of federal land conveyed into non-federal ownership should be used only when required by law or executive order or when clearly and specifically supported by the applicable forest land and resource management plan."

The Forest Service feels that the objectives of completing this exchange are of greater benefit to the government in the long run than putting any further restrictions on 0.66 miles of floodplain or eliminating the 0.66 miles, which would stop the land exchange altogether.