

DECISION NOTICE
and
FINDING OF NO SIGNIFICANT IMPACT

Black River Land Exchange

Exchanges--AZA 31926
USDA Forest Service
Southwestern Region
Apache National Forest
Springerville Ranger District
Apache County, Arizona

October 2005

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INTRODUCTION AND DECISION SUMMARY

This Decision Notice documents my decision to select alternative 1, the proposed action, as described in the August 2005 Environmental Assessment (EA) for the Black River Land Exchange. This decision will convey 337.74 acres of Federal land described as Federal Tracts A and B to First American Title Insurance Company, Trustee, under Trust 8541, for the benefit of Precision Components, Inc., Herbert W. Owens in exchange for 396.35 acres of non-Federal land described as Rancho Alegre, Thompson Ranch and Blue River Ranch parcels. Both the Federal and non-Federal lands are located within the Apache National Forest, Apache County, Arizona, except for the Blue River Ranch which is located in Greenlee County (See "Legal descriptions" at the end of this document).

A Decision Notice and Finding of No Significant Impact (DN/FONSI) approving the proposed action alternative to exchange the identified lands was originally signed by the Director of Lands and Minerals, Southwestern Region on August 24, 2004. Nine appeals of the DN/FONSI were received by the Appeal Deciding Officer for the Chief. Eight of the appeals were found to be eligible. Informal resolution was not reached. On December 6, 2004 the Appeal Deciding Officer reversed the decision of the Director of Lands and Minerals, Southwestern Region. The Appeal Deciding Officer directed the Director of Lands and Minerals to perform additional environmental analysis that consistently considered the potential for development on the Federal lands once conveyed into private ownership as a reasonably foreseeable future action. The additional analysis has been completed and is now included in the project record. The Apache-Sitgreaves National Forests completed the revised EA considering the effects of the potential for residential development of the Federal lands once conveyed into private ownership given the physical and legal constraints associated with the property and, in addition, the appropriateness of a deed restriction alternative has been considered. Potential future impacts and uses associated with reasonably foreseeable development on the Federal lands were considered in reaching a conclusion that the exchange is in the public interest and supports the two required findings of 36 CFR 254.3(b)(2).

This land exchange will be completed in accordance with the General Exchange Act of March 20, 1922, as amended; the Federal Land Policy and Management Act of October 21, 1976, as amended; and the Federal Land Exchange Facilitation Act of August 20, 1988. It follows current Forest Service regulations and policies and contributes to achieving the Apache-Sitgreaves National Forests' Land Management Plan direction. The scope of my decision is limited to the actions described in the EA and this DN/FONSI. This decision is site specific.

The appraisals of the Federal and non-Federal lands have been approved. Upon approval of the original August 24, 2004 DN/FONSI a formal Land Exchange Agreement which documented agreement and acceptance by the private landowner to the conditions of this land exchange proposal was signed by the private landowner. The Exchange Agreement was then accepted by the Forest Service and committed both parties to accept as final the Agency-approved appraised values. The Agency-approved appraisals indicate the value of the Federal land is less than the non-Federal land. The Federal Land has an approved value of \$4,675,000 and the non-Federal land has an approved value of \$4,725,000. A cash equalization payment of \$50,000 by the United States to First American Title Insurance Company as Trustee is required to equalize values as required by Sec. 206(b) of the Federal Land Policy and Management Act. Cash payments by the United States can be funds deposited by public school entities in previous exchange cases under the authority of the Sisk Act of December 4, 1967, as amended, or Land and Water Conservation Act funds. Use of these funds for this purpose meets the intent of said Acts. The Agency-approved values remain valid under the conditions cited in the Federal and non-Federal appraisal review reports and continue to be fixed and valid as long as the estate to be conveyed is consistent with the estate appraised.

DECISION RATIONALE AND DETERMINATION OF PUBLIC INTEREST

Based on the information documented in the EA, documents contained in or referenced in the project record, and past experience, it is my decision to approve this land exchange proposal and proceed with alternative 1, the proposed action.

I reviewed public comments, from both the original scoping and EA and the April 2005 draft EA and public comments that were received, and found no new issues or concerns were raised. As directed by the Appeal Deciding Officer the potential for future development on the Federal lands has been thoroughly analyzed and carried forth through the EA. All points brought forth were considered in the development of the August 2005 EA and are contained in the project record.

I have reviewed the two alternatives given detailed study to determine if they were responsive to the key issues and the purpose and need for this analysis. I also reviewed alternatives that were considered but not given detailed study to help me decide if a thorough and complete range of alternatives was considered. I find that the range of alternatives considered is thorough and complete.

I considered the following items in making my decision; the effects may be both positive and negative. The net public benefit is greatest from the proposed action.

1. As required by 36 CFR 254.3, the following statement is made regarding the completion of the Black River land exchange as a determination of public benefit.

Full consideration has been given to the opportunity to achieve better management of Federal lands and resources by the Black River land exchange. This exchange will result in the consolidation of lands for more logical and efficient management and development. It will meet the needs of the State of Arizona and local residents to secure important wildlife habitat objectives, protect cultural resources, protect wetlands, enhance recreation opportunities and improve public access to Federal land.

I find that:

The resource values and the public objectives served by the non-Federal lands to be acquired meet or exceed the resource values and public objectives served by the Federal land; and

The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

2. This land exchange is within the context and meets the guidelines envisioned and spelled out in the the Final EIS and approved Apache-Sitgreaves National Forests' Land Resource Management Plan. Upon conveyance of the non-Federal land to the United States, the newly acquired land will be managed together with the surrounding management areas in accordance with the standards and guidelines in the Apache-Sitgreaves Forests' Plan. The Federal land will be deleted from the management area within which it is located.
3. 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 impacts on the quality of the human environment and the transaction is in the public interest.
4. The acquisition of the non-Federal parcels will result in the Forest acquiring 118 acres of wetland/riparian habitat. A gain of this quantity of riparian habitat is considered substantial. Floodplain acquisition will include 1.65 miles along the West Fork of the Black River and 1.5 miles along the Blue River. All three parcels contain vital species habitat including loach minnow, spikedace, Apache trout, Arizona willow, Chiricahua dock, northern water shrew, and

native freshwater mussel. This habitat is considered extremely important on the Forest and in the Southwestern Region.

5. National Forest administration would be both simplified and enhanced through acquisition of the non-Federal land and the resulting consolidation of landownership through this exchange. Completion of this exchange will result in a reduction of approximately 5.9 miles of private/National Forest property boundary and a reduction of 14 property controlling landline corners. This will also result in an estimated annual savings of approximately \$870.
6. The intended use of the conveyed Federal land will not substantially conflict with established objectives on adjacent Federal lands. Any future uses would occur within the constraints of applicable Federal and State laws regarding the Clean Water Act for storm water discharge, impacts to wetlands, floodwater management, and groundwater development, including State and Apache County subdivision and development standards.
7. It is expected that Apache County tax revenues will increase as a result of this proposal. According to the Zoning Ordinance of Apache County, Arizona, Greer Phase One amendment, these lands have been identified as A-G Agricultural General Zone. Property values would be expected to continue to increase over time.
8. Greenlee County tax revenues will slightly decrease as a result of this exchange. The property taxes paid on the Blue River Ranch parcel located in Greenlee County totaled \$68.16 for 2002. Based on payments received by the County from years 2002 through 2005 the payments to the County from the Payments to States programs exceeded this amount every year.

As required by 36 CFR 254.3 I have determined that the public interest is well served through this exchange.

The resource values and public objectives served by acquisition of the non-Federal parcels equal or exceed the resource values and public objectives served by conveyance of the Federal parcels. The non-Federal lands contain significant high quality wetland/riparian habitat.

The intended use of the Federal lands to be conveyed will not substantially conflict with established management objectives on adjacent Federal lands. Reasonably foreseeable legal development on the Federal lands will not significantly conflict with established management objectives on adjacent Federal or private lands.

The EA which discusses the impacts of this exchange is available for public review at the offices of the Springerville Ranger District; the Forest Supervisor, Apache-Sitgreaves National Forests; and in the office of the Regional Forester, Southwestern Region, Albuquerque, New Mexico.

PROPOSED ACTION

In accordance with the above cited authorities, the United States will acquire non-Federal land containing 396.35 acres, more or less, within the Alpine and Springerville Ranger Districts, Apache National Forest, Greenlee (158.68 ac.) and Apache (237.67 ac.) Counties, Arizona; and the United States will convey to First American Title Insurance Company, Trustee, under Trust 8541, for the benefit of Precision Components, Inc., Herbert W. Owens, Federal lands containing 337.74 surveyed acres, more or less, within the Springerville Ranger District, Apache National Forest, Apache County, Arizona.

The non-Federal land consists of three separate parcels. The Rancho Alegre parcel is bordered by Apache National Forest and State of Arizona Heritage Fund lands. Both the Blue River Ranch and Thompson Ranch are isolated inholdings completely surrounded by Apache National Forest lands.

- Rancho Alegre parcel is within the Apache National Forest on the Alpine Ranger District. The land is situated along the West Fork of the Black River at an elevation of 7,600 feet. The vegetation along the 0.25-mile stretch of River is riparian in nature, with Arizona alder and willows lining both

banks. There are 3 acres of wetland habitat along the River. The upland portion of the property is an open meadow, dominated by spike muhly grass. The river and wetlands provide habitat for Apache trout, Chiricahua dock, and native freshwater mussels (Dr. Myers, USFS Report 10/04/01). Forest Road (FR) 01-25 provides access to the parcel along its west and south boundaries. The east boundary adjoins a parcel owned by the Arizona Heritage Fund and managed by the Arizona Game and Fish Department.

- The Thompson Ranch parcel is within the Apache National Forest on the Springerville Ranger District. The land is situated along the West Fork of the Black River at an elevation of 8,800 feet. The perennial streams passing through this parcel include 1.0 mile of Black River, 0.20 mile of Burro Creek, and 0.20 mile of Thompson Creek. Approximately 60 acres of riparian habitat is characterized by alders, willows and sedges. The parcel provides habitat for Apache trout, Arizona willow, Chiricahua dock, and northern water shrew (Dr. Myers, USFS Report 10/04/01). FR 01-116 provides access to the parcel and it runs north-south through the east portion of the parcel and turns to the west along the south boundary.
- The Blue River Ranch parcel is within the Apache National Forest on the Alpine Ranger District. The land is situated along the Blue River at an elevation of 5,500 feet. The parcel originally contained a 4.0-acre 10-year "Estate for Years" and a road easement from the Greenlee County Blue River Road (FR 01-281) to a residence. The "Estate" encompassed structural improvements described as a residence, utility building, storage shed, and well house. The "Estate for Years" expired on December 29, 2004. The structures were disposed of by the non-Federal party in November 2004. The non-structural range improvements consisting of fences remain and will not be removed by the non-Federal party. A Navopache Electric Cooperative 69 KV transmission line and Frontier Communications buried telephone line pass through the southern portion of the parcel paralleling FR 01-281. The vegetation along the approximately 1.50 miles of river channel is riparian dependent and includes Fremont cottonwood, narrow leaf cottonwood, alder, and willow. There are 55 acres of riparian habitat in this parcel. The parcel contains habitat for the spikedace (Dr. Myers, USFS Report 10/04/01). The Blue River Road provides access along the east and south sides of the parcel.

The two Federal parcels are located approximately 12 miles southwest of Springerville, Arizona, in the Apache National Forest and Springerville Ranger District.

- Tract A has an elevation of 8,160 to 8,400 feet above sea level and is generally gently sloping on the east portion with some steeper terrain on the north portion. Soils are heavy clay with some surface rock. Vegetation consists of a scattered overstory of second growth ponderosa pine with an understory of various grasses and small openings. This tract is bordered on the east by State Highway 373 and adjoins private lands currently owned by Herb Owens on the south and west. There are no riparian or wetland habitats in this tract.
- Tract B has an elevation range of 8,180 feet in the northeast corner to 8,500 feet in the southwest corner. The vegetation is primarily a continuous overstory of second growth ponderosa pine with a grass understory. Soils are high in clay content with surface rock evident. The tract is bordered on the north by Crosby Acres, a developed subdivision, and State Highway 373 on the east. This tract includes part of a cross-country ski trail along its southern boundary (approximately $\frac{3}{4}$ mile in length). The ski trail will be relocated south of the tract boundary and above Rosey Creek. The trail will not be relocated within any part of the Rosey Creek floodplain. There are no riparian or wetland habitats in this tract.

PUBLIC INVOLVEMENT

Legal notice of the proposed land exchange was published for 4 consecutive weeks between October 29, 2002 and November 27, 2002 in the *White Mountain Independent* and the *Copper Era* (36 CFR 254.8). The Greenlee and Apache County Boards of Supervisors, State agencies and the appropriate Congressional delegation members were formally advised. No objections were received as a result of the newspaper publication. The Greenlee County Board of Supervisors has gone on record as opposing any land exchanges that reduce the acres of private land in Greenlee County that may be available for future development.

Consultation occurred with Native American Tribes, the Arizona State Game and Fish Department and the U.S. Fish and Wildlife Service. Public involvement was sought through mailing a request for public input letter to determine any issues of concern. A mailing list consisting of 222 addresses was compiled that included Federal, State, and local agencies, as well as individuals and organizations that it was believed had an interest in or would be affected by the project. The mailer included a description of the proposed project, maps showing the lands being considered for exchange, and requested written comments be submitted to the Forest Service by January 31, 2003. The public was invited to an open house at the Apache-Sitgreaves Forest Supervisor's Office that was held January 9, 2003, to receive information about the proposed exchange and submit their comments. Notice of the open house was published in the *White Mountain Independent* on January 3, 2003 and the Apache County Recorder on January 1, 2003. The Forest Service received 150 written responses in the form of letters, e-mails and comment forms in response to the mailer and open house. There were an additional 17 comments via telephone. Petitions from individuals disapproving of the land exchange were periodically submitted to the Forest. All individuals on the petitions whose name and address could be identified were added to the mailing list so that they would be informed of the availability of the EA for comment. The issues raised at the open house reflected most of the same comments and concerns that were received in writing. The comments and the interdisciplinary team's (IDT) responses are included in the project record.

No objections or adverse comments were received from any of the Native American Tribes or state agencies that were contacted.

Notice of the 30-day comment period for the original EA was sent to all the parties listed on the Forests' mailing list for the proposed exchange on May 22, 2003, and legal notice was published in the *White Mountain Independent* on May 30, 2003. The Forest received 32 written responses in the form of letters, facsimiles and e-mails during the public comment period for the original EA. Comments that were not previously addressed in the EA along with Forest Service responses were included as Exhibit C as part of the August 24, 2004 DN/FONSI and are included in the project record.

The IDT reviewed the comments and at that time one key issue was identified and addressed in the environmental analysis and the original EA. The issue concerned the reduced opportunity for outdoor recreation activities on Federal lands near Greer should the land exchange occur. The number of acres of Federal land in the Apache National Forest available for public outdoor recreation use was identified as the unit of measure for this issue in the EA. The IDT concluded that the change in acres available for public outdoor recreation use in the Greer area would decrease by 337.2 acres or approximately 2.4%. An increase of 396.35 acres available for outdoor recreation elsewhere on the Forest would result in an additional 58.61 acres actually being available for use by the public. The change in acres available to the public for outdoor recreation use in the Greer area and the Forest as a whole was determined to not be significant.

Subsequent to the Appeal Deciding Officer's December 6, 2004, reversal of the Director of Lands & Minerals' original DN/FONSI a request for comments on a revised draft EA that included an analysis of potential for future development on the Federal lands was mailed on April 15, 2005 to the appellants of the original DN/FONSI and individuals and organizations who had previously submitted comments on the original EA. Legal notice of the availability of the revised draft EA and the 30-day comment period was published in the *White Mountain Independent* on April 19, 2005. The Forest received 104 written responses in the form of letters, facsimiles and e-mails during the public comment period for the draft EA. Comments along with the Forest's responses are included in the project record.

A public meeting was held in the community of Greer, Arizona on April 23, 2005. Notice of the meeting was sent by mail on March 24, 2005, to the appellants of the original DN/FONSI and individuals and organizations who had previously submitted comments on the original EA and a news release announcing the meeting was published in the *White Mountain Independent* on March 29, 2005. It was estimated that over 50 people attended the meeting. An April 29, 2005, article in the *White Mountain Independent* reported on the meeting and indicated that 70 people attended the meeting.

Two key issues were addressed in the environmental analysis. The issue concerning the loss of opportunity for outdoor recreation activities in the Greer area that was discussed in the original EA was carried forward. The potential for future development on the Federal lands was determined to be a second issue and has now been addressed in the environmental analysis and final EA.

All comments received during the original analysis and the resulting additional analysis that was performed as directed by the Appeal Deciding Officer were considered in this decision and are included in the project record.

ALTERNATIVES CONSIDERED, BUT NOT CARRIED FORWARD FOR FURTHER ANALYSIS

The range of alternatives considered in a discretionary land exchange is limited by the exchange process itself. A balanced exchange package is eventually arrived at by a series of proposals and counter proposals until both the non-Federal and Federal parties accept a mix of parcels. Once both parties agree upon an acceptable mix, the Federal agency proposes to go forward with an analysis of the action and an Agreement to Initiate a Land Exchange is signed by both parties. The exchange proposal analyzed in this document reflects lands that were mutually agreed upon by the non-Federal landowner and the Forest Service.

Purchase of non-Federal lands. Other means of acquiring the non-Federal lands were considered but eliminated from further study. The Land and Water Conservation Fund (LWCF) is the funding mechanism used by the Forest Service to purchase tracts of land. To date, Congress has appropriated enough funding to acquire only a few of the highest national priorities for land acquisitions. As is the case with most proposals, many deserving projects go without funding. Sale of non-Federal lands to the United States is an alternative to a land exchange, however the possibility of purchasing the non-Federal parcels through the LWCF is not an option as Mr. Owens indicated he is not willing to sell the Federal government the non-Federal parcels. Mr. Owens proposed a land exchange because he wishes to receive lands of equal value to those he is willing to convey. The Federal government can only purchase land from willing sellers. In addition, as stated above, funds to purchase these privately owned parcels are not presently available. It appears appropriated LWCF funds for land purchases will continue to be limited in the foreseeable future as funding is now in a downward trend.

Deed restrictions. Public scoping also suggested that deed restrictions should be used to control future development on the Federal land once conveyed into private ownership. Completing the exchange with the addition of a deed restriction (restrictions limiting use of the land) on the Federal lands was considered by the Forest Service. The Apache-Sitgreaves National Forests reviewed the need for a deed restriction through the environmental analysis process. The resource values associated with the Federal lands indicated that no restrictive deed or covenant was warranted to comply with legal, regulatory requirements, executive orders, policy, or to meet Forest Plan management objectives. An alternative that included a deed restriction was not fully developed or analyzed, except as the "No Action" alternative. 36 CFR 254.3(h) states that "*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.*" Chapter 3 in the EA describes the existing conditions and possible effects of the proposal and the No Action alternative. The Biological Analysis and Evaluation (BA&E) and supplements for sensitive wildlife, fish and amphibians, and plants, and threatened and endangered wildlife are contained in the project record. The

Federal lands are upland sites with no water and no fish or amphibians; there are no fisheries, amphibian, or wetland concerns associated with them. No riparian areas, wetlands or floodplain would be lost through this exchange. The Federal lands are not considered critical habitat as outlined in any Recovery Plan, or a high use area for sensitive wildlife species. Game animals, including elk and mule deer, do frequent the area but any potential future development that may occur would have no major impact on these species. No cultural sites or traditional cultural properties that might be adversely affected by the proposal or alternatives were identified, so a need for a deed restriction related to cultural resources was not required. While the non-Federal party would have full discretion on what he could do with the property should the exchange go forward, any future uses of the land would occur within the constraints of applicable laws and regulations, including but not limited to, clean air laws, the Endangered Species Act, state law, and county subdivision and development standards. There are no resources or unusual conditions present on the Federal lands that require restrictions beyond those imposed by local and state regulations and laws.

A deed restriction does not fulfill the purpose and need for action, as it would also require continued Federal administration and oversight of the lands exchanged out of Federal ownership. The Forest Service has long taken the position that zoning and regulation of uses on private land are within the responsibility of state and local governments. Forest Service Manual 5403.3 reads "*Except as authorized by law, order, or regulation, Forest Service policies, practices, and procedures shall avoid regulating private property use.*" A principal objective of discretionary land exchanges is to reduce administrative costs and requirements, not increase them.

Exchange of other Federal lands. Several commenters suggested Federal lands outside the Greer area should be select for exchange rather than those identified in the EA. The non-Federal party initiated discussion with the Forest Service regarding a land-for-land exchange proposal that identified Federal lands adjacent to or in close proximity to his existing ranch property. During the discussions that eventually resulted in an acceptable mix of lands it was made clear by the non-Federal party that he required the Federal lands be in the vicinity of his existing ranch property. If an alternative that included the exchange of other Federal lands outside the Greer area was not acceptable to the non-Federal party it could not be fully developed or analyzed, except as the No Action alternative.

ALTERNATIVES CONSIDERED IN DETAIL

The primary factors I considered in making my decision were how well each alternative met the purpose and need for the proposal, and responded to the key issues and other concerns raised during scoping. A summary of the issues and the consequences of the alternatives relative to the key issues appear on page 9 in the EA. A summary of other concerns and the consequences of the alternatives are contained on pages 17-38 in the EA.

The two alternatives that were considered and discussed in detail are:

Alternative 1 - Complete the exchange as proposed; exchange 396.35 acres of non-Federal land for 337.74 acres of Federal land.

Alternative 2 - No action. No exchange of lands would take place and lands would remain in current ownerships.

FINDING OF NO SIGNIFICANT IMPACT

My decision is based on the August 2005 Environmental Assessment for the Black River Land Exchange, the Biological Assessment and Evaluation and supplements, and a review of the scoping comments and public comments received on the draft April 2005 Environmental Assessment. I have determined that this project is not a major Federal action and will not significantly affect the quality of the human environment, either

individually or cumulatively, with other activities in the general area. An Environmental Impact Statement is not needed. This finding is based on the following factors:

Consideration of the beneficial and adverse environmental impacts:

Adverse effects are primarily related to the loss of Federal land available for outdoor recreation in the Greer area and impacts to adjacent private lands from foreseeable future development of the Federal lands. None of the environmental effects were determined to be significant, singularly or in combination.

Based on the EA, there are no significant adverse or beneficial impacts likely to occur as a result of the proposed exchange.

(EA Chapter 3, pages 17-38, 55-56.)

Consideration of the effects on public health and safety:

The proposed exchange will have no adverse effect on the public health or safety. The analysis of reasonably foreseeable future development indicates development and future use of the Federal parcels would occur within the constraints of applicable laws and regulations, including but not limited to, clean air laws, the Endangered Species Act, state law, and county subdivision and development standards. There will be no significant impact on public safety or demand for additional public services.

(EA Chapter 3, pages 36, 38.)

Consideration of the unique characteristics of the geographic area:

The Federal land to be conveyed is not unique within its geographic setting, in terms of physical and biological characteristics, and is generally similar to many other areas of National Forest and private land in the area. The area drains into Rosey and Lang Creeks. There are no prime farms, range, or forestlands, or roadless, wilderness, natural, study or other specially designated areas located on the lands proposed for exchange.

(EA Chapter 3, pages 18-21, 34, and 35.)

The Forest Service will acquire three parcels that have "live" or perennial water. Water quality in the Blue River is high enough to support native fish such as the loach minnow and spikedace. The Rancho Alegre parcel contains habitat that is vital to loach minnow. The acquisition of these parcels would result in the Forest acquiring 118 acres of wetlands identified as vital habitat for loach minnow and spikedace, Apache trout, northern water shrew, and native freshwater mussels.

(EA Chapter 2, pages 6 and 7; Chapter 3, pages 19 and 26.)

Consideration of the degree to which the effects are likely to be highly controversial:

The effects on the quality of the human environment are not likely to be highly controversial because there is no known scientific controversy over the impacts of the project.

(EA, Chapter 3, pages 17-38.)

Consideration of the degree to which effects are uncertain or unknown:

There are no known effects on the human environment that are highly uncertain, or involve unique, or unknown risk as a result of this proposed exchange. Effects of this action will be similar to the effects of past similar actions. Land exchanges have occurred in the Southwestern Region for quite some time and their effects are relatively well understood. Based on the results of past actions there are no known or expected effects on the human environment that are highly uncertain or involve risk as a result of implementing this proposal.

(EA Chapter 2, pages 6-7.)

Consideration of the degree to which this action will set a precedent for future actions with significant effects:

The proposed exchange will not establish a precedent for future actions of this nature in this area. Each proposed land exchange or other similar action must be evaluated on its own merit. My decision neither establishes a precedent for future actions nor represents a principle about future considerations. (EA Chapter 2, page 6.)

Consideration of the action as related to other actions with cumulatively significant impacts:

Cumulative effects were considered as a part of the analysis. The analysis did not reveal any significant cumulative impacts from individual or connected actions. (EA Chapter 3, pages 17-38, 55-56.)

Consideration of the degree to which the action may affect archeological/cultural sites, listed, or eligible Historic Places:

The Forest prepared a cultural resource survey report for the Federal lands. No archaeological properties were identified on the Federal lands. Consultation was conducted with the Hopi Tribe, the White Mountain Apache Tribe, the Pueblo of Zuni, and the Navajo Nation regarding the exchange. The exchange does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593. (EA Chapter 3, page 31.)

Several minor rock structures that are potential cultural resource sites have been identified on the non-Federal Blue River Ranch parcel. Should this parcel be acquired by the United States a determination of their significance would be made. The historic Thompson cabin on the Thompson Ranch parcel would be acquired by the United States and it would receive the full protection of Federal law. (EA Chapter 3, page 31.)

Consideration of the degree to which the action may affect threatened, endangered, and sensitive species, or habitat:

No adverse impact to any endangered, threatened, or sensitive species or their habitat is foreseen. No threatened, endangered, or sensitive species are known to inhabit the Federal area within the proposed land exchange. Several Mexican Spotted Owl Protected Activity Centers (PAC) are located west of the Federal lands. Concurrence on the Forest's determination that the proposed action "may affect, but is not likely to adversely affect" MSO was requested of and received from the U.S. Fish and Wildlife Service. (EA Chapter 3, pages 22-28.)

Consideration of whether the action violates Federal, State, or local laws or requirements imposed for the protection of the environment:

The proposed exchange will not violate or threaten to violate any Federal, State, or local law requirement for the protection of the environment. Local, county, and municipal governments were contacted, as were State agencies. The respondents were supportive or quiet regarding the protection of the environment as a result of this project. Also, see "Findings Required by Laws/Regulations" below. (EA Chapter 3, pages 17-38.)

FINDINGS REQUIRED BY LAWS/REGULATION

- a. Conveyance of the Federal lands into private ownership does not conflict with the requirements of Sec. 402(g) of FLPMA (Grazing Permittee/Lessee).
- b. No archeological/cultural values on the Federal lands are involved. The exchange does not conflict with the requirements of the National Historic Preservation Act of 1966 and Executive Order 11593.
- c. This exchange does not conflict with Executive Order 11988 regarding floodplain management and Executive Order 11990 regarding wetlands management. The positive acquisition of wetlands/riparian and floodplain lands into Federal ownership supports the objectives of the Executive Orders as interpreted in the Forest Plan.
- d. No threatened, endangered, or sensitive species of animals or plants, or habitat are adversely affected. A Biological Assessment and Evaluation was completed on March 27, 2003 and supplemented February 28, 2005 and July 21, 2005. U.S. Fish and Wildlife Service concurrence was received for the proposed exchange. The exchange does not conflict with the requirements of the Endangered Species Act of 1973, as amended.
- e. No caves are involved; therefore, this exchange does not conflict with the intent of the Federal Cave Resources Protection Act of November 18, 1988.
- f. 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. No evidence of hazardous materials was discovered indicating the likelihood of contamination on the Federal or non-Federal lands. 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. A previously closed Forest Service solid waste "dump" is located on Federal Tract A. It received household trash from nearby recreation sites in the mid 1950's to the mid 1960's. The dump was closed, covered with soil and reclaimed in the mid 1960's. No known hazardous materials were disposed of at the site. The non-Federal party is aware of the circumstances and acceptable to its present condition. The Regional Environmental Engineer has determined that no remedial action is necessary at this site.
- g. A formal Forest Service Mineral Report dated April 11, 2002 concluded that both the Federal and non-Federal lands have low potential for oil, gas, coal, and geothermal resources. There is also low potential for locatable minerals. The subject lands have moderate potential for salable minerals in the form of common cinders, sand or gravel, but no greater potential than for that of surrounding areas. Both the Federal and non-Federal lands will be exchanged without any mineral reservations. The report was submitted to the Bureau of Land Management, Arizona State Office; concurrence was received on August 26, 2005 and is in the project record.
- h. This exchange does not conflict with Executive Order 12898 regarding Environmental Justice in Minority Populations and Low Income Populations. The exchange itself will not affect low income or minority population members.

IMPLEMENTATION DATE

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 *White Mountain Independent*, the newspaper of record. If an appeal is filed, implementation will not begin sooner than 15 business days following a final decision on the appeal (36 CFR215.9(b)).

ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This Decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. The written appeal must be filed (regular mail, fax, e-mail, hand-delivery, or express delivery) with the Appeal Deciding Officer.

Send appeals by regular mail to:

Appeal Deciding Officer, USDA Forest Service, EMC;
1400 Independence Avenue, SW; Mailstop 1104
Washington, DC 20250-1104

Federal Express and hand-delivery address is:

USDA Forest Service, Ecosystem Management Coordination,
201 14th Street, SW; 3rd Floor, Central Wing;
Washington, DC 20024.

Telephone 202-205-0895; and Fax number is 202-205-1012.

The business hours for those submitting hand-delivered appeals are: 8:15 a.m. to 4:45 p.m. ET, Monday through Friday, excluding holidays. An electronic appeal must be submitted in a format such as an email 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 *White Mountain Independent*, the newspaper of record. The publication date in 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 any other source.

Individuals or organizations who submitted substantive comments (36 CFR 215.2) during the comment period 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.

INFORMATION CONTACT PERSONS

For further information concerning this Decision or the Forest Service appeal process, contact the Director, Lands and Minerals, Southwestern Region, USDA Forest Service, 333 Broadway, SE, Albuquerque, New Mexico 87102, (505) 842-3271, or the Forest Supervisor, Apache-Sitgreaves National Forests, 309 S. Mountain, P.O. Box 640, Springerville, Arizona 85938, (928) 333-4301.

October 14, 2005

Date

/s/ H. Wayne Thornton

H. WAYNE THORNTON
Director of Lands and Minerals
Southwestern Region

EXHIBIT 1
Legal description of FEDERAL LAND to be exchanged

APACHE NATIONAL FOREST

Springerville Ranger District

GILA AND SALT RIVER MERIDIAN, Apache County, Arizona
Township 8 North, Range 27 East

Sec. 22—S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 23—lots 2 and 3; S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 26—lot 5.

“Tract A”

Containing 70.57 record/surveyed acres, more or less.

GILA AND SALT RIVER MERIDIAN, Apache County, Arizona
Township 8 North, Range 27 East

Sec. 35—lots 2, 4, 5, 8, 9, 10, and 12.

“Tract B”

Containing about 267.17 record/surveyed acres, more or less.

ALTOGETHER containing about 337.74 acres, more or less.

Legal description of non-FEDERAL LAND to be exchanged

APACHE NATIONAL FOREST

Alpine Ranger District

GILA AND SALT RIVER MERIDIAN, Greenlee County, Arizona
Township 3 North, Range 31 East

Sec. 20--N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 21--N $\frac{1}{2}$ SW $\frac{1}{4}$.

“Blue River”

Containing 160.00 record (158.68 calculated/surveyed) acres, more or less.

GILA AND SALT RIVER MERIDIAN, Apache County, Arizona
Township 4 North, Range 28 East

Sec. 3--SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 10--NW $\frac{1}{4}$ NW $\frac{1}{4}$.

“Rancho Alegre”

Containing 80.00 record (79.76 calculated surveyed) acres, more or less.

Springerville Ranger District

GILA AND SALT RIVER MERIDIAN, Apache County, Arizona
Township 6 North, Range 27 East

Sec. 26--SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 27--W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

“Thompson Ranch”

Containing 160.00 record (157.91 calculated/surveyed) acres, more or less.

ALTOGETHER containing 400 record (396.35 calculated/surveyed) acres, more or less.

Greenlee County – 160 record (158.68 calculated/surveyed) acres, more or less.

Apache County – 240 record (237.67 calculated/surveyed) acres, more or less.

Exhibit 2

Actions Analyzed for Cumulative Effects

Analysis of cumulative effects considers past, present, and reasonably foreseeable actions.

Past Actions

The affected environment has been created by a combination of natural events and human impacts. Depiction of the affected environmental consequences inherently includes past events and impacts.

Present Actions

There are two other Forest Service Projects in the area: Greer Wildland Urban Interface and Greer Lakes Improvement Project.

Greer Wildland Urban Interface (WUI) - This project involves the pre-commercial thinning and commercial harvest of wood around the private lands in the Greer area with the desired outcome of reducing potential wildland fire impacts to private property. This project is currently being implemented (Doc 134).

Greer Lakes Improvement Project - This project involves replacement of existing boat ramps and toilet facilities and construction of armadas and one new toilet at the Greer Lakes (Tunnel, Bunch and River Reservoirs). This project is currently being implemented (Doc 132).

No other present projects in this area are currently proposed or listed in the Schedule of Proposed Actions for the Apache-Sitgreaves National Forests.

Reasonably Foreseeable Actions

Residential Development

The cumulative effects analysis considers future residential development on the Federal lands even though Mr. Owens has stated there currently are no future plans for development or other disposition of the land.

Given the local zoning of the adjacent areas, it is reasonably foreseeable that the lands conveyed out of Federal ownership could be developed for residential use. However, the future use or development of the lands conveyed out of Federal ownership would become subject to all laws, regulations, and zoning authorities of State and local governing bodies. All potential future development would comply with the Apache County subdivision ordinance, Apache County Greer Conservation, Development and Management Program Ordinance (Phase I), and Arizona State laws and regulations.

Assumptions for reasonable future development are based on the information contained in the report "Evaluation and Estimate of Projected Development Costs for Subdivision of 337 Acres in Greer, Apache County, Arizona", dated November 2003, prepared by Murphy Engineering Group (Murphy Engineering Report) (Doc 120). This document was prepared to display the level of development this land could accommodate if the maximum legal development was to occur. A summary of the basic requirements used in the analysis is as follows:

- Conceptual layout and lot density does not represent a development plan as detailed topographic information was not used to prepare the report. Layouts were for estimating infrastructure improvements. Minimum lot sizes of 1 acre are required in the Greer area (Doc 3, Section 307.01).

- Roads constructed to minimum County standard, which involves preparation of preliminary plan and engineering drawings that must be submitted to the County Planning Director for approval by the Planning and Zoning Commission (Subdivision Resolution, County of Apache, Arizona, Section IV).
- Although pavement is not required by County standards, it is reasonably foreseeable that all roads would be paved to meet market demands (Doc 120).
- The County requires a drainage plan for stormwater runoff. (Zoning Ordinance of Apache County, Article 8)
- Necessary improvements, including required drainage facilities to manage stormwater runoff, would be constructed to insure downstream properties are protected from any increases in peak flow runoff due to development (Doc 120).
- Utilities comply with Arizona Corporation Commission regulations (Doc 120).
- Arizona Department of Environmental Quality (ADEQ) has jurisdictional authority for approving water and wastewater facilities. Public water and sanitary systems proposed to serve the subdivision must meet minimum ADEQ standards. The subdivision would be located within the Little Colorado Sanitary District, which has jurisdictional authority over properties within the District's boundaries therefore wastewater disposal would comply with the District's rules and regulations and be connected to its facilities. Each lot would be required to install a septic tank which would be connected to LCSD's collection system for treatment at its facility. Any upgrades or extensions necessary to provide service to the subdivision would be arranged for by the proponent (Doc 120).
- Water for domestic use would be provided by a central production and distribution system to the entire development.
- Fire protection facilities are included in development concept (Doc 120).
- All potential future development on the Federal lands would be subject to Apache County Phase I regulations. Objectives of the Phase I include encouraging adequate open space, the evaluation and control of high density uses, and enhancement of visual aesthetics and maintenance of the rural village quality and image of Greer (Doc 35).

Applicable laws, regulations, and zoning modeled in the cumulative effects analysis:

- County standards for stormwater runoff (Zoning Ordinance of Apache County, Article 8).
- State of Arizona standards for roadways and streets (Arizona Administrative Code, Title 18, Chapter 2)
- 40 Code of Federal Regulations Parts 1500-1508

Future Land Adjustments

Recently inquiries have been received by the Springerville District Ranger regarding a proposal for a land exchange involving the 19 existing summer recreation residence permits that collectively make up the Little Colorado Summer Home Tract on approximately 35 acres located within the GRA. Although a formal exchange proposal has not been received it is possible in the foreseeable future that one involving these recreation residences may be submitted for consideration. There currently are no other inquiries or formal proposals for land exchange within the GRA at this time. A request by the Forest Service for Fiscal Year 2006 funding to purchase approximately 10 acres of land located along the Little Colorado River within the GRA has been submitted to the Washington Office. Proposals to include this land in a future exchange

proposal would also be considered. An exchange of the summer recreation residence tract out of Federal ownership or Forest Service acquisition of the 10 acres along the Little Colorado River would result in a 1% or less change to the number of acres of Federal and private lands in the GRA.

No other reasonably foreseeable projects in this area are currently proposed or listed in the Schedule of Proposed Actions for the Apache-Sitgreaves National Forests.

Relocation of cross-country ski trail

Tract B contains a section of a cross-country ski trail along its southern boundary (approximately $\frac{3}{4}$ mile in length). The ski trail would be relocated south of the tract's boundary and above Rosey Creek. The trail would not be relocated within any part of the Rosey Creek floodplain.